DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	DATE FILED: August 11, 2014 4:18 PM CASE NUMBER: 2013CV34544
Plaintiff: Jane E. Norton, **v.** **Defendants: Rocky Mountain Planned Parenthood, Inc., et al.**	Case No.: 2013-CV-34544 Courtroom: 215

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

This matter is before the Court on the Defendants' motions to dismiss this action under C.R.C.P. 12(b)(1) and 12(b)(5). The Court received argument on these motions on April 25, 2014. The Court has also reviewed the briefing on these motions, the affidavits and exhibits submitted in support of this briefing, the file and is otherwise advised as to the grounds for these motions. After considering all of this information the Court holds that Plaintiff's claims cannot be maintained as a matter of law under the subsidization theory on which she is proceeding. Because her complaint does not identify a specific abortion service that was supported with state funds she fails to allege a violation of Colorado's Abortion Funding Prohibition Amendment (hereinafter "the Amendment"), Colo. Const., Art. V, § 50.

Factual Background

Plaintiff contends that the funding provided by the State to Defendant Rocky Mountain Planned Parenthood, Inc. (hereinafter "Planned Parenthood") violates the Amendment. The Amendment provides in relevant part that:

> 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…

Colo. Const., Art. V, § 50.

Plaintiff alleges that the state funding provided to Planned Parenthood violates the Amendment because Planned Parenthood is interrelated with Planned Parenthood of the Rocky Mountain Services Corporation (hereinafter "Services Corp."). *See* V. Compl. ¶ 12. According to Plaintiff, Defendants have been violating the Amendment since 2009 by paying approximately

$14.4 Million in public funds to Planned Parenthood. *Id.*, ¶ 22. Plaintiff contends that the payment of these public funds allows Planned Parenthood to subsidize Services Corp. because of the close connection between these two entities. *Id.*

In her complaint, Plaintiff identifies various public funds that have been paid to Planned Parenthood. *See id.*, ¶¶ 23 – 28, and exs. C – T to the verified complaint. The verified complaint does not identify any abortion services that have been supported with these public funds. In addition, no evidence has been submitted that Planned Parenthood performs abortions. However, it is undisputed that Services Corp. performs non-therapeutic abortions. The verified complaint does not allege that any of the funds were paid to Services Corp.

Although there is no allegation or evidence that funding was provided for any abortion, Plaintiff contends that the Amendment has been violated based on a theory that the public funds paid to Planned Parenthood subsidize Services Corp. *Id.*, ¶¶ 22 & 34. Plaintiff contends that this subsidization is in the form of a reduced rent that Services Corp. is allowed to pay by virtue of its affiliation with Planned Parenthood. *Id.*, ¶ 17. Plaintiff relies on an audit conducted in 2001 for her allegation that Services Corp. is receiving a rent subsidy from Planned Parenthood. *Id.* and ex. A to the complaint, Pl.'s Aff'd. Plaintiff contends that this subsidy is ongoing because there has been no effort to separate Services Corp. and Planned Parenthood. *Id.*, ¶¶ 20 & 31. *See also* Pl.'s Aff'd in support of her combined response, ¶ 14. Plaintiff also alleges that the expenditure of public funds for state personnel, equipment, and facilities in connection with administering the public funds violates the Amendment. V. Compl. ¶¶ 29 & 30.

In their motion to dismiss, the State Defendants attach affidavits and other documentary evidence demonstrating that more than $13.0 Million of the public funds identified by Plaintiff in her verified complaint were actually federal funds. *See* Motion, at p. 3 (discussing affidavits of Danielle Shoots and Robert Douglas). With regard to the remaining $1.4 Million, the State Defendants present evidence that none of it was paid to Planned Parenthood for abortion services. *Id.* As explained below, this $1.4 Million is at the heart of Plaintiff's subsidization theory.[1] She contends that since 2009 these state funds have served to subsidize Service Corp.

Defendants move to dismiss this action for lack of standing under C.R.C.P. 12(b)(1) and also for failure to state a claim under C.R.C.P. 12(b)(5). To the extent that Plaintiff's claims are premised on Planned Parenthood's receipt of federal funds, Defendants argue that she lacks standing under *Hotaling v. Hickenlooper*, 275 P.3d 723 (Colo. App. 2011). Plaintiff's standing to challenge the remaining expenditure of $1.4 Million in state funds is not contested.

