

Small Claims    County Court    District Court  
 Probate Court    Juvenile Court    Water Court  
DENVER County, State of Colorado  
Court Address: 1437 Bannock Street, Denver, CO 80237

**Plaintiff(s): SAMANTHA WAGNER, ASHLEY STEWART, and A.S., a Minor Child Acting Through Her Mother and Next Best Friend, Ashley Stewart**

v.

**Defendant(s): PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.; ROCKY MOUNTAIN PLANNED PARENTHOOD, INC., a/k/a PLANNED PARENTHOOD OF THE ROCKY MOUNTAINS, INC.; AND MAJORS PROPERTY LLC**

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Case Number: 16 CV

Div.:      Ctrm:

**COMPLAINT AND JURY DEMAND**

COMES NOW the Plaintiffs, by and through their respective counsel, and for their Complaint against the Defendants state the following:

## **PARTIES**

1. At all relevant times hereto the Plaintiff Samantha Wagner was a resident of El Paso County, Colorado. She continues to reside in El Paso County, Colorado as of the filing of this Complaint.

2. At all relevant times hereto the Plaintiffs Ashley Stewart and A.S. were residing in McLennan County, Texas. They continue to reside in McLennan County, Texas as of the filing of this Complaint. A.S. is a minor child and is presently acting through her Mother and Next Best Friend, Ashley Stewart.

3. At all relevant times hereto the Defendant Planned Parenthood Federation of America, Inc. was a New York corporation. At all relevant times hereto this Defendant was also registered to do business in the State of Colorado, and continues to be in good standing to do business in the State of Colorado at the time of the filing of this Complaint. This Complaint is being served upon its registered agent in Colorado, and is hereafter referred to as “PPH”.

4. PPH provides a range of reproductive health care services that include abortions.

5. While some services are provided at no charge, upon information and belief, PPH charges a fee for its abortion services.

6. At all relevant times hereto Defendant Rocky Mountain Planned Parenthood, Inc., a/k/a Planned Parenthood of The Rocky Mountains, Inc. was a Colorado Limited Liability Corporation that continues to be is in good standing to do business in Colorado as of the time of the filing of this Complaint. This Defendant is being served with a copy of this Complaint through its registered agent in Denver, and is hereafter referred to as “PPH of Colorado”.

7. At all relevant times hereto Defendant Majors Property LLC, was a Colorado Corporation, and as of the filing of this Complaint is in good standing to do business in the State of Colorado. Majors Property LLC, upon information and belief, owns the property that is occupied by PPH and PPH of Colorado at 3480 Centennial Blvd., Colorado Springs, CO 80907, which is the location of the events that are the subject of this Complaint. This Defendant will hereinafter be referred to as “MAJORS” and is being served with this Complaint through its registered agent in Denver.

8. No Federal jurisdiction exists in this matter through diversity of citizenship or otherwise. Jurisdiction and venue are appropriate with this Court.

## **GENERAL ALLEGATIONS**

9. PPH is registered as a nonprofit organization and incorporated in New

York State. It operates over 600 Clinics nationally through local and regional affiliates such as PPH of Colorado.

10. Upon information and belief, PPH and its local and regional affiliates share a common website, share funds, and interact and act in concert on a national level, including in Colorado, in order to fulfill their common mission, goal and charter of providing reproductive healthcare, including abortions.

11. For many years, most prominently beginning after the decision rendered by the United States Supreme Court in *Roe v. Wade* in 1973, facilities that provided abortion services, and in particular PPH, came under increasingly violent attacks by individuals and groups that were religiously or philosophically opposed to abortion. These various groups and individuals made it clear they would use violent and deadly means on an ongoing basis in order to stop PPH from performing abortions.

12. Upon information and belief, PPH clinics have been the targets of thousands of verbal threats and protests and have been the actual targets of well over 300 acts of direct violence, including arson, bombings, approximately a dozen murders and butyric acid attacks.

13. Upon information and belief, the level of violence and the extreme nature of the violence of the attacks against PPH has been escalating since the 1990's.

