

IN THE STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

PAUL GESSING

Plaintiff,

v.

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 PLANNED PARENTHOOD OF THE ROCKY MOUNTAINS, INC.

Defendants.

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

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT;  
MEMORANDUM IN SUPPORT**

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## INTRODUCTION

This case is about the government donating taxpayer money to a politically connected private entity in violation of the anti-donation clause of the New Mexico Constitution. In response to the Supreme Court’s leaked *Dobbs* decision, the City of Albuquerque (“the City”) decided it would donate \$250,000 to Planned Parenthood of the Rocky Mountains (“PPRM”)—and passed an appropriation authorizing that gift. Months later, an “Agreement” appeared to back-fill an ostensible justification for what had been a simple charitable donation of taxpayer money to an ideologically favored organization. This vague document did nothing to remedy the constitutional violation, and requires nothing of PPRM sufficient to justify the City’s largess.

Defendants’ \$250,000 sponsorship of Planned Parenthood violates the donation clause of the New Mexico Constitution because: (i) the retroactive Agreement lacks adequate consideration; (ii) the timing of the Agreement and documentary evidence show that it is a donation disguised as a business transaction; (iii) the lack of an open bidding process and the legislative history both point to an illegal donation; and (iv) no exception to the donation clause applies here.

## STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The anti-donation clause of the New Mexico constitution states: “Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation. . . .” N.M. Const. art. IX, § 14; Compl. ¶ 16.

2. The City of Albuquerque (“the City”) is a municipality subject to this provision of the New Mexico Constitution. *Id.* at ¶ 17.

3. At its meeting on May 16, 2022, the City Council adopted Floor Amendment 13, which reduced \$500,000 from affordable housing and redirected half of those funds, or \$250,000, to a “Council directed sponsorship to Planned Parenthood.”<sup>1</sup> *Id.* at ¶ 19; Exhibit (“Exh.”) 1 at CABQ002894.

4. The next day, Councilwoman Tammy Fiebelkorn declared in a press release, “While extremists attack choice nationwide and the Supreme Court seems poised to take away women’s rights and control of their own bodies, we affirmed our respect and support for women’s reproductive freedoms. I’m proud to have sponsored this amendment to provide vital support for Planned Parenthood.” *Id.* at ¶ 21; Compl., Exh. A.

5. The release quotes her further as saying, “[a]nti-women extremists have used aggression and intimidation towards Planned Parenthood clinics, staff, and patients resulting in increased costs, delays in treatment, and additional counseling and education needs. These funds support our local Planned Parenthood clinic to ensure that all Albuquerque women have access to family planning, abortion, and other reproductive health services.” *Id.* at ¶ 22; Compl., Exh. A.

6. Months later an agreement (“the Agreement”) appeared—a “social services agreement” between the City and PPRM. *Id.* at ¶ 3; Compl., Exh. B. The Agreement funds staff positions rather than specific services. *Id.*

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<sup>1</sup> [https://www.youtube.com/watch?v=NpHipNR\\_Q6w](https://www.youtube.com/watch?v=NpHipNR_Q6w) (Video of Albuquerque City Council Meeting - May 16, 2022), at 2:41:30 (introductory comments by Councilwoman Fiebelkorn).

7. Per the Agreement, Planned Parenthood received \$250,000 in quarterly payments over two years (July 1, 2022 through June 30, 2024) per the terms of the agreement, signed August 5, 2022. Compl. at ¶¶ 23–24.

8. At the subsequent Council meeting on August 15, 2022, the Council considered a proposed motion to withdraw the donation to Planned Parenthood and instead give it to Barrett House, a local homeless shelter. *Id.* at ¶ 26.

9. Councilwoman Fiebelkorn defended the allocation of funds to PPRM, asserting, “The reason it came about is because I am pro-choice. I am a supporter of Planned Parenthood. Period. And I was happy, proud to sponsor this budget amendment.” *Id.*

10. \$250,000 constituted an abnormally high dollar amount, as internal emails of City employees stated: “I thought this was going to be a typical sponsorship, but this is one will be for \$250K[.]” Exh. 2 at CABQ001252. Indeed, “basic sponsorships” are “under \$2500.” Exh. 3 at CABQ001280. The City’s Associate Director Budget & Finance stated: “The \$ presents some challenges because of procurement limits.” Exh. 2 at CABQ001251. Various internal emails discussed if there were “any outputs” to “prove” the high dollar amount and avoid “Anti-Donation issues.” Exh. 4 at CABQ001294-8, 2868-9, 76