Defendants further argue that Plaintiff's claims should be dismissed as a matter of law under C.R.C.P. 12(b)(5) because the Amendment requires an abortion transaction or service to be directly or indirectly paid or reimbursed through the public funds. Under Defendant's reading

[1] While Plaintiff characterizes some of these expenditures as supporting abortion services, as explained later, she fails to make a showing sufficient to meet her burden to create a disputed fact for trial on this issue.

of the Amendment, a violation cannot be premised solely on an alleged subsidization of Services Corp., because there is no connection between the state funds and the performance of an abortion. Defendant Planned Parenthood also argues that Plaintiff's claims should be dismissed because it would have the effect of prohibiting any funding to Planned Parenthood. According to Planned Parenthood, this would violate the federal free choice of provider mandate under federal Medicaid law.

Plaintiff maintains that the Amendment's prohibition on "indirect" funding embraces a subsidization theory. At oral argument of these motions, she argued that without this rent subsidy Services Corp. would not have been able to perform as many abortions as it otherwise would have been able to perform during this time period. No evidence, however, was submitted in this regard.

These motions present a pure question of law as to whether the Amendment can be interpreted to support Plaintiff's subsidization theory. The Court holds that the Amendment requires the public funds to have a nexus to the performance of an abortion. Allowing a claim to move forward on a subsidization theory would stretch the meaning of the Amendment too far and read out the requirement that the funding bear a connection to the performance of an abortion. Plaintiff's interpretation would also violate the federal requirement affording Medicaid patients a free choice of providers. For these reasons, the Court determines that Plaintiff's claims are not supportable under the subsidization theory. The motions to dismiss will be granted.

Motion to Dismiss / Summary Judgment Standards

Both parties have submitted affidavits and documentary evidence in support of their positions. Plaintiff's verified complaint recites the funds that were paid to Planned Parenthood since 2009. It also attaches reports maintained under the State Defendants' open records databases to show the funds paid to Planned Parenthood by the State Defendants. *See* V. Compl., exs. C – T. The State Defendants submit affidavits and documentary evidence that demonstrate that the $13.0 Million paid to Planned Parenthood were purely federal funds. This evidence also demonstrates that the $1.4 Million in state funds were paid to Planned Parenthood for services that are not related to abortions.

In a Rule 12(b)(5) motion to dismiss for failure to state a claim, the Court may consider materials that are referenced in a complaint. *Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198, 203 (Colo. App. 1999). The Court may consider this evidence, especially to clear up any discrepancies in the documents referenced in the complaint. *See Yadon v. Lowry*, 126 P.3d 332, 336 (Colo. App. 2005).

Under C.R.C.P. 12(b), if matters outside of the pleadings are presented to the Court and not excluded, the motion may be treated as a motion for summary judgment under C.R.C.P. 56. *See Horne Eng'r Svcs. v. Kaiser-Hill*, 72 P.3d 451, 452 – 53 (Colo. App. 2003). Where both parties submit evidence outside of the pleadings on a motion to dismiss, the Court may convert it

to a summary judgment motion without notice and without inviting the parties to submit extraneous information. *Id.*, at 453.

The evidence submitted by the parties has framed the legal issue presented by these motions. The State Defendants' affidavits and exhibits have defined the amount of the federal funds paid to Planned Parenthood. This evidence also clarifies the fact that the state funding of Planned Parenthood was for services unrelated to the performance of abortions. Plaintiff contends that discovery will be needed to confirm this fact. *See* Pl.'s Resp. at 5 n. 6 & n. 7. Beyond this assertion by counsel, Plaintiff has not submitted anything to indicate that discovery would call into doubt that $1.4 Million in state funds was provided for services unrelated to abortions.[2] In this sense Plaintiff has failed to rebut Defendants' showing and has not created a factual dispute on a material issue. *See People in the Interest of S.N.*, 2014 WL 2957066, ¶ 17 (Colo. 2014) (argument of counsel is insufficient to create a factual issue for trial). *See also Fritz v. Regents of Univ. of Colo*., 586 P.2d 23, 26 (Colo. 1978) (same).

Instead, Plaintiff's affidavits and the other documentary evidence submitted in response to Defendants' motions make it clear that she is proceeding on a subsidization theory. *See* Pl.'s combined resp. at 6; and ex. A thereto, Pl.'s Aff'd, and exhibits attached thereto. The legal issue squarely raised by Plaintiff's verified complaint is whether payments to Planned Parenthood for non-abortion services subsidize Services Corp. in violation of the Amendment. Plaintiff's claims hinge on whether the Amendment can be read to prohibit subsidization of Services Corp. This is a question of law which requires the Court to interpret the Amendment. The Court, therefore, determines that discovery is not necessary to decide the legal issue that has been presented in these motions and which forms the basis for Plaintiff's claims. The motions to dismiss are converted to motions for summary judgment and the Court will consider them in accordance with the standards set forth in C.R.C.P. 56.

