



**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**STATE OF NEW MEXICO ex rel.  
WESLEY and JESSICA BIGNEY,  
NORBERT BARCENA, BETTY  
BIRNER, and PAMELA LEE HAINES**

Plaintiffs-Respondents,

v.

**NO. S-1-SC-40768**

**CITY OF RIO RANCHO, a municipal  
corporation; and HAROLD'S GRADING  
& TRUCKING, INC.,**

Defendants-Petitioners,

and

**CITY OF RIO RANCHO, a municipal corporation**

Cross-Claimant,

**HAROLD'S GRADING & TRUCKING, INC.,**

Cross Defendant.

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**DEFENDANT-PETITIONER'S REPLY BRIEF**

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## **STATEMENT OF COMPLIANCE**

Undersigned counsel hereby certifies that this brief was prepared in 14-point Times New Roman typeface and the body of this brief complies with the page limit requirement of Rule 12-318(G), with a word count of 4,400 words using Microsoft Word, version 2504.

COMES NOW Defendant/Petitioner, the City of Rio Rancho (the “City”), by and through its attorneys, NM Local Government Law, LLC (David M. Wesner and Kenneth J. Tager) and, pursuant to Rule 12-318(C) NMRA, hereby submits its Reply Brief in the above-captioned appeal.

## ARGUMENT

### **I. The District Court Erred When it Applied NMSA 1978 Section 42A-1-25 to Plaintiffs’ Claim for Attorney Fees.**

A central point of the City’s arguments on appeal is that irrespective of whether the concurrence in *Landavazo v. Sanchez*, 1990-NMSC-114, 111 N.M. 137, 802 P.2d 1283, was correctly decided (which the City argues it was not), it was never intended to impose attorney-fee awards in all inverse-condemnation actions. The City has consistently shown that the Court in *Primetime Hosp, Inc. v. City of Albuquerque*, 2007-NMCA-129, 142 N.M. 663, 168 P.3d 1087 (“*Primetime*”) held that *Landavazo* was intended to apply only to truly “aggravated” government conduct, it declined to award attorney fees, and its decisions in that regard were not disturbed on appeal.<sup>1</sup> *See Primetime* at, e.g., ¶ 52, holding that:

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<sup>1</sup> *See Primetime Hosp., Inc. v. City of Albuquerque*, 2009-NMSC-011, ¶ 9, 146 N.M. 1, 206 P.3d 112 (“*Primetime II*”) (noting that the appellant “challenges the Court of Appeals’ holdings on lost profits, excess construction costs, and costs,” not the holding on attorney fees under *Landavazo*). Therefore, this Court’s reversal of *Primetime* did not apply to the attorney-fee issue. *See State v. Ayon*, 2023-NMSC-025, ¶ 32, 538 P.3d 66 (stating that “[c]ases are not authority for propositions not considered”) (internal punctuation marks omitted).

The Supreme Court’s decision in *Landavazo* “that the county did not have the right to take the property,” *id.*, includes the implicit limit “in the way it did here.” In this sense the aggravated circumstances present in *Landavazo* are an integral part of the decision. The absence of such aggravated circumstances argues against the expansion of the *Landavazo* rule to all inverse condemnation cases, and we decline to expand it in this case.

Plaintiffs cite no authority questioning *Primetime*’s observation that it would “extend the holding of *Landavazo*” to “allow attorney fees as a matter of course in inverse condemnation cases.” *See also id.* at ¶ 49, asking “[s]hould we, then, expand *Landavazo* and hold that Section 42A–1–25(A)(3) supports a rule that attorney fees are presumptively appropriate in all inverse condemnation cases? Our response is: No.”

Plaintiffs simply proceed as though that reasoning were absent from *Primetime*. *See* Answer Brief at, e.g., p. 19, claiming, across the board, that “public policy demands that government be required to pay fees in inverse condemnation cases” (emphasis removed). Whether or not that proposition has merit from a policy perspective, it has never been the law, even under *Landavazo*, and it would be up to the Legislature, not the courts, to make it so.

Plaintiffs also ignore the City’s showing that *Landavazo* was incorrect where it held that Section 42A-1-25 (1981) does not expressly preclude application in inverse condemnation. As the City has consistently argued, attorney fees under the eminent-domain code are only available in a “condemnation proceeding,” and

inverse condemnation is, by definition, action taken without a condemnation proceeding. See NMSA §42A-1-25, specifying only that:

- A. The court shall award the condemnee his litigation expenses whenever:
- (1) the condemnor has abandoned the condemnation proceeding;
  - (2) the condemnation proceeding has been dismissed for any reason except when a bona fide settlement has been reached; or
  - (3) there is a final determination that the condemnor does not have a right to take the property sought to be acquired in the condemnation proceeding.”

