

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PAUL GESSING and CARE NET OF
ALBUQUERQUE, INC.,

Plaintiffs,

v.

Case No.: D-202-CV-2023-00316

STEPHANIE YARA, in her official capacity as
director of finance and administration for the
City of Albuquerque; CAROL M. PIERCE, in
her official capacity as director of family and
community services of the City of
Albuquerque; and ROCKY MOUNTAIN
PLANNED PARENTHOOD, INC. d/b/a
PLANNED PARENTHOOD OF THE ROCKY
MOUNTAINS, INC.,

Defendants.

**DEFENDANT PPRM'S ANSWER TO PLAINTIFFS' COMPLAINT FOR
BREACH OF ANTI-DONATION CLAUSE AND DECLARATORY JUDGMENT**

Defendant Rocky Mountain Planned Parenthood, Inc., d/b/a Planned Parenthood of the Rocky Mountains, Inc. ("PPRM"), by and through counsel Modrall, Sperling, Roehl, Harris & Sisk, P.A. (Brian K. Nichols and Chandler R. Farnworth) hereby answer Plaintiffs' Complaint for Breach of the Anti-Donation Clause and Declaratory Judgment (the "Complaint") as follows:

BACKGROUND

1. Defendant denies the allegations of Paragraph 1 as statements including conclusions of law to which no response is required, but to the extent a response is required, Defendant admits only that this Paragraph purports to refer to Article IX, § 14 of the New Mexico Constitution, which speaks for itself, but denies any attempt by Plaintiffs to interpret or characterize it.

2. Defendant admits only that the City of Albuquerque entered into an agreement with PPRM on August 5, 2022 (the “Agreement”). Pursuant to that Agreement, PPRM agreed to provide healthcare services and the City agreed to compensate PPRM in an amount not to exceed \$250,000. All other allegations in Paragraph 2 are denied.

3. Defendant denies the allegations contained in Paragraph 3 and specifically denies that the Agreement lacks performance expectations or specific metrics.

4. Defendant lacks specific information to admit or deny the allegations contained in Paragraph 4, and states that if a matter of public record then the events speak for themselves.

5. Defendant lacks specific knowledge or information with which to admit or deny that Plaintiffs are an Albuquerque taxpayer and an organization that provides social services. Defendant denies all other allegations contained in Paragraph 5.

PARTIES

6. In response to Paragraph 6, Defendant re-states all preceding paragraphs of this Answer and incorporates them herein.

7. Defendant lacks sufficient knowledge or information with which to admit or deny the allegations contained in Paragraph 7, and therefore denies the same.

8. Defendant lacks sufficient information to admit or deny the residence of Plaintiff Care Net of Albuquerque or the services it provides, and therefore denies the allegations in Paragraph 8.

9. In response to the allegations contained in Paragraph 9, Defendant admits that Stephanie Yara is the Director of Finance and Administrative Services for the City of Albuquerque and works from City Hall in Bernalillo County. Defendant lacks sufficient information to admit or deny the remainder of the allegations in Paragraph 9.

10. Defendant admits that Carol M. Pierce is the Director of Family and Community Services for the City, that the electronic signature of Gilbert Ramirez appears on the Agreement and that the City's website includes an announcement that he was appointed Deputy Director of DFCS. Defendant lacks sufficient information to admit or deny the remainder of the allegations in Paragraph 10.

11. Defendant admits the allegations in Paragraph 11.

JURISDICTION AND VENUE

12. In response to Paragraph 12, Defendant re-states all preceding paragraphs of this Answer and incorporate them herein.

13. In response to Paragraph 13, Defendant states that such allegations contain legal conclusions to which no response is required, but to the extent a response is required, Defendant denies that Plaintiffs' rights are affected by a municipal ordinance or the Agreement.

14. In response to Paragraph 14, Defendant states that such allegations contain legal conclusions to which no response is required, but to the extent a response is required, Defendant does not currently deny this Court's jurisdiction or venue but reserves the right to do so.