The Colorado Rules of Civil Procedure allow a court to enter summary judgment, prior to trial, where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *In re: S.N.*, 2014 WL 2957066, at ¶ 14 (*quoting* C.R.C.P. 56(c)). If the court can decide the case strictly as a matter of law then summary judgment is appropriate. *Id*.

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[2] Plaintiff maintains that the state funding for copper IUDs violates the Amendment because these are abortion inducing devices. Under established authority these devices are not abortion devices, but instead are considered contraceptive devices. *See* authority cited in Planned Parenthood's Reply, at 8 (American College of Obstetricians & Gynecologists, Statement on Contraceptive Methods (July 1998); International Federation of Gynecology & Obstetrics, Emergency Contraceptive Pills: Medical & Service Delivery Guidelines (3d ed. 2012)). Further, federal regulations promulgated by the U.S. Department of Health and Human Services governing human subjects research define "pregnancy" as "the period time from implantation until delivery." 45 C.F.R. § 46.202 (definitions). Accordingly, the Court concludes that the state funding provided for these contraceptive devices are not encompassed within the Amendment. This funding, therefore, does not raise a disputed fact on a material issue in this action.

Summary judgment is only appropriate if the moving party establishes that no disputed material facts exist. *Id.*, ¶ 16. To meet its burden, the moving party can use "pleadings, depositions, answers to interrogatories, ... admissions on file, [and] affidavits." *Id.* (*quoting* C.R.C.P. 56(c)). Only if the moving party establishes that no disputed material facts exist must the opposing party then demonstrate a controverted factual question. *Id.* When determining whether summary judgment is appropriate, the trial court must give the non-moving party all favorable inferences that can be drawn from the record. *Id.* "This is not to say, however, that the non-moving party can use 'pretense, or apparent formal controversy,' to avoid summary judgment." *Id.*, ¶ 17 (*quoting Sullivan v. Davis*, 474 P.2d 218, 221 (Colo. 1970)). "For example, a litigant cannot 'merely assert a legal conclusion without evidence to support it.'" *Id.* (*quoting Fritz*, 586 P.2d at 26). "A genuine issue of material fact also 'cannot be raised by counsel simply by means of argument.'" *Id.* (*quoting Sullivan*, 474 P.2d at 221).

Standing

Before turning to the parties' interpretations of the Amendment, the Court briefly addresses Plaintiff's standing to bring this action. Defendants seek dismissal of Plaintiff's claims to the extent that she relies on federal funding of Planned Parenthood. Under *Hotaling* a Colorado taxpayer lacks standing to challenge expenditures under the Amendment to the extent that federal funds are involved. *Hotaling*, 275 P.3d at 727. Plaintiff has made it clear that she is not suing to challenge the expenditure of federal funds. *See* Pl.'s combined resp., at 7 & 10. Defendants seek dismissal of her claims to the extent these claims involve federal funding.

Dismissal, however, is not appropriate on this basis. A claim may be maintained if there is any standing to assert it. Defendants do not challenge Plaintiff's standing to the extent that she relies on the $1.4 Million in state funds that were provided to Planned Parenthood. Plaintiff also maintains that she has standing based on the state resources that are used to process federal funds that are passed through to Planned Parenthood. Plaintiff has taxpayer standing even though de minimis state resources are used to process these funds. *See Freedom from Religion Found. v. Hickenlooper*, __ P.3d __, 2012 COA 81, at ¶ 56 (Colo. App. 2012), *cert granted* (12SC442, May 20, 2013). Plaintiff has standing based on the state funds provided to Planned Parenthood and because state resources were used to administer federal funding to Planned Parenthood. Her claims therefore may move forward. Dismissal on the basis of standing is not appropriate.

Does the Amendment Encompass a Subsidization Theory?

Plaintiff contends that any state funding provided to Planned Parenthood violates the Amendment because of the close connection it has with Services Corp. *See* Pl.'s combined resp., at 6, 11 & 20-21. Plaintiff's claims depend on the meaning of the term "indirectly" as it is used in the Amendment. The relevant language approved by the voters which prohibits indirect funding of abortions is as follows:

> 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…

Colo. Const., Art. V, § 50. The Court analyzes the meaning of the term "indirectly" within the Amendment using accepted rules of constitutional interpretation.