14. Upon information and belief, PPH of Colorado are the subject of constant verbal, email, and mail threats.

15. Upon information and belief, PPH and PPH of Colorado have been consciously aware of the extreme and escalating violence and have tracked and discussed the rising violence on many corporate levels.

16. Upon information and belief, PPH receives contributions from private and governmental sources of over \$196,000,000.00 per year.

17. Upon information and belief, PPH and PPH of Colorado understand that the majority of individuals and their families who come to PPH clinics, including the Plaintiffs in this action, do not have the knowledge, information or means to determine whether the PPH facilities they are going to offer a safe environment.

18. The PPH and PPH of Colorado clinic in this action, herein after referred to as the "PPH CLINIC", like many "PPH" clinics, in fact did not provide a safe and secure environment, nor did it provide any warnings of the very real threat and dangers that face people whom they invite and encourage attend its clinic. Upon information and belief, PPH and PPH of Colorado, given their intimate knowledge of the escalating threat levels towards their clinics and the people who frequent their clinics, had a duty provide for adequate for the individuals it marketed to and invited to its facility. PPH and PPH of Colorado provided no warnings of the

threats and dangers associated with entering onto the PPH CLINIC property. The conduct of PPH and PPH of Colorado was attended by circumstances of willful and wanton conduct, and Plaintiffs intend to move to amend this Complaint to add a claim for punitive damages as allowed by statute.

19. Upon information and belief, on November 27, 2015, PPH and PPH of Colorado provided no armed or other security outside of the PPH CLINIC located at 3480 Centennial Blvd. in Colorado Springs from at least approximately 11:35 a.m. through the remainder of that day.

20. Many PPH and PPH of Colorado facilities, including one of their facilities in Denver, are equipped with security exterior fences, gates, and video and audio surveillance.

21. PPH and PPH of Colorado chooses to provide a high level of security for some clinics and little or no security for others.

22. The PPH CLINIC had been the target of near weekly public protests prior to November 27, 2015.

23. Plaintiff Samantha Wagner expected to and had a right to enter a safe and secure environment when she arrived at the PPH CLINIC on November 27, 2015.

24. Ashley Stewart is the widow of Ke'Arre Stewart, who is deceased. A.S. is the surviving daughter of Ke'Arre Stewart. Ke'Arre Stewart had a right to enter a safe and secure environment when he arrived at the PPH CLINIC on November 27, 2015. As heirs of Ke'Arre Stewart, Ashley Stewart and A.S. had a right to expect that the PPH clinic would provide a safe and secure environment for their husband and father.

25. On the morning of November 27, 2015, Samantha Wagner arrived at the PPH CLINIC with two friends, "J" and "B", at approximately 11:35 a.m. for a scheduled appointment of 11:50 a.m. Ms. Wagner made the appointment so that she could learn about the range of services that PPH provides, and assess what services she might need or choose.

26. "B" pulled into a parking space directly in front of the PPH CLINIC. He parked next to a truck that Ms. Wagner later learned was that of the shooter, Robert Lewis Dear. As their car came to a stop in the parking space, she noticed Mr. Dear leaning over in the back of his truck, but did not see what he was doing and did not give it him any thought at the time.

27. After gathering their things inside the car, Ms. Wagner, "J" and "B" started to get out of "B's" car. As they were in this process, Ms. Wagner saw Mr. Dear raise a rifle and recalls him uttering words to the affect "you should have not have come here today". In the following moments, Mr. Dear shot and killed "J" as she was exiting from the right rear passenger seat. "J" fell directly to the pavement.

28. Mr. Dear then shot Ms. Wagner through her right upper arm, shattering and severing her humerus bone. She and “B” were able to make their way back into the car and “B” was able to turn around and drive north towards a building that contained medical clinics. Mr. Dear continued to shoot at them and “B” was shot several times during that process. Ms. Wagner received medical care in a medical clinic nearby until she was able to be evacuated several hours later.

29. Ke’Arre Stewart arrived at the clinic prior to the shootings with a friend, “K”. Upon information and belief Mr. Stewart was at or very near the front door of the PPH CLINIC when Mr. Dear shot and killed him.

