

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PAUL GESSING,

Plaintiff,

v.

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

DONNA SANDOVAL, in her official capacity as
Director of Finance and Administration for the
City of Albuquerque; et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come before the for bench trial on August 26, 2025, Plaintiff having appeared by and through Counsel (*Law Offices of Timothy D. Ducar, PLC*) Timothy Ducar and (*Liberty Justice Center*) Reilly Stephens, and Defendants Planned Parenthood of the Rocky Mountains, Inc. (“PPRM”) having appeared by and through Counsel (*Modrall, Sperling, Roehl, Harris & Sisk, P.A.*) Brian K. Nichols and Benjamin C. Rossi, Defendants Donna Sandoval and Gilbert Ramirez having appeared by and through Counsel (*Robles, Rael & Anaya PC*) Marcus J. Rael, Jr. and Jessica L. Nixon (collectively the “City Defendants”), the Court hereby enters the following Findings of Fact and Conclusions of Law:

PROCEDURAL MATTERS

1. Plaintiff Gessing filed a civil complaint in the Second Judicial District Court for Bernalillo County, seeking declaratory relief as a taxpayer regarding the validity of the August 5, 2022 (“2022 Contract”) between the City of Albuquerque (“City”) and PPRM, in light of New Mexico’s Anti-Donation Clause. *See* Complaint (January 17, 2023). “Defendants” refers to all Defendants (PPRM and the City) collectively.

2. Plaintiff asserts standing as a taxpayer. *See* Complaint ¶ 5 (January 17, 2023). The Court previously dismissed a second plaintiff, Care Net of Albuquerque for lack of standing. *See* Opinion and Order on City Defendants’ Motion to Dismiss and Defendant PPRM’s Motion for Joinder and to Dismiss (November 1, 2023).
3. City Defendants Mr. Ramirez and Ms. Sandoval are named in their official capacity only; and were substituted as named Parties when their predecessors departed their respective positions.
4. PPRM filed an Answer to Plaintiff’s Complaint for Breach of Anti-Donation Clause and Declaratory Judgment. *See* PPRM Answer (March 10, 2023).
5. PPRM asserted a counterclaim for declaratory relief. *See* PPRM Amended Answer and Counterclaim (March 30, 2023).

FINDINGS OF FACT

Standing, Champerty

1. At the request of his counsel, the Court excused Plaintiff from attending the bench trial. Plaintiff did not introduce any evidence establishing his residency or taxpayer status.
2. In the Joint Pretrial Order, the Parties stipulated to both personal and subject matter jurisdiction. The Parties also included separate statements of their respective positions on the claims at issue. Plaintiff’s statement asserted that he is an “Albuquerque resident and taxpayer,” and although Defendants’ statement did not include a corresponding acknowledgment, by not contesting Plaintiff’s statement in the Pretrial Order, Defendant de facto stipulated to Plaintiff Gessing’s assertion.

3. Paul Gessing established that he is a tax-paying citizen of Albuquerque by de facto stipulation of Defendant and Plaintiff was not required to offer any additional evidence at trial to establish residency or taxpayer status.
4. As part of his requested relief, Plaintiff seeks the return or disgorgement of the funds paid by the City to PPRM, totaling just over \$214,000.

The Contract and PPRM's Delivery of Patient Health Services

5. The 2022 Contract between PPRM and the City covered the City's Fiscal Year 2023, running from July 1, 2022, through June 30, 2023. Although the Contract was signed on August 5, 2022, it retroactively authorized services beginning July 1, 2022 (the beginning of the fiscal year). This retroactive effective date is standard across the City's social service contracts, for both new and returning vendors, due to the structure and timing of the City's annual budget process.
6. Under the 2022 Contract, PPRM agreed to provide specified patient services such as STI tests and cancer screenings for which the City would reimburse, or partially reimburse, PPRM. The services provided were those identified in the 2022 Contract and constituted one of the defined Outputs PPRM was required to deliver under the 2022 Contract.
7. PPRM fulfilled the patient services Output by providing the contracted services, for which the City served as a third-party payer:
 - 41 Wellness Visits
 - 220 Breast Exams
 - 542 Telehealth Visits
 - 6109 Health Center Visits
 - 307 Cancer Screening & Prevention Services
 - 3879 Birth Control
 - 8490 STI Tests

The contracted services were provided at PPRM's Health Center on San Mateo Boulevard in Albuquerque. Identical services were also rendered to other patients without billing the City, as alternative funding sources, such as self-pay and commercial insurance were available.

8. At the time of the 2022 Contract, Ellen Braden (hereinafter Braden) served as the City's Division Manager of Behavioral Health and Wellness. Braden oversaw PPRM's performance under the Contract, approved payment to PPRM, supervised staff administering the Contract and drafted significant portions of the agreement. Over her two decades with the City, she personally managed approximately three hundred (300) social service contracts.
9. With respect to patient services, PPRM satisfied the scope of work requirements under Output One.
10. The City's Monitoring Report, conducted later in the contract term confirmed that PPRM's internal data or documentation substantiated the information provided in its Quarterly Reports and Requests for Reimbursement (RFRs).
11. At the time of the 2022 Contract, Annabelle Cadena (herein after Cadena) served as the City's DFCS Community Outreach Coordinator and with a team, managed approximately thirty (30) City contracts at any given time. In that role, she reviewed PPRM's Quarterly Reports and completed the City's internal Quarterly "Rubrics" to assess contract performance.
12. Based on the review conducted by Cadena of PPRM's reports and documentation, PPRM was achieving "90 to 100 percent" compliance with its patient healthcare service obligations under the 2022 Contract.