11. On its website, Planned Parenthood of the Rocky Mountains acknowledged the donation, thanking the City and urging others to send a message of thanks to “those champions” (the Councilors) for ensuring patients have “access to the full spectrum of reproductive health care, including abortion care.” Compl. at ¶ 29. The suggested message to the City Councilors reads, “Thank you for standing with Albuquerque families by appropriating \$250,000 to Planned

Parenthood for reproductive health care services in our city's budget. With access to abortion care at stake across the country, it is critical that we all stand up and make sure that people are able to access the health care they need in NM. You did just that by voting to support this critical funding for our city's patients." *Id.* Councilor Fiebelkorn responded to these emails, proud that the City had kept "reproductive healthcare" available. Exh. 5 at CABQ001143.

12. Internal emails discuss the motivation of the City, as Councilor Fiebelkorn stated what she viewed as the consideration received by the City: "The City of Albuquerque is providing this sponsorship to ensure access to family planning, abortion, and other reproductive health services for Albuquerque residents and visitors." Exh. 6 at CABQ001285-6.

13. The Grant Launch Intake Form regarding this allocation of funds states that the grant is a "[r]esponse of city to the fall of Roe." Exh. 7 at PPRM 000291. The same document states that the "Allowable Costs" are "% of salaries for 2 RN's, 3 HCA's and 1 Advanced Practice Nurse[.]" *Id.*

14. PPRM's "Project Progress Report," submitted to the City on November 28, 2022, details how PPRM used the City's funds. Defs' Exh. 1, Attach. 20 at CABQ001910-11. The report states that "out of state patients rose to 23% of our total patient volume." *Id.* at CABQ001910. The report continues: "The generous support from the City has allowed us to support our patient base by offsetting core staff salary costs and freeing up dollars to increase our patient assistance dollars from \$25,706 last year during this quarter to over \$220,000 this year." *Id.* The Report discusses further increased abortion services to out-of-state travelers in the March 1st, 2023 report of Quarter 2. *Id.* at CABQ001912

15. Each quarter, PPRM submitted to the City a “Quarterly Assessment of Whether Contract Performance Met Expectations,” which is a self-evaluation. Defs’ Exh. 1, Attachs. 22, 23, 24, and 25. PPRM states that there is “no goal” for Outputs 1 and 2, yet marks itself as having met the output—devoid of any standards—each quarter. *Id.*

16. PPRM submitted reimbursement forms to the City that requested reimbursement only for staff salaries. Defs’ Exh. 1, Attach. 21 at CABQ000003-4, 63-4, 174, 308, 547, 583, 714, 835, 912-15, and 933.

17. The City conducted a monitoring review of PPRM to assess compliance with the Agreement. Exh. 8 at PPRM 000226-230. The City found several violations. *Id.* Emails also noted missing demographic information from the client files (*Id.* at PPRM 000231-2), though the City did not note this in its review. *Id.* at PPRM 000229.

18. Despite the City’s Open Meeting Ordinance and the City’s *Administrative Requirements*, PPRM refused to allow meetings or even just meeting minutes to be open and available to the public and requested a waiver of this requirement, stating concern for the safety of its leadership, staff, and board members, even though this information can be found on its website. Exh. 7 at PPRM 000283.

### **LEGAL STANDARD**

“Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.” *Romero v. Phillip Morris, Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280. “All reasonable inferences are construed in favor of the non-moving party.” *Id.* The moving party bears the initial burden of establishing a “prima facie

showing that he is entitled to summary judgment.” *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331, 825 P.2d 1241. Then the burden shifts to the non-moving party to “demonstrate the existence of specific evidentiary facts that would require trial on the merits.” *Id.*

## ARGUMENT

### **I. Defendants’ \$250,000 sponsorship of Planned Parenthood of the Rocky Mountains violates the anti-donation clause of the New Mexico Constitution.**

The Agreement violates the anti-donation clause of the New Mexico constitution. To determine whether an appropriation is an illegal donation, a court evaluates “its nature and the circumstances surrounding it.” *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 50. If an appropriation “take[s] on character as a donation in substance and effect,” it is illegal. *Id.* When evaluating an appropriation, the Court should consider “the ills [the anti-donation clause] was intended to correct,” 1985 N.M. AG LEXIS 36, \*4, which includes stopping “gifts or donations disguised as business transactions.” *City of Raton*, 600 F. Supp. 2d at 1161. Further, “[t]he constitution makes no distinction as between ‘donations’, whether they be for a good cause or a questionable one. It prohibits them all.” *State ex rel. Mechem v. Hannah*, 63 N.M. 110, 120 (1957) (quoting *State ex rel. Sena v. Trujillo*, 46 N.M. 361, 369 (1942)).