### **CLAIMS AGAINST PPH AND PPH OF COLORADO**

#### **I. PREMISES LIABILITY PURSUANT TO C.R.S. §13-21-115**

30. Plaintiffs incorporate by reference paragraphs 1-29 of this Complaint as if fully set forth herein.

31. On November 27, 2015, PPH and PPH of Colorado operated and occupied the PPH CLINIC, and are “landowners” as defined by C.R.S. §13-21-115.

32. Samantha Wagner and Ke’Arre Stewart were invitees upon that property and of PPH and PPH Colorado.

33. Accordingly, PPH and PPH of Colorado had a duty of reasonable care to protect Samantha Wagner and Ke’Arre Stewart, and others like them, from dangerous conditions on the premises of which they knew or should have known, pursuant to §13-21-115(3)(c)(I).

34. Given the long history of violent attacks and threats, it was foreseeable that a violent attack of some sort would occur at the PPH CLINIC, which was foreseeable.

35. PPH and PPH of Colorado knew or should have known that invitees to the PPH CLINIC were at risk of injury or death. PPH and PPH of Colorado failed to comply with their statutory duties, including but not limited to:

- a. Failing to employ and have present at the time of the shootings at the PPH CLINIC properly trained armed security guards, both outside the PPH CLINIC and within, in order to protect all invitees once they entered the premises, against the type of violent activity that PPH and PPH Colorado have been the target of for decades;
- b. Failing to provide perimeter fencing and a secure point of entry into the PPH CLINIC, in order to protect those who lawfully entered the premises and to act as a barrier for those who would attempt to enter unlawfully and

for the purpose of injuring or killing those within the premises;

- c. Failing to properly train employees or provide reasonable human, audio and camera surveillance monitoring of suspicious activity, with personnel prepared to rapidly respond to and intervene in suspicious activity;
- d. Failing to provide any signs, posters, verbal or any other type of warning describing the risk of physical harm, injury or death associated with entering PPH properties.

36. PPH and PPH of Colorado knew or should have known of the dangers and risks of the kind or similar kind that occurred on November 27, 2015 at the PPH CLINIC that were caused by its failures as noted above. Such dangers and risks were foreseeable.

37. PPH and PPH of Colorado breached their duties as landowners under the Premises Liability Act.

38. As a direct and proximate result of the dangerous conditions, Plaintiffs were severely injured, suffering non-economic losses and injuries which include but are not limited to mental and emotional distress, loss of enjoyment of life, and fear and embarrassment. Plaintiff Samantha Wagner has suffered extreme physical pain and suffering.

39. Samantha Wagner has suffered physical disfigurement including scarring.

40. Plaintiff Samantha Wagner has suffered economic losses which include but are not limited to past and future medical and rehabilitation expenses; loss of past and future wages and loss of future earning capacity; out of pocket expenses related to her medical and rehabilitation treatment; and permanent physical impairment.

41. Ashley Stewart and A.S. have suffered additional non-economic and economic damages and those are set forth below under their claims for Wrongful Death.

Plaintiffs pray for relief as set forth in the Prayer for relief at the conclusion of their claims against PPH and PPH of Colorado on page 9 this Complaint and hereby incorporate the same by reference.

## **II. NEGLIGENCE**

42. Plaintiffs incorporate by reference paragraphs 1-41 of this Complaint as if fully set forth herein.

43. PPH and PPH Colorado had a duty to exercise reasonable care to provide for the safety and security of the individuals they invite and encourage to come to their clinics.

44. Given the long history of violent attacks and threats, PPH and PPH Colorado knew or should have known there was a likelihood of such an attack, or a violent attack of some sort, at the PPH CLINIC, and it was foreseeable.