13. The absence of minimum or baseline goals was not a concern for the City for a first-year vendor.
14. PPRM did not bill the City for any abortion services provided to patients.
15. PPRM submitted ten (10) Requests for Reimbursement (“RFRs”) to the City for services rendered under the 2022 Contract. Each RFR typically covered a one-month period, except for a single RFR that encompassed a three-month span. Wilson prepared all ten RFRs. Braden or members of her team reviewed and approved the RFRs prior to payment.
16. The RFRs submitted by PPRM and paid by the City, totaling \$214,320.35 reflected actual reimbursable expenses and was less than the full contract appropriation due to the nature and timing of services rendered.
17. The valuation of the services PPRM provided under the Contract, that is, services for which the City reimbursed PPRM, calculated using values from the Center for Medicare and Medicaid Services exceeding two million dollars, was greater than the amount actually reimbursed by the City.
18. The 2022 Contract allowed PPRM to continue seeing patients that were in Albuquerque, and that without the Contract, PPRM wouldn’t have been able to see the local patients from Albuquerque. PPRM was able to increase the number of patients served at the San Mateo Health Center.
19. PPRM did not prioritize “patients from Texas,” but generally scheduled patients in the order calls are received, essentially on a first-come, first-served basis. When PPRM operated under a government contract, the requirements or obligations of that contract took priority.

20. Contract enabled PPRM to allocate “staff hours and staff time” to meet the needs of Albuquerque family planning patients, however did not reimburse abortion services.
21. PPRM was able to calculate revenue based on each health center. The San Mateo Health Center was always in a deficit, of approximately a million dollars every year, due to the income levels and needs of its patients. To continue serving patients, PPRM relied on government contracts such as the 2022 Contract, among others.
22. Across operations, PPRM incurred a net loss of a little over \$2 million during the period of the 2022 Contract, which loss increased in the following year.
23. The San Mateo Health Center was also limited in capacity, with “just a couple of exam rooms” which served as a barrier to meeting patient needs.
24. In addition to the facility limitations, the Contract, capped at \$250,000, was not sufficient to allow PPRM to expand staff or services. The 2022 Contract alone was not adequate to provide for expansion beyond the increased number of patients cared for. Construction of a new health center on Eubank enabled PPRM to expand both staffing and services.

Developing the Scope of Services for Patient Health Services

25. Braden drafted the scope of services for the 2022 Contract, as well as other terms beyond boilerplate provisions. PPRM did not know the reimbursement terms, including covered services, until the negotiation process with Braden and finalization of the terms of 2022 Contract.
26. The City provided an application to all first-time vendors, including PPRM.
27. In response, PPRM submitted the application with proposed minimum services, which included abortion services as well as lobbying or political advocacy.

28. Braden did not include abortion care or political advocacy in the Scope of Services she drafted.
29. Braden also did not include a baseline or minimum number of patient health services in the Scope of Services because in her best judgment, it was the best path forward not to include them.
30. Baseline numbers are often excluded from contracts with first-time vendors, because the first-year's performance may itself establish the baseline for future years.
31. There were "many times the City did not include "specific numeric values in performance measures" for new vendors.
32. Numeric requirements are not mandated by the administrative requirements.

PPRM's Invoicing for Patient Health Services

33. PPRM maintains a health records management system, NextGen, in which health center staff record patient services. The data then migrates to a billing system with protected information removed. PPRM uses the same systems to bill Medicaid and the New Mexico Department of Health.
34. The City reimbursed PPRM for part of the salaries and benefits of PPRM's "existing" staff positions, covering the employees in those positions who provided services to patients. It is not clear whether "new" employees filled those positions. The City functioned as a third-party payer, in the same manner as New Mexico Medicaid and the New Mexico Department of Health. The City paid only a portion of salaries and benefits, since the same employees provided services reimbursed by other third-party payers. The City selected this method of payment because the City did not reimburse on a per-service basis, since the City did not have a baseline to know what each individual service would cost.

35. The City maintained an “other program fees first” policy, requiring PPRM to exhaust all our other avenues of income, such as commercial insurance, Medicaid, and self-pay. As a result, full-time PPRM employees worked on “program services,” within Scope One of the 2022 Contract, but the City was not a payer for all of those services, since other funding sources were utilized first. Accordingly, the City reimbursed only part, not all, of the salaries and benefits of those PPRM employees. For this reason, PPRM reported to the City all services provided at the San Mateo Health Center, including abortion care, along with the corresponding payer.
36. As a result of the City’s policy, City money paid for services which otherwise would not have been paid for. PPRM experienced an increase in patients, including new patients, at the San Mateo Health Center and without the 2022 Contract, PPRM would not have provided as many family planning services as it did under the Contract.

Sex Education

37. A second Output required under the 2022 Contract was the provision of sex education to 8,000 individuals. PPRM did not bill the City for sex education services. PPRM ultimately provided sex education to 9,667 individuals.
38. PPRM met the sex education Output.

Patients and Demographic Data

39. A third Output under the 2022 Contract required PPRM to provide equitable access to services for patients from diverse backgrounds, ensuring that people who had certain demographics, such as race, ethnicity, [or] income level, had equal access to services as everyone else. To that end, PPRM was required to collect demographic data capable of

being disaggregated to assess differences in access or outcomes among various patient groups. This health equity data reporting was also required of other agencies.

