

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80523 Phone Number: (720) 865-8301	
Plaintiff: Mark Hotaling Defendants: August William Ritter, Jr., a/k/a Bill Ritter, in his official capacity as Governor of the State of Colorado; and James B. Martin, a/k/a Jim Martin, in his official capacity as Executive Director of the Colorado Department of Public Health and Environment; Planned Parenthood of the Rocky Mountains Services Corporation, a Colorado nonprofit corporation; and Boulder Valley Women’s Health Center, Inc., a Colorado nonprofit corporation	▲ COURT USE ONLY ▲
ATTORNEY FOR PLAINTIFF Barry K. Arrington, #16,486 ARRINGTON & ASSOCIATES, P.C. 5310 Ward Road, Suite G-07 Arvada, Colorado 80002 Phone Number: (303) 205-7870 FAX Number: (303) 463-0410 E-mail: barry@arringtonpc.com	Case Number: Courtroom
COMPLAINT	

Plaintiff Mark Hotaling, by and through his attorneys, Arrington & Associates, P.C., submits the following complaint against defendants:

I. PARTIES

1. Plaintiff Mark Hotaling (“Hotaling”) is an individual with an address of 51458 WCR 33, Nunn, Colorado 80648.

2. Defendant August William Ritter, Jr., a/k/a Bill Ritter (“Ritter”), is an individual. This action is brought against Ritter in his official capacity as Governor of the State of Colorado. Ritter’s office address is 136 State Capitol, Denver, Colorado 80203.

3. Defendant James B. Martin, a/k/a Jim Martin (“Martin”) is an individual. This action is brought against Martin in his official capacity as Executive Director of the Colorado Department of Public Health and Environment. Martin’s office address is 4300 Cherry Creek Drive South, Building A, First Floor, Denver, Colorado 80222.

4. Planned Parenthood of the Rocky Mountains Services Corporation (“Services Corp.”) is a Colorado nonprofit corporation with an address of 7155 East 38th Avenue, Denver, Colorado 80207.

5. Boulder Valley Women’s Health Center, Inc. (“BVWHC”) is a Colorado nonprofit corporation with an address of 2855 Valmont Road, Boulder, Colorado 80301.

II. VENUE

6. Pursuant to C.R.C.P. 98(b)(2), venue is proper in the City and County of Denver.

III. GENERAL ALLEGATIONS

7. In 1984 the voters of the State of Colorado approved an amendment to the Colorado Constitution (hereinafter, the “Abortion Funding Prohibition Amendment”) prohibiting the use of public funds either directly or indirectly to pay for induced abortions. The Abortion Funding Prohibition Amendment is set forth as Article V, Section 50 of the Colorado Constitution, which states:

No public funds shall be used by the State of Colorado, its agencies or political subdivisions to pay or otherwise reimburse, either directly or indirectly, any person, agency or facility for the performance of any induced abortion, PROVIDED HOWEVER, that the General Assembly, by specific bill, may authorize and appropriate funds to be used for those medical services necessary to prevent the death of either a pregnant woman or her unborn child under circumstances where every reasonable effort is made to preserve the life of each.

8. The Abortion Funding Prohibition Amendment became effective on January 14, 1985 and remains in effect to this day.

9. A subsequent initiative to repeal the Abortion Funding Prohibition Amendment was rejected by the voters. Thus, Colorado voters have twice affirmed the Abortion Funding Prohibition Amendment’s prohibition on the use of taxpayer dollars to subsidize, directly or indirectly, induced abortions.

10. Services Corp. provides abortion services.

11. In 2001 Jane Norton was Executive Director of the Colorado Department of Health and Environment (the “Department”). That year the Department retained the

accounting firm of Anderson & Whitney to investigate the operations of Services Corp. and its affiliate Rocky Mountain Planned Parenthood, Inc. d/b/a Planned Parenthood of the Rocky Mountains, Inc. (“RMPP”). Following that audit, the Department announced that it could no longer award contracts to RMPP because RMPP subsidizes Services Corp.’s abortion operations. If it is illegal for the Department to award a contract to an organization that subsidizes an abortion provider, it is even more clearly illegal to award a contract directly to the abortion provider.

