

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ARIETTY BRUSH,)	
)	
Plaintiff,)	Case No.
)	
v.)	Judge
)	Magistrate Judge
TENNESSEE COMPTROLLER OF THE)	
TREASURY; JASON E. MUMPOWER, in)	Jury Demand
his Official Capacity; JIM ARNETTE, in)	
his Official Capacity; and PENNY AUSTIN,)	
in her Official Capacity,)	
)	
Defendants.)	

COMPLAINT

For her Complaint against Defendants Tennessee Comptroller of the Treasury; Jason E. Mumpower, in his official capacity; Jim Arnette, in his official capacity; and Penny Austin, in her official capacity (collectively “Defendants”), Plaintiff Arietty Brush (“Ms. Brush”) states:

PARTIES

1. Ms. Brush is a former employee of Defendants.
2. Defendant Tennessee Comptroller of the Treasury is a Tennessee governmental entity operated by the State of Tennessee with its principal place of business at 425 Rep. John Lewis Way N., Nashville, Tennessee 37243.
3. Defendant Jason E. Mumpower is the Tennessee Comptroller of the Treasury and Ms. Brush’s former supervisor who has the power or authority to reinstate and/or recommend the reinstatement of Ms. Brush to her former position or an equivalent one with Defendants.
4. Defendant Jim Arnette is the Director of Defendant Comptroller’s Division of Local Government Audit, in which Ms. Brush formerly worked, and Ms. Brush’s former

supervisor who has the power or authority to reinstate and/or recommend the reinstatement of Ms. Brush to her former position or an equivalent one with Defendants.

5. Defendant Penny Austin is the Assistant Director of the Division of Local Government Audit and Ms. Brush's former supervisor who has the power or authority to reinstate and/or recommend the reinstatement of Ms. Brush to her former position or an equivalent one with Defendants.

JURISDICTION AND VENUE

6. Ms. Brush brings this action for declaratory relief, prospective injunctive relief, equitable relief, and damages for unlawful employment practices under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"). The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(4). Venue is proper under 28 U.S.C. § 1391.

7. Ms. Brush has met all conditions precedent to the filing of this Complaint. She timely filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") on August 19, 2022. The EEOC through the U.S. Department of Justice issued Ms. Brush Notices of Right to Sue on September 19, 2023.

FACTS

8. Ms. Brush worked for Defendants as a Legislative Information Systems ("IS") Auditor, or field staff auditor, for over 14 years, from June 1, 2007, until Defendants discharged her on January 5, 2022.

9. Ms. Brush is a woman who is transgender.

10. A transgender person is someone whose sex assigned at birth, based on the appearance of external physical sex characteristics, does not match that person's innate, internal sense of being male, female, or some other category—often referred to as "gender identity." Most

of the time, individuals born with male-typical external physical characteristics identify and experience themselves as male, and those born with female-typical external physical characteristics identify and experience themselves as female. For transgender individuals, however, their external characteristics and their internal sense of their sex do not align or match. This incongruence often leads to a medical condition called gender dysphoria. Gender dysphoria is clinically significant distress that results from an incongruence between one's sex assigned at birth and one's gender identity.

11. Being transgender bears no relationship to a person's ability to perform their job, be productive, and contribute to society.

12. Ms. Brush was qualified for her job with Defendants and performed it in an excellent manner. She received numerous "Meets High Expectations" and "Highly Effective" annual performance reviews as well as several pay increases during her employment with Defendants.

13. In or about June 2021, Ms. Brush began gender transitioning treatment with her medical providers and changed her style of dress from male to female, at first in her personal and public life activities outside of work.

14. Additionally, from or about March 2021 forward, Ms. Brush had fencing and signs around her home and in her yard supporting LGBTQ rights and had discussions with neighbors about them. At least one neighbor stated in Ms. Brush's presence that Ms. Brush should be reported to Defendants.

15. On or about June 29, 2021, Ms. Brush received the first and only Performance Improvement Plan ("PIP") that she ever received from Defendants.

16. Other than the June 29, 2021, PIP, Ms. Brush never received any PIPs or any disciplinary action during her 14-plus years of employment with Defendants.

17. The June 29, 2021, PIP was a 90-day plan that by its terms expired on September 27, 2021, or 90 days from June 29, 2021.

18. Ms. Brush was committed to satisfying the requirements of the PIP and she did so. In the PIP, Ms. Brush's supervisor, Assistant Director of Defendants' Division of Local Government Audit ("LGA") Penny Austin ("Ms. Austin), stated, "I look forward to discussing your progress over the next 90 days during our regularly scheduled weekly meeting."

