

FINDINGS AND RECOMMENDATIONS OF THE
INVESTIGATIVE SUBCOMMITTEE TO
THE HEARING SUBCOMMITTEE OF THE
INTERIM LEGISLATIVE ETHICS COMMITTEE
REGARDING REPRESENTATIVE CARL TRUJILLO

WHEREAS, an Investigative Subcommittee was convened to conduct a confidential investigation of Representative Carl Trujillo's conduct which allegedly violated the Anti-Harassment Policy adopted by the New Mexico Legislative Council; and

WHEREAS, Special Counsel, appointed by the Investigative Subcommittee, completed their confidential investigation and reported their findings and recommendations to the Investigative Subcommittee on July 25, 2018; and

WHEREAS, the Investigative Subcommittee hereby adopts the attached Report and Recommendations of Special Counsel, dated July 25, 2018; and

WHEREAS, the Investigative Subcommittee finds no probable cause on certain alleged violations of the Anti-Harassment Policy, as recommended in the attached Report and Recommendations of Special Counsel; and

WHEREAS, the Investigative Subcommittee finds probable cause on certain alleged violations of the Anti-Harassment Policy, as recommended in the attached Report and Recommendations of Special Counsel; and


NOW, THEREFORE, with respect to the matters on which the Investigative Subcommittee finds no probable cause in accordance with the findings and recommendations of Special Counsel, the Investigative Subcommittee hereby recommends that the Hearing Subcommittee close the investigation on those matters and dismiss any potential charges resulting therefrom;

NOW, THEREFORE, with respect to the matters on which the Investigative Subcommittee finds probable cause in accordance with the findings and recommendations of Special Counsel,

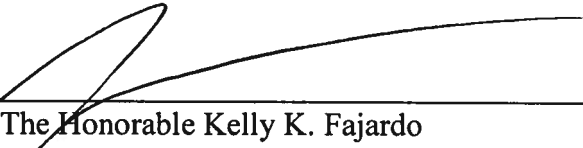
the Investigative Subcommittee hereby recommends that the Hearing Subcommittee initiate a formal hearing pursuant to Legislative Council Policy No. 16 J.

Dated this 27th day of July, 2018.

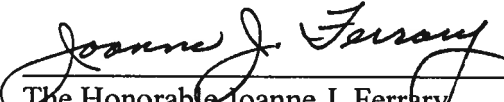
Respectfully submitted,



The Honorable Cathrynn N. Brown



The Honorable Kelly K. Fajardo



The Honorable Joanne J. Ferrary



The Honorable Javier Martínez

REPORT AND RECOMMENDATIONS OF SPECIAL COUNSEL
TO THE INVESTIGATIVE SUBCOMMITTEE OF THE
INTERIM LEGISLATIVE ETHICS COMMITTEE
REGARDING REPRESENTATIVE CARL TRUJILLO

Subcommittee Members:

The Honorable Cathrynn N. Brown
The Honorable Kelly K. Fajardo
The Honorable Joanne J. Ferrary
The Honorable Javier Martinez

July 25, 2018

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A. Introduction.

1. Effective January 15, 2018, the New Mexico Legislative Council adopted a new Anti-Harassment Policy prohibiting harassment of any kind, including sexual harassment. The Anti-Harassment Policy defined harassment as any verbal or physical behavior that a reasonable person would find threatening, intimidating or coercive.

2. The Anti-Harassment Policy defines sexual harassment, in part, as forms of harassment using sexual verbal or nonverbal conduct as intimidation, or the creating of an offensive or demeaning work environment. According to the policy, sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment; (2) submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting that person; (3) submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes; or (4) such conduct has the purpose or effect of interfering with a person's work or creating an intimidating, hostile or offensive working environment.

3. On May 2, 2018, Laura Bonar submitted an "open letter" to State Representative Carl Trujillo, alleging that Representative Trujillo sexually harassed her "on multiple occasions" in 2013 and 2014. Ms. Bonar's letter alleged Representative Trujillo "propositioned [her]," "touched [her] inappropriately" . . . [and] . . . "held [his] power as a state legislator over [her] head, making it clear to [her] that [her] passion for [her] cause would get [her] nowhere unless [she] demonstrated 'passion' for [him]." During the relevant period, Ms. Bonar was employed as a lobbyist by Animal Protection Voters of New Mexico. Ms. Bonar copied the following media

with her May 2, 2018 letter: the *Santa Fe New Mexican*, the *Santa Fe Reporter*, *New Mexico Political Report*, *Los Alamos Monitor*, *Los Alamos Daily Post*, *Albuquerque Journal North*, *Valley Daily Post*, *Taos News*, *Gallup Independent*, *Weekly Alibi*, the *Associated Press*, and various television stations, including KOB, KOAT, KRQE and KUNM.