Here, the nature and circumstances of the sponsorship illustrate that it is an illegal donation. First, the vague, perfunctory Agreement does not provide adequate consideration between the government and the private entity, as evidenced by PPRM’s own admission. Second, the timing of the Agreement reinforces that it was intended to disguise the intended donation as a business transaction. Third, the lack of open bidding process and legislative history surrounding the

Agreement provides this Court further indicia that this was not a good-faith effort to purchase services and instead an illegal donation. Fourth, PPRM has not even complied with the terms of the Agreement and instead has used the extra funds not to provide health services to New Mexico residents but instead largely to subsidize out-of-state patients.

**A. The Agreement does not provide adequate consideration because it simply defrays the PPRM’s existing operating expenses rather than purchasing services for the City.**

Courts must ensure an “exchange of adequate consideration.” 2019 N.M. AG LEXIS 11, \*13-14. Indeed, the “Supreme Court of New Mexico has stricken transactions under the Anti-Donation Clause in circumstances involving an outright gift of money or property to a private entity with no exchange of adequate consideration.” *City of Raton v. Ark River Power Auth.*, 600 F. Supp. 2d 1130, 1147 (D. N.M. 2008). When analyzing the anti-donation clause, “New Mexico courts, and the New Mexico Attorney General's Office, have generally . . . scrutinized contracts for consideration.” *Id.* at 1160. The anti-donation clause is implicated when there is not “true consideration—money exchanged for a real product.” *Id.* at 1161. Even if the purported appropriation has an objective benefit to the State, that is not sufficient to deem it legitimate. *See State ex rel. Mechem v. Hannah*, 63 N.M. 110, 314 P.2d 714 (1957) (finding that the fact that the program assisted the livestock industry, for the general economic benefit of the state, was still an illegal donation).

Even if the City’s money goes toward the general benefit of the public or for a public purpose, there is no such exception to the anti-donation clause that allows such a gift. N.M. Att’y Gen. Op. No. 87-33 (1987). In *Harrington v. Atteberry*, the New Mexico Supreme Court recognized that



even though the proposed use of funds was “educational in its nature and serve[d] a public purpose,” if this were the criteria by which potential donations were evaluated, “there would hardly be any limit upon the right of the [city] to appropriate money to a private corporation.” *Harrington v. Atteberry*, 21 N.M. 50, 54 (1915) (holding that an appropriation of funds to a corporation who would use those funds to conduct a county fair violated the anti-donation clause). Even nonprofit public libraries are not exempt from the anti-donation clause. 2019 N.M. AG LEXIS 12 at \*1.

Here, the Agreement lacks any performance metrics, contains no minimum criteria, and provides taxpayers no guarantee of adequate consideration. Nor is it even purchasing services for the people of Albuquerque: PPRM’s own documents support Plaintiff’s allegation that the funds are simply defraying existing cost salaries so that PPRM can serve more out-of-state patients and fewer residents of the City. The November 28, 2022 report from Planned Parenthood to the City explicitly confirms this:

Since the fall of Roe, our Albuquerque health centers have been consistently overwhelmed [sic] with out of state patients flooding to New Mexico for care. Last year during this quarter, 94% of our patients lived in New Mexico and 6% were from out of state. This year during the same quarter our out of state patients rose to 23% of our total patient volume. *The generous support from the City has allowed us to support our patient base by offsetting core staff salary costs and freeing up dollars to increase our patient assistance dollars from \$25,706 last year during this quarter to over \$220,000 this year.*

Defs’ Exh. 1, Attach. 20 at CABQ001910 (emphasis added). The March 1, 2023 report also mentions the increase in out-of-state patients: “Patients from out of state continue to travel to our health centers for expert abortion care, leaving less appointment availability for our local family planning patients. Over 20% of patients seen at our Albuquerque health centers traveled from out of state to access care during the second quarter.” *Id.* at CABQ001912.

PPRM's own documentation of how it is using the \$250,000 confirms Plaintiff's allegation: rather than a contract to purchase services for Albuquerque residents, the "sponsorship" provided by the City has been used to defray existing staff salaries, freeing up PPRM's *other money* to serve *other patients*. The end result of the City Council-directed sponsorship for PPRM has been to serve more patients from *outside New Mexico*. Local residents now account for only about 77% of patients, whereas before the donation they were 94%. What exactly are the taxpayers of Albuquerque supposed to have gotten out of this deal?

It's no surprise that the City's sponsorship of PPRM has resulted in no actual increase in services for residents because none was ever intended, as a closer look at the terms of the Agreement confirms.