40. The “disaggregating data” meant that demographic information entered by patients into PPRM’s health records system, NextGen, migrated without protected information into a data analytics system called Power BI (and separately into a billing system). In Power BI, the data could be separated by demographic categories (e.g., patients over age 60) and compared to other data for purposes such as patient satisfaction surveys, with reports generated based on parameters entered. The data is separated by categories and stripped of names.
41. PPRM collected demographic data even before the 2022 Contract. The data collected during the 2022 Contract satisfied the requirements of this Output.
42. The types of demographic data collected by PPRM and reported to the City, included:
 - a. “Total patient volume” for all services at the San Mateo Health Center, including abortion services, the percentage of out of New Mexico patients increased from 6% to 23%.
 - b. Overall patient numbers grew, and the number of patients who were Albuquerque residents also grew.
 - c. Data reflected that 69 percent of PPRM patients during that time period were 50 percent or below the AMI, which is the annual median income in Albuquerque and 43 percent were under 30 percent or below the AMI. The AMI was calculated by geographic area.
43. Demographic information was provided to the City in the Quarterly Reports. Final demographic data was provided to the City.
 - a. By self-reporting, as to income:

5094 Patients	
2181 Patients, 42.8%	at or below 30% of Albuquerque’s AMI
1311 Patients, 22.2%	between 31% -51% of Albuquerque’s AMI
871 Patients, 14.7%	between 50% - 80% of Albuquerque’s AMI
731 Patients, 12.4%	greater than 80% of Albuquerque’s AMI

Ex. K20 includes a link showing Albuquerque Average Median Income at the relevant time to be: \$56,000 for one person. The link is now: https://www.cabq.gov/health-housing-homelessness/documents/2023-hud-home-income_rent-limits-eff_6-15-23.pdf.

b. By self-reporting, as to income ethnicity, for purposes of health equity:

5,767	Patients	
3,494	Hispanic/Latino	60.58%
2,273	not Hispanic Latino	

c. By self-reporting, as to race, for purposes of health equity:

5,955	Patients	6304 total clients, 349 not reporting race
White	3,264	54.8%
Black	493	8.27%
Native	379	6.36%
More than one race	1,686	28.3%

d. By self-reporting, as to residence

6304	Patients	
3864	Albuquerque	61%
2,440	“Other”	

- 44. PPRM met the Contract requirements for patient demographics.
- 45. With respect to income, the requirement was met because the majority of the clients were considered lower income. The 2022 Contract was primarily intended to serve low and moderate income persons, as measured by the “median income of the Albuquerque Standard Metropolitan Statistical Area.
- 46. PPRM met the “health equity” demographic requirements for Output 2, as PPRM was providing services to a wide array of races and ethnicities, which the City appraised to ensure equity of services. Health equity data is also required from other vendors and agencies.

47. With respect to residence, the Contract provided services “intended primarily for low and moderate income residents of Albuquerque. The residence of the patients served by PPRM satisfied the Contract’s requirements.
48. In at least one Quarterly Report, PPRM identified the increase in out-of-state patients as a barrier in response to the query, “describe barriers that may be impeding progress on contract scopes.” The barrier was attributed to overall patient volume and the physical limitations of the San Mateo Health Center. The higher proportion of out-of-state patients did not mean that the City was reimbursing PPRM for services to those patients, because the total number of program patients exceeded the number of patients for whom the City provided reimbursement.

City Regulations and PPRM Compliance

49. Before PPRM could invoice the City, it was required to complete several compliance steps, including certificates of insurance, adopting accounting and staff policies, and addressing certain governance items.
50. PPRM was also required to maintain a system to verify employee hours or time worked, such as a “Personnel Activity Report” or another process that meets City standards; and PPRM satisfied that requirement.
51. PPRM requested two waivers from compliance requirements, for open meetings and Board minutes, citing security concerns. The City granted these requests as such waivers were not uncommon, with approximately half of vendors having a waiver on file.
52. About three months into the 2022 Contract, the City informed PPRM that it could not invoice for “patient subsidies.” Those subsidies were removed and the parties agreed upon a substitute.

53. In or around April-May 2023, City personnel conducted a monitoring visit to PPRM, after which they generated a Monitoring Report. PPRM submitted a response. The City reimbursed PPRM and did not request further information or indicate that the responses were inadequate.
54. The monitoring visit generally reviewed fiscal and program issues, including PPRM's employee handbook, employee files, health -- medical records, de-identified. The City also met with PPRM'S accountant and discussed accounting policies.
55. Cadena conducted the program portion of the Monitoring Review, during which she reviewed 40 patient files and other program documents. She determined there were no issues or problems.
56. As part of her programmatic review, Cadena reviewed PPRM's patient files, which she determined were "pretty thorough . . . there was a lot of information" and used a checklist for her file review. The review took over two days. On the first day, Cadena noted certain information she could not locate, which PPRM provided the second day.
57. The Monitoring Report did not include program findings. Instead, it noted certain program "concerns," which Braden described as:

a concern is something that is – that needs to eventually be addressed by the agency. But it's either -- it's something that we can see that they're doing. It's not necessarily in accordance with their own policy, but it's not a direct violation necessarily of the administrative requirements or the contract.

I'll give an example. Sometimes we'll do concerns for a new vendor if they don't have one of the required corporate docs. Because that's not necessarily preventing them from executing the services, but they do need to have it on file.