**[11 RP 2823-24]** (Emphases added on appeal.) *See also* NMSA 1978 Section 42A-1-29(A), defining inverse condemnation as a public body’s action to “take or damage any property for public use . . . without instituting . . . any proceeding for condemnation.” (Emphasis added.)

Plaintiffs have never claimed – and do not claim now – that their lawsuit is a “condemnation proceeding” for these purposes. No proceeding connected to this appeal “sought to . . . acquire[]” any of Plaintiffs’ property. By their silence on this point, Plaintiffs concede that theirs is not a “condemnation proceeding” under the eminent-domain code. *See State ex rel. Human Services Dept. v. Rawls*, 2012-NMCA-052, ¶ 21, 279 P.3d 766 (noting that “where a party declines to address an issue in its answer brief, the issue is treated as a concession”).

Another argument that Plaintiffs concede by their silence concerns the City’s showing that the attorney-fee provision in Section 42A-1-25(A)(3) does not apply here because the City had the “right to take” the northern access onto Epazote Road,

and would have had the right to do so even permanently. [BIC 12-14] Plaintiffs only point to the district court’s ruling that “the City did not have the right to take or damage Plaintiff’s property without compensation.” [AB 24], *citing* [12 RP 3028] at ¶ 2 (emphasis added; internal punctuation mark omitted). Of course, Section 42A-1-25 does not impose an attorney-fee obligation on every public body that has no “right to take without compensation” (which would be every public body). Rather, Section 42A-1-25(A)(3) allows an award of attorney fees only upon the unqualified “final determination that the condemnor does not have a right to take the property sought to be acquired in the condemnation proceeding” (emphasis added). Again, no public body has a right to take property without compensation, and there is no dispute that the City had, at all material times, the power of condemnation over – *i.e.* the “right to take” – the access at issue. Plaintiffs make no effort to – and therefore concede that they cannot – show to the contrary. *Rawls, supra*, at ¶ 21.

Courts are to follow the “fundamental and closely related tenets of statutory construction that courts read an entire statute as a whole, considering statutory provisions in relation to one another, and give effect to all provisions of a statute so as to render no part inoperative or surplusage.” *Pirtle v. Legislative Council Comm. of New Mexico Legislature*, 2021-NMSC-026, ¶ 19, 492 P.3d 586 (citation omitted). Applying those tenets to Section 42A-1-25 makes it clear that attorney fees are awardable in three circumstances: when a public body brings, then abandons, a

condemnation proceeding (Section 42A-1-25(A)(1)), when a public body's condemnation proceeding is dismissed for any reason other than settlement (Section 42A-1-25(A)(2)), or when a public body brings a condemnation proceeding to acquire property without any legal right to do so (Section 42A-1-25(A)(3)). Those distinctions would be surplusage if fees were available "presumptively," in "condemnation proceedings" or otherwise. Nothing in Plaintiffs' Answer Brief establishes that any of those circumstances applies to this matter; *ergo*, the City's showing remains unrefuted: the district court erred in relying on Section 42A-1-25 to award fees as against the City.

Another key component of the City's arguments regarding the lower courts' reliance on *Landavazo* in this case is strict construction, which Plaintiffs make no attempt to show was applied in *Landavazo* or in the proceedings below. In fact, Plaintiffs mention strict construction only once in their Answer Brief, and then only as a segue into a tangential constitutional argument<sup>2</sup> they raise for the first time on

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<sup>2</sup> Plaintiffs repeatedly complain that the City's longstanding arguments under the anti-donation clause "constitutionalize" an issue that is inherently constitutional by its nature; they should not be heard to introduce *new* constitutional arguments at this late stage of the proceedings. See *State ex rel. Torrez v. Bd. of Cnty. Commissioners for Lea Cnty.*, 2025 WL 52496, at \*1 (Jan. 9, 2025) (citing *Allen v. LeMaster*, 2012-NMSC-001, ¶ 28, 267 P.3d 806, for its statement that it "is an enduring principle of constitutional jurisprudence that courts will avoid deciding constitutional questions unless required to do so"). The City's anti-donation argument is necessarily constitutional by definition; it is Plaintiffs who attempt unnecessarily to "constitutionalize" an issue, and they do so far too late in the proceedings.