FACTUAL ALLEGATIONS

15. In response to Paragraph 15, Defendant re-states all preceding paragraphs of this Answer and incorporates them herein.

16. In response to Paragraph 16, Defendant admits only that this Paragraph purports to refer to Article IX, Section 14 of the New Mexico Constitution, which speaks for itself, but denies any attempt by Plaintiffs to interpret or characterize it.

17. In response to Paragraph 17, Defendant states that this Paragraph contains a legal conclusion to which no response is required, but to the extent a response is required, Defendant

admits only that the City of Albuquerque is a municipality, and that the Agreement is consistent with Article IX, Section 14 of the New Mexico Constitution.

18. Defendant admits the allegations contained in Paragraph 18.

19. Concerning Paragraph 19, Defendant admits that the City Council voted 6-3 on a proposed amendment to enter into the Agreement with PPRM which authorizes payments to PPRM for services rendered.

20. Defendant admits the allegations contained in Paragraph 20, specifically that City Council action authorized payments to PPRM for specific services identified in the Agreement.

21. Concerning Paragraphs 21 and 22, Defendant admits that Councilwoman Fiebelkorn issued a press release referring to Amendment 13 authorizing the City of Albuquerque to enter into the Agreement with PPRM. Defendant denies the relevancy of Councilwoman Fiebelkorn's press release as to whether the Agreement violates the anti-donation clause.

22. Defendant admits Paragraph 23, and particularly that the Agreement "is for services rendered" for a period of time.

23. With regards to the allegations contained in Paragraph 24, Defendant admits that the Agreement provides that PPRM will be compensated for services rendered over the course of two years, and that the Agreement speaks for itself.

24. Concerning Paragraph 25, Defendant admits that PPRM is a non-profit provider of healthcare services, including but not limited to cancer screenings, abortion, and contraception. Defendant further admits that it currently has four locations in New Mexico.

25. Concerning Paragraphs 26 and 27, Defendant admits that Councilwoman Fiebelkorn provided comments on the Agreement during an August 15 Council meeting, but

denies that any remarks made by Councilwoman Fiebelkorn during this meeting render the Agreement a violation of the anti-donation clause or otherwise affect the validity of the Agreement.

26. Defendant admits Paragraph 28, except that the legislative action by the Albuquerque City Council did not “give” or “grant” any amount to PPRM, but rather approved payments to PPRM for services rendered over a period of time. PPRM is not aware whether Barrett House has or must render services for payments, therefore Barrett House may have received a gift or grant.

27. Concerning Paragraph 29, Defendant admits that the Planned Parenthood of New Mexico website thanked the City of Albuquerque for entering into an Agreement with PPRM, but denies that any remarks published on this website render the Agreement a violation of the anti-donation clause or otherwise affect the validity of the Agreement.

28. Defendant lacks sufficient knowledge or information with which to admit or deny the allegations contained in Paragraph 30, and therefore denies the same.

29. Defendant lacks sufficient knowledge or information with which to admit or deny the allegations contained in Paragraph 31, and therefore denies the same. Defendant specifically denies that Care Net provides the same services as PPRM, that Care Net was denied an opportunity to apply for funding through the City of Albuquerque, and denies that any process was required, other than that provided by the City, for the Agreement to be valid.

COUNT 1
VIOLATION OF THE ANTI-DONATION CLAUSE

30. Defendant incorporates its denials and defenses in Paragraphs 1-32 as if fully set forth herein.

31. With respect to Paragraph 33 of the Complaint, Defendant admits only that this Paragraph purports to refer to the anti-donation clause, Article IX, Section 14 of the New Mexico

Constitution and its exceptions. Defendant denies any attempt by Plaintiffs to interpret or characterize the anti-donation clause or any exceptions that may be applicable.

32. Defendant denies the allegations of Paragraphs 34-38 as conclusions of law to which no response is required. To the extent a response is necessary, Defendant denies that the City of Albuquerque made any prohibited donation to PPRM, and specifically denies that the Agreement at issue constitutes a gift or donation.