58. Not providing a copy of bylaws would constitute an example of a program concern. A “concern” its definition in the regulations as one that needs to be rectified, but that may be done in a later fiscal year.
59. The program “concern” identified for PPRM related to the number of directors serving on the PPRM Board. In response, PPRM provided a list of twenty-two (22) directors. PPRM resolved the concern to the City’s satisfaction.
60. A fiscal “finding” was noted regarding PPRM’s late submission of its initial invoice. This finding was not unusual nor egregious and was described as “to be expected with new vendors,” but still required documentation.
61. With respect to compliance and monitoring, Plaintiff did not present evidence of any issue that the City itself had not already raised with PPRM during the 2022 Contract.
62. Plaintiff did not present any evidence that disputed, the following evidence:
- The accuracy of PPRM’s records;
 - The services provided by PPRM to patients;
 - The Quarterly Reports provided by PPRM to the City, including income and other demographic data;
 - The RFRs or invoices provided by PPRM to the City;
 - An estimated value of PPRM’s services
63. Plaintiff provided no evidence that PPRM served fewer patients than PPRM’s records state; provided fewer services than PPRM’s records state; that PPRM’s demographic information about its patients was incorrect; or that the value of PPRM’s services, under federal Medicaid standards, was higher than the City’s payments.

Council Sponsorship and Related Issues

64. Plaintiff identified as an issue the origination of the 2022 Contract as a “Council-directed sponsorship,” including communications suggesting that the funding amount was

unusually large and noting confusion regarding which City Department would administer the Contract.

65. Jesse Muniz (hereinafter Muniz), the City's budget manager and Associate Director of Budget and Finance, clarified at least some of these issues.

- a. Muniz first explained that the City was always cognizant of the Anti-Donation issue, and the requirement that the City receive something in return for payments. Accordingly, emails referencing the need to insure "fair consideration" for the Council-directed sponsorship did not reflect any unusual or suspicious concern, but rather the City's routine attention to Anti-Donation requirements.
- b. Muniz clarified that the amount of the Council-directed sponsorship, \$250,000, which set the maximum reimbursement available to PPRM, was not unusually large. Therefore, emails regarding the amount of the Council-directed sponsorship fund were not identified as an unusual or suspicious concern.
- c. Finally, Muniz clarified that under City rules, "social services" contracts, such as the 2022 Contract, were administered at the time by the Department of Family and Community Services, which operated under its own procurement rules and processes. Accordingly, the 2022 Contract was not subject to the City's central procurement procedures. Therefore, emails referencing the absence of a competitive process did not reflect any unusual or suspicious issue, but simply the applicable procurement framework for social service contracts.

66. Plaintiff contended that Albuquerque City Councilor Tammy Fiebelkorn intended her Council-directed sponsorship either to operate as a donation or to primarily benefit patients residing outside of Albuquerque. Councilor Fiebelkorn clarified that:

- a. Councilor Fiebelkorn is the City Councilor for District Seven (7).
- b. Councilor Fiebelkorn is aware that the New Mexico Anti-Donation Clause prohibits governments, including the City, from making gifts to persons, companies or individuals.
- c. Councilor Fiebelkorn explained the distinction in the use of the term “sponsorship” between “Council-directed sponsorships” and “event sponsorships.” Council-directed sponsorships require City Council approval, appear as a line item in the budget, are allocated to a City department, and necessitate a contract, scope of work, and provision of services before the City issues reimbursements. By contrast, event sponsorships involve each City Councilor’s use of constituent services funds to sponsor community events, are typically limited to \$2,500 or less, and do not require City Council approval.
- d. Councilor Fiebelkorn proposes dozens of Council-directed sponsorships each year, in amounts ranging from \$50,000 to \$500,000, and that her proposals are approved by the Council.
- e. Councilor Fiebelkorn further confirmed that she proposed, or sponsored, an amendment to the FY 23 budget directing or appropriating up to \$250,000 to PPRM and that she did not intend this amendment to constitute a gift or donation, and that she understood a contract would be required and that PPRM would have to provide services to patients in order to receive any portion of the appropriation. She also confirmed that, as usual, she had no role in drafting or developing the 2022 Contract.
- f. Councilor Fiebelkorn was influenced by the anticipated reversal of *Roe v. Wade* by the U.S. Supreme Court decision in *Dobbs* and was concerned that an influx of out-of-state patients might impede or disrupt PPRM’s ability to provide services to Albuquerque

- residents. However, prior to introducing her budget amendment for the Council-directed sponsorship to PPRM, there had been no discussions with other City Councilors about *Dobbs*, or with PPRM about the sponsorship.
- g. Councilor Fiebelkorn did not intend her sponsorship to be “only for local or only out-of-state” patients, and that she was “very concerned that we would have local folks who did not have access to the services they needed either. She was aware that it is typical for non-City residents to travel to Albuquerque for services, including individuals from Pueblos, the East Mountains, Sandoval County, and Los Lunas.
 - h. Councilor Fiebelkorn emphasized that her Council-directed sponsorship to PPRM, and the resulting social services Contract, went through the same process as all other social services contracts.

CONCLUSIONS OF LAW

Jurisdiction, Venue, and Standing

1. The Court has subject matter jurisdiction over this action and personal jurisdiction over the Parties.
2. Venue is proper in this District Court.
3. This is an action for injunctive and declaratory relief and is governed by the Anti-Donation Clause of the New Mexico State Constitution and case law and other legal authorities construing that Clause and the requirements of that Clause.
4. “The right of a taxpayer to sue to enjoin threatened devastavit of municipal funds or property is well established in this state.” *Ward v. City of Roswell*, 1929-NMSC-074, ¶ 6, 34 N.M.

326, 327, 281 P. 28, 28 (citing *Asplund v. Hannett*, 31 N.M. 641, 249 P. 1074, 58 A. L. R. 573).