45. PPH and PPH of Colorado breached their duties of reasonable care including but not limited to:

- a. Failing to employ and have present at the time of the shootings at the PPH CLINIC properly trained and armed security guards, both outside the PPH CLINIC and within, in order to protect all invitees once they entered the premises, against the type of violent activity that PPH and PPH Colorado have been the target of for decades;
- b. Failing to provide perimeter fencing and a secure point of entry into the PPH CLINIC, in order to protect those who lawfully entered the premises and act as a barrier for those who would attempt to enter unlawfully and for the purpose of injuring or killing those within the premises;
- c. Failing to properly train employees or provide reasonable human, audio and camera surveillance monitoring of suspicious activity, with personnel prepare to rapidly respond to and intervene in suspicious activity;
- d. Failing to provide any signs, posters, verbal or any other type of warning describing the risk of physical harm, injury or death associated with entering PPH properties.

46. As a direct and proximate result of PPH and PPH of Colorado's negligence, the Plaintiffs have suffered injuries including non-economic and economic losses, as set forth in paragraphs 38-41 and 56-57 of this Complaint, and those allegations are incorporated into this paragraph by reference as if fully set forth.

Plaintiffs pray for relief as set forth in the Prayer for relief at the conclusion of their claims against PPH and PPH of Colorado on page 9 of this Complaint and hereby incorporate the same by reference.

### **III. OUTRAGEOUS CONDUCT**

47. Plaintiffs incorporate paragraphs 1-46 of this Complaint as if fully set forth herein.

48. PPH and PPH of Colorado were in a position of authority over the Plaintiffs as a result of the control they had pertaining to the provision of safety and security for visitors to the PPH CLINIC.

49. PPH and PPH of Colorado, as set forth above, were keenly aware of the history of violence against them and those who frequent their clinics, and chose not to provide adequate security for Plaintiffs and their family, although they had the means and obligation to do so. They knew or should have known that it was likely that a violent attack of some sort would occur at the PPH CLINIC.

50. PPH and PPH of Colorado provided little or no security at the PPH CLINIC, such as an armed guard and perimeter fencing, as they do in other clinics. It provided no signs, posters, verbal or any other type of warning describing the risk of physical harm, injury or death associated with entering PPH properties.

51. PPH and PPH of Colorado knew or should have known of the consequences of their delay, failure and decision to not implement appropriate security measures to protect the Plaintiffs and their families. A violent attack of some sort would have been foreseeable.

52. PPH and PPH of Colorado consciously disregarded high level of risk for injury at the PPH CLINIC. The conduct of PPH and PPH of Colorado was extreme and outrageous, causing Plaintiffs extreme emotional distress.

53. As a direct and proximate cause of PPH and PPH of Colorado's outrageous conduct the Plaintiffs have suffered injuries, including non-economic and economic losses as set forth in paragraphs 38-41 and 56-57 of this Complaint, and those allegations are incorporated into this paragraph by reference as if fully set forth.

Plaintiffs pray for relief as set forth in the Prayer for relief at the conclusion of their claims against PPH and PPHC on page 9 of this Complaint and hereby incorporate the same by reference.

#### **IV. WRONGFUL DEATH**

54. Plaintiffs Ashley Stewart and A.S. incorporate paragraphs 1-53 of this Complaint by reference as if fully set forth herein.

55. PPH and PPH of Colorado, as a result of their violation of the Premises Liability Statute, negligence and outrageous conduct, wrongfully caused the death of Ke'Arre Stewart, their husband and father.

56. As a result of PPH and PPH of Colorado's actions, Ashley Stewart and A.S. are entitled to damages for economic injuries, including, but not limited to, net pecuniary losses from the death of Ke'Arre Stewart, funeral expenses, past and future economic support, past and future household services; and other economic losses as set forth under statutory and common law in Colorado.

57. For noneconomic injuries, including but not limited to, grief; mental anguish;

anger; loss of companionship; impairment of the quality of life; pain and suffering; emotional distress; and other noneconomic injuries including the loss of Ke'Arre Stewart's love, affection, society and companionship.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants PPH and PPH of Colorado in amounts that will fully and fairly compensate them for their injuries, damages and losses, both past and future. Ashley and A.S. pray for all damages as set forth in paragraphs 56-57. Plaintiffs' request judgment for pre and post judgment interest as provided by law, as well as for costs, attorney's fees, expert witness fees, all proper compensatory damages whatsoever, and any other relief the Court deems proper.

