COLORADO SUPREME COURT Colorado State Judicial Building, Two East 14th Avenue, Denver, CO 80203	DATE FILED: December 28, 2016 2:48 PM FILING ID: 32C9A58699DD2 CASE NUMBER: 2016SC112
COURT OF APPEALS, STATE OF COLORADO, Judges Terry, Bernard, and Rothenberg, Appeals Court Case No. 2014 CA 1816 Appeal from District Court, Denver County, Colorado; The Honorable Andrew P. McCallin, Case No. 2013CV34544	
Petitioner: Jane E. Norton v. **Respondents**: 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	COURT USE ONLY
Attorneys for Amici Curiae: David M. Hyams, Att. Reg. #42648 SDG Law LLC 3900 E. Mexico Ave., Ste. 300 Denver, CO 80210 720-989-1281 dhyams@sdglawllc.com	Case Number: 2016SC112

BRIEF OF *AMICI CURIAE* COLORADO FAMILY ACTION, GENESIS FAMILY CHURCH, KINGDOM WAY MINISTRIES, SUMMIT MINISTRIES, AND CHRISTINA DARLINGTON IN SUPPORT OF PETITIONER JANE E. NORTON

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that

The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).

It contains 4,748 words (does not exceed 4,750 words).

The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ David M. Hyams
David M. Hyams

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Colorado Family Action ("CFA") is a Colorado nonprofit corporation that represents Colorado taxpayers who seek to assure that religious freedom is secure, the sanctity of life is promoted, and marriage and the family are protected and promoted. CFA seeks to protect life in all forms, and thus to correct the court of appeals' decision that essentially permits abortion providers to subsidize their trade with taxpayer funds.

Genesis Family Church ("GFC") is an evangelical Christian church in Westminster, Colorado, which places a high value on the history of Christian doctrine and practice, and especially as expressed in the structure of the nuclear family. As such, GFC has a keen interest in this case, since its taxpaying members deem it both their religious and civic duty to speak publicly on behalf of (otherwise defenseless) preborn children, and especially since Colorado's constitution prohibits the flow of taxpayer dollars to abortion providers.

Kingdom Way Ministries ("KWM") is a Colorado non-profit corporation based in Loveland, Colorado, whose mission includes equipping leaders in business to integrate their faith and Christ-centered leadership principles to transform their communities for the common good. KWM believes that tax dollars used to fund abortions is a violation of such principles and is a detriment to the communities of Colorado.

Summit Ministries ("Summit") is a Colorado nonprofit that educates young people through various forums to champion a biblical worldview. In 1973, its founder, Dr. David Noebel, published *The Slaughter of the Innocent*, one of the first pro-life resources available after *Roe v. Wade*. Summit carries on Dr. Noebel's legacy through educational resources that advocate the sanctity of life and protection of the unborn.

Christina Darlington is a Colorado citizen and taxpayer opposed to abortion and her tax dollars being used to fund the performance of any abortion in any capacity whatsoever.

SUMMARY OF ARGUMENT

The United States and Colorado have historically protected their citizens' fundamental right to freedom of conscience. In the abortion context, this has taken the form of conscience clauses and funding restrictions. Article V, Section 50 of the Colorado Constitution (the "Amendment") is an instance of the latter. The district court and court of appeals opinions render the Amendment meaningless, as they effectively sanction the funding of the performance of induced abortions by allowing the Governor, the Department of Health Care Policy and Financing, and/or the Department of Public Health and Environment (the "State Defendants"), in defiance of a directive issued by Petitioner (the "CDPHE Directive"), to direct taxpayer dollars to Rocky Mountain Planned Parenthood, Inc. ("PP") (the

"Funding"), who in turn utilizes that money to subsidize the abortion activities of its alter ego, Planned Parenthood Rocky Mountains Services Corporation ("PP Services"). Forcing *Amici* to indirectly or directly fund the termination of preborn human beings violates their consciences, as they are deeply opposed to abortion.

