

SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**MEN & WOMEN AGAINST
DISCRIMINATION,**
a West Virginia corporation,

Plaintiff,

v.

CIVIL ACTION NO. 08-C-1056

**THE FAMILY PROTECTION SERVICES
BOARD,** a West Virginia public body, corporate
and politic,

stucky

Defendant.

**SERVE: Darrell McGraw,
Attorney General
State Capitol Complex
Bldg. 1, Room E-26
Charleston, WV 25305**

TO THE ABOVE-NAMED DEFENDANT:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Harvey D. Peyton, Esquire, Plaintiff's attorney, whose address is Post Office Box 216, Nitro, West Virginia 25143, an answer, including any related counterclaim or defense you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: June 2, 2008

Cathy S. Watson
CLERK OF COURT

BY: Cuba, Deputy

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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**MEN & WOMEN AGAINST
DISCRIMINATION,**
a West Virginia corporation,

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CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO. 08-C-1056
JUDGE: *Stucky*

**THE FAMILY PROTECTION SERVICES
BOARD**, a West Virginia public body, corporate
and politic, and **JUDY KING SMITH**, in her
capacity as Chairperson of the Family Protection
Services Board, and **KATHIE KING**, in her
capacity as Member of the Family Services
Protection Board, and **JUDI BALL**, in her capacity
as Secretary and Treasurer of the Family Protection
Services Board, and **LORA MAYNARD** and
BARBARA HAWKINS, in their capacities as
Members of the Family Protection Services Board,

Defendants.

COMPLAINT

Comes now the Plaintiff, by counsel, and for cause of action against the above-named Defendants states as follows:

1. Men & Women Against Discrimination is a non-profit charitable corporation organized to protect the rights of children under the age of eighteen years to access and relationship with both parents regardless of gender and to promote fairness and gender equality in the implementation of the purposes of the West Virginia Domestic Violence Act and the manner in which services are provided pursuant to that Act to the citizens of the State of West Virginia.

2. The Family Protection Services Board is a public body created pursuant to the provisions of *W. Va. Code* §48-26-301.

3. Judy King Smith, Kathie King, Judi Ball, Lora Maynard, and Barbara Hawkins currently serve in the capacity as duly appointed members of the Family Protection Services Board, each having been appointed pursuant to the provisions of *W. Va. Code* §48-26-301; Judy King Smith is the Chairperson of said Board and Judi Ball is the Secretary/Treasurer of said Board.

4. The Family Protection Services Board was both created and defined by *W. Va. Code* §§48-26-101 and 48-26-202; the legislative act both defining and creating the Family Protection Services Board is known as the "West Virginia Domestic Violence Act."

5. The West Virginia Domestic Violence Act, *W. Va. Code* §§48-26-101, *et seq.*, defines domestic violence within the meaning of the Act in terms of absolute gender neutrality without reference in any regard to the gender of either the alleged perpetrator or victim. *W. Va. Code* §§48-27-201, 202, 204.

6. The Family Protection Services Board acts as an agency or instrumentality of the State of West Virginia to implement a portion of the West Virginia Domestic Violence Act; the statutory duties of the Board relative to the West Virginia Domestic Violence Act are set forth in *W. Va. Code* §48-26-401. Those duties include the establishment and enforcement of a system of standards for annual licensure for all domestic violence shelters and programs for victims of domestic violence in the State of West Virginia and the award to domestic violence programs and/or shelters, for each fiscal year, ninety-five percent (95%) of the total funds collected and paid over during the fiscal year into the West Virginia Family Protection Fund, a special revenue account established pursuant to *W. Va. Code* §48-2-604.

7. The funding for the West Virginia Family Protection Fund established pursuant to §48-2-604 and appropriated by the Family Protection Services Board derives from a tax or fee in the sum of fifteen dollars (\$15.00) collected by the county clerks of the various counties of West Virginia for each marriage license issued in each county during the fiscal year.

8. In carrying out its duties regarding the appropriation of funds from the West Virginia Family Protection Fund, the Family Protection Services Board must comply with the "funding application requirements" specified in *W. Va. Code* §48-26-601 which provides in pertinent part:

(c) A family protection shelter or program may not be funded initially if it is shown that it discriminates in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial funding, the shelter or program may not be refunded until the discrimination ceases.

