

# Fed judge considers if pharmacies must sell Plan B

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(AP) -- A federal judge is considering whether Washington state can require pharmacies to stock and sell Plan B or other emergency contraceptives, even in the face of religious objections by druggists who believe they destroy human life.

U.S. [District Judge](#) Ronald Leighton heard closing arguments Wednesday in a lawsuit that claims state rules violate the [constitutional rights](#) of pharmacists by requiring them to dispense such medicine. The state requires pharmacies to dispense any medication for which there is a community need and to stock a representative assortment of drugs needed by their patients.

Ralph's Thriftway in Olympia, Wash., and two licensed Washington pharmacists sued in 2007, saying that dispensing [Plan B](#) would infringe on their religious beliefs because it can prevent the implantation of a fertilized egg. The state says the requirements are legal because they apply neutrally to medicines and pharmacies, and that they promote a government interest - the timely delivery of medicine, including Plan B, which becomes less effective as time passes.

The judge blocked the state dispensing rule in 2007, finding that it would violate the plaintiffs' freedom of religion. But a 9th U.S. Circuit Court of Appeals panel overruled him, saying that he applied the wrong legal standard and that the rule appeared constitutional because it was neutral and did not directly target [religious views](#).

The appellate court sent the case back to Leighton, telling him to apply the correct standard. He held an 11-day trial to flesh out the matter, and in court Wednesday, he expressed little patience for the state's enforcement of the rules, which he said reminded him of the federal government's arbitrary enforcement of the now-repealed rule against gays serving openly in the military.

The issue is more important than many other freedom-of-religion cases, such as those concerning religious dress or other ceremonial matters, he said.

"The question of life and death is serious," he thundered at an attorney for the state. "It's not facial hair, it's not a burka. ... I do not know when life begins, but I will not denigrate somebody's view of when life begins."

Leighton said he would rule in a couple weeks, and that he intended to frame his opinion in a way that would encourage the 9th Circuit and the U.S. Supreme Court to address whether pharmacists have a due-process right to refuse to provide medicine that they believe can take a life.

"Somebody at higher pay and higher station will decide this issue," he said. "I'll tee it up."

Plan B had been at the center of the state's decision in 2007 to adopt the Washington Board of Pharmacy's dispensary requirements. The drug, which has a high dose of medicine found in birth-control pills, is effective in preventing pregnancy if a woman takes it within 72 hours of unprotected sex.

Individual pharmacists are allowed to pass a prescription to another druggist in the same store, provided the order is not delayed. But that leaves no option for a lone [pharmacist](#) or a [pharmacy](#) owner with

religious objections to a particular drug.

The pharmacists "can violate their core [religious beliefs](#) and participate in the taking of a human life, or they can lose their license," lawyer Kristen Waggoner said during her closing argument.

The pharmacists argued they can easily and quickly refer customers to nearby drug stores willing to sell the drug, but women's rights groups said that may not be the case in rural areas. It might also be difficult for those with disabilities if their pharmacists decide not to dispense it for personal reasons, they said.

Waggoner noted business exemptions that allow pharmacies not to stock a drug, including low demand, high cost, insurance concerns, and security reasons in cases where stocking a drug such as the addictive painkiller oxycodone could increase risk of theft. If the state allows pharmacies not to stock a drug for non-religious reasons, it should also allow them not to stock a drug for religious ones, she argued.

Democratic Gov. Chris Gregoire, who supports the dispensary requirements, has rejected a compromise that would have allowed druggists to refer patients to other pharmacies for reasons of conscience.

A group that includes HIV patients has intervened in the case on the state's behalf, arguing that if pharmacies can refuse to dispense Plan B for religious reasons, some might also refuse to dispense AIDS medications, for example.

According to filings in the case, eight states have rules requiring pharmacists to dispense all drugs. But most of those don't require pharmacies to stock Plan B or similar drugs, so pharmacies in those states wouldn't be required to dispense them, the plaintiffs argue.

Waggoner noted that the state showed no interest in rigidly enforcing the rule until groups such as Planned Parenthood began filing complaints and sending test-shoppers and picketers to pharmacies to see if they would dispense Plan B. She said it indicated the state's true objective was to stamp out religious objection to the drug, an idea she called "repugnant to the Constitution."

Hospital pharmacies in the state do not fall under the rules, which govern retail, outpatient pharmacies, and they can refuse to dispense certain drugs for reasons of conscience. Catholic hospitals won't dispense Plan B except in cases of rape, Leighton noted.

That makes the state's argument about promoting access to the drug a "red herring," he said.

"The poor people who rely on emergency rooms don't get the so-called benefit of the rule," he said. "It's riddled with exceptions and holes. It's Swiss cheese."

The state's lawyers argued that exemptions to the rule increase the accessibility of drugs because it helps pharmacies stay competitive.

Plan B is kept behind the counter but is available without a prescription to anyone over 17. Federal regulators recently recommended that it be sold to anyone regardless of age, but the Obama administration overruled its own experts in December, outraging women's rights groups and many in the president's own party.

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