Accordingly, the court of appeals erred in interpreting Colo. Const. art. V, section 50 to bar the use of state funds to pay for the performance of any induced abortion only to the extent that the performance of an induced abortion is the purpose for which the state makes the payment. This Court should not permit a reading of the Amendment that rewards corporate shell games and does violence to the conscience rights it was designed to protect. *Amici* respectfully request the Court reverse the court of appeals.

ARGUMENT

I. THE PROHIBITION ON USING PUBLIC FUNDS TO PAY FOR ABORTIONS HAS A LONG HISTORY AND REMAINS A POPULAR MEANS OF PROTECTING CONSCIENCE RIGHTS.

A. Freedom of Conscience Is a Fundamental Right Affirmed by Our Nation's Founders.

The First Amendment guarantees that Congress shall make no law prohibiting the free exercise of religion. U.S. CONST. amend. I. The essence of that promise is the guarantee that the government cannot force a person to commit an act in violation of his or her religion. *See generally* Michael W. McConnell,

The Origins and Historical Understanding of Free Exercise of Religion, 103 HARV. L. REV. 1409 (1990).

The signers of the First Amendment were united in a desire to protect the "liberty of conscience," which they considered to be a right given by God that was antecedent to the nation they were forming. *See* Thomas C. Berg, *Free Exercise of Religion*, in THE HERITAGE GUIDE TO THE CONSTITUTION 310 (2005).

Thomas Jefferson was clear that freedom of conscience is not to be subordinate to the government:

> [O]ur rulers can have authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God.

Jefferson, *Notes on Virginia* (1785).

Likewise, James Madison, considered the Father of the Bill of Rights, considered freedom of conscience an unalienable right:

> The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.

Madison, *Memorial and Remonstrance Against Religious Assessments* ¶ 15 (1785).

According "to the view taken by Jefferson and Madison . . . 'to compel a man to furnish contributions of money for the propagation of opinions which he

disbelieves is sinful and tyrannical.'" Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2203 (2003) (quoting *A Bill for Establishing Religious Freedom* (1786)).

Indeed, liberty of conscience is in the warp and woof of our nation's history. Thus, forcing Colorado taxpayers to pay for life-ending procedures to which they are conscientiously opposed eviscerates one of the very purposes for which this nation was formed. As Thomas Jefferson charged us:

> [W]e are bound, you, I, every one, to make common cause, even with error itself, to maintain the common right of freedom of conscience. *We ought with one heart and one hand hew down the daring and dangerous efforts of those who would seduce the public opinion to substitute itself into . . . tyranny over religious faith*. . . .

Jefferson, Letter to Edward Dowse, Esq. (Apr. 19, 1803) (emphasis added).

B. Freedom of Conscience Is a Fundamental Right Affirmed by the Supreme Court.

In recognition of its paramount importance, the U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience. *See, e.g.*, *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) ("This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience."); *Tinker v.*

Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 n.2 (1969) (referencing "constitutionally protected freedom of conscience").

In *West Virginia State Board of Education v. Barnette*, the Supreme Court stated:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. . . .

Barnette, 319 U.S. 624, 642 (1943). "[F]reedom to differ is not limited to things that do not matter much. . . . The test of its substance is the right to differ as to things that touch the heart of the existing order." *Id.*

Barnette has been affirmed repeatedly, including in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), where the Supreme Court stated:

> It is conventional constitutional doctrine that where reasonable people disagree the government can adopt one position or the other. *That theorem, however, assumes a state of affairs in which the choice does not intrude upon a protected liberty*. Thus, while some people might disagree about whether or not the flag should be saluted, or disagree about the proposition that it may not be defiled, *we have ruled that a State may not compel or enforce one view or the other*.

Id. at 851 (citing *Barnette*, 319 U.S. 624) (citations omitted) (emphasis added).