*a. Output 1*

Per the Agreement, under Output 1, PPRM is to "offer healthcare services to New Mexican residents" that are "limited to wellness visits, breast exams, telehealth visits, health center visits and any follow-up or treatment as needed, cancer screening and prevention services, provision of birth control and testing for sexually transmitted infections." Compl. at Exh. B at Agreement Exh. A, § FY2023 B.1. PPRM must document this by "report[ing] on the number of clients served and the number of each service provided." *Id.* In other words, Planned Parenthood could provide one wellness visit, report it, and fulfill its obligation; there is no expectation of any a particular number or type of clients or visits.

But even so, not a single penny of the \$250,000 is going toward the services listed in Output 1. Appendices 2 & 4 state that all \$250,000 will go to paying salaries and benefits for PPRM

employees. Compl. at Exh. B at Agreement Exh. B, § Apps. #2, 4. No provision is made in the Agreement for “consumable supplies” like pregnancy or STI tests that require “cost reimbursement” or “requisitions for payment.” 100% of the money is dedicated to salaries for staff, specifically the three nurses and three health assistants identified in Appendix 4. *Id.* Indeed, PPRM’s reimbursement documents sent to the City prove as much. Defs’ Exh. 1, Attach. 21. The reimbursement documents did not include an ounce of information about any of the “specific services” discussed in Output 1. Instead, the only tracked costs are salaries of staff members. *Id.* at CABQ000003-4, 63-4, 174, 308, 547, 583, 714, 835, 912-15, and 933. Staff salaries are the only thing PPRM sought reimbursement for, and the only thing the City reimbursed. *Id.*

Further demonstrating the need (and needed application) of the anti-donation clause, if those staff people “offer services,” the Agreement has been fulfilled, and PPRM is entitled to the full \$250,000, regardless of the actual number of patients seen or services provided, regardless of whether the services offered by these staff members are provided to New Mexico residents, and regardless of whether the services provided are worth anything close to that amount of money.

The only specific services PPRM reports providing are abortions for visitors from outside New Mexico, which PPRM itself says have displaced its provision of services for the taxpayers of Albuquerque. Defs’ Exh. 1, Attach. 20 at CABQ001910-12. And, under the agreement, abortions are not even a service Planned Parenthood is supposed to provide “to New Mexican residents,” let alone to out-of-state visitors. Compl. at Exh. B at Agreement Exh. A, § FY2023 B. PPRM is not even indirectly fulfilling its purported consideration, and PPRM is not actually reporting to the City the provision of the supposed services it was asked to provide. The City is reimbursing staff

costs, not services, and the money “free[d] up” from paying salary goes toward abortions for people from other states, not to providing the named services in the Agreement to New Mexicans.

The so-called “Quarterly Assessment of Whether Contract Performance Met Expectations” displays the lack of standards in this Output. Defs’ Exh. 1, Attachs. 22, 23, 24, and 25. According to this form, PPRM self-reported numbers for services with no reference to the \$250,000. No money breakdown is provided, and there is no way to track whether PPRM “met expectations.” Next to “Report Number for the Quarter,” PPRM writes “no goal” for every service. There are four ratings that PPRM could receive depending on whether they have “met” expectations. 1 is “Unmet” or “less than 50%.” 2 is “At-Risk” or “51% - 89%.” 3 is “Met” or “90%-100%.” 4 is “Exceeds” or “100%+.” There is no way to determine where PPRM falls on this chart because there are no listed goals or numbers. One cannot even know what the percentages are referring to. Nonetheless, PPRM marks “Met” for every category, demonstrating the absence of actual standards for this purported consideration. It purports to be meeting “90%-100%,” but it is not apparent what the means—except that it appears that any number would suffice, even just one single service.

*b. Output 2*

The second output is to “expand health equity by promoting equitable access to services and care.” Compl. at Exh. B at Agreement Exh. A, § FY2023 B.2. PPRM is to do this by “disaggregating data to assess for any difference in patient access, experience, or clinical outcomes across demographic groups, including age, race, ethnicity, income level, region of residence, etc.”

*Id.* In other words, PPRM must produce some sort of report, which could be as simple as reporting the demographic data it already collects.