12. In 2007 the Department awarded contracts 05FLA00166 and 08FLA00789 (the “Services Corp. Contracts”) to Services Corp. The Services Corp. Contracts total \$9 million. The Services Corp. Contracts are unlawful in that they violate the provisions of the Abortion Funding Prohibition Amendment because the profits and overhead Services Corp. has earned and will earn on these contracts is being used and will be used to subsidize its abortion operations. The Department has no authority to make or agree to make expenditures pursuant to the Services Corp. Contracts, and all such expenditures are unlawful.

13. BVWHC provides abortion services.

14. In 2007 the Department awarded contracts 05FLA00145; 08FLA00769; and 07FLA00050 (the “BVWHC Contracts”) to BVWHC. The BVWHC Contracts total in excess of \$9 million. The BVWHC Contracts are unlawful in that they violate the provisions of the Abortion Funding Prohibition Amendment because the profits and overhead BVWHC has earned and will earn on these contracts is being used and will be used to subsidize its abortion operations. The Department has no authority to make or agree to make expenditures pursuant to the BVWHC Contracts, and all such expenditures are unlawful.

15. Hotaling is a Colorado taxpayer and has a legally protected interest in ensuring that public funds are not expended in violation of the Colorado Constitution. Hotaling has suffered injury in fact as a result of the Department’s unlawful and unconstitutional expenditures described above.

IV. FIRST CLAIM FOR RELIEF (Declaratory Judgment)

16. Hotaling incorporates the allegations set forth in paragraphs 1 to 15 as if fully set forth herein.

17. Hotaling is entitled to a declaratory judgment pursuant to the Colorado Uniform Declaratory Judgment Act, C.R.S. §§ 13-51-101 *et seq.*, and C.R.C.P. 57 to determine his rights with respect to Ritter’s and Martin’s unlawful expenditure of public funds in violation of the Colorado Constitution.

18. Hotaling requests the Court to enter a judgment declaring that Ritter's and Martin's actions in causing the Department to contract with and pay funds to Services Corp. pursuant to the Services Corp. Contracts violates the Colorado Constitution.

19. Hotaling requests the Court to enter a judgment declaring that Ritter's and Martin's actions in causing the Department to contract with and pay funds to BVWHC pursuant to the BVWHC Contracts violates the Colorado Constitution.

20. Hotaling requests the Court to enter a judgment declaring that the Services Corp. Contracts and the BVWHC Contracts are void and not merely voidable.

IV. SECOND CLAIM FOR RELIEF (Permanent Injunction)

21. Hotaling incorporates the allegations set forth in paragraphs 1 to 20 as if fully set forth herein.

22. The Department's unconstitutional expenditure of public funds has caused Hotaling to suffer real, immediate and irreparable injury for which there is no remedy at law. Obviously, requiring Ritter and Martin to abide by the Colorado Constitution in their funding and contracting activities will not disserve the public interest, and the balance of equities favors an injunction.

23. Hotaling requests the Court to enter an order enjoining Ritter and Martin from further violations of the Abortion Funding Prohibition Amendment and specifically enjoining them from awarding further contracts to and making further payments to Services Corp. and BVWHC.

V. THIRD CLAIM FOR RELIEF (Contract Rescission)

24. Hotaling incorporates the allegations set forth in paragraphs 1 to 23 as if fully set forth herein.

25. Hotaling requests the Court to enter an order rescinding the Services Corp. Contracts and requiring Services Corp. to disgorge and refund to the State of Colorado all funds received pursuant to or on account of the Services Corp. Contracts.

26. Hotaling requests the Court to enter an order rescinding the BVWHC Contracts and requiring BVWHC to disgorge and refund to the State of Colorado all funds received pursuant to or on account of the BVWHC Contracts.

Respectfully submitted this 29th day of October, 2008.

/s/ Barry K. Arrington

Barry K. Arrington

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