The Supreme Court has also protected conscientious objectors. *See Welsh v. United States*, 398 U.S. 333, 344 (1970) (extending draft exemptions to "all those whose consciences, spurred by deeply held moral, ethical, or religious

beliefs, would give them no rest or peace if they allowed themselves to become part of an instrument of war."). The *Welsh* court noted a statement by Mr. Welsh, the conscientious objector, that has significance here:

> I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. . . . I cannot, therefore conscientiously comply with the Government's insistence that I assume duties which I feel are immoral and totally repugnant.

Id. at 343.

Like Welsh, *Amici* believe that human life is valuable—at all stages and in all situations, and that elective abortion is murder and a sin against God. Being forced to fund procedures that terminate a prenatal human is just as objectionable as being forced participate in the termination of postnatal humans in war.

C. Recognizing the Fundamental Right of Freedom of Conscience Demands the Prohibition on Funding Abortions with Tax Dollars.

In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court based its holding on a woman's constitutional right to privacy.

> Under that rationale, the government is required to leave all aspects of the decision about abortion in private hands. It follows logically that the government is permitted — indeed, it may even be required — to refuse to fund abortions. Roe was not, after all, an affirmation of the proposition that abortion is morally unobjectionable. It was an affirmation that the question of the morality of abortion is deeply contested and that the government should not resolve the issue.
>
> ***
>
> For those who consider abortion to be murder, it is "sinful and

tyrannical" to require them to participate in it with their tax dollars.

***

> Therefore, as in the case of government funding of religion, the privacy-separation rationale provides ample justification for the government's refusal to fund abortions. When the decisions are private, they should be left to the institutions of private choice. The public, which includes conscientious opponents of religion and abortion, should not be forced to pay for either.

Michael W. McConnell, *The Selective Funding Problem: Abortions and Religious Schools*, 104 Harv. L. Rev. 989, 1007-1011 (1991) (citations omitted).

D. Freedom of Conscience Is a Fundamental Right Affirmed by Congress and State Legislatures.

Cognizant of the deeply held convictions regarding abortion, Congress has passed measures expressing Americans' commitment to protecting their freedom of conscience. These measures protect health care providers who oppose abortions and taxpayers who oppose their tax dollars being used to fund abortions.

1. Conscience clauses protect healthcare providers.

Following *Roe v. Wade*, in 1973, Congress passed the first of the Church Amendments, *see* 42 U.S.C. §300-7, which protect healthcare providers from discrimination by recipients of funds from the Department of Health and Human Services on the basis of their religious or moral objection to performing or participating in abortions or any lawful health service or research activity. Many similar conscience provisions related to federal funding have been passed over

the last 45 years. *See, e.g.*, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS (Dec. 27 2016), http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf (compiling federal conscience protections).

States have adopted similar provisions. To date, "90% of all states include conscience clause protections for medical professionals involved in abortion, and 26% of all states have protection for pharmacists and health professionals who object to the provision of contraceptives." A. Von Hagel and D. Mansbach, *Reproductive Rights in the Age of Human Rights*, 142, 150 (2016).

2. Funding restrictions protect taxpayers.

The second type of conscience protection prohibits using public funds to pay for abortions, such as the funding rider commonly known as the Hyde Amendment, which, with some limited exceptions, prohibits federal spending on abortion. *See, e.g.*, Pub. L. No. 94-439, § 209; *see also Dodge v. State Dep't of Social Servs.*, 657 P.2d 969, 972 n.1 (Colo. App. 1982) (discussing same). Since its passage in 1976, the U.S. Supreme Court has upheld the Hyde Amendment, *see Harris v. McRae*, 48 U.S. 297 (1980), and it has been added to appropriations bills annually.

Funding restrictions have also applied to international aid. In 1973, Congress passed the Helms Amendment, which prohibits aid to international organizations that counsel for, refer, or provide abortions. *See* Von Hagel & Mansbach, at 152.