B. Investigative Powers of the House of Representatives.

1. Once the Legislature adjourns, it no longer functions as a political body, and the rules, policies and procedures governing the business of the body during the session no longer apply. *See* N.M. Const. Art IV, § 5 (establishing time and length of legislative session); *Dillon v. King*, 97 N.M. 79, 529 P.2d 745 (1974) (legislature must complete its business within constitutionally-prescribed time). As a result of this limitation, the Legislature specifically created the Interim Legislative Ethics Committee to address ethical matters which arise during the interim. The statute states: “[a]ll matters arising in the interim pertaining to legislative ethics shall be referred to this special interim legislative ethics committee.” Section 2-15-7 (B), NMSA 1978. During the interim, the Legislative Council is vested with authority to conduct legislative affairs and is bound by all applicable interim rules. Those rules include Legislative Council Policy No. 16.

2. The Anti-Harassment Policy recognizes the applicability of the rules and policies while the Legislature is in session, and those applicable during the interim. The Anti-Harassment Policy states that “Sections 2-15-7 through 2-15-12, NMSA 1978; Senate Rules 9-13-1 through 9-13-6; House Rules 9-13-1 through 9-13-7; *or* Legislative Council Policy No. 16 shall apply to the process regarding complaints against legislators.” (emphasis added).

3. To trigger an ethics investigation, Section 2-15-9 (D), NMSA 1978 recognizes that a “member of the public *may* file a written sworn complaint.” (emphasis added). Subsection F of

Legislative Council Policy No. 16 – which is applicable during the interim – recognizes such a requirement for any legislator or member of the public filing “any charge *seeking the discipline* of a member of the Legislature during the interim.” (emphasis added). In that circumstance, the charge shall be in writing, under oath or affirmation, and filed with the Legislative Council Service at the State Capitol.

4. However, Legislative Council Policy No. 16 also recognizes that filing a written sworn complaint seeking discipline of a member is not the only basis for the Legislature to discharge its constitutional function of investigating one of its members for potential ethical misconduct. N.M. Const., Art. IV, § 11 (each House determines procedures to investigate and discipline its members). Subsection H of Legislative Council Policy No. 16 acknowledges that the Speaker of the House of Representatives, in conjunction with the appropriate majority and minority leaders, “may also refer *any ethics matter* affecting a member . . . which might require investigation to the Interim Legislative Ethics Committee.” (emphasis added). This procedure is underscored by the language of the Anti-Harassment Policy itself, which does not require a written statement as the triggering event for an ethical investigation. The Anti-Harassment Policy recognizes that circumstances may exist which warrant an investigation based on other types of evidence that the Speaker, caucus leaders, and outside counsel deem appropriate under the circumstances.¹

5. In the present circumstance, Ms. Bonar did not file a charge seeking discipline of Representative Trujillo, nor did she request that any investigation be initiated. Her “open letter”

¹ Requiring a sworn, written statement to initiate an ethics investigation not only disregards the express language of Legislative Council Policy No. 16 H and the Anti-Harassment Policy itself, but such an interpretation would unduly constrain the ability of the legislature to perform its constitutionally-mandated investigative function. Certainly one can conceive of circumstances where the Speaker and leadership, without receiving a formal complaint seeking discipline of a member, become aware of information sufficient to warrant an internal investigation. That information could be a simple writing, oral communications, or other indicia of conduct that leadership deems sufficient to cause an objective ethical concern under 16 H.

of May 2, 2018, which she submitted to Representative Trujillo and numerous newspapers and other media, made a public request that he resign his office. Despite the absence of a formal complaint,² the Speaker of the House, in conjunction with majority and minority caucus leaders and outside counsel, determined that the matters set forth in the “open letter” warranted a referral to the Interim Legislative Ethics Committee for investigation. Thereafter, an investigative subcommittee of the Interim Legislative Ethics Committee convened and, with the recommendation of the Legislative Council Service, retained the undersigned as special legal counsel to the investigative subcommittee to investigate the matters set forth in Ms. Bonar’s “open letter.” Special Counsel initiated the investigation on or shortly after May 17, 2018.

C. Standards for the Investigation.

1. Legislative Council Policy No. 16 authorizes Special Counsel to assist the investigative subcommittee concerning the ethics matter.³ After considering the recommendations of the Special Counsel, the role of the investigative subcommittee is to determine “whether probable cause exists to believe a formal charge is warranted.” Legislative Council Policy No. 16 provides that, if the investigative subcommittee determines that probable cause exists, the subcommittee will recommend that the hearing subcommittee of the Interim Legislative Ethics Committee initiate a formal hearing. A formal hearing is initiated by the issuance of a written finding of probable cause by the hearing subcommittee and the service of a copy of that document on the legislator being charged. However, if the investigative subcommittee finds no probable

² On May 8, 2018, Ms. Bonar’s counsel submitted the “open letter” to the Legislative Council Service and asked that it be considered a formal complaint. That submission, however, does not transform the letter into a formal charge, under oath or affirmation, and thus is not a written sworn complaint under Legislative Council Policy No. 16 F.

³ Special Counsel requested the investigative subcommittee to make an exception to the confidentiality rule and allow Special Counsel to inform Representative Trujillo of the specific conduct revealed during the investigation so that Representative Trujillo and his counsel could appropriately provide relevant information and seek to refute the accusations. The investigative subcommittee granted Special Counsels’ request.

cause to believe a charge is warranted, it shall recommend that the hearing subcommittee close the investigation or dismiss the charge.