appeal: “The City argues that the Eminent Domain Code should be construed strictly. However, the Plaintiffs’ constitutional right to *just* compensation[] must be construed liberally in favor of citizens and against the government.” [AB 21] (emphasis in original; record citation omitted). By their silence, Plaintiffs concede that strict construction *does* apply to statutory attorney-fee authorizations, such as that in Section 42A-1-25, and that neither *Landavazo* nor the courts below construed the fee provision strictly. *See Rawls, supra*, at ¶ 21 (where party declines to address an issue in its answer brief, the omission is treated as a concession). Having now had a full and fair opportunity to do so, Plaintiffs have failed to refute the City’s showing that the courts below erred in applying *Landavazo* in this case, and consequently in awarding attorney fees to Plaintiffs. As is discussed below, Plaintiffs also fail to refute the City’s showing that *Landavazo* should be reversed.

## **II. The *Landavazo* Concurrence was Wrongly Decided, and Should Be Reversed.**

At [AB 13-17], Plaintiffs acknowledge the elements for reversing a prior decision, framed by this Court as “particular questions” to consider:

- 1) whether the precedent is so unworkable as to be intolerable; 2) whether parties justifiably relied on the precedent so that reversing it would create an undue hardship; 3) whether the principles of law have developed to such an extent as to leave the old rule “no more than a remnant of abandoned doctrine;” and 4) whether the facts have changed

in the interval from the old rule to reconsideration so as to have “robbed the old rule” of justification.

*Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 34, 125 N.M. 721, 965 P.2d 305 (citing *Planned Parenthood v. Casey*, 505 U.S. 833, 854, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992)). Plaintiffs’ answers to those questions demonstrate that *Landavazo* is indeed ripe for reversal.

In attempting to argue that *Landavazo* is not unworkable, Plaintiffs claim that *Landavazo* – together with the same *Primetime* decision they disregard elsewhere – forms a “test,” which “considers several factors,” but they neglect to say what those factors are. **[AB 13]** The only “factor” Plaintiffs identify is “whether the taking is a mistake or the result of an affirmative decision to take or harm property without a condemnation [proceeding].” *Id.* For that proposition, Plaintiffs cite only *Landavazo*’s circular characterization as “wrongful” of any taking the condemnor “did not have the right” to effect, although an inadvertent taking “might” not subject the public body to an award of fees. *Id.*, quoting *Landavazo* at ¶ 30.

That argument ignores the fact that *all* local public bodies have the right to condemn, *no* local public body has the right to condemn without payment, and Section 42A-1-25 mentions neither “wrongfulness” nor inadvertence. If the Legislature had wished to impose attorney-fee awards in inverse-condemnation actions, it could simply have said so, rather than requiring – as it did – a “condemnation proceeding” in which property is “sought to be acquired” by a public

body, that is abandoned by “the condemnor,” dismissed short of settlement, or brought without legal basis. The *Landavazo* concurrence acknowledged the majority’s plain-language reading of the statute, but rejected that approach in favor of reading into the statute a “wrongfulness” requirement. The concurrence’s rationale was that if it read the statute as written – *i.e.* as applying only to “condemnation proceedings” brought by public bodies – it would not make sense in inverse condemnation. *Landavazo, supra*, at ¶ 27, acknowledging that the phrase “does not have the right,” in Section 42A-1-25(A)(3):

can be construed as Justices Baca and Ransom construe it—namely, by holding that it applies only when the court determines that the public authority either did not have the power of eminent domain in the first place or that the taking was not for a public purpose. But if so construed, the statute becomes somewhat meaningless in the inverse condemnation situation, because then the landowner will not be limited to inverse condemnation as his exclusive remedy; in fact, he will not even have the right of inverse condemnation, because the taker of the property, by hypothesis, will not have been exercising the power of condemnation.

In order to award fees in inverse condemnation, then, the concurrence concludes: “It seems to us to make more sense to hold that the phrase ‘does not have a right’ in the inverse condemnation situation means that the condemning authority has proceeded wrongfully in taking the landowner’s property without paying or offering just compensation.” *Id.* at ¶ 28. The concurrence does not take the analysis a step further and conclude that it makes even more sense to find that the attorney-fee provision

applies only as it is written, to “condemnation proceedings,” *i.e.* actions brought by public bodies.