The executive branch also supports funding restrictions. In 1984, President Reagan issued an executive order prohibiting "funding for nonprofit and international organizations that use segregated, non-US funds to provide any abortion-related service, including counseling, referral, or the procedure itself." *Id*. In 2010, President Obama issued an executive order that adopts funding restrictions from the Stupak-Pitts Amendment for the Affordable Care Act. *See* Exec. Order No. 13535, 3 C.F.R. 15599 (2010).

States have also implemented this protection. "To date, 32 states and the District of Columbia provide funding for abortion for women on Medicaid only in cases of rape, incest, and when the life of the mother is at stake . . . ." Von Hagel & Mansbach, at 152. These state-level measures pass constitutional muster, *see Rust v. Sullivan*, 500 U.S. 173 (1991) (states may engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest), and "are predicated on the assertion that the public should not pay for services—such as abortion—to which they are opposed." Von Hagel & Mansbach, at 159.

While these restrictions generally date from 1973 onward, they protect millennia-old convictions regarding how the God of the Bible views abortion:

> You shall not murder a child by abortion, nor kill [a child who] has been born.

The Didache 2.2 (c. AD 60-150).

> In our case, murder being once for all forbidden, we may not destroy even the fetus in the womb, while as yet the human being derives blood from other parts of the body for its sustenance. To hinder a birth is merely a speedier man-killing; nor does it matter whether you take away a life that is born, or destroy one that is coming to the birth.

Tertullian, *The Apology* 9 (c. AD 197-204), *ANF* 3.25.

> In the Bible, to kill a baby in the womb, at any stage of pregnancy, is as much an act of murder as it is for Pharaoh to force the male Hebrew infants to be cast into the Nile River. In Scripture, a baby is a baby, whether inside or outside of the womb.

Timothy L. Fan, *Divine Heartbeat: Listening to God's Heartbeat for Preborn Children* (2014), 211.

Thus, for *Amici*, abortion is an inextricably moral and religious issue of grave concern. Funding prohibitions recognize this conviction by protecting individuals from the government forcing them to violate their consciences, but the court of appeals decision dispenses with the longstanding national and local commitment.

3. Colorado recognizes freedom of conscience as a right to be protected.

Continuing in this long and venerable tradition, Colorado enshrined this fundamental right of freedom of conscience in its constitution:

> The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or

> capacity, on account of his opinions concerning religion; but *the liberty of conscience* hereby secured . . . .

Colo. Const., Art. II, § 4 (emphasis added); *see also* Art. II, § 3; Art. IX, §§ 7,8. Furthermore, because the Colorado constitution's religion clauses are "more restrictive" than their federal counterparts, *see Taxpayers for Public Education v. Douglas County School Dist.*, 351 P.3d 461, 474 (Colo. 2015), the conscience rights preserved by them warrant even greater vigilance.

Given its foundational commitment to protecting its citizens' conscience rights, it is little wonder that Colorado has embraced both types of protections.

a) Colorado conscious clause protections

The Colorado Legislature has expressly acknowledged the role of conscience when considering matters concerning procreation:

> This part 2 [concerning family planning] shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs, to follow the dictates of their own consciences, to prevent the imposition upon any individual of practices offensive to the individual's moral standards, to respect the right of every individual to self-determination in the procreation of children, and to insure a complete freedom of choice in pursuance of constitutional rights.

C.R.S. § 25-6-201.

Accordingly, private institutions and healthcare providers may refuse to provide contraceptives and information about contraceptives based upon religious or conscientious objections. C.R.S. § 25-6-102. Public employees may also refuse on religious grounds to provide family planning and birth control services. C.R.S. § 25-6-207.

b) Colorado funding restrictions

In 1984, Colorado citizens embraced the principle of not forcing taxpayers to fund abortion by adopting the Amendment, which the Colorado Legislature has repeatedly implemented. *See, e.g.,* C.R.S. §§ 25.5-3-106 (no public funds for abortion—Colorado Indigent Care Program), 25.5-4-415 (no public funds for abortion—providers reimbursement), 25-20.5-503(2) (school-based health center grant program).