1. Rules of Constitutional Interpretation.

The rules of statutory construction apply also to interpretation of constitutional provisions. *Lobato v. State*, 304 P.3d 1132, 1138 (Colo. 2013). The Amendment must be read as a whole and the Court must give its terms a plain and common sense meaning. *Id.*

The primary goal in construing a constitutional amendment is to give effect to the intent of the voters in enacting the amendment. *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004); *Interrogatories Relating to the Great Outdoors Colo. Trust Fund*, 913 P.2d 533, 538 (Colo. 1996); *Zaner v. Brighton*, 917 P.2d 280, 283 (Colo. 1996). A court must first "give words their ordinary and popular meaning in order to ascertain what the voters believed the amendment to mean when they adopted it." *Davidson*, 83 P.3d at 654. A court "should not engage in a narrow or technical reading of language contained in an initiated constitutional amendment if to do such would defeat the intent of the people." *Zaner*, 917 P.2d at 283.

If the language of a constitutional amendment is "plain, its meaning clear, and no absurdity involved," then it should be "declared and enforced as written." *Great Outdoors*, 913 P.2d at 538. If an amendment is ambiguous, then "a court should favor a construction that harmonizes different constitutional provisions rather than creates conflict." *Id.*

An amendment "is ambiguous if it is 'reasonably susceptible to more than one interpretation.'" *Davidson*, 83 P.3d at 654 (*quoting Zaner*, 917 P.2d at 283). In the event that the "intent of the voters cannot be discerned from the language, 'courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment.'" *Id.* Courts can turn to other relevant materials, "such as the ballot title and submission clause and the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislature." *Id.* (*quoting In re: Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999)).

No insight can be gained from the extraneous materials submitted by the parties as to the meaning of the term "indirectly." Therefore, the Court interprets the Amendment as a whole, using its plain language and reading it in harmony with other laws. The Court concludes that the subsidization theory would read out certain terms of the Amendment and create a conflict with the federal Medicaid laws. Therefore, the subsidization theory is not consistent with the Amendment as written.

2. Reading the Amendment as a Whole.

The parties submit competing definitions of the term "indirectly" in support of their positions. The various definitions submitted by the parties, however, do not answer the question as to whether the Amendment embraces a subsidization theory. Plaintiff contends that to give full effect to the term "indirectly" as used in the Amendment, it must be read to prohibit the subsidization alleged in her verified complaint. *See* Pl.'s combined response, at 18. The Court disagrees. The Court reads the Amendment as a whole to require that the payment bear a connection to the performance of an abortion. This reading still gives meaning to the term "indirectly" while giving meaning to the Amendment as a whole.

The term "indirectly" must be read in conjunction with the requirement that the funding be "for the performance of any induced abortion." Colo. Const., Art. V, § 50. The plain meaning of this phrase requires a connection between the payment and the performance of an abortion. Plaintiff has not alleged any specific abortion that is being supported with $1.4 Million in state funding. A subsidization theory would eliminate this requirement because it would prohibit a wider range of activity than just the abortion service itself. It would effectively eliminate all funding to Planned Parenthood based on its association with Services Corp.

Reading the Amendment to require a connection with the performance of an abortion still gives effect to the term "indirectly." Indirect funding is still prohibited. To give effect to all parts of the Amendment, however, the indirect funding must be connected with the performance of an abortion. Because Plaintiff has not alleged that the subsidization was provided in connection with any abortion, she fails to allege a necessary element of the Amendment.

Plaintiff also relies on the fungible nature of money to argue that the Amendment prohibits subsidization. *See* Pl.'s combined response, at 19-20. She argues that a dollar provided to Planned Parenthood translates into support of Services Corp. because of the close connection between the two entities. *Id.*, at 20-21. This interpretation again runs afoul of the plain language of the Amendment requiring that the funding be provided for the performance of an abortion. Here there has been no evidence submitted to create a factual dispute as to the use of the funding. The State Defendants presented unrebutted evidence that the $1.4 Million in state funding was provided for services unrelated to the performance of an abortion. The idea that these state funds resulted in a profit for Planned Parenthood that then permitted subsidization of Services Corp. stretches the term "indirectly" too far. The State Defendants point out that there would be no limit to the reach of the Amendment if it prohibited any state dollars that ultimately end up with Planned Parenthood. *See* State Defendants' Reply, at 6. This expansive interpretation of the Amendment would prohibit any state employee from making a donation to Planned Parenthood, because the funds originated from the employee's state salary.