5. New Mexico courts hold that “a taxpayer may, in the absence of enabling statute, have injunction to prevent devastavit of municipal funds . . . we consider the taxpayer’s right, as against municipal authorities, settled in this jurisdiction.” *Id.* at ¶¶ 15-16 (citing *Laughlin v. County Commissioners*, 3 N.M. 420, 5 P. 817; *Crampton v. Zabriskie*, 101 U.S. 601, 25 L. Ed. 1070; *Catron v. County Commissioners*, 5 N.M. 203, 21 P. 60, *Page v. Gallup*, 26 N.M. 239, 191 P. 460).
6. “When there is no reason for the City to spend its money, then taxpayers certainly have the right to seek an injunction against the expenditure.” *Cathey v. The City of Hobbs*, 1973-NMSC-042, ¶ 10, 85 N.M. 1, 4, 508 P.2d 1298, 1301 (citing *Laughlin v. County Comm’rs*, 3 N.M. 420, 5 P. 817 (1885)); *see also Shipley v. Smith*, 1940-NMSC-074, ¶ 14, 45 N.M. 23, 28, 107 P.2d 1050, 1053 (“Private citizens as well as taxpayers or proper public officials may maintain mandamus to enforce the performance of a public duty.”) (citing *State ex rel. Black & Gilmore v. Wilson*, 158 Mo. App. 105, 120, 121, 139 S.W. 705, 709).
7. The Court may grant discretionary standing to parties seeking to enforce the New Mexico Constitution in cases that present issues of “great public importance.” *See Baca v. New Mexico Department of Public Safety*, 2002-NMSC-017, ¶ 4, 132 N.M. 282, 47 P.3d 441; *State ex rel., Coll v. Johnson*, 1999-NMSC-036, ¶ 21, 128 N.M. 154, 990 P.2d 1277 (explaining that the court may grant standing under the “great public importance doctrine” where a claim involves “clear threats to the essential nature of state government guaranteed to New Mexico citizens under their Constitution”).

8. Plaintiff has established he has standing to pursue his claims as stated herein and further that he is a real party in interest pursuant to Rule 1-017(A) NMRA.

The Anti-Donation Clause

A. The Anti-Donation Clause's Prohibition on Gifts or Donations

11. The “Anti-Donation Clause” of the New Mexico Constitution, Article IX, Section 14, 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 . . . except as provided in Subsections A through H of this section.”
12. The New Mexico Supreme Court “has defined donation, for purposes of Article IX, Section 14, as ‘a gift, an allocation or appropriation of something of value, without consideration.’” *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 50, 458 P.3d 406 (quoting *Village of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 62 N.M. 18).
13. “The 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*, 1957-NMSC-065, ¶ 38, 63 N.M. 110 (internal quotes omitted).
14. However, “Article IX, Section 14 permits ‘incidental aid or resultant benefit to a private corporation or other named recipients’ unless the aid or benefit ‘by reason of its nature and the circumstances surrounding it take on character as a donation in substance and effect.’” *Moses*, 2019-NMSC-003, ¶ 50 (quoting *Village of Deming*, 1956-NMSC-111, ¶¶ 36-37).
15. In determining whether a governmental entity has violated the Anti-Donation Clause, New Mexico courts and the New Mexico Attorney General’s Office¹ have focused their analysis

¹ Attorney General opinions are not binding authority, but may be persuasive to the extent they do not conflict with existing case law. *Bd. of Cnty. Comm’rs v. Ogden*, 1994-NMCA-010, ¶ 15, 117 N.M. 181.

on whether the governmental entity received consideration for its payment to a private entity or individual. *City of Raton v. Arkansas River Power Auth.*, 600 F. Supp. 2d 1130, 1160 (D.N.M. 2008) (Browning, J.). *See also, e.g., State ex rel. Office of State Engineer v. Lewis*, 2007-NMCA-008, ¶ 49, 141 N.M. 1.

16. Consideration “consists of a promise to do something that a party is under no legal obligation to do or to forbear from doing something he has a legal right to do.” *Luginbuhl v. City of Gallup*, 2013-NMCA-053, ¶ 15, 302 P.3d 751.
17. “If the courts or the Attorney General’s office find consideration, the courts and the Attorney General’s office generally end their review.” *City of Raton*, 600 F. Supp. 2d at 1160.
18. The court’s role in analyzing a governmental contract under the Anti-Donation Clause is not to “evaluate whether the agreement [between a governmental and private entity] was a good or bad deal under the Anti-Donation Clause.” *City of Raton*, 600 F. Supp. 2d at 1161.
19. The New Mexico Attorney General has repeatedly concluded that a private entity’s “provision of public services could serve as adequate consideration for receipt of government funding” pursuant to a services agreement, and that “such an arrangement . . . would not run afoul of the Anti-donation Clause.” *See* N.M. Att’y Gen. Ltr. Op. (12/1/2022); N.M. Att’y Gen. Ltr. Op. (11/22/2019).

B. The Sick and Indigent Exception

20. Subsection A of Article IX, Section 14 provides that the Anti-Donation Clause does not “prohibit[] the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.”

21. To date, only one New Mexico appellate case has addressed this provision in detail. *See Humana of N.M., Inc. v. Bd. of Cnty. Comm'rs of Lea Cnty.*, 1978-NMSC-036, 92 N.M. 34. Accordingly, this Court will look to opinions of the New Mexico Attorney General's Office and State Ethics Commission for guidance, to the extent it finds those opinions persuasive.
22. As the New Mexico Attorney General's Office has recognized, "a rather liberal interpretation has been given to the 'sick and indigent person' exception to the anti-donation constitutional provision." N.M. Att'y Gen. Op. No. 83-4 (7/29/1983).
23. It is well-established that the "sick and indigent" exception does not require both sickness and indigence; rather, it applies to the maintenance and care of targeted recipients who are either "sick" or "indigent." *See* N.M. Att'y Gen. Op. No. 83-04 (July 29, 1983) ("A donation for the care and maintenance of either the sick or the indigent is not prohibited."); N.M. Att'y Gen. Op. No. 58-135 (June 23, 1958) ("It is our view that such care and maintenance be extended to those who are either sick *or* indigent. It would not seem necessary that a person, in order to secure such assistance, be both sick *and* indigent. . . . It is our opinion that such is the common sense view. To hold that a person must be both sick and indigent, rather than sick *or* indigent, would disqualify the large amount of recipients now obtaining welfare aid and old age assistance who are in financial need but are not sick.").
24. The terms "care" and "maintenance," as used in the sick and indigent exception, have been broadly interpreted to mean "services that are necessary to promote physical, moral or mental well-being." N.M. Att'y Gen. Op. No. 83-4 (7/29/1983) (citing *Day v. Brooks*, 224