2. The Special Counsels' role in recommending the existence or absence of probable cause is not equivalent to a finding that conduct prohibited by the Anti-Harassment Policy has occurred; rather, a recommendation to find the existence of probable cause is an acknowledgment that objective evidence exists which provides a reasonable basis to believe that conduct prohibited by the Anti-Harassment Policy has occurred. 9.1.1.7X(1), (2) NMAC (New Mexico Human Rights administrative procedures) ("probable cause" means allegations supported by "evidence providing reasonable grounds to believe"); see *Erdahl v. Groff*, 576 N.W.2d 15, 19 (S.D. 1998) ("probable cause" in analyzing a claim for sexual harassment is a lesser standard than preponderance of the evidence, requiring only that "a reasonable, intelligent, and prudent person would have more than a suspicion, upon reasonable inquiry"); *Bilikre v. Comm'n on Human Rights & Opportunities*, No. CV 94 0138849S, 1995 WL 669157, at *4 (Conn. Super. Ct. Nov. 3, 1995) ("reasonable cause" under the state statute governing sexual harassment claims requires only "a bona fide belief that the material issues of fact are such that a person of ordinary caution, prudence and judgment *could* believe the facts [as alleged by the complainant].") (emphasis in original); *Benavidez v. Shutiva*, 2015-NMCA-065, ¶ 20, 350 P.3d 1234 ("probable cause," as defined in New Mexico tort law, is a "reasonable" belief after investigation).

3. In analyzing the evidence to make an objective assessment of the existence or absence of probable cause, Legislative Council Policy No. 16 K, which governs the procedures for any potential hearing, provides that all parties shall have an opportunity to be heard, to request the presence of witness and the production of relevant evidence, and to cross-examine witnesses against them. As a consequence, any finding of probable cause must be based on evidence

available to the legislator being charged, including testimony from witnesses who would be subject to cross-examination at any subsequent hearing. Because of the protections afforded to the charged legislator under paragraph K of Legislative Council Policy No. 16, Special Counsel have deemed it inappropriate to rely on or to consider any information provided by anonymous sources who would not be present at any hearing and subject themselves to cross-examination. Accordingly, while Special Counsel have reviewed information and interviewed witnesses who desire to remain anonymous, Special Counsel have given no weight to such evidence or oral statements in assessing the existence or absence of probable cause.⁴

4. Additionally, in order to honor the confidentiality requirement imposed by Legislative Council Policy No. 16, Special Counsel implemented certain precautionary measures. Special Counsel limited access to information to the necessary administrative assistants at each law firm and did not provide other attorneys or other staff with facts or information discovered through the investigation. Special Counsel did not disclose communications with the investigative subcommittee, nor even the identity of the members of the investigative subcommittee. Likewise, the investigative subcommittee maintained strict confidentiality in all communications with Special Counsel and in the subcommittee's deliberations.

⁴ Special Counsel note that other states have used anonymous sources as a basis to find violations of a legislature's policies on workplace harassment. For example, in Arizona, the Special Counsel, in an investigation of harassment and inappropriate conduct charges involving Representative Don Shuter (R, Dist. 13) and Representative Michelle Ugenti-Ritas (R, Dist. 23), dated January 29, 2018, changed the names of individuals to honor their requested privacy. According to the Counsel in Arizona, these witnesses' request for anonymity "should not be understood to diminish the veracity of those individuals." Special Counsel have determined that this type of reliance is impermissible under Legislative Council Policy No. 16 because it would allow a finding of "probable cause" based on the statements of witnesses who would not be available for cross-examination at any hearing. To provide otherwise would substantially prejudice the charged legislator and depart significantly from the protections of cross-examination provided by Legislative Council Policy No. 16.

D. Specific Acts of Alleged Harassment and Application of Anti-Harassment Policy.

1. Ms. Bonar's "open letter" dated May 2, 2018 stated, without identifying specific incidences, that:

In 2013 and 2014, you sponsored bills that were important to my organization, then used your sponsorship to sexually harass me on multiple occasions. You propositioned me. You touched me inappropriately. You held your power as a state legislator over my head, making it clear to me that my passion for my cause would get me nowhere unless I demonstrated 'passion' for you. You did all this as a married man.

Additionally, Ms. Bonar's open letter alleged that Representative Trujillo "shut [her] out of the legislative process," and that Representative Trujillo "stalled work on animal protection legislation, and that legislation died."

2. The Anti-Harassment Policy provides that complaints of sexual harassment will be evaluated using a "reasonable person" standard. In this context, Special Counsels' evaluation is not limited to the subjective perception by the complainant about the alleged conduct, but seeks to determine whether the alleged conduct would constitute sexual harassment as experienced by a reasonable person who is situated similarly to the complainant. Thus, in order to assess whether probable cause exists to find a violation of the Anti-Harassment Policy, Special Counsel must gauge the conduct by an objective standard and thereby determine whether a reasonable person, under similar circumstances, would experience harassment as defined by the Policy. *See Semsroth v. City of Wichita*, 304 Fed. Appx. 707, **7 (10th Cir. 2008) (in considering whether a hostile work environment exists to support a sexual harassment claim, factfinder should consider "all the circumstances from the perspective of a reasonable person in the plaintiffs [sic] position.").