Merely describing the contortions the *Landavazo* concurrence underwent to conscript Section 42A-1-25 into service in inverse-condemnation actions illustrates how unworkable *Landavazo*'s treatment of the issue is. More to the point, writing “wrongfully” into the fee provision, while writing out “condemnation proceeding,” in order to allow an award of fees in inverse condemnation the Legislature had not seen fit to enact, violated the principle that “statutory attorney fees may be awarded only when ‘expressly,’ ‘explicitly,’ or ‘specifically’ authorized by statute, and that statutes allowing an award of fees will be strictly construed”). *Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 24, 323 P.3d 939 (emphasis added; internal punctuation marks omitted). In fact, grafting the word “wrongfully” into Section 42A-1-25 specifically violated the rule “that the courts will not add to such a statutory enactment, by judicial decision, words [that] were omitted by the legislature.” *Sims v. Sims*, 1996-NMSC-078, ¶ 22, 122 N.M. 618, 930 P.2d 153 (emphasis added; internal punctuation marks omitted). As their final contention that *Landavazo* is workable, Plaintiffs allege that “[t]rial courts are perfectly able to

apply *Landavazo*.” [AB 14] As is discussed below, Plaintiffs cannot show that any court has applied *Landavazo*.

The second *Trujillo* question asks “whether parties justifiably relied on the precedent so that reversing it would create an undue hardship.” *Trujillo, supra*, at ¶ 34. In response to the City’s showing that not a single reported decision has ever relied on *Landavazo*, Plaintiffs rewrite the reliance element into a trick question, stating that the “City would have no way of knowing whether a party in a reported or unreported decision actually relied on *Landavazo*.” [AB 15] The inquiry “whether parties justifiably relied on the precedent so that reversing it would create an undue hardship” was clearly not intended to pose an unanswerable question about the subjective thoughts of every party in every “reported or unreported decision.” In its original form, this element inquired “whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation.” *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 854, 112 S. Ct. 2791, 2808, 120 L. Ed. 2d 674 (1992), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022).

Plaintiffs posit that “governments in New Mexico have since 1990 (when *Landavazo* was decided) known that a potential consequence of wrongfully taking land without a condemnation process could be an attorney fee award.” [AB 15]

They do not complete the thought and acknowledge that governments in New Mexico have known since 2007 – when *Primetime* was decided – that attorney fees could be awarded against them in inverse condemnation only under “aggravated” circumstances, and that such fees would not be awarded “presumptively,” “as a matter of course.” Other than their speculation about what some hypothetical litigant might have thought, Plaintiffs fail to adduce either evidence that any litigant actually has relied on *Landavazo*’s revision of Section 42A-1-25, or evidence of any “special hardship” that would result from *Landavazo*’s reversal. As such, Plaintiffs fail to show that the second *Trujillo* question insulates *Landavazo* from reversal.

The third *Trujillo* question is “whether the principles of law have developed to such an extent as to leave the old rule ‘no more than a remnant of abandoned doctrine’.” *Trujillo, supra*, at ¶ 34. Plaintiffs proclaim that the City “identifies no case that demonstrates *Landavazo* is a ‘remnant of an abandoned doctrine’.” **[AB 16]** The City did not claim that any “case demonstrates” that *Landavazo* is a remnant of abandoned doctrine. The City showed there has only been one case in which “principles of law have developed” *vis à vis Landavazo*, and another to which *Landavazo*’s attorney-fee holding simply did not apply. The City stated that “*Primetime* ‘developed’ ‘principles of law’ in an attempt to contextualize *Landavazo*, and explain the narrowness of its reach,” while *Moongate Water Co., Inc. v. City of Las Cruces*, 2014-NMCA-075, 329 P.3d 727 “involved only an award

of costs in inverse condemnation to the prevailing defendant public body.” [BIC 26] (Emphases in Brief.)

Plaintiffs cite one other decision, to which *Landavazo* also did not apply (*Reddy v. New Mexico Dep't of Transp.*, 2023 WL 6602032 (Ct. App. Oct. 10, 2023), *cert. denied sub nom. Reddy v. NM Dep't of Transp.*, 2024-NMCERT-002, 546 P.3d 1276). Plaintiffs then claim that *Primetime II* “presented this Court and the Court of Appeals with an opportunity to overrule or limit *Landavazo*.” Plaintiffs are mistaken. As is noted above, the plaintiff in *Primetime* did not appeal the attorney-fee issue to this Court.