N.E. 2d 557 (Ohio 1967), and *Kelly v. Jefferis*, 50 A. 215 (Del. 1901)); N.M. Att’y Gen. Op. No. 69-103 (9/3/1969).

25. The New Mexico Supreme Court has clarified that the meanings of “sick” and “indigent” are not tied to how the public understood those terms in 1912, when the state Constitution was adopted. See *Humana of New Mexico, Inc. v. Bd. of County Comm’rs of Lea Cnty.*, 1978-NMSC-036, ¶¶ 12-15, 92 N.M. 34. Instead, the meaning of these terms evolves over time and should be interpreted in accordance with modern understandings. *Id.* ¶ 13 (“Words employed in a constitution are not necessarily static in meaning but grow and change as the conditions of modern society and knowledge grow and change through the passage of years.”).
26. Thus, the New Mexico Supreme Court has determined that the term “indigent” is not limited to “penniless” persons, but, rather, includes “persons on welfare who barely eek [sic] out an existence” and patients who are unable to pay hospital costs. *Id.* ¶¶ 3-15 (finding constitutional an act providing for counties to pay hospital claims for “indigent patients” who are “unable to pay the cost of the hospital care administered”).
27. No New Mexico appellate court has construed the meaning of “sick,” as used in the Anti-Donation Clause. However, the New Mexico Attorney General’s Office has interpreted the phrase broadly to include both (1) individuals who are ill, and (2) individuals who are obtaining medical or rehabilitation treatment, including healthy individuals who are obtaining preventative-care to avoid becoming ill. See, e.g., N.M. Att’y Gen. Op. No. 83-4 (7/29/1983).

Plaintiff's Claim for Declaratory Judgment

28. Plaintiff seeks a declaration under the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (the "DJA"), that the Contract is a gift or donation in violation of the Anti-Donation Clause, and consequently, is null and void.

A. The Merits of Plaintiff's Claim

29. Plaintiff has failed to establish by a preponderance of the evidence his claim under the DJA, his claim for declaratory judgment, and his champerty claim. *See Matter of Valdez*, 1975-NMSC-050, ¶ 16, 88 N.M. 338 (preponderance of the evidence is the "typical standard" for civil actions).
30. Plaintiff failed to establish that the City's allocation, "by reason of its nature and the circumstances surrounding it," took on character "as a donation in substance and effect," *Moses*, 2019-NMSC-003, ¶ 50, because the consideration involved constituted an "obvious sham," *City of Raton*, 600 F. Supp. 2d at 1160.
31. Plaintiff offered no evidence to refute that PPRM performed the patient services, provided the required demographic data, and delivered sex education programming specified in the 2022 Contract - services selected by the Department of Family and Community Services (DFCS) officials to meet DFCS' programmatic needs.
32. Plaintiff offered no evidence to refute that City's payments were anything other than compensation for PPRM's provision of the services under the 2022 Contract, made pursuant to ten (10) Requests for Reimbursement submitted by PPRM and approved by DFCS officials.

33. Plaintiff offered no evidence to refute that the fair value of services PPRM provided under the 2022 Contract substantially exceeded \$250,000, even though PPRM billed the City for only \$214,320.35, less than the \$250,000 appropriation.
34. This unrefuted evidence establishes that there was consideration for the 2022 Contract.
35. Plaintiff argues that Councilor Fiebelkorn’s public statements regarding the May 16, 2022 Floor Amendment establish that the 2022 Contract was a donation in substance and effect. This Court rejects Plaintiff’s argument for the following reasons.
36. First, the May 2022 Floor Amendment did not involve any alleged “donation” that would trigger Anti-Donation Clause analysis. Plaintiff presented no evidence establishing that the Floor Amendment bound the City to pay \$250,000, or any amount to PPRM. *See City of Clovis v. Sw. Pub. Serv. Co.*, 1945-NMSC-030, ¶¶ 20-21, 49 N.M. 270. Thus, Councilor Fiebelkorn’s statements in the wake of that amendment are not relevant to the question of whether the City’s later allocation of funds to PPRM, via its final budget and 2022 Contract, involved an unconstitutional donation.
37. Second, as a matter of law, “[s]tatements of legislators, after the passage of legislation . . . are generally not considered competent evidence to determine the intent of the legislative body enacting a measure.” *United States Brewers Assoc., Inc. v. Director of the N.M. Dep’t of Alcoholic Beverage Control*, 1983-NMSC-059, ¶¶ 9-10, 100 N.M. 216. Thus, press releases from politicians such as Councilor Fiebelkorn regarding their personal reasons for supporting a budget amendment are not admissible evidence of legislative intent.
38. Third, Councilor Fiebelkorn’s intent in sponsoring the amendment was not necessarily shared by the four other councilmembers who voted for the amendment on May 16, 2022, and she intended to speak for herself only in her press release characterizing the vote.