9. In order to apply for funding to be appropriated by the Family Protection Services Board to be paid from the tax or fee collected for marriage licenses as hereinabove referred to, a "family protection program" or "program" or "shelter" or "family protection shelter" or "a program for victims of domestic violence" as defined by *W. Va. Code* §§48-26-204, 48-26-206, 48-27-207 must be licensed programs as defined by those provisions of the Code.

10. *W. Va. Code* §48-26-602 provides that grants or appropriations from the West Virginia Family Protection Fund shall be made in accordance with five specific statutory criteria, which are as follows:

- (1) Demonstration of local need for proposed services;
- (2) Merit of project as proposed;
- (3) Demonstration of local control of the shelter or program;
- (4) Administrative design and efficiency of the project; and
- (5) The board shall develop a formula for equal distribution of fifty percent of any money it awards.

11. The Family Protection Services Board has adopted administrative rules pursuant to the funding authority delegated to it by the legislature; these rules can be found in Title 191 of the *West Virginia Code of State Rules*.

12. In §191-1-2.1 *West Virginia Code of State Rules*, the Family Protection Services Board has defined its purposes in pertinent part as follows:

“to provide ongoing administration and allocation of the West Virginia Family Protection Funds and to establish and enforce a system of standards for the annual licensure of domestic violence programs.”

13. Section 191-2-1 *et seq.* of the *West Virginia Code of State Rules* contains the Family Protection Service Board’s established general standards and procedures for the licensure of family protection programs as specified in *W. Va. Code* §48-26-401. The standards and procedures for licensure provide that any “certified domestic violence advocate” must be employed by a licensed family protection program and further have been approved by the board of directors of the West Virginia Coalition Against Domestic Violence as meeting the eligibility standards in the Coalition Against Domestic Violence Advocate Certification Program. *West Virginia Code of State Rules* §91-2-2.2.

14. The Family Protection Services Board licensing standards for family protection programs require, among other things, that no family protection program can be licensed unless its board of directors shall have adopted and monitored implementation of written personnel policies that shall, at a minimum, assure that at least one-third (1/3) of its direct service providers are certified by the West Virginia Coalition Against Domestic Violence as domestic violence advocates. *West Virginia Code of State Rules* §191-2-3.2.k.12.

15. The Family Protection Services Board’s licensing standards for family protection programs further requires that each program, to maintain licensure, must report to the board on an annual basis the number of certified domestic violence advocates on its staff and the proportion of domestic violence advocates on staff to non-certified advocates.

16. If a family protection program wishes to provide outreach services, the Family Protection Services Board requires that all such outreach staff, in addition to attending a four-week orientation/training program provided by a licensed family protection program, also attend "at least two West Virginia Coalition Against Domestic Violence advocate certifications training per year."

17. Section 191-2-6 of the *West Virginia Code of State Rules* permits funding from the West Virginia Family Protection Fund only to be appropriated or granted to licensed family protection programs; this provision of the *Code of State Rules* also prohibits the board from funding a family protection program that discriminates in its services on the basis of sex.

18. Based upon the foregoing, the Family Protection Services Board has unlawfully delegated the appropriation of public funds into the hands of a private entity, i.e. the West Virginia Coalition Against Domestic Violence. Programs cannot be licensed without the employment of certified personnel; only the West Virginia Coalition Against Domestic Violence is designated to approve certification; employment of individuals certified by the West Virginia Coalition Against Domestic Violence constitutes an ongoing requirement for receipt of public funding; membership in the Coalition is a condition of certification.

19. There exists no statutory basis for the Family Protection Services Board's exclusive reliance on certification by the West Virginia Coalition Against Domestic Violence, nor does any statute or rule specify with any degree of particularity what standards or requirements are to be met for certification and licensure that is a precondition to the receipt of public funding.

20. In addition to constituting an unlawful and unconstitutional delegation of authority in violation of Article V, Section I of the Constitution of the State of West Virginia, the manner in which the Family Protection Services Board has chosen to implement and exercise its

powers and duties violates the equal protection clause of Article II, Section IV of the West Virginia Constitution and *W. Va. Code* §48-26-601(c) and *West Virginia Code of State Rules* §191-2-6.4.a because its certification and licensure procedures result in discrimination in the provision of services on the basis of sex.

21. The West Virginia Coalition Against Domestic Violence requirements for domestic violence advocate certification are a program funded by grants awarded by the office on Violence Against Women, Office of Justice Programs, United States Department of Justice.