PPRM's own documents make clear, however, that the only services expanded and benefiting from the Agreement are abortions for out-of-state customers. The demographic data produced in its reimbursement forms is minimal, and PPRM does not demonstrate that anyone was served due to the Agreement (and would not have been served but for the Agreement). But PPRM does not have to produce this information to comply with the Agreement. Its minimal data with no explanation suffices, displaying the Agreement's inadequacy. As with Output 1, PPRM marks itself as as having "Met" expectations, or "90%-100%" (again, of what?), even though it also marks "N/A" for "reporting the number" of persons or services provided. With no stated minimum in the Agreement, PPRM doesn't need to write anything else to be in compliance and presumably could have written *anything* to be in compliance. Defs' Exh. 1, Attachs. 22, 23, 24, and 25. As suspected, PPRM just reports its own data, and that is enough to cover the purported consideration. There are no goals to be met, and no numbers to achieve.

*c. Output 3*

The third output is to "provide patient education to 8,000 participants regarding healthy choices on sexuality and parenting. The agency will report numbers served; monitor strategies, outputs, and outcomes." Compl. at Exh. B at Agreement Exh. A, § FY2023 B.3. The Agreement provides no other detail regarding this output. Nothing indicates whether it covers providing information on Planned Parenthood's website, speaking at school assemblies, providing individual counseling, or handing out pamphlets. It contains no specifics on the curriculum that will be used

in this education. There is nothing to substantiate that these educational activities, whether at school assemblies, public events, or one-on-one counseling sessions, combine with the other outputs to create \$250,000 in value. But nonetheless, the full \$250,000 is going to staff salaries alone, as the reimbursement forms note.

The law requires that the City purchase “a real product” from PPRM. *City of Raton*, 600 F. Supp. 2d at 1161. The Agreement provides no evidence of such a purchase—reflecting the fact that it did not go through a normal, robust procurement process; it uses high-level language without setting specific expectations to actually deliver value. As a result, it is now the end of the reimbursement period, and PPRM has not demonstrated that Output 3 was met. Nothing in the reimbursement forms indicate that 8,000 participants were “educated” on “healthy choices on sexuality and parenting.” The promise to do what a party is already obligated by law or contract to do is not sufficient consideration for a promise made in return. *In re Will of Quantius*, 58 N.M. 807, 822 (1954).

The so-called consideration in the Agreement is vague, contains no minimum compliance standards, and is not supported by PPRM’s own reimbursement documents. Therefore, the Agreement lacks true consideration and is unenforceable.

**B. The timing of the Agreement and discovery documents surrounding the creation of the Agreement shows it is a donation disguised as a business transaction.**

Even if the Court were to conclude that the Agreement contained adequate consideration, the Agreement would still violate the anti-donation clause. The Agreement did not surface until *after* \$250,000 was donated to PPRM. The documented history displays that the money was meant as a

donation and the idea for an Agreement only came after the fact. Amendment 13 simply said the money was “for Planned Parenthood,” not that it was approved funding for healthcare services. Compl. ¶ 19. The final adopted budget simply listed “Planned Parenthood NM” under the Department of Family & Community Services (Compl. ¶ 20), again with no reference to healthcare services.

Such a large designation of funds was so unprecedented that the City discussed in its internal emails about how it could make such a significant donation work. Frances Gonzales, Council Fiscal Analyst, wrote to Jesse Muniz (Associate Director of Budget and Finance – Council Services Department), “I thought this was going to be a typical sponsorship from Councilor Fiebelkorn but this one will be for \$250K . . . .” Exh. 2 at CABQ001252. Mr. Muniz replied in the same email chain, “The \$ amount presents some challenges because of procurement limits.” *Id.* at CABQ001251. It appears the City had to bypass its own procurement limits in order to give PPRM such a sizeable contribution. In fact, Mr. Gonzalez later noted that “basic sponsorships” are “under \$2,500.” Exh. 3 at CABQ001280 (emphasis in original). Another City employee, Jennifer Bradley (Chief Procurement Officer), stated in an internal email, “The only reason the sponsorships are authorized under an OEP is because we can argue that the inclusion of the City in programs, venues, websites, etc. is ‘advertising’ that is equivalent to the sponsorship (typically around \$5,000). \$250,000 is a lot to prove.” Exh. 4 at CABQ002868. These actions do not pass the smell test. Together with the legislative history and repeatedly stated goals of the City and PPRM, what took place here was nothing more than an unconstitutional donation disguised as a proper division of funds.

The very notion that the City would get something in return for this unprecedented sponsorship was just an afterthought. On July 6th, Mr. Muniz asked Laura Rummler (Policy Analyst for the City), “Are there any outputs that we can put in the agreement.” Exh. 4 at CABQ001294. In other words: they were inventing pretextual outputs long after the money had already been donated. Aware that there could very well be a constitutional issue, Mr. Muniz also mused, “Have to iron out the language in the agreements to ensure there are no Anti-Donation issues.” Exh. 4 at CABQ002876.