Courts have consistently ruled that the statements of individual legislators, whether made during floor debates or after the passage of legislation, are not competent evidence to establish legislative intent. The Supreme Court of New Mexico has held that such statements cannot be considered competent evidence in determining legislative intent. *See Regents of Univ. of New Mexico v. New Mexico Fed'n of Teachers*, 1998-NMSC-020, ¶30, 125 N.M. 401. Similarly, the Supreme Court of the United States has emphasized that inquiries into legislative motives are hazardous and that statements made by individual legislators cannot reliably represent the motives of the legislative body as a whole. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 S. Ct. 2228, (2022). Thus, Councilor Fiebelkorn's statements cannot be taken as evidence of legislative intent as a matter of law.

39. Fourth, Councilor Fiebelkorn's did not intend to make a donation or gift to PPRM. She was aware that the Anti-Donation Clause forbids gifts or donations by governmental bodies to private entities and understood that a contract between the City and PPRM for services to patients would be required for PPRM to receive any portion of the appropriation.
40. Plaintiff further contends that internal City communications, observing that the funding level was unusually large and expressing uncertainty about which City Department would administer the 2022 Contract, demonstrate that the 2022 Contract was a donation in substance and effect.
41. Plaintiff offered no evidence to rebut trial testimony that the e-mails referencing the need to ensure "fair consideration" for the Council-directed sponsorship to PPRM did not reflect any unusual or suspicious concern; that the maximum amount of the sponsorship, \$250,000, was not unusually large; and that the lack of a competitive process for the

sponsorship was consistent with DFCS procurement rules for social services contracts, which differ from the City's central procurement rules. The Court rejects Plaintiff's argument that these e-mail communications constitute evidence of a donation.

42. Plaintiff argues that the backdating of the 2022 Contract from its actual execution date of August 5, 2022, to July 1, 2022, the start of the City's fiscal year, demonstrates that the Contract was, in substance and effect, a sham designed to perpetrate a donation.
43. Plaintiff offered no evidence to rebut trial testimony that the retroactive effective date is standard across the City's social services contracts, for both new and returning vendors, due to the structure and timing of the City's annual budgeting process. The Court therefore rejects Plaintiff's argument that the Contract's retroactive backdating constitutes evidence of a donation.
44. Plaintiff argues that waivers obtained by PPRM to certain DFCS compliance requirements, and/or findings of the City's Monitoring Report, constitute evidence of a donation in substance and effect. The Court rejects this argument for the following reasons.
45. Plaintiff offered no evidence to rebut trial testimony that the City's Monitoring Report found no issues with PPRM's performance of the 2022 Contract that could have caused the City to withhold reimbursement or cancel the Contract; that the two "concerns" and one "finding" contained in the Report were not unusual or egregious for new vendors; or that the waivers requested and received by PPRM for certain administrative requirements were not unusual or uncommon for social services vendors.
46. Furthermore, Plaintiff has offered no authority for the proposition that evidence showing that PPRM was non-compliant with DFCS compliance requirements or provisions of the 2022 Contract is relevant to whether the City received consideration in exchange for its

funding of PPRM. Therefore, such evidence is largely irrelevant to the key issue in this case.

47. Plaintiff argues that PPRM's one-time application to DFCS, which included abortion services and lobbying or political advocacy, constitutes evidence of a donation in substance and effect.
48. The Court rejects this argument because Plaintiff offered no evidence to refute trial testimony that DFCS officials, not PPRM, drafted the scope of the services for the 2022 Contract, and that neither abortion services nor political advocacy were included in that scope of services.
49. Plaintiff argues that the lack of baseline or minimum numbers for patient health services in the 2022 Contract's Scope of Services constitutes evidence of a donation in substance and effect.
50. This Court rejects Plaintiff's argument because Plaintiff offered no evidence to refute trial testimony that DFCS officials decided not to include baseline or minimum numbers because (1) baseline numbers are not mandated by administrative requirements, and (2) baseline numbers are often excluded from contracts with first-time vendors.
51. Plaintiff argues that PPRM's provision of abortion services to out-of-state residents during the contract shows that the 2022 Contract was a donation in substance and effect. This Court rejects Plaintiff's argument for the following reasons.
52. Plaintiff offered no evidence rebutting trial testimony that the 2022 Contract allowed PPRM to continue serving Albuquerque and Bernalillo County residents by allocating staff hours and time to their needs, and was neither intended to enable, nor in fact enabled, PPRM to meet the needs of out-of-state patients.

53. Plaintiff offered no evidence that any of the funds that would otherwise have been used to pay the salaries of PPRM providers in the absence of the 2022 Contract went towards providing abortions to out-of-state patients. Moreover, Plaintiff offered no evidence rebutting trial testimony that the higher proportion of out-of-state patients did not mean that the City was reimbursing PPRM for services to those patients.
54. Plaintiff's only evidence that City funds went towards out-of-state patients consisted of a portion of a Project Progress Report produced by PPRM in discovery, which identified out-of-state patients as a barrier to performance of the 2022 Contract. This does not support Plaintiff's contention that the 2022 Contract amounted to a donation or sham, however, because the Report did not identify or describe the many services PPRM actually provided to in-state residents pursuant to the Contract.
55. Plaintiff argues that the 2022 Contract is a donation in substance and effect unless (1) PPRM provided services under the Contract that would not otherwise have been provided without the City's funding, or (2) the funding underwrote salaries for PPRM personnel who would not have been hired but for the City's funding. This Court rejects Plaintiff's argument for the following reasons.
56. Plaintiff's proposition lacks any basis in law. Plaintiff relies solely on Attorney General Opinion, No. 70-26 (3/11/1970), which addresses the legality of a contract under which a city and county would compensate for a funeral home to operate an ambulance service, notwithstanding the existence of other providers at the time. That opinion analyzed two legal issues: (1) whether the city and county were statutorily authorized to enter into the contract under existing statutes, and (2) whether the contract violated the Anti-Donation Clause.