33. Defendant denies the allegations in Paragraphs 39-40 as conclusions of law to which no response is required, but to the extent such a response is required, Defendant denies that Councilwoman Fiebelkorn's press release impacts the terms and conditions of the Agreement or renders the Agreement a donation. Defendant moreover states that the Agreement speaks for itself and denies any allegations inconsistent with the terms of such Agreement.

34. Defendant denies the allegations contained in Paragraphs 41-43 as conclusions of law to which no response is required. To the extent a response is necessary, Defendant denies that the Agreement constitutes a sham and further denies that the Agreement lacks sufficient consideration.

35. Defendant denies the allegations in Paragraph 44 as a conclusion of law to which no response is required. To the extent a response is required, Defendant states that the Agreement requires PPRM to perform the services identified in Exhibit A to the Agreement in a satisfactory and proper manner and within the financial resources allocated for those services under the Agreement. The Agreement provides specific metrics for measuring the services provided, including that PPRM provide patient education to 8,000 participants. Defendant PPRM specifically denies that it could provide one wellness visit and fulfill its obligations under the Agreement.

36. With regard to Paragraph 45 of the Complaint, Defendant admits that the Agreement requires Defendant to track progress for services rendered pursuant to the Agreement and produce a report providing demographic data for those services.

37. With regard to Paragraph 46 of the Complaint, Defendant denies that the third output of the Agreement, concerning the provision of patient education to 8,000 participants, lacks sufficient detail.

38. Defendant denies the allegations contained in Paragraph 47, and specifically denies Plaintiffs' allegation that the Agreement merely requires a "single patient visit" or "8,000 visitors to an existing website."

39. Defendant denies the allegations contained in Paragraphs 48-52 as conclusions of law to which no response is required, but to the extent a response is required, Defendant admits only that these Paragraphs purport to describe an exception to New Mexico's anti-donation clause and denies any attempt by Plaintiffs to interpret or characterize it.

40. Defendant denies Paragraph 53 of the Complaint.

41. Defendant denies the allegation contained in Paragraph 54 as a conclusion of law to which no response is required, but to the extent a response is required, Defendant admits only that this Paragraph purports to describe exceptions to New Mexico's anti-donation clause and denies any attempt by Plaintiffs to interpret or characterize it.

42. Defendants admit the allegations contained in Paragraphs 55 and 56.

43. Defendant denies the allegation contained in Paragraph 57 as a conclusion of law to which no response is required, but to the extent a response is required, Defendant admits only that this Paragraph purports to describe the remedy for violations of New Mexico's anti-donation clause and denies any attempt by Plaintiffs to interpret or characterize that remedy.

44. Defendant incorporates its denials and defenses in Paragraphs 1 through 43 of this Answer as if fully set forth herein.

AFFIRMATIVE DEFENSES

45. Plaintiffs fail to state a claim, in whole or in part under Rule 1-012, New Mexico Rules of Civil Procedure.

46. The Complaint is barred based upon documentary evidence.

47. Plaintiffs' claims are barred, in whole or in part, by the doctrines of champerty and maintenance.

48. Plaintiffs' demand for declaratory judgment claim fails to present a justiciable controversy between the parties in part because Plaintiffs lack standing.

49. Defendant PPRM incorporates any affirmative defenses, which may be pled by another party.

50. Defendant PPRM reserves the right to add defenses and denials. Defendant has neither knowingly nor intentionally waived any applicable defenses. If Defendant learns that additional defenses may apply, Defendant will seek leave to amend its Answer to raise such other defenses.

WHEREFORE, Defendant prays for an order dismissing the Complaint filed herein by Plaintiffs, for costs, and other relief that the Court deems just and proper.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: /s/ Chandler R. Farnworth

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to counsel of record via the court' s Odyssey File & Serve System as well as via e-mail this 10th day of March, 2023:

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