3. The Anti-Harassment Policy defines sexual harassment as “unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature when:

a. submission to such conduct is made, either explicitly or implicitly, a term or condition of a person’s employment;

b. submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting that person;

c. submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes; or

d. such conduct has the purpose or effect of interfering with a person’s work or creating an intimidating, hostile or offensive working environment.”

Additionally, the Policy prohibits any retaliation against any person who reports harassment or files a complaint or cooperates as a witness under the Policy.

4. Special Counsels’ initial task was to identify the particular conduct forming the bases for the complaints set forth in Ms. Bonar’s May 2, 2018 letter. As discussed in detail in this report, Special Counsel identified the following incidents of conduct alleged to violate the Anti-Harassment Policy, including the allegation that Representative Trujillo retaliated against Ms. Bonar and Animal Protection Voters (“APV”),⁵ as a consequence of Ms. Bonar’s refusal to submit to the alleged conduct:

⁵ Julianna Koob, a lobbyist for Planned Parenthood of Rocky Mountains and other entities, also submitted an e-mail to the Legislative Council Service and to the Deputy Secretary of State, dated May 24, 2018, asserting that Representative Trujillo retaliated against her for (i) supporting Planned Parenthood and allegedly supporting Representative Trujillo’s opponent in the primary election; and (ii) supporting Ms. Bonar in the claims of sexual harassment. As discussed below at page 41, Special Counsel have examined Ms. Koob’s claim of retaliation in relation to her alleged support of Ms. Bonar. Special Counsel have not examined the claim in relation to Ms. Bonar’s work

a. During the 2013 legislative session, Representative Trujillo introduced HB 224 to strengthen the animal cruelty statute by providing for enhanced penalties. On March 8, 2013, prior to the beginning of the session, Ms. Bonar entered onto the Floor of the House and handed materials pertaining to HB 224 to Representative Trujillo. Upon receiving the materials, Representative Trujillo allegedly asked Ms. Bonar “whether [she] stayed in Santa Fe during the session,” to which she responded that she often did so. Ms. Bonar alleges that Representative Trujillo then stated in a soft voice that “we should have dinner sometime.”

b. During the 2014 legislative session, Ms. Bonar lobbied on behalf of APV and served as an expert witness for HB 20, a bill sponsored by Representative Trujillo to provide funding for dog and cat spay and neuter surgeries in needy communities across New Mexico. On January 28, 2014, Ms. Bonar attended the House Consumer and Public Affairs Committee hearing to serve as an expert witness for the presentation of HB 20. While waiting for the bill to be called by the Chair, Ms. Bonar stated she located a seat in the front row of the public seating section, immediately next to Representative Trujillo. As she sat down, she allegedly asked, “May I sit next to you, Mr. Representative?” According to Ms. Bonar, Representative Trujillo leaned close to her and quietly said “You can sit next to me anytime, Laura. At dinner, by the fire, in the pool.” Ms. Bonar alleges that Representative Trujillo touched her thigh and that she could feel his breath on her neck.

c. On or about February 5, 2014, Ms. Bonar alleges she encountered Representative Trujillo while walking in the corridor immediately outside of the House Floor. According to Ms. Bonar, as Representative Trujillo passed her in the corridor, he quickly grabbed

for Planned Parenthood or her alleged support of Representative Trujillo’s opponent, as such an inquiry is beyond the scope of this investigation.

her arm and “pulled [her] close to him.” She states that she was suddenly pressed against the wall. Ms. Bonar alleges that Representative Trujillo then stated, “When are we meeting?”

d. After the February 5, 2014 incident, Ms. Bonar asked the Executive Director of APV, Elisabeth Jennings, whether Ms. Jennings could continue to work on HB 20. Ms. Bonar expressed to Ms. Jennings that she had other responsibilities during this period, including other bills and work on behalf of APV outside the Legislature. As a result, Ms. Jennings agreed to do the remaining work associated with HB 20. According to Ms. Bonar, Representative Trujillo ceased contact with APV concerning HB 20, and Ms. Jennings “shared her frustration that despite multiple attempts, she could not get Representative Trujillo to respond to help secure the spay-neuter funding that HB 20 was designed to provide.” Ms. Bonar perceived the alleged inaction by Representative Trujillo as retaliation for her refusal to accept his invitation.

5. Special Counsel have analyzed the alleged conduct under the third and fourth categories of sexual harassment in the Policy:

a. Whether the alleged conduct had the purpose or effect of interfering with Ms. Bonar’s work or creating an intimidating, hostile or offensive working environment;⁶ or

b. Whether the submission to or rejection of the alleged conduct was used as the basis for decisions or actions related to the support or opposition of legislation.