### **CLAIMS AGAINST MAJORS PROPERTY LLC**

#### **I. PREMISES LIABILITY PURSUANT TO C.R.S. §13-21-115**

58. Plaintiffs incorporate by reference paragraphs 1-57 of this Complaint as if fully set forth herein.

59. Upon information and belief, MAJORS owned and leased the land and building that is operated by PPH and PPH of Colorado as the PPH CLINIC and is a "landowner" as defined by C.R.S. §13-21-115.

60. Upon information and belief, MAJORS was aware that PPH and PPH of Colorado were operating the PPH CLINIC in order to provide reproductive healthcare, including abortions.

61. Upon information and belief, MAJORS was or should have been aware of the history of threats and violence against PPH and / or PPH of Colorado. This knowledge, as well as that of any of its board members or other officers concerning PPH and PPH of Colorado is attributable to MAJORS.

62. Samantha Wagner and Ke'Arre Stewart were invitees upon the property owned and leased by MAJORS.

63. Accordingly, MAJORS had a duty of reasonable care to protect Samantha Wagner and Ke'Arre Stewart, and others like them, of dangerous conditions of the premises of which they knew or should have known, pursuant to §13-21-115(3)(c)(I).

64. Given the long history of violent attacks and threats against PPH and PPH of Colorado that MAJORS was or should have been aware of, MAJORS knew or should have known of the likelihood of violent attacks at the PPH CLINIC. Violent attacks were foreseeable.

65. MAJORS failed to comply with its statutory duties, including but not limited to:

- a. Failing to employ, or requiring as part of its lease with PPH or PPH of Colorado to have them employ, and have present at the time of the shootings at the PPH CLINIC properly trained armed security guards, both outside the PPH CLINIC and within, in order to protect all invitees once they entered the premises, against the type of violent activity that PPH and PPH Colorado have been the target of for decades;
- b. Failing to provide, or requiring as part of its lease with PPH or PPH of Colorado for them to provide, perimeter fencing and a secure point of entry into the PPH CLINIC, in order to protect those who lawfully entered the premises and act as a barrier for those who would attempt to enter unlawfully and for the purpose of injuring or killing those within the premises;
- c. Failing to require PPH and PPH of Colorado as a part of its lease with them, to properly train employees or provide reasonable human, audio and camera surveillance monitoring of suspicious activity, with personnel prepared to rapidly respond to and intervene in suspicious activity;
- d. Failing to provide any signs, posters, verbal or any other type of warning describing the risk of physical harm, injury or death associated with entering PPH properties, or as a part of its lease with PPH and PPH of Colorado, requiring them to provide such warnings.

66. MAJORS knew or should have known of the dangers and risks of the kind that occurred on November 27, 2015 at the PPH CLINIC, or at least for the probability of some type of violent acts, that were caused by its failures as noted above.

67. MAJORS breached its duties as landowners under the Premises Liability Act.

68. As a direct and proximate result of the dangerous conditions, Plaintiffs were severely injured, suffering non-economic losses and injuries which include but are not limited to mental and emotional distress, loss of enjoyment of life, fear, and embarrassment. Plaintiff Samantha Wagner has suffered extreme physical pain and suffering.

69. Samantha Wagner has suffered physical disfigurement.

70. Plaintiff Samantha Wagner has suffered economic losses which include but are not limited to past and future medical and rehabilitation expenses; loss of past and future wages and loss of future earning capacity; out of pocket expenses related to her medical and rehabilitation treatment; and permanent physical impairment.

71. Ashley Stewart and A.S. have suffered additional non-economic and economic Damages and those are set forth below under their claims for Wrongful Death.

Plaintiffs pray for relief as set forth in the Prayer for relief at the conclusion of their claims against MAJORS on page 12 of this Complaint and hereby incorporate the same by reference.

## **II. NEGLIGENCE**

72. Plaintiffs incorporate by reference paragraphs 1-71 of this Complaint as if fully set forth herein.

73. MAJORS had a duty to exercise reasonable care to provide for the Safety and security of the individuals that are invited to come to the PPH CLINIC.