This example demonstrates why the state funding must bear a connection to an abortion. It places a logical limit on the term "indirectly" and honors the purpose of the Amendment, which is to prohibit the state funding of abortions. Interpreting the term "indirectly" to prohibit a subsidization extends the prohibition beyond the plain words of the Amendment. The proper

construction of this Amendment as a whole requires a connection with the performance of an abortion. This reading of the Amendment is also consistent with the federal Medicaid requirement that patients have a free choice of providers, which is discussed next.

3. Medicaid Law Requiring Free Choice of Qualified Providers.

A subsidization theory is also inconsistent with federal Medicaid law requiring that patients have a free choice of qualified providers. The Seventh and Ninth Circuits have analyzed state funding bans that specifically prohibit subsidization of abortion operations. *See Planned Parenthood of Indiana v. Comm'r of Indiana Dept. of Health*, 699 F.3d 962 (7th Cir. 2012), *cert. denied* 133 S. Ct. 2736 (2013); *Planned Parenthood Arizona, Inc. v. Betlach*, 727 F.3d 960 (9th Cir. 2013), *cert. denied* 134 S. Ct. 1283 (2014). Both of these courts have enjoined enforcement of these funding bans as inconsistent with the free choice of provider requirement that is contained within the federal Medicaid laws.

A state must follow all requirements of the federal Medicaid laws when it participates in the Medicaid program. *See* 42 U.S.C. § 1396a(a); *Hern v. Beye*, 57 F.3d 906, 913 (10th Cir.), *cert. denied sub nom, Weil v. Hern*, 516 U.S. 1011 (1995). These federal requirements mandate that state Medicaid programs offer their beneficiaries a free choice of qualified health care providers. *See* 42. U.S.C. §§ 1396a(a)(23); 1396d(4)(C). Colorado has expressly adopted this federal requirement with respect to family planning services and is prohibited from seeking a waiver of this provision from the federal government. *See* Colo. Rev. Stat. §§ 25.5-5-319(2) and 25.5-5-404(4)(a).

The Court interprets the Amendment so as not to create a conflict with this statutory scheme. The Seventh Circuit's analysis of Indiana's funding ban in relation to the free choice of provider requirement is instructive here. In that case Planned Parenthood of Indiana did not have a separate affiliate like Services Corp. that performed abortions. It used private funds to perform its abortions. *Planned Parenthood of Indiana*, 699 F.3d at 972. But it also received state funding for services that are unrelated to abortion, such as family planning services, cancer screenings, birth control and screening for sexually transmitted diseases. *Id.*, at 971-72.

Before 2011, Indiana had a funding ban similar to the Amendment. *See id.*, at 987. In 2011 Indiana enacted a new law that also prohibited subsidization. The Seventh Circuit described Indiana's recently enacted funding ban as follows:

> The new law goes a step further by prohibiting abortion providers from receiving *any* state-administered funds, even if the money is earmarked for other services. The point is to eliminate the indirect subsidization of abortion.

Id. (emphasis in original).

After conducting a detailed analysis of the new funding ban, the Seventh Circuit concluded that it violated the free choice of provider requirement under the federal Medicaid laws. *Id.*, at 980. It therefore concluded that the very subsidization theory at issue in this case was inconsistent with federal Medicaid law. In *Betlach*, the Ninth Circuit came to a similar conclusion when analyzing a similar funding ban enacted in Arizona. 727 F.3d 960.

In these cases the Seventh and Ninth Circuits were dealing with a provider that performed both abortion and non-abortion services. The subsidization in those cases was a clearer case than it is here. In this case the subsidization alleged by Plaintiff is one step removed. According to Plaintiff the subsidization must flow through Planned Parenthood before it ever reaches Services Corp. This extra step in the flow of the alleged subsidy makes the Seventh and Ninth Circuits' holdings all the more persuasive in this case. In those cases the Seventh and Ninth Circuits were enjoining a direct subsidy of the abortion provider. If the Amendment were interpreted to embrace a subsidization theory, the restriction would apply to prevent funding of an entity that is even further removed from the entity performing the actual abortion services.

The Court concludes that the decisions entered in *Planned Parenthood of Indiana* and *Betlach* apply with equal force here. Adopting a subsidization theory would place the Amendment in conflict with the carefully laid out Medicaid scheme that exists under federal and Colorado law. The Court must avoid an interpretation of the Amendment that places it in conflict with other laws. *See Great Outdoors*, 913 P.2d at 538. Therefore, the Court declines to adopt Plaintiff's subsidization interpretation of the Amendment, because such a reading would place it conflict with federal and Colorado Medicaid laws. The Court, therefore, concludes that the Amendment does not encompass a subsidization theory.