E. Summary of Recommendations.

1. The bases for Special Counsels’ recommendations are detailed in this report. The following is a summary of those recommendations:

⁶ Categories one and two of conduct deemed to violate the Anti-Harassment Policy, i.e., whether submission to such conduct becomes a term or condition of a person’s employment, or whether the submission to or rejection of such conduct is used as the basis for employment decisions, are not relevant to the present inquiry.

a. Based on the objective standard of whether conduct would be deemed to constitute sexual harassment by a reasonable person situated similarly to Ms. Bonar, the Special Counsel recommend a determination of no probable cause with respect to Representative Trujillo's alleged comment on March 8, 2013, on the Floor of the House of Representatives, that he and Ms. Bonar "should have dinner sometime."

b. The Special Counsel find insufficient credible evidence that Representative Trujillo engaged in physical touching of Ms. Bonar during the encounter on January 28, 2014, when Ms. Bonar allegedly asked to sit next to Representative Trujillo while waiting for HB 20 to be heard by the House Consumer and Public Affairs Committee. Accordingly, the Special Counsel recommend a determination of no probable cause with respect to the allegation of sexual harassment based on the alleged physical touching of Ms. Bonar's thigh by Representative Trujillo on January 28, 2014.

c. The Special Counsel find sufficient credible evidence that the verbal conduct of Representative Trujillo directed to Ms. Bonar, while waiting for HB 20 to be heard by the House Consumer and Public Affairs Committee on January 28, 2014, i.e., "You can sit next to me anytime Laura, at dinner, by the fire, in the pool" would cause a reasonable person to perceive sexual harassment under similar circumstances. Accordingly, the Special Counsel recommend a determination of probable cause that Representative Trujillo's verbal conduct on January 28, 2014, violated the Anti-Harassment Policy by having the purpose or effect of interfering with Ms. Bonar's work and creating an intimidating, hostile or offensive working environment.

d. Special Counsel find sufficient credible evidence that, on February 5, 2014, Representative Trujillo engaged in verbal and physical conduct directed to Ms. Bonar by grabbing her arm outside of the Chamber of the House of Representatives, pulling her close to him, and

asking her, “When can we meet?” Special Counsel further determine that a reasonable person under similar circumstances would find such verbal and physical conduct to constitute sexual harassment as defined in the Anti-Harassment Policy. Accordingly, Special Counsel recommend a determination of probable cause that Representative Trujillo violated the Anti-Harassment policy by physically touching Ms. Bonar on February 5, 2014 and asking her “When can we meet?” and that such conduct had the purpose or effect of interfering with Ms. Bonar’s work and creating an intimidating, hostile or offensive working environment.

e. Special Counsel find insufficient credible evidence supporting the allegation that Representative Trujillo intentionally ceased working on HB 20 in retaliation for Ms. Bonar’s refusal to submit to his suggestions and conduct. Special Counsel find substantial evidence that Representative Trujillo continued to work diligently on securing funding for spay/neuter services through an amendment to the general appropriations act requested by Senator Martinez in the Senate, and that Representative Trujillo thereafter continued to zealously advocate for animal protection issues on behalf of APV. Accordingly, Special Counsel recommend a finding of no probable cause that Representative Trujillo used the rejection of his alleged conduct as a basis for any decision or action related to the support or opposition of legislation.⁷

F. Evidence Considered and Interviews Conducted.

1. In conducting the investigation, Special Counsel interviewed numerous witnesses and reviewed relevant documentation. Special Counsel interviewed Laura Bonar (the complainant); Jessica Johnson (Legislative Affairs Director for Animal Protection Voters (“APV”)); Elisabeth Jennings (Executive Director of Animal Protection New Mexico (“APNM”))

⁷ Special Counsel also find insufficient credible evidence that Representative Trujillo retaliated against Julianna Koob for her alleged support of Ms. Bonar in her claims of sexual harassment. Special Counsel express no opinion whether Representative Trujillo retaliated against Ms. Koob for her work on behalf of Planned Parenthood or for her alleged support of Ms. Andrea Romero, Representative Trujillo’s opponent in the primary election.

and APV, collectively referred to as APNM/APV); Julianna Koob (lobbyist for Planned Parenthood and other entities); Gene Grant (former partner of Laura Bonar); Debra Torza Condit (contract lobbyist for APV); Daniel Abram (Human Resources and Deputy Director for APNM/APV); Representative Deborah Armstrong; Representative Carl Trujillo; Senator Richard Martinez; Representative Patricia Lundstrom; Representative Debbie Rodella; Representative Monica Youngblood; Charles Sallee, Deputy Director, Legislative Finance Committee; and Heather Nordquist.⁸