74. Given the long history of violent attacks and threats against PPH and PPH Colorado MAJORS knew or should have known of the likelihood of such an attack, or a violent attack of some sort, at the PPH CLINIC. That violent attacks could occur was foreseeable.

75. MAJORS breached its duty of reasonable care including but not limited to:

- a. Failing to employ or requiring as part of its lease to require PPH and PPH of Colorado to employ and have present at the time of the shootings at the PPH CLINIC PROPERLY TRAINED AND armed security guards, both outside the PPH CLINIC and within, in order to protect all invitees once they entered the premises, against the type of violent activity that PPH and PPH Colorado have been the target of for decades;
- b. Failing to provide or failing to require as part of its lease with PPH and PPH of Colorado to provide perimeter fencing and a secure point of entry into the PPH CLINIC, in order to protect those who lawfully entered the premises and act as a barrier for those who would attempt to enter unlawfully and for the purpose of injuring or killing those within the premises;
- c. Failing to provide any signs, posters, verbal or any other type of warning describing the risk of physical harm, injury or death associated with entering PPH properties.
- d. Failing to provide any signs, posters, verbal or any other type of warning describing the risk of physical harm, injury or death associated with entering PPH properties, or as a part of its lease with PPH and PPH of Colorado, requiring them to provide such warnings.

76. As a direct and proximate cause of PPH and PPH of Colorado's negligence the

Plaintiffs have suffered injuries including non-economic and economic losses as set forth in paragraphs 68-71 and 79-80 of this Complaint, and those allegations are incorporated into this paragraph by reference as if fully set forth.

Plaintiffs pray for relief as set forth in the Prayer for relief at the conclusion of their claims against MAJORS on page 12 of this Complaint and hereby incorporate the same by reference.

**III. WRONGFUL DEATH**

77. Plaintiffs Ashley Stewart and A.S. incorporate by reference paragraphs 1-76 of this Complaint as if fully set forth herein.

78. MAJORS, as a result of their violation of the Premises Liability Statute, negligence and outrageous conduct, wrongfully caused the death of Ke'Arre Stewart, their husband and father.

79. As a result of MAJORS actions, Ashley Stewart and A.S. are entitled to damages for economic injuries, including, but not limited to, net pecuniary losses from the death of Ke'Arre Stewart, funeral expenses, past and future economic support, past and future household services; and other economic losses as set forth under statutory and common law in Colorado.

80. Ashley Stewart and A.S. entitled to noneconomic injuries, including, but not limited to, grief; mental anguish; anger; loss of companionship; impairment of the quality of life; pain and suffering; emotional distress; and other noneconomic injuries including the loss of Ke'Arre Stewart's love, affection, society and companionship.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendant MAJORS in amounts that will fully and fairly compensate them for their injuries, damages and losses, both past and future. Plaintiffs Ashley Stewart and A.S. pray for the damages set forth in paragraphs 79-80. Plaintiffs request judgment for pre and post judgment interest as provided by law, as well as for costs, attorney's fees, expert witness fees, all proper compensatory damages whatsoever, and any other relief the Court deems proper.

**PLAINTIFFS DEMAND A TRIAL BY A JURY OF SIX PERSONS.**

DATED this 20<sup>th</sup> day of May, 2016.

**McCORMICK & MURPHY, P.C.**

By: /s/ Kirk R. McCormick  
Kirk R. McCormick (16563)  
**Attorneys for Samantha Wagner  
and A.S.**

♣ *Pursuant to Rule 121, §1-26, this document has been electronically filed. A duly signed original is available at the law firm of McCormick & Murphy, P.C.*

**LAW OFFICES OF JOSEPH J.  
ARCHULETTA AND ASSOCIATES, P.C.**

By: /s/ Joseph J. Archuleta  
Joseph J. Archuleta (19246)  
**Attorneys for Ashley Stewart**

♣ *Pursuant to Rule 121, §1-26, this document has been electronically filed. A duly signed original is available at the law firm of Joseph J. Archuleta and Associates, P.C.*

Plaintiffs' Addresses:

Address information is not  
being publically provided due  
to privacy issues