4. Evidence of Voter Intent.

The Court will briefly review the extraneous evidence submitted by the parties as to meaning of the Amendment. This evidence, however, was not particularly informative as to the meaning of the term "indirectly." Therefore, the Court does not rely on this evidence as part of its interpretation of the Amendment.

Both sides claim support for their positions from the Bluebook that was issued in 1984 when the Amendment appeared on the ballot and was passed by the voters. The 1984 Bluebook contains the following passage regarding the term "indirectly":

> **Indirectly.** In part, the proposed amendment prohibits the use of public funds to pay or otherwise reimburse, ". . . either directly or indirectly . . ." any person or agency for the performance of any induced abortion. A question exists as to whether the quoted language of the amendment would have implications beyond that of precluding the use of medicaid and medically indigent funds for most abortions. For example, would the word "indirectly" prohibit the state or its political subdivisions from appropriating funds for a medical insurance program or plan for their

> respective employees if such a plan authorized abortion services? Would the state and its political subdivisions be prohibited from contracting for services with an agency or institution which provides abortion services? Would Denver General and other publicly operated hospitals be prohibited from authorizing abortion services in their respective hospitals? Would the University of Colorado Health Sciences Center be prohibited from conducting any courses in abortion procedures?

Ex. D to the State Defendants' Motion, 1984 Bluebook, at 6.

These questions touch on the subsidization theory at issue here. The Bluebook, however, does not suggest any answers to these questions. These questions appear to be raised for the voters' consideration when voting on the Amendment. No answers to these questions can be gathered either way from the enactment of the Amendment. Rather, these questions appear to reserve for another day the determination whether a subsidization theory is recognized under the Amendment. That is the purpose of this action.

In the arguments for the amendment, the Bluebook recognizes that in *Harris v. McRae*, 448 U.S. 297 (1980), the U.S. Supreme Court "has ruled that tax payers are not required to *subsidize* abortions." 1984 Bluebook, at 7 (emphasis added). Again, the Bluebook does not expound on this statement. If anything this statement reinforces the requirement that the funding bear a connection to the performance of an abortion.

The Court determines that no voter intent can be gathered from the Bluebook as to whether the term "indirectly" encompasses a subsidization theory. In addition, no meaning of this term can be gleaned from analyzing the "objective sought to be achieved and the mischief to be avoided" in enacting the Amendment. *See Davidson*, 83 P.3d at 654 (voter intent can be gathered from the objective of the provision and the mischief it seeks to lessen or eliminate). Therefore, these aids in ascertaining voter intent are of little use when interpreting the term "indirectly" as used in the Amendment.

Finally, Plaintiff maintains that some support for her position can be found in the fact that she interpreted the Amendment to prohibit funding of Planned Parenthood when she was the executive director of the Colorado Department of Public Health and Environment ("CDPHE") from 1999 – 2004. *See* Ex. A to Pl.'s combined response, Pl.'s Aff'd. In her affidavit, Plaintiff recites the steps that she took to understand the connection between Planned Parenthood and Services Corp. *Id.* An audit performed by an accounting firm found that Planned Parenthood was charging Services Corp. less than market rates for its lease of facilities in Durango, Colorado Springs and Denver. *See id.*, ex. G, September 5, 2001 report of Anderson & Whitney, P.C. Based on this finding, Plaintiff ordered that the two entities separate before Planned Parenthood would be considered for any state funds designed for family planning services. Pl.'s Aff'd, ¶¶ 13-15.

Plaintiff's interpretation of the Amendment while she was the executive director of CDPHE came well after the 1984 election. The Court, therefore, finds that it is of limited use in ascertaining voter intent when the Amendment was enacted. Therefore, the extraneous evidence of voter intent submitted by the parties does not provide any insight as to whether the Amendment embraces a subsidization theory.

For the reasons set forth above, the Court concludes that Plaintiff's theory of subsidization is not encompassed within the Amendment. Plaintiff's claims, therefore, may not be maintained as a matter of law. Accordingly, the Defendants' motions to dismiss are granted. The Court's resolution of these motions make it unnecessary to determine whether the Governor is a proper party to this action. Therefore, the Court does not address the State Defendants' motion to dismiss the Governor from this action.

SO ORDERED this 11th day of August, 2014.

BY THE COURT:

Andrew P. McCallin
District Court Judge