**C. The lack of an open bidding process and the legislative history point to an illegal donation.**

When the government gives a large sum of money to a private organization, examining the history and context of the appropriation ensures that it does not “take on character as a donation in substance and effect.” *Moses*, 2019-NMSC-003, ¶ 50. Additionally, to avoid corruption, an appropriation must go through the normal procurement process rather than be designated before the fact for a particular organization. As the City’s own Inspector General said recently in considering another anti-donation case, “City personnel should have slowed down to ensure proper procedures were being followed and that the purchase met all standards.”<sup>2</sup> Those proper procedures are laid out in the City’s procurement manual, which pledges “to reduce unethical behavior by providing a procurement process that promotes fair and open competition. Competition is the foundation of any public procurement process.” City of Albuquerque

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<sup>2</sup> Report of Investigation, File No. 22-0203-C, *Alleged violation of Article IX Section 14 regarding the purchase and installation of stadium turf and a misuse of taxpayers’ dollars*, City of Albuquerque Office of the Inspector General (March 10, 2023), pg. 16.



Procurement Manual, pg. 1 (Oct. 2019).<sup>3</sup> The City’s procurement principles include “ensure transparency,” “obtain the best value for the money expended,” and “promote competition and allow a fair opportunity to compete.” *Id.* at 2.

Here, the City set out to make a donation from the start. The donation was motivated by the Supreme Court’s leaked decision in *Dobbs*, as Councilwoman Fiebelkorn unequivocally declared why the donation occurred: “The reason it came about is because I am pro-choice. I am a supporter of Planned Parenthood. Period.” Compl. ¶ 26. Because the \$250,000 was a planned donation from the start, normal procurement procedures were not followed. There was no request for information, request for proposals, sealed bids, or neutral panel of city procurement officers deciding among bidders. There was no public posting identifying the services the City thought it required, the approximate amount it thought those services should cost, and the criteria for successful bids. What’s more, the original vote to fund PPRM was not listed in advance on any agenda, denying the public an effective opportunity to object. No other organization received an opportunity to compete. With a complete lack of transparency, the City formulated the Agreement with PPRM in private, sharing no drafts and accepting no comments. The stated motivation for giving \$250,000 to PPRM along with the failure to follow a normal procurement process display that this was an illegal donation in “substance and effect.”

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<sup>3</sup> Available at <https://www.cabq.gov/dfa/documents/city-of-albuquerque-procurement-manual.pdf>.

After receiving the donation, PPRM encouraged members of the public to thank the Council members for championing the appropriation. Compl. at ¶ 29. Using the thank-you format from the PPRM website, citizens emailed Councilors, stating:

Thank you for standing with Albuquerque families by appropriating \$250,000 to Planned Parenthood for reproductive health care services, *including abortion care* in our city's budget. With access to abortion care at stake across the country, it is critical that we all stand up and make sure that people are able to access the health care they need in NM. You did just that by voting to support this critical funding for our city's patients.

Exh. 5 at CABQ001143 (emphasis added). Councilwoman Fiebelkorn's responded by thanking the constituent, adding, "I'm very proud that the City has reaffirmed our respect for women and dedication to keeping reproductive healthcare available to all the women of Albuquerque. I'll always push for choice and access to women's reproductive healthcare." *Id.* Even though abortion is not one of the services that PPRM was to provide according to the Agreement, it appeared to be the understanding by both constituents and council members that that is where the money would go.

Internal emails between City employees likewise disclose the true purpose of the donation. Jesse Muniz, Associate Director of Budget & Finance – Council Services Department, wrote in an email, specifically asking for clarification regarding consideration:

The question you can help us answer is, what is the City getting in return for providing a sponsorship. Legal Department always comes back to, what consideration does the City obtain in exchange for providing funds to an organization in terms of sponsorships.

Exh. 6 at CAQ001286. Councilwoman Fiebelkorn responded, "The City of Albuquerque is providing this sponsorship to ensure access to family planning, abortion, and other reproductive

health services for Albuquerque residents and visitors.” *Id.* at CABQ001285-6. She went on to clarify, “Let’s try to not say ‘woman’ and include people traveling to Albq for these services.” *Id.*

Councilwoman Fiebelkorn answered the question of consideration: Abortion, especially for out of staters. This is all regardless of the fact that the Agreement does *not* include abortion services and *only* includes New Mexico residents. Compl. at Exh. B at Agreement Exh. A, § FY2023. Consistent with PPRM’s reimbursement material, the understanding was that money going to staff salaries would free up funds to go to abortion, especially those coming from out of state. On June 30, 2022, the City then contacted PPRM to confirm that the above language (“ensure access to family planning, abortion, and other reproductive health services for Albuquerque residents and visitors”) was “in line with how PP would like to reflect their services.” Exh. 6 at CABQ001285. PPRM responded simply, “This looks good, thank you!” *Id.* The stated goal, of both the City and PPRM, was to use the money for abortion, including abortions for out-of-state residents. Neither the City nor PPRM had any intention of meeting the stated Agreement Outputs. Instead, the Outputs were hastily drawn up after the decision was made to give PPRM \$250,000 .