Plaintiffs claim that “*Landavazo* is still a doctrine the Courts rely on” ([AB 16]), but they are unable to cite a single decision where a court actually has relied on *Landavazo*. The absence of a body of cases applying *Landavazo* is no evidence that *Landavazo* is a vital part of New Mexico common law; it is evidence that *Landavazo* is a one-of-a-kind outlier. It is not a remnant of any prior doctrine, because it did not adopt any prior doctrine. It is *sui generis*, and its reversal would bring no undesirable consequence.

The final *Trujillo* “question” is “whether the facts have changed in the interval from the old rule to reconsideration so as to have ‘robbed the old rule’ of justification.” *Trujillo, supra*, ¶ 34. In conjunction with this factor, the City noted, not that “the facts have changed,” but that “the ‘old rule’ of *Landavazo* was never

justified. It was an unwarranted, if understandable, deviation from the principle that statutory authorizations of attorney-fee awards, being in derogation of the common law, must be strictly construed.” [BIC 27] citing *Parkview*, *supra*, ¶ 24. *Landavazo* stands alone. Plaintiffs do not demonstrate to the contrary in their Reply.

Plaintiffs claim, in conjunction with the third question, that “the Legislature has had 34 years to change the Eminent Domain Code if it had determined *Landavazo* should be abandoned.” [AB 16-17] That proposition turns the inquiry on its head; the Eminent Domain Code’s allowance of attorney fees in a “condemnation proceeding,” under three enumerated circumstances, is not in need of revision. It is *Landavazo* that has shown no continuing vitality, it is *Landavazo* that declined to apply the Eminent Domain Code as written, and as this case shows, particularly after the Court of Appeals’ *de-facto* reversal of *Primetime*, *Landavazo* perpetuates the risk of confusion and waste. *Landavazo* should be reversed.

### **III. Payment of Fees Not Incurred Against the City Would Be an Allocation or Appropriation of Something of Value, Without Consideration, in Violation of the Anti-Donation Clause of the New Mexico Constitution.**

At all times post-trial, the City has argued that in addition to its error in awarding fees without statutory authorization, the district court also erred in awarding fees that Plaintiffs incurred against the City’s co-Defendant, Harold’s Grading and Trucking (“HGT”), or in “general trial time.” [BIC 29] That is so because under the anti-donation clause set forth in Article IX, Section 14 of the New

Mexico Constitution, the City can only be required to pay fees incurred against the City. The New Mexico Constitution prohibits the City from paying “something of value, without consideration to a person, association or public or private corporation’.” **[BIC 30]** citing *Vill. of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 62 N.M. 18, 303 P.2d 920 (emphasis added). Unable to refute that straightforward proposition by showing, *e.g.*, any “consideration” to the City for payment of fees not incurred against it, Plaintiffs change the subject, and misrepresent the entire point of the City’s argument.

Again raising a theory for the first time on appeal, Plaintiffs claim at **[AB 28]** that the “City has no more standing to object to an allegedly excessive attorney fee award than does a citizen or corporation,” and complain in a footnote that the “City refers to ‘burden on the taxpayers’ as if this is a greater burden than burden on a citizen.” **[AB 28]** The anti-donation clause exists solely for the benefit of taxpayers, so “a citizen or corporation” can never have standing to raise it as a defense to an obligation, even if Plaintiffs had preserved a standing argument below. *See State v. Druktenis*, 204-NMCA-032, ¶ 122, 135 N.M. 223, 86 P.3d 1050 (Court will not address unpreserved issues raised for the first time on appeal).

More importantly, Plaintiffs misrepresent the issues where they characterize the City’s anti-donation argument as alleging an “excessive attorney fee.” **[AB 28]** *See also* **[AB 30]** (complaining that the City cites no “case where a court has

analyzed an excessive fee case”); *id.* (characterizing the fees at issue as “a payment the amount of which is in question”); [AB 31] (portraying the contested fees as “a payment in which one party questions the value of the thing received” and fees “in excess of what a city[] self[-]servingly considers ‘reasonable’”); *id.* (claiming the “City essentially argues that the Court awarded too much in attorney fees”). As Plaintiffs should be well aware by this stage of post-trial proceedings, the City’s anti-donation argument is not a complaint about the *amount* of Plaintiffs’ fee claim. The City also appeals the excessiveness of the fee award, but the amount of the fees is immaterial to the anti-donation violation at issue. Rather, the City’s anti-donation argument focuses solely on fees not incurred against the City. It is payment of fees incurred against HGT, or in “general trial time” that would violate the anti-donation clause. Plaintiffs ignore the true gravamen of the anti-donation issue, and – to that extent – they concede its validity. *See Rawls, supra*, at ¶ 21 (answer brief’s silence on an issue operates as a concession).