19. During the 90-day PIP period, Ms. Brush met with Ms. Austin on or about a weekly basis.

20. During their weekly meetings, Ms. Austin advised Ms. Brush that she was meeting all of the expectations in the PIP and performing her job well.

21. At no time during the 90-day PIP period did Ms. Austin inform Ms. Brush that she was not meeting any of the expectations in the PIP or that she had not successfully completed any of the PIP's requirements.

22. Had Ms. Brush not met any of the expectations in the PIP or not completed any of its requirements, Ms. Austin would have told Ms. Brush as much, given her a revised or renewed PIP, or terminated her employment on September 27, 2021, 90 days after Ms. Austin issued the PIP. Indeed, the PIP expressly stated that it was "a 90-day" plan and that "[f]ailure to meet expectations may result in further corrective action up to and including termination."

23. Moreover, at the end of the 90-day PIP period in late September 2021, Ms. Austin expressly advised Ms. Brush that she was meeting all of the expectations in the PIP and had successfully completed all of the PIP's requirements.

24. Ms. Austin further shared with Ms. Brush positive comments from clients in late September 2021, including from a client who had stated that Ms. Brush was a model auditor who should be recognized for her excellent job performance.

25. Following the expiration of the PIP on September 27, 2021, Ms. Brush continued performing her job in an excellent manner and was never informed that she was not performing her job well.

26. In November and December 2021, Ms. Brush requested limited periods of medical leave for required medical appointments related to her gender transitioning.

27. In November and December 2021, Ms. Austin commented negatively about Ms. Brush's taking time off for medical appointments with her medical providers, stated that she was taking excessive time off for those appointments, and asked Ms. Brush about the reasons for her leave.

28. On November 15, 2021, Ms. Brush received her first estrogen prescription from her medical provider.

29. On November 15, 2021, Ms. Brush wore women's clothing to a work meeting in Murfreesboro, Tennessee.

30. Ms. Austin and several other field staff auditors who reported to Ms. Austin also attended the November 15, 2021, meeting in Murfreesboro and saw Ms. Brush at the meeting.

31. Between sessions at the November 15, 2021, meeting in Murfreesboro, Ms. Brush discussed with those in attendance that she was undergoing laser hair removal because she had always disliked facial hair.

32. From November 15, 2021, forward, Ms. Brush wore women's clothing and accessories when meeting with work clients and when working with her co-workers and supervisors, both in person and remotely.

33. When she began consistently wearing women's clothing to work as of November 15, 2021, Ms. Brush noticed that Ms. Austin treated her differently and less favorably in the terms and conditions of employment than other field staff auditors who reported to Ms. Austin.

34. For example, even though Ms. Brush had successfully completed the June 29, 2021, PIP and all of her assignments before other IS auditors had, Ms. Austin refused to allow Ms. Brush to attend the Fall 2021 IS conference with her fellow team members. Ms. Brush had previously attended three IS conferences.

35. Ms. Austin's refusal to allow Ms. Brush to attend the Fall 2021 IS conference caused Ms. Brush to get behind on continuing professional education hours required to maintain her professional license.

36. Ms. Brush had also previously heard Ms. Austin refer to trans individuals as "its". Specifically, Ms. Austin stated during a break in a NASACT NSAA IT conference in Grand Rapids, Michigan, in late September 2019 while discussing the *Bostock v. Clayton County* case then before the U.S. Supreme Court, "I don't know what to call them anymore—'it'?"

37. On December 13, 2021, Ms. Brush officially changed her legal name to Arietty Brush.

38. On January 4, 2022, Ms. Brush emailed Defendants' Human Resources Specialist, Caley Pinto, and requested that her name be changed to Arietty Brush on Defendants' website and on internal work communications, including those through Microsoft Outlook and Teams.

39. Ms. Brush further requested that Ms. Pinto change her employee I.D. photo from an older photo to a more recent one and provided Ms. Pinto a new photo of herself on January 4, 2022.

40. Ms. Brush also emailed Ms. Austin on January 4, 2022, and advised her that she did not wish to be addressed with male pronouns any longer and would like to be addressed with female pronouns going forward.

41. Ms. Brush further advised Ms. Austin on January 4, 2022, that she would appreciate her assistance in “breaking the ice” with the IS team and financial auditing staff regarding her name and pronoun changes.

