

COLORADO COURT OF APPEALS,  
STATE OF COLORADO  
2 East 14<sup>th</sup> Avenue, Suite 300  
Denver, CO 80203

Appeal from the DISTRICT COURT, CITY &  
COUNTY OF DENVER

Honorable Andrew P. McCallin  
1437 Bannock Street  
Denver, CO 80202

Case No. 2013-CV-34544

**Plaintiff- Appellant:**  
**JANE E. NORTON**

v.

**Defendants-Appellees:**  
ROCKY MOUNTAIN PLANNED  
PARENTHOOD, INC. a/k/a PLANNED  
PARENTHOOD OF THE ROCKY  
MOUNTAINS, INC., a Colorado nonprofit  
corporation; JOHN W. HICKENLOOPER, in  
his official capacity as Governor of the State of  
Colorado; SUSAN E. BIRCH, in her official  
capacity as Executive Director of the Colorado  
Department of Health Care Policy and  
Financing; and LARRY WOLK, in his official  
capacity as Executive Director of the Colorado  
Department of Public Health & Environment.

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▲ COURT USE ONLY ▲

Case Number:

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**PLAINTIFF-APPELLANT'S NOTICE OF APPEAL**

Appellant Jane E. Norton, by and through her undersigned counsel, hereby submits this Notice of Appeal pursuant to C.A.R. 3.

**I. NATURE OF THE CASE**

A. Nature of the Controversy:

The Complaint challenged disbursements by Colorado state agencies of millions of state tax dollars to Rocky Mountain Planned Parenthood, Inc. ("Planned Parenthood") in violation of Article V, § 50, Colorado's Constitution,

which provides that “[n]o public funds shall be used ... to pay or otherwise reimburse, either directly or indirectly... for ... any induced abortion.”

The Complaint alleged that Planned Parenthood is so inter-connected to PPRM Services Corporation, an entity related to and controlled by Planned Parenthood and which performs abortions, that the effect of payment of tax dollars to Planned Parenthood is to directly or indirectly, pay or reimburse for induced abortions in violation of Article V, § 50.

The State Defendants and Planned Parenthood filed motions to dismiss challenging Plaintiff’s standing pursuant to C.R.C.P. 12(b)(1), and asserted the Complaint failed to state a claim pursuant to C.R.C.P. 12(b)(5). The district court granted Defendants’ motions to dismiss on the grounds that Norton “fail[ed] to identify a specific abortion service that was supported with state funds” and therefore failed “to allege a violation” of Article V, § 50.

The district court, without notice or any opportunity for any discovery, converted the motions to dismiss into motions for summary judgment. The court accepted *Defendants’* factual assertions as true, erroneously concluded there were no factual disputes, created a definition of the term “indirect,” and applied its definition to the facts *alleged by Defendants*, doing so as “a matter of law.”

B. Order Being Appealed and the Basis for the Appellate Court's

Jurisdiction:

Appellant seeks review of the district court's August 11, 2014 Order Granting Defendants' Motions to Dismiss. This Court has appellate jurisdiction pursuant to C.R.S. § 13-4-102 (1) and C.A.R. 1(a)(1).

C. Whether the Order Resolved All Issues Pending before the Trial Court:

The district court's August 11, 2014 Order resolved all issues pending before the district court.

D. Whether the order is final for purposes of appeal Pursuant to C.R.C.P.

54(b):

The district court's August 11, 2014 Order is final pursuant to C.R.C.P.

54(b).

E. Date of Order from trial court:

The date of the district court's Order is August 11, 2014.

F. Whether any extensions were granted to file any motions for post-trial relief:

No extensions to file any motions for post-trial relief pursuant to C.R.C.P. 59 were requested or granted.

G. The Date Any Motion for Post-Trial Relief Was Filed:

No motions for post-trial relief pursuant to C.R.C.P. 59 have been filed.

H. The Date Any Motion For Post-Trial Relief Was Denied:

No motions for post-trial relief pursuant to C.R.C.P. 59 have been filed.

I. Whether There Were Any Extensions Granted To File The Notice of Appeal:

No extensions to file a Notice of Appeal have been requested or granted.

**II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL:**

Appellant may raise the following issues on appeal:

- A. Whether the district court erred in granting Defendants' motions to dismiss.
- B. Whether the district court erred in defining the term "indirect" and then applying its definition to the facts of the case as a "matter of law."
- C. Whether the district court erred in concluding that the term "indirect" as used in Article V, Section 50, Colorado Constitution, permits indirect subsidization with state taxpayer dollars of induced abortions.
- D. Whether the district court erred in treating Defendants' motions to dismiss as motions for summary judgment, considering evidence outside of the pleadings, and/or precluding the Plaintiff from conducting any discovery.
- E. Whether the district court erred in considering evidence outside of the pleadings submitted in connection with Defendants' C.R.C.P. 12(b)(1)

motion challenging Plaintiff's standing in deciding not the C.R.C.P. 12(b)(1) motion but Defendants' C.R.C.P. 12(b)(5) motions.

F. Whether the district court erred in resolving factual disputes in favor of Defendants in the context of either Defendants' C.R.C.P. 12(b)(1) motion to dismiss or Defendants' C.R.C.P. 12(b)(5) motion to dismiss.

G. Whether the district court erred in depriving Plaintiff the opportunity to engage in discovery and develop the record before ruling on either Defendants' C.R.C.P. 12(b)(1) motion to dismiss or Defendants' C.R.C.P. 12(b)(5) motion to dismiss.

H. Whether the district court erred in concluding that Plaintiff's claims would violate the federal Medicaid "choice-of-providers" provision.

### **III. TRANSCRIPTS**

A transcript of the hearing held on April 25, 2014 (50 pages in length) has been produced and certified by Charlene Llewellyn, CTS West, Inc., 6121 S. Quail Way, Littleton, Colorado, 80127. The transcript is available in electronic format, and is necessary for the resolution of issues raised in this appeal.

## IV. COUNSEL FOR THE PARTIES

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**V. APPENDICES TO THIS NOTICE OF APPEAL**

District Court's August 11, 2014 Order Granting Defendants' Motions to  
Dismiss.

Dated this 17th day of September, 2014.

Respectfully submitted,

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Attorneys for Plaintiff-Appellant



## CERTIFICATE OF SERVICE

I certify that on this 17th day of September, 2014, a true and correct copy of the foregoing **NOTICE OF APPEAL** was filed with the Denver District Court and the Colorado Court of Appeals via ICCES and served via ICCES and/or electronic mail and U.S. Mail on the the parties and/or their counsel of record as follows:

Clerk of District Court (Via U.S. Mail)  
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/s/ Marilyn Kuipers  
Marilyn Kuipers