**D. PPRM did not comply with the City’s *Administrative Requirements*.**

In addition, PPRM did not comply with certain portions of the City’s monitoring review, yet, to Plaintiff’s knowledge, PPRM has not remedied these violations, with little pressure from the City to do so. On April 13, 2023, the City conducted a monitoring review to “assess compliance with the *Administrative Requirements* and adherence with the FY23 Contractual Agreement with the City of Albuquerque.” Exh. 8 at PPRM 000228. The City found three concerns, including: (i)

an improper number of Board members, (ii) violation of the City Open Meetings ordinance, and (iii) late reimbursement requests. *Id.* at PPRM 000228-30.

*i. Improper number of Board Members in violation of Administrative Requirements.*

First, the City determined that PPRM was not following agency Bylaws because it could only account for three Board Members rather than four. *Id.* at PPRM 000228-9. In violation of the *Administrative Requirements*, PPRM did not inform the City of changes to its Board:

Administrative Requirements Section 10. C 1 (e): Required Documents. Contractors shall maintain current copies of: a listing of current Governing Board members. Section 10. C 3 (b) Contractors shall submit within 30 days to assigned program staff any changes or update to: current Governing Board members.

*ii. Violation of City Open Meetings ordinance and Administrative Requirements.*

Second, PPRM was “not in compliance with the City Open Meetings ordinance” and “[t]here was no evidence indicating that board meetings are open to the public.” Exh. 8 at PPRM 000229.

These infractions violated *Administrative Requirements* Section 10. A 3 (b), which states:

Eligibility Compliance. Governing Board. The nonprofit shall document that its Governing Board is constituted in compliance with approved bylaws and nationally and locally accepted standards and that it actively fulfills its responsibilities for policy direction, including regularly scheduled meetings for which minutes are kept. The organization shall verify board compliance with the City Open Meeting Ordinance.

ROA, 1994, §2-5-1, et. seq.

There is no documentation showing that PPRM has since complied with the City Open Meeting Ordinance or the *Administrative Requirements* by allowing meetings or even just meeting minutes to be open and available to the public. Indeed, PPRM requested a waiver of the City’s meeting

minutes requirement. Exh. 7 at PPRM 000283. PPRM’s reasoning for the waiver consisted of only this:

At PPRM, the safety of our staff, patients, and properties is a top priority. As an organization whose leadership and staff have been continuously targeted by anti-abortion extremists, we believe information and individuals involved with our Board meetings could be placed at a greater risk if their names and information were made public.

*Id.* PPRM provides no citations, or even anecdotal examples of any “risks.” But even if it had, PPRM already lists its leadership team and Board members publicly on its website.<sup>4</sup> With their names and information already made public by PPRM itself, there is no basis for such a waiver. yet the City granted PPRM’s waiver request, as there are no records of meeting minutes. The City, once again showing its favoritism and political motivation, allowed PPRM to violate the City Open Meetings Ordinance. The City handed PPRM \$250,000, and the taxpayers can’t even know what PPRM is doing behind closed doors. This does little to “ensure transparency” in accordance with the City’s procurement principles. City of Albuquerque Procurement Manual, pg. 1 (Oct. 2019); *Supra* note 3.

*iii. Late reimbursement requests in violation of Administrative Requirements and lack of complete information in patient files for review.*

The City discovered a third infraction: PPRM did not submit reimbursements in a timely manner. This violated DFCS Administrative Requirements 13.G.(4)(iii), which dictates, “requests for payment may be submitted at any time during the contract period, though no less than

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<sup>4</sup> <https://www.plannedparenthood.org/planned-parenthood-rocky-mountains/who-we-are/leadership-team-board>.

quarterly.” What’s more, there are some discrepancies surrounding the patient files that the City reviewed. Exh. 8 at PPRM 000229-232. Although the City claimed in its report that all client files were complete, emails from the City employee conducting the monitoring review casts doubt on their completion. Anabell Cadena emailed PPRM staff on the day of the monitoring review saying that she could not find any of the following information in the files she was reviewing: (1) family number; (2) income; (3) whether the client resides in Albuquerque; and (4) social determinates of health. Exh. 8 at PPRM 000232. Without this information, how can PPRM purport to meet even the extremely low standard of just reporting demographic information in accordance with Outputs 1 and 2? It is questionable whether PPRM is even keeping sufficient demographic information.