Plaintiffs also claim this Court should reject the City’s arguments because courts “interpret our constitution to carry out its spirit, avoiding legal technicalities and subtle niceties.” [AB 21] But Plaintiffs do not even attempt to show that the City’s arguments do rely on “legal technicalities and subtle niceties.” The core of the City’s argument is set forth at [BIC 29-30]:

The term “donation” is broader as used in the anti-donation clause than in common parlance. In “the anti-donation context, the term ‘donation’

means ‘a gift, an allocation or appropriation of something of value, without consideration to a person, association or public or private corporation’.” *Vill. of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 62 N.M. 18, 303 P.2d 920.

Plaintiffs fail to show that any part of the above analysis is a “legal technicality,” a “subtle nicety,” or otherwise inapplicable to the City’s anti-donation argument. Plaintiffs discuss unrelated principles under the United States Constitution, and announce their counsel’s opinions as to the “spirit of the New Mexico and U.S. Constitution.” [AB 21] But they neglect to develop an argument that payment of attorney fees incurred, *e.g.*, against HGT would not be an “allocation or appropriation of something of value, without consideration.” Plaintiffs also neglect to articulate an argument that the City’s anti-donation concerns can be addressed at all without “constitutionalizing” them, given that they arise directly under the New Mexico Constitution.

The closest Plaintiffs come to squarely addressing the anti-donation argument is where, at [AB 29-30], they claim that “[m]odern Anti-donation cases make it clear it is limited to literal ‘give-aways[,]’ not cases where a [c]ourt imposes fees or damages.” To support that pronouncement, Plaintiffs cite cases involving the payment of wages (*Treloar v. Cnty. of Chaves*, 2001-NMCA-074, 130 N.M. 794, 32 P.3d 803) and the conveyance of water rights (*State ex rel. Office of State Eng’r v. Lewis*, 2007-NMCA-008, 141 N.M. 1, 150 P.3d 375). [AB 29-30] Plaintiffs admit that in both of those cases, the public received some consideration for the payments

at issue. [AB 30] Yet nowhere do Plaintiffs identify any consideration the City would receive if it paid attorney fees incurred against, *e.g.*, its co-Defendant. Because the City argued there was not consideration, and Plaintiffs made no attempt to show there was, Plaintiffs concede the question and, consequently, the City’s entire anti-donation argument. *See Rawls., supra*, at ¶ 21. The City does not challenge the award of fees incurred against it on anti-donation grounds. Plaintiffs show no evidence or authority that any other fees awarded against the City are proper under the New Mexico Constitution. The City’s showing in Section II of its Brief in Chief, therefore, is unchallenged, and should prevail.

#### **IV. The Courts Below Erred in Awarding Fees Due to Plaintiffs’ Allegation that the City “Supported HGT’s Defense.”**

The City’s Brief showed that Plaintiffs’ conclusory allegation below – that the City was responsible for paying fees incurred against HGT because the City allegedly took some “action that supported HGT’s defense” – was unsupported. [BIC 33-35] Plaintiffs cite no such authority in their Answer Brief, and therefore concede that no such authority exists. *See Rawls, supra*, at ¶ 21; *see also State v. Baca*, 2015-NMSC-021, ¶ 44, 352 P.3d 1151, 1161 (providing that “[w]here a party has failed to cite any contrary authority from this or any other jurisdiction, this Court will presume that no such authority exists”) (internal punctuation marks omitted).

“[A]ction that supported HGT’s defense” is no ground for an attorney-fee award, even if fees could be awarded at all.

**CONCLUSION AND RELIEF REQUESTED**

As is discussed above, Plaintiffs continue in their failure to show the district court awarded only recoverable fees and costs. This matter should be remanded to the district court to vacate its award of attorney fees against the City, both because Plaintiffs failed to establish entitlement to fees even under the “wrongfulness” standard of *Landavazo*, and because the *Landavazo* concurrence was wrongly decided and should be reversed. The district court should also correct its errors in awarding costs not incurred against the City, and excessive costs. Plaintiffs have made no valid showing to the contrary.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2025 I filed the foregoing electronically through the court's Odyssey file and serve system. I FURTHER CERTIFY that a copy of the foregoing was also transmitted via electronic mail to the following:

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