2. Special Counsel also reviewed and considered the following documents: the open letter submitted by Ms. Bonar, dated May 2, 2018; typewritten notes of Laura Bonar, June 7, 2018; statement of Jessica Johnson, dated May 3, 2018; statement of Elisabeth Jennings, dated May 2018; statement of Debra Torza Condit, dated May 5, 2018; statement of Gene Grant, dated May 17, 2018; record of conversations by Daniel Abram, from February 27, 2018 to March 16, 2018; memorandum from Laura Bonar to Daniel Abram and Lisa Jennings, dated March 19, 2018; letter from Representative Miguel Garcia and Representative Christine Trujillo to Democrat Caucus and House of Representatives, dated May 7, 2018; e-mail correspondence from Julianna Koob to Raul Burciaga, Director of Legislative Council Service and John Blair, Deputy Secretary of State, dated May 24, 2018; voicemail recording left on Julianna Koob's mobile phone, dated on or about May 19, 2018; undated letter from Representative Carl Trujillo to investigative subcommittee, received by Special Counsel on or about June 27, 2018; affidavit of Representative Carl Trujillo, dated June 27, 2018; Quality Control Analysis on polygraph examination by PGP Polygraph, LLC, dated May 15, 2018; confidential expert report of Mark D. Handler related to quality control review of

⁸ Special Counsel also interviewed witnesses who requested anonymity. Special Counsel have honored those requests, but, as previously stated, Special Counsel have given no weight to the statements of anonymous witnesses because of the requirement in Legislative Policy No. 16 that witnesses providing testimony related to probable cause must be available for cross-examination at any subsequent hearing.

polygraph examination,⁹ undated; various e-mail correspondence between representatives of APNM/APV and Representative Trujillo, Facebook posts from Laura Bonar and Representative Carl Trujillo; HB 20 and fact sheets to assist Representative Trujillo with presentations; records of mobile phone calls for Representative Trujillo; memorandum from the Legislative Finance Committee (David Abbey and Charles Sallee) to Representative Trujillo, dated May 24, 2018; promotional material of support by APV for Representative Trujillo; fundraising materials distributed by APV for Representative Trujillo; various text messages between Elisabeth Jennings and Representative Trujillo; various text messages between Jessica Johnson and Representative Trujillo; letter from Ray Lopez, Senior Analyst for House Taxation and Revenue Committee, dated May 21, 2018 (supporting Representative Trujillo in this investigation); proposed letter from Nancy M. King to “Legislative Ethics Sub-Committee,” dated May 11, 2018, “in strong support” of Representative Trujillo; letter from Sayuri Yamada to “New Mexico Ethics Subcommittee,” dated May 14, 2018, in support of Representative Trujillo; letter from Representative Dona G. Irwin to “Committee Members,” dated May 21, 2018, in support of Representative Trujillo; e-mail communication from Representative Sarah Maestas Barnes to counsel for Representative Trujillo, dated June 26, 2018, in support of Representative Trujillo; letter from Representative Monica Youngblood to “Whom it May Concern,” dated May 11, 2018, in support of Representative Trujillo; Second Affidavit of Representative Carl Trujillo, dated July 19, 2018.

⁹ Special Counsel have not discussed in this Report the reliability or substance of the polygraph examination of Representative Trujillo, dated May 10, 2018, because the examination is irrelevant to Special Counsels’ recommendations. The polygraph examination asked Representative Trujillo three questions, the first two of which concerned contact with Ms. Bonar’s breasts, buttocks or vagina. Ms. Bonar has made no allegation that such contact occurred. The third question, i.e. “was [Ms. Bonar’s] legislation stalled because she rejected your sexual advances?”, is immaterial because Special Counsel have determined that other independent credible evidence establishes the absence of probable cause for the claim that Representative Trujillo retaliated against Ms. Bonar or APNM/APV as a result of Ms. Bonar’s rejection of his alleged “sexual advances.”

ANALYSIS

G. Historic Relationship Between Ms. Bonar and Representative Trujillo.

1. Credibility of Witnesses.

a. Special Counsel find all witnesses to have been credible and that each is genuinely committed to his or her version of events. APNM/APV and all witnesses from APNM/APV have been professional and cooperative with this investigation. Ms. Bonar has been forthright, cooperative, and confident in her description of the events. Similarly, Representative Trujillo has cooperated fully with this investigation, but adamantly insists that none of the events, as reported by Ms. Bonar, occurred. It is noteworthy that Representative Trujillo does not believe any of the events reported by Ms. Bonar were caused by a misapprehension of the circumstances; rather, Representative Trujillo vehemently and repeatedly denies all of the allegations. Representative Trujillo also has been cooperative in providing records of mobile phone calls, e-mail communications and social media posts to assist Special Counsel in filling information gaps. Likewise, APNM/APV has been cooperative in providing detailed information about APV's internal handling of Ms. Bonar's allegations, including written submittals made to and by the Human Resources Director at APNM/APV.