22. The grants pursuant to which the West Virginia Coalition Against Domestic Violence funds its domestic violence advocate certification program are mandated by federal law for use to develop and strengthen victim service programs involving crimes against women. 42 U.S.C. §3796(g)(g).

23. In compliance with its funding requirements, the West Virginia Coalition Against Domestic Violence Domestic Violence Advocate Certification Program states as the first purpose of that program "domestic violence advocates promote the safety and well-being of women and children who are victims of abusive relationships."

24. The Plaintiff, in the representative capacity of its constituents, wishes to advocate against the incidence of domestic violence and to assure that programs funded by the State of West Virginia receive fair allocation of funds without necessity that participants comply with the ideology, certification requirements, or gender bias of a private organization to whom a state agency has unlawfully delegated funding authority.

25. The actions of the Defendants in delegating all funding and certification authority over domestic violence advocacy and domestic violence programs to the West Virginia Coalition Against Domestic Violence deprive the Plaintiff and its constituents of an opportunity for free

expression of their speech, thoughts and ideas relative to domestic violence by depriving them of even the opportunity to attain certified domestic violence advocate status or even the opportunity to apply for program funding, all of which constitutes unlawful prior restraint upon the Plaintiff's fundamental Constitutional rights of free speech.

26. The actions of the Defendants in requiring the Plaintiff and its constituents to be certified by and to be members of the West Virginia Coalition Against Domestic Violence as a precondition to seeking certification as domestic violence advocates or even applying for funding for domestic violence programs constitute unlawful political test or oath as a precondition to the receipt and enjoyment of the privileges of citizenship in the State of West Virginia in violation of the applicable provisions of the Constitution of the State of West Virginia.

27. Upon information and belief, the Plaintiff states that the Defendants will appropriate or grant ninety-five percent (95%) of the West Virginia Family Protection Funds in the same unlawful manner for the fiscal year commencing July 1, 2008, as in prior fiscal years.

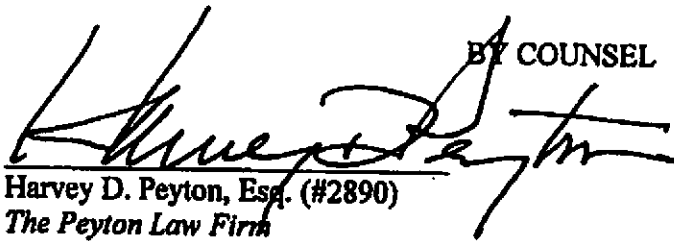
28. Because the manner in which the Defendants appropriate funds from the West Virginia Family Protection Fund is, on its face, unconstitutional and unlawful, and further because the Plaintiff and its constituents have a significant interest in the manner in which such funds are appropriated, the Plaintiff has standing to seek injunctive relief against the Defendants to prohibit the implementation of funding for the fiscal year commencing July 1, 2008, until such time as the Defendants have adopted and implemented rules and procedures for the lawful and constitutional appropriation of funding.

WHEREFORE, Plaintiff prays that it be awarded injunctive relief prohibiting the Defendants from the granting of funds from the West Virginia Family Protection Fund until such time as the Defendants address and implement lawful rules and procedures governing the same.

The Plaintiff prays that it be awarded its attorney fees and costs incurred during the prosecution of this action.

**MEN & WOMEN AGAINST
DISCRIMINATION, a West Virginia corporation**

BY COUNSEL



Harvey D. Peyton, Esq. (#2890)

The Peyton Law Firm

2801 First Avenue

P. O. Box 216

Nitro, WV 25143

Phone: (304) 755-5556

Fax: (304) 755-1255

Counsel for Plaintiff

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF PUTNAM, to-wit:

Larry Witt, President of Men & Women Against Discrimination, the Plaintiff named in the foregoing "Complaint," after being first duly sworn, says that the statements and allegations contained therein are true, except insofar as they are therein stated to be upon information and belief, and insofar as they are therein stated to be upon information and belief, he believes them to be true.

Men & Women Against Discrimination,
a West Virginia corporation

By: *Larry Witt*
LARRY WITT

Taken, subscribed and sworn to before the undersigned authority this 20th day of May, 2008.

My commission expires: Sept. 15, 2013

JLF
NOTARY PUBLIC