42. Ms. Austin did not respond to Ms. Brush’s January 4, 2022, email. But later that evening, Ms. Austin sent Ms. Brush a text message stating: “We need to have a private conversation.”

43. Ms. Brush responded to Ms. Austin’s text message and stated that she was available for a conversation. Ms. Austin did not respond.

44. On January 5, 2022, the day after Ms. Brush sought to change her name, pronouns, and photo with Human Resources and emailed Ms. Austin about advising the IS team about these changes, Mr. Arnette, Ms. Austin, and Defendants’ Human Resources representatives and legal counsel called Ms. Brush and informed her that the call was being recorded.

45. In the January 5, 2022, call, Mr. Arnette advised Ms. Brush that “the Comptroller” had decided to terminate her employment, effective immediately, due to her “performance.”

46. In the January 5, 2022, call, Mr. Arnette also gave Ms. Brush the “option of resigning” in lieu of being formally discharged. In reality, Ms. Brush had no choice in the matter—

Defendant communicated to her that it was terminating her employment effective immediately regardless of whether she resigned.

47. Having no choice with respect to the fact that her employment was ending immediately and involuntarily, Ms. Brush was constructively discharged and forced to resign under coercion and duress so that she would not lose her many years of accumulated state pension and retirement benefits.

48. On October 6, 2022, Defendants represented to the EEOC that they decided to terminate Ms. Brush's employment because she allegedly "failed to abide by Item #2 of the [June 29, 2021] PIP." They stated, "As a result of *this* failure, LGA leadership determined that [Ms. Brush] was unable to consistently meet the expectations of [her] position and that their only remaining choice was termination." (emphasis added). Defendants cited no other item of the PIP that Ms. Brush allegedly "failed to abide by" or satisfy.

49. Defendants' stated reason for terminating Ms. Brush's employment was false and a pretext for unlawful sex-based discrimination.

50. All of Ms. Brush's 16 or so annual performance evaluations with Defendants were satisfactory or better; her evaluations continued to get better over time; and the totality of the written comments of her supervisor, Ms. Austin, demonstrate that Ms. Brush did "consistently meet the expectations of [her] position" and belie and undermine Defendants' pretextual allegation that she "was unable to consistently meet th[ose] expectations."

51. Further, "Item #2" of the June 29, 2021, PIP stated, "Engage in a discussion with other auditors regarding their best practices for completing work timely and be open to implementing these practices."

52. After June 29, 2021, Ms. Brush did engage in discussions with other auditors regarding their best practices for completing work timely, including but not limited to in IS staff meetings and in other discussions with auditors, and was open to implementing such practices.

53. At no time did Ms. Brush express an “unwillingness” to engage in a discussion with other auditors regarding best practices for completing work in a timely fashion. Nor did she express an unwillingness to implement practices that would result in the more efficient or timely completion of work. Rather, Ms. Brush continuously encouraged efficiency, the reduction of redundancies, and an increased use of Microsoft Excel among the auditors, a suggestion with which Ms. Austin agreed.

54. Defendants’ alleged reason for terminating Ms. Brush’s employment was also insufficient to motivate, and did not actually motivate, that adverse employment action. Several other IS auditors whom Ms. Austin supervised, including but not limited to Doug Sandidge, Bethany Graves, and Barbara Shults, submitted work assignments later than Ms. Brush and/or submitted incomplete work. In fact, virtually none of Defendants’ IS auditors had all of their county audits fully completed before the end of each fiscal year, or by June 30. Yet Defendants did not discharge any of these other auditors.

55. According to Ms. Austin, and per annual LGA goals and objectives, the only “deadline” IS auditors had was to have begun their field work in their assigned counties before June 30 of each year. The IS auditors’ goal was to have their work finalized before the financial auditors completed and released audits by March 31 the following year. No deadlines were specified in the audit plans that Ms. Austin provided for each county or anywhere else.

56. Further, all LGA annual goals and objectives were met during Ms. Brush’s employment and Ms. Brush timely submitted her portion of the work related to those goals and

objectives. Ms. Brush never held up a financial audit submission by, for example, providing her portion of the work in an untimely fashion.

57. Defendants' contention before the EEOC that its "decision to terminate [Ms. Brush] was made prior to its knowledge of [her] . . . protected status" is also false. As described above, Ms. Brush changed her style of dress from male to female in her personal and public life activities outside of work in June 2021. For example, she regularly played disc golf in public wearing women's attire in and after June 2021.