2. Contacts Between Ms. Bonar and Representative Trujillo Other Than the Alleged Acts of Harassment.

a. Other than the alleged interaction between Representative Trujillo and Ms. Bonar on the House Floor on or about March 8, 2013, when Representative Trujillo allegedly said, "we should have dinner sometime," Representative Trujillo and Ms. Bonar had few contacts in 2013. The mobile phone records of Representative Trujillo demonstrate no phone calls between his mobile phone and Ms. Bonar's mobile phone in 2013. Likewise, there are no text messages between Representative Trujillo and Ms. Bonar during 2013, and there were only three e-mail or

social media post communications during this period. On February 6, 2013, Ms. Bonar sent an e-mail to Representative Trujillo, thanking him for his time spent on an animal cruelty bill, HB 224. Representative Trujillo did not reply to this e-mail. On February 12, 2013, Ms. Bonar sent an additional e-mail to Representative Trujillo dealing with the definition of abandonment of animals. Representative Trujillo also did not reply to this e-mail. On November 8, 2013, Ms. Bonar invited Representative Trujillo via Facebook to an event protesting animal killing contests.

b. In 2014, the communications between Ms. Bonar and Representative Trujillo were similarly abbreviated. On January 28, 2014, Ms. Bonar sent an e-mail to Representative Trujillo attaching a fact sheet for HB 20, the spay/neuter funding bill sponsored by Representative Trujillo. In that e-mail, Ms. Bonar stated, “Thank you for being a champ for spay/neuter!!” Later that day, at approximately 1:32 p.m., Representative Trujillo called Ms. Bonar’s mobile phone number, and the call lasted approximately two minutes. According to the phone records, this is the only phone conversation ever held between Representative Trujillo and Ms. Bonar. Later that day, at 8:45 p.m., Ms. Bonar tagged Representative Trujillo in a Facebook post, writing “Proud to support Carl Trujillo’s bill to bring more S/N [spay/neuter] to our state!!” On January 29, 2014, one day after Ms. Bonar’s alleged encounter with Representative Trujillo while waiting for HB 20 to be heard in the House Consumer and Public Affairs Committee, Ms. Bonar sent an e-mail to Representative Trujillo, with a copy to fellow lobbyist Debra Torza Condit, congratulating Representative Trujillo for passing HB 20 through the House Consumer and Public Affairs Committee with a 5-0 vote. The only other e-mail communication in 2014 appears to have occurred on February 6, 2014, when Ms. Bonar forwarded to Representative Trujillo an e-mail from Vandra Baca at the Regulation and Licensing Department regarding disbursement of funding for the animal care facility fund relevant to HB 20. This e-mail communication occurred one day

prior to Ms. Bonar's alleged encounter with Representative Trujillo in the hallway outside of the House Chambers, when he allegedly "pulled" her aside and asked "When can we meet?"

H. Ms. Bonar's Relationship with APNM/APV.

1. APNM is a 501(c)(3) corporation, with a mission to advocate for the rights of animals by effecting systemic policy changes, resulting in the humane treatment of all animals. APV is a 501(c)(4) corporation, with the mission of actively promoting and supporting animal-friendly legislation at the local, state and federal levels. APV seeks to hold New Mexico's elected and appointed officials accountable on animal issues, and routinely grades legislators based on their support of animal issues advocated by APV. APV is a non-partisan organization that supports candidates regardless of party. Its support of a candidate, or lack thereof, is based exclusively on the candidate's position concerning animal issues important to APV.

2. Elisabeth Jennings is the present Executive Director of APNM/APV. Ms. Jennings began her career in animal advocacy in 1984, and started lobbying in the state Legislature in 1989. By 1993, she was an employee of the predecessor to APNM, and ultimately became Executive Director of APV in 2002. Ms. Jennings met Ms. Bonar in 2007, when Ms. Bonar served as a part-time volunteer for APV. Ms. Jennings described Ms. Bonar as a very talented nurse, who is also a "quick study." She described Ms. Bonar as having "amazing integrity," an "incredible memory," and "very talented." APV secured additional funding in 2011, which provided Ms. Jennings with the opportunity to hire Ms. Bonar on a full-time basis. Ms. Bonar began her full-time position with APV in 2011, and began lobbying full-time in Santa Fe during the 2013 legislative session.

I. The Progression of Ms. Bonar’s Disclosure of Alleged Sexual Harassment to APNM/APV and Others.

1. The 2013 Legislative Session.

During the 2013 legislative session, Ms. Bonar did not communicate to Ms. Jennings, or to any other co-workers at APV, the alleged incident on the House Floor on March 8, 2013, when Representative Trujillo reportedly stated, “We should go to dinner.”

2. The 2014 Legislative Session.

During the 2014 legislative session, Ms. Jennings was out of state to take care of her ailing mother, but returned to New Mexico to assist with the passage of HB 20 or another funding bill for the proposed spay/neuter program. Ms. Jennings stated in 2018 that Representative Trujillo “completely ignored my messages asking for his help in the crucial last days and hours for the passage of HB 20” during the 2014 legislative session. She also stated that she did not know why Representative Trujillo was non-responsive, “but I do now.” As a result of Representative Trujillo’s alleged failure to respond to her during the 2014 legislative session, Ms. Jennings stated she contacted Senator Richard Martinez, who filed an amendment to SB 313, which secured \$100,000 of funding for the spay/neuter bill, and that Representative Trujillo had no “role in securing the funding because he ultimately was not involved in helping us secure the funds.”¹⁰

3. Ms. Bonar Ends Lobbying Work.

At the conclusion of the 2014 legislative session, Ms. Bonar told Ms. Jennings, “I can’t do session work anymore.” At that time, Ms. Bonar did not inform Ms. Jennings of her alleged two encounters of sexual harassment with Representative Trujillo during the 2014 legislative session.