## **II. No exception to the anti-donation clause applies.**

The “sick and indigent persons” exception to the anti-donation clause does not apply here. That exception only applies when a contract documents that public funds have actually served “sick and indigent persons” within the city’s responsibility. The contract should be specific, made on a reimbursement basis, and paid out with specific proof of service to named sick and indigent persons. 1961 N.M. AG LEXIS 82, \*3-4; Compl. ¶ 54.

The Agreement satisfies none of these requirements. No specific performance metrics exist, and no such metrics are reported to the City. Again, PPRM’s own documents demonstrate that no performance metrics must be met, nor any services proven for reimbursement, because the only thing the City reimburses is staff salary. PPRM presents no “specific proof of service,” just generic demographic information. PPRM does not even ask for reimbursement based on these alleged

services, as required by the exception. So even if the demographic information alone were enough to meet the sick and indigent exception, there is still no proof that the money went toward the demographic reports.

The Agreement and the demographic information are not sufficient to support such an exception. They lack *any* specific proof of services for specific indigent persons. Indeed, to satisfy the exception, PPRM would need to “make a periodic accounting to the city . . . listing the names and addresses of sick and indigent persons who have been recipients of the service” and then to receive reimbursement on a cost basis. 1961 N.M. AG LEXIS 82, \*3. PPRM provides no names, no addresses, nor anything else beyond some rough buckets of income ranges for patients served. PPRM 002314. And that data itself makes clear this is not specifically for the poor or needy—with many patients listed exceeding the 80% Median Income threshold. *Id.*

If PPRM’s vague information were deemed sufficient to satisfy the exception, then practically any organization that claims to serve any lower-income persons would be able to receive huge appropriations from the City and only produce demographic information in return. This tramples over the purpose of the exception, which is to provide *specific proof* of service to *named* individuals. And if Plaintiff is correct about the purpose of this appropriation, then the sick-and-indigent exception does not apply. The City Council did not appropriate these funds to “make provision for the care and maintenance of sick and indigent persons.” The City Council appropriated these funds to make a political statement about abortion rights. The inquiry can end there.

But “the sick and indigent exception does not permit the state or a local government to make donations to a private or nonprofit organization that are used for the organization’s operating expenses.” 2011 N.M. AG LEXIS 15, \*15-16. *Accord* 1956 N.M. AG LEXIS 81, \*4-5 (“Article IX, Section 14 of the Constitution would also prohibit the use of public funds to operate a privately leased county hospital.”). Yet all the money at issue is, according to PPRM itself, defraying existing staff salaries. Nothing else has been reimbursed or requested for reimbursement.

Finally, the sick and indigent exception does not apply when a contract does not lead to new or additional services beyond those already offered in the community, but “instead provides a subsidy to a private concern” that happens to operate in the medical arena. 1970 N.M. AG LEXIS 26, \*5-6. Nothing in the Agreement requires PPRM to provide new or additional services. Indeed, PPRM’s own documents admit that the money from the City is being used to fund staff salaries, and that the money that was previously going to salaries is now “free[d] up to direct toward “patience assistance dollars,” or abortion. This use of City funds does not implicate the sick and indigent exception.

## **CONCLUSION**

The Agreement is not a legally enforceable contract. PPRM’s own documentation does not support the consideration it asserts that the Agreement contains. The Agreement embodies a lazy afterthought when the City and PPRM realized that proving a \$250,000 sponsorship was a difficult and unusual task. As a result, they cultivated an extremely vague agreement with no measurable components to indicate whether consideration was met. As far as we know, PPRM could have handed out some pamphlets and reported their own data and met the conditions of the



Agreement. PPRM does not provide specific services or named persons in its demographic reports. The purpose of the appropriation was *not* to help sick or indigent individuals, and the money is being used to fund staff salaries and not new or additional services. Therefore, the sick and indigent exception does not apply here. Plaintiff therefore asks that the Court grant the Motion for Summary Judgment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I uploaded a true and correct copy of the foregoing motion with all referenced attachments in pdf format onto the Court's docket using Court's Odyssey File & Serve System on the 28th of February, 2025, and also emailed a copy of the same to:

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