Colorado courts have acknowledged the rationale behind funding prohibitions such as the Amendment:

> [T]he government has no constitutional obligation to fund the exercise of a constitutional right. *See, e.g., Rust v. Sullivan,* 500 U.S. 173, 193, . . . (1991) ("[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right.") . . . ; *Harris v. McRae,* 448 U.S. 297, 316 . . . (1980) ("[I]t simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices.").

Dolores Huerta Prepar. v. State Bd. of Ed., 215 P.3d 1229, 1237 (Colo. App. 2009) (citations omitted). Indeed, when this Court has faced the issue of public funding that runs afoul of freedom of conscience-based constitutional provisions, even when the funding occurs indirectly, the Court has affirmed freedom of conscience.

In *Taxpayers for Public Education,* Chief Justice Rice cited approvingly of Justice Bernard's dissenting opinion in the lower court. *See* 351 P.3d at 466. There,

Justice Bernard clearly articulated that protecting freedom of conscience would be accomplished by a faithful application of the constitution:

> Applying section 7 as written in this case would reduce the problems associated with funding private . . . schools . . . while *carefully protecting the right of Colorado's citizens to exercise their religious conscience* . . . .

356 P.3d 833, 871 (Colo. App. 2013) (Bernard, J., dissenting) (emphasis added).

A plurality of this Court agreed with Justice Bernard and found the program at issue violated Article IX, section 7 and thus the consciences of Colorado taxpayers. 351 P.3d at 475. In so holding, the Court employed language that mirrors the interests at stake here, and underscores the flaw in the court of appeals' reading of the Amendment:

> The Colorado Constitution features broad, unequivocal language forbidding the State from using public money to fund [abortions]. Specifically, article [V], section [50]—entitled "[public funding of abortion] forbidden"— includes the following proscriptive language:
>
> > [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….]
>
> (Emphasis added.) . . . Therefore, this stark constitutional provision makes one thing clear: A[n agency] may not aid [abortion providers].
>
> Yet aiding [abortion providers] is exactly what the [Funding] does. . . . To be sure, the [Funding] does not explicitly funnel money directly to [abortion providers], instead providing financial aid to [provider affiliates]. But section [50]'s prohibitions are not limited to direct funding. Rather, section [50] bars [agencies] from "pay[ing] [or otherwise reimburs[ing], either directly or indirectly, any person,

> agency or facility for the performance of any induced abortion" (emphasis added). Given that [abortion providers] rely on [provider affiliates' nexus] (and their corresponding [material subsidies]) for their ongoing survival, the [Funding]'s facilitation of such [nexus] necessarily constitutes aid to "[pay or otherwise reimburse . . . indirectly]" those [providers]. Section [50] precludes [agencies] from providing such aid.

Id. at 470.

> [T]he [Funding] awards public money to [provider affiliates] who may then use that money to pay for [the performance of an induced abortion]. In so doing, the [Funding] aids [abortion providers]. Thus . . . the [Funding] violates the clear constitutional command of section [50].

Id. at 471.

As in *Taxpayers*, this Court should again apply the constitution as written and vindicate Colorado citizens' conscience rights. For if indirect funding to a prohibited recipient of state funds violated the constitution where the term "indirect" was absent from the provision at issue, and the immediate transferee (a student) was ontologically and nominally distinct from the subsequent transferee (a religious school), how much more should the Funding be found to be in violation where "indirect" is expressly stated in the Amendment and where the immediate and subsequent transferees are alter egos.

E. The Majority of Americans, Regardless of Whether They Are Pro-life or Pro-abortion, Do Not Want Their Tax Dollars Funding Abortions.