¹⁰ As discussed *infra*, while Special Counsel believe Ms. Jennings is credible, Special Counsel also believe that she is mistaken on this point. The evidence demonstrates that Representative Trujillo, after learning that time had expired for House amendments to HB 2, contacted Senator Martinez to arrange for a similar amendment, SB 313.

4. Disclosure to Jessica Johnson After the 2014 Legislative Session.

a. Shortly after Ms. Bonar's decision to forego further legislative work after the 2014 session, APV received a significant donation which enabled APV to hire Jessica Johnson as Legislative Director. In late 2014, as she was preparing to work in her first legislative session (2015), Ms. Johnson attended an approximate one-hour orientation meeting with Ms. Bonar in Ms. Bonar's office in Albuquerque.¹¹ Ms. Johnson reported that Ms. Bonar first advised her to avoid being alone in the Roundhouse and to travel in "packs." Ms. Bonar emphasized to Ms. Johnson that there were certain legislators to avoid when she was alone, including Representative Trujillo. Ms. Johnson stated that Ms. Bonar did not go into "details" about Representative Trujillo's alleged conduct at that time, but reported that he "came on to her and, after she refused his advances, he stopped returning phone calls."

b. During the orientation meeting for the 2015 legislative session, Ms. Johnson also reported that Ms. Bonar generally described the three incidents of alleged harassment. Ms. Johnson stated that Ms. Bonar reported Representative Trujillo's request to have dinner in 2013, and that on a subsequent occasion he allegedly said she could sit next to him "near a fireplace" and had brushed his hand over her thigh when making the comment. Ms. Johnson also reported that, during the meeting, Ms. Bonar said that Representative Trujillo had whispered into her ear some inappropriate comments. Ms. Johnson then reported that Ms. Bonar told her Representative Trujillo, on a different occasion, tried to get her to leave with him and touched her on the elbow and pulled her to the side of a hallway when making the request.

¹¹ This meeting occurred sometime between September 2014 and December 2014. Ms. Bonar's disclosure to Ms. Johnson at that meeting was the first communication to an APV employee by Ms. Bonar concerning Representative Trujillo's alleged sexual harassment.

5. Disclosure to Gene Grant in 2014.

a. Gene Grant and Laura Bonar had a relationship for six years, from 2010 through August 2016. They lived together from 2012 to 2016, in the North Valley in Albuquerque. After their break-up in 2016, Mr. Grant and Ms. Bonar had no contact until May 8, 2018, when Mr. Grant sent an e-mail to Ms. Bonar offering to corroborate her claim of sexual harassment by Representative Trujillo. Mr. Grant reported he vividly recalled the incident in 2014, when Representative Trujillo allegedly stopped Ms. Bonar in the hallway outside of the House Chambers. He stated that Ms. Bonar came home that evening “very upset,” pacing around the house without taking her jacket off, and she told him Representative Trujillo had made a specific “ask” for her to go away with him. Mr. Grant also corroborated certain details of her encounter, including that Ms. Bonar had told him about Representative Trujillo stopping her in the hallway and pulling her to the side before he made the request. The next morning, Mr. Grant stated that Ms. Bonar found it very difficult to go back to Santa Fe.

b. Mr. Grant also stated the matter “dominated” their household conversation for six to eight weeks. He felt powerless because Representative Trujillo was on the “team,” meaning that he was a primary advocate for APV and the issues on which Ms. Bonar worked. As a result, Mr. Grant did not think “he could do anything about it,” even when he attended a fundraiser at the Santa Fe office of APV for Representative Trujillo. Mr. Grant expressed that both he and Ms. Bonar felt there was no “available path” forward to vindicate the alleged transgression. Notably, Ms. Bonar did not solicit Mr. Grant’s statement or interview in this matter, nor did she confer with him about the process.

6. Disclosure to Debra Torza Condit in 2014.

a. Debra Torza Condit began working as a contract lobbyist for APV in 2007, and she has continued to assist APV with lobbying in Santa Fe on an annual basis. Ms. Torza Condit reported that, during the 2014 session, she worked with Ms. Bonar, and Ms. Bonar reported she was “having issues with Representative Trujillo making advances toward her.” At that time, Ms. Torza Condit perceived it as a typical “Roundhouse power play” and simply advised Ms. Bonar to avoid him. Ms. Torza Condit also reported, however, that she worked with Representative Trujillo in 2016, and had “no issues with him.”

J. Representative Trujillo’s Advocacy for APV from 2015 to 2018.

1. In 2015, Representative Trujillo continued his role as a champion of APV issues, just as he had in the past. Ms. Jennings reported that, in 2015, Representative Trujillo introduced HB 415, which put a “check off” option on state income tax returns for taxpayers to contribute all or part of their refund to the spay/neuter program. HB 415 passed all committees, it passed the House by a vote 62-1, it passed the Senate 36-0, and the Governor signed the bill into law.

2. During the 2015 legislative session, Ms. Jennings worked on HB 415 on behalf of APV and communicated frequently with Representative Trujillo. By e-mail dated February 16, 2015, Ms. Jennings invited Representative Trujillo to be one of