58. Additionally, from or about March 2021 forward, Ms. Brush had fencing and signs around her home and in her yard supporting LGBTQ rights and had discussions with neighbors about them. At least one neighbor stated in Ms. Brush's presence that Ms. Brush should be reported to Defendants.

59. Further, in June 2021, Ms. Brush made use of Defendants' Employee Assistance Program ("EAP") with respect to her initial gender transition counseling and therapy. She signed EAP documentation stating that the information she provided may be shared with others.

60. In or about July 2021, Ms. Brush was diagnosed with gender dysphoria.

61. Additionally, as described above, Ms. Brush received her first estrogen prescription from her medical provider on November 15, 2021. The same day, she wore women's clothing to an auditors' meeting in Murfreesboro, Tennessee. Ms. Austin and several other auditors who reported to Ms. Austin were present at this meeting and saw Ms. Brush. At that time, Ms. Brush also began wearing her hair down instead of up, wore scrunchies and used women's lip balm, and had her facial hair permanently removed.

62. Moreover, as described above, from November 15, 2021, through the end of her employment on January 5, 2022, Ms. Brush wore women’s clothing and accessories whenever she met with co-workers and clients, both in person and remotely.

63. Finally, as described above, Ms. Brush officially had her named changed in a “Final Decree Changing Name” entered by the Chancery Court for Sullivan County, Tennessee, on December 13, 2021.

64. Ms. Brush’s work appearance changed from male to female as of November 15, 2021—long before “LGA leadership” allegedly “recommend[ed]” to Defendants’ “Human Resources team” on December 28, 2021, that Ms. Brush’s employment be terminated. Defendants were thus well aware of Ms. Brush’s plain and obvious transition from male to female when they allegedly recommended the termination of her employment, when they later decided to terminate her employment, and when they later informed Ms. Brush that her employment was being terminated on January 5, 2022.

65. As described above, Defendants discriminated against and discharged Ms. Brush because of sex, including because she is a transgender woman and because she did not conform to certain sex-based stereotypes, in violation of Title VII.

66. Defendants’ conduct as described in this Complaint was malicious and/or recklessly indifferent to Ms. Brush’s federally protected rights.

67. As a direct result of Defendants’ discriminatory conduct, Ms. Brush lost income and other privileges and benefits of employment; suffered embarrassment, humiliation, emotional distress and anxiety, inconvenience, and loss of enjoyment of life; and has incurred attorneys’ fees, costs and litigation expenses.

68. Defendants Mumpower, Arnette, and Austin are liable in their official capacities for prospective injunctive and equitable relief, including but not limited to reinstatement and attorneys' fees and costs pursuant to *Ex parte Young*, 209 U.S. 123 (1908), and its progeny, to enjoin the ongoing violations of Ms. Brush's rights and for the willful, deliberate, malicious, and/or recklessly indifferent discriminatory conduct described in this Complaint. These defendants have the authority or power to reinstate Ms. Brush to the same or an equivalent position and/or to recommend that she be reinstated.

RELIEF REQUESTED

WHEREFORE, Ms. Brush respectfully requests:

1. That the Court declare that Defendants violated Title VII, permanently enjoin them from violating her rights or grant her other equivalent equitable relief, and order them to reinstate her to an equivalent job position with the same or greater pay and benefits;
2. A jury trial and entry of judgment in her favor;
3. Back pay and damages for lost benefits and expenses incurred;
4. Compensatory damages for embarrassment, humiliation, emotional distress and anxiety, inconvenience, and loss of enjoyment of life;
5. Reinstatement with restoration of all benefits and seniority or, alternatively, front pay and damages for lost benefits;
6. Punitive damages;
7. Attorneys' fees, costs and litigation expenses;
8. Prejudgment interest and, if applicable, post judgment interest; and
9. Such other and further injunctive, declaratory, equitable, and legal relief to which she may be entitled.

Respectfully submitted,

s/Douglas B. Janney III

Douglas B. Janney III (TN BPR No. 19112)
Law Office of Douglas B. Janney III
5115 Maryland Way
Brentwood, Tennessee 37027
(615) 742-5900
doug@janneylaw.com

s/Stella Yarbrough

Stella Yarbrough (TN BPR No. 33637)
Legal Director
Lucas Cameron-Vaughn (TN BPR No. 36284)
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 320-7142
syarbrough@aclu-tn.org
lucas@aclu-tn.org

Attorneys for Plaintiff