Conscience-based restrictions on taxpayer funded abortions remain popular across demographic and political lines. "Taxpayer funding for abortion is opposed by 62 percent of Americans. This includes 65 percent of African-Americans, 61 percent of Latinos, and 45 percent of those who say they are pro-choice, as well as 84 percent of Republicans, 61 percent of Independents and 44 percent of Democrats." *Americans Support Abortion Restrictions*, KNIGHTS OF COLUMBUS (Dec. 26, 2016), http://www.kofc.org/un/en/news/polls.html#/ (reporting findings of July 2016 Marist Institute for Public Opinion poll). *See also The 2016 Election: Clinton vs. Trump Voters on American Health Care*, 16, POLITICO (Dec. 26, 2016, http://www.politico.com/f/?id=00000158-039b-d881-adda-77db04b70000 (reporting findings of October 2016 Politico/Harvard T.H. Chan School of Public Health poll: "Overall, only 36% of likely voters favor allowing Medicaid funding to be used for abortion services, while a majority (58%) oppose."). The opinion below upsets this popular protection.

II. THE RISK OF IMPROPER EXPENDITURE OF PUBLIC FUNDS IS A CLEAR AND PRESENT DANGER.

A. Because the Lower Courts Sanctioned the Intentional Circumvention of the Amendment, Nothing Prevents Abortion Providers from Scamming the System.

By PP's refusal to operate as separate and distinct legal entity from PP Services, PP has made it clear that it will not (and cannot) provide certifications that should be required in order to receive state funds: that none of the money is used to provide indirect financial assistance for the performance of an induced abortion. If so much as a cent of the Funding is used to pay for any of the resources PP Services uses in the *performance* of an induced abortion, e.g., the electricity, water, abortion devices (e.g., manual vacuum aspirators, uterine curettes, syringes, cervical dilators), emergency contraceptives, staff salaries, latex gloves, etc., the money is used for non-permissible purposes.[1] Absent such certification, there is no way to ensure that tax dollars PP receives will not be used to facilitate induced abortions in violation of the Amendment. That alone is sufficient to reverse the decision below, and so long as PP and PP Services continue to be alter egos, tax dollars cannot constitutionally flow to either. *See Rust*, 500 U.S. at 198 ("By requiring that the Title X grantee engage in abortion-related activity separately from activity receiving federal funding, Congress has . . . not denied it the right to engage in abortion-related activities.

[1] *Amici* view the injustices perpetrated upon preborn humans in the name of abortion akin to the horrors of chattel slavery. Applying the facts and PP's arguments here in that context, although tax dollars may not have been allocated to actually purchase the slaves—that would have been done via a separate shell corporation—tax dollars would have been used to acquire and maintain the ship that hauled the slaves across the Atlantic, pay the crew's wages, and purchase the neck rings, leg-shackles, instruments for forcing open slaves' jaws, etc. According to PP and the courts below, that would have been a legitimate use of taxpayer funds.

Congress has merely refused to fund such activities out of the public fisc, and the Secretary has simply required a certain degree of separation from the Title X project in order to ensure the integrity of the federally funded program.").

However, even if PP could provide such certification, it would be insufficient to protect the constitutional interests at stake, because—in abdication of their duty—the State Defendants have repeatedly demonstrated that they are unwilling to enforce the Amendment. And given that their abdication began when former Governor Ritter took office and has continued under Governor Hickenlooper—even though the facts undergirding the CDPHE Directive never changed—logic compels the conclusion that the State Defendants are beholden to their political ally, PP. Thus, those entrusted to protect the conscience rights of Colorado taxpayers instead flout those rights. This is an affront to the rule of law and a slap in the face to the taxpayers who pay the salaries of those charged to uphold the constitution.