57. The Attorney General’s Office determined that the contract at issue would not violate existing statutes (1) if there were no other established ambulance services (based on statutory language currently located in NMSA 1978, § 5-1-1), or, in the alternative, (2) if existing services were inadequate and additional services were therefore necessary. The Attorney General’s Office concluded that the contract at issue would not satisfy either statutory requirement because (1) other ambulance services existed, and (2) the contract was not limited to providing necessary and unavailable services. Thus, its reference to whether the contract at issue involved “new” services appears to stem from a statutory inquiry that is not relevant to this case.²
58. This conclusion is further supported by recent Anti-Donation Clause opinions, none of which suggest that a service agreement with a governmental entity must provide services that are new or otherwise unavailable. *See, e.g.,* Att’y Gen. Ltr. Op. (11/22/2019) (analyzing state librarian’s disbursement of money to developing and established rural libraries operated by private nonprofits under State’s Rural Libraries Endowment Fund Act, and determining that municipal contracts for library services would not violate Anti-Donation Clause, with no mention of new or expanded services) & 4.5.10.13(B) NMAC (no mention of new or expanded library services included in criteria for receipt of funding under Rural Libraries Endowment Act); Att’y Gen. Op. No. 2022-14 (12/1/2022) (rape crisis center’s provision of its services could serve as adequate consideration for government funding).

59. In light of this authority, this Court is not persuaded by Plaintiff's interpretation of Opinion No. 70-26, and rejects Plaintiff's attempt to impose a "new-or-expanded services" requirement on the Anti-Donation Clause.
60. Furthermore, even if a new-or-expanded services requirement existed, Plaintiff presented no evidence to rebut trial testimony establishing that, as a result of the City's policy, City funds used to pay for services that otherwise would not have been provided.
61. Plaintiff has failed to meet his burden of proving that the 2022 Contract between the City and PPRM violates the New Mexico Anti-Donation Clause. Accordingly, judgement is entered in favor of the City and PPRM on Plaintiff's claim.

PPRM's Claim for Declaratory Judgment

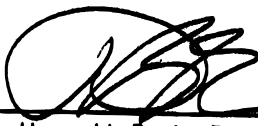
62. PPRM seeks a declaration under the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (the "DJA"), that the Contract is lawful, valid, and enforceable under the Anti-Donation Clause. *See* Amended Answer and Counterclaim, at 3 (Mar. 30, 2023).
63. PPRM's claim for declaratory judgment is created by, and was brought under, the DJA.
64. As an undisputed party to the 2022 Contract, PPRM has established that it has a real interest in the outcome of this litigation under Section 44-6-4.
65. PPRM has established that it has standing to bring its claim under the DJA.
66. This Court has subject matter jurisdiction over PPRM's claim.
67. PPRM has established by a preponderance of the evidence that the City received valid consideration in exchange for its funding.
68. In particular, PPRM has established that (1) it provided services, demographic data, and sex education selected by DFCS officials to include within the 2022 Contract's Scope of Services to meet DFCS' programmatic needs; and (2) pursuant to the 2022 Contract, PPRM

received funding for the salaries and benefits of personnel providing these services based upon Requests for Reimbursement submitted to, and approved by, DFCS officials.

69. PPRM has established that the 2022 Contract was lawful, valid and enforceable under the Anti-Donation Clause.
70. In addition, PPRM has established that PPRM's patient services, demographic data, and sex education went primarily to the indigent and provided medical treatment or preventive care.
71. The Court finds that the healthcare services provided by PPRM under the 2022 Contract fall within the "sick and indigent" exception, as they involved preventative healthcare, screenings, and treatment of illness.
72. The Court finds that the demographic data and sex education provided by PPRM under the 2022 Contract fall within the "sick and indigent" exception under the liberal interpretation afforded to "care and maintenance" under the exception. *Cf.* N.M. Att'y Gen. Op. No. 69-103 (9/3/1969) (finding that sick and indigent exception applied when county performed road work for a charitable institution that provided care to sick people); State Ethics Commission Advisory Op. No. 2023-03 (4/14/2023) (sick and indigent exception applied to program providing gift cards, gardening supplies, and life skills training to individuals with history of substance abuse or drug-related charges).
73. The Court also finds that the services, demographic data, and sex education provided by PPRM pursuant to the 2022 Contract were primarily intended to serve and did serve the "indigent."

IT IS THEREFORE, ORDERED, ADJUDGED. AND DECREED as follows:

74. Defendants PPRM and the City have each established by a preponderance of the evidence that the 2022 Contract with the City is valid, lawful, and enforceable under the New Mexico Anti-Donation Clause, as the City received consideration for the funds expended.
75. Defendants have further shown by a preponderance of the evidence that its services under the 2022 Contract fall within the “sick and indigent” exception to the Anti-Donation Clause.
76. For each of these independent reasons, judgment is entered in favor of PPRM and the City, and Plaintiff’s claims are dismissed with prejudice.
77. Counsel for Defendant’s shall submit a form of Judgment within fifteen (15) days after entry hereof.


The Honorable Denise Barela Shepherd
District Court Judge

I HEREBY CERTIFY that a copy of this Findings of Fact and Conclusions of Law was efiled and eserved to all parties on October 23, 2025.

/s/ Danielle O. DeMatty
Trial Court Administrative Assistant