Moreover, by sanctioning PP's corporate shell game, the lower courts have shown other abortion providers how they, too, can obtain tax dollars to perform abortions and trammel upon taxpayers' conscience rights: set up a corporate entity ("ABC Corp.") purely for coding abortions, then run the rest of the business under an alter ego entity ("XYZ Corp."). XYZ Corp. is eligible for public funding, because, although the state pays or reimburses XYZ Corp. for the "menu of services" concomitant with the performance of an induced abortion, the state never

purposefully pays or reimburses XYZ Corp. (or ABC Corp.) for the *actual* performance of induced abortions. This means of scamming taxpayers is sophomoric and is daily dispensed with in commercial cases by courts throughout this state. Yet, by refusing to allow Petitioner to proceed with discovery, two courts have now put their imprimatur on PP's shell game. *Cf. McCallum Family L.L.C. v. Winger*, 221 P.3d 69, 74 (Colo. App. 2009) (an inquiry determining whether a corporate entity is the alter ego of another "looks to the specific facts of each case"). Accordingly, this Court is the last line of defense for safeguarding the public fisc from being further defrauded. *See Taxpayers*, 351 P.3d at 471 ("The program's lack of vital safeguards only bolsters our conclusion that it is constitutionally infirm.").

B. Colorado Tax Dollars Are Possibly Funding a Criminal Enterprise.

Amici are concerned that the violations of their conscience rights in Colorado are merely an instance of the well-documented, troubling business practices of PP across the country. For example, "[t]estimony by former Planned Parenthood employees, as well as audited financial statements, suggest the taxpayer dollars that the nation's largest abortion chain purportedly receives for non-abortion services support its abortion business." *Myths and Facts on Taxpayer Funding for Abortion*, AMERICANS UNITED FOR LIFE (Dec. 26, 2016), http://www.aul.org/myths-and-facts-on-taxpayer-funding-for-abortion/

(summarizing testimony of former PP employees belying the notion that funding for contraception or family planning has nothing to do with abortion services).

Furthermore, in the wake of the scandal that erupted in 2015 following a series of videos concerning Planned Parenthood's alleged trafficking in fetal tissue (several of which featured Planned Parenthood of the Rocky Mountains, *see* Denver Post, Elizabeth Hernandez (07/29/2015) available at http://goo.gl/PVbMCj), both houses of Congress have referred Planned Parenthood for criminal prosecution. *See* Press Release, *Select Panel Refers Numerous Entities for Further Investigation into Possible Violations of Law*, THE ENERGY AND COMMERCE COMMITTEE (Dec. 26, 2016) https://energycommerce.house.gov/news-center/press-releases/select-panel-refers-numerous-entities-further-investigation-possible; News Release, *Grassley Refers Planned Parenthood, Fetal Tissue Procurement Organizations to FBI, Justice Department for Investigation* (Dec. 26, 2016), http://www.grassley.senate.gov/news/news-releases/grassley-refers-planned-parenthood-fetal-tissue-procurement-organizations-fbi. Colorado citizens should not have their pockets picked to further the shady activities of Planned Parenthood.

CONCLUSION

From their inception, this nation and state have embraced, cherished, and guarded that most sacred of rights—the freedom of conscience. Despite wars,

cultural upheavals, and acerbic political wrangling, the citizens of America and Colorado have been unwavering in their commitment to protecting their most sincerely held beliefs from the government's encroachment. In the abortion context, this has taken the form of conscience clauses and funding restrictions. The latter is on the verge of being rendered utterly meaningless in this state.

Amici respectfully implore this Court to heed Jefferson's call to "hew down the daring and dangerous efforts of those who would seduce the public opinion to substitute itself into . . . tyranny over religious faith. . . ," Jefferson, Letter to Dowse, and reverse the court of appeals.

DATED this 28th day of December, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 28th day of December, 2016, a true and correct copy of the foregoing **BRIEF OF *AMICI CURIAE* COLORADO FAMILY ACTION, GENESIS FAMILY CHURCH, KINGDOM WAY MINISTRIES, SUMMIT MINISTRIES, AND CHRISTINA DARLINGTON IN SUPPORT OF PETITIONER JANE E. NORTON** was served by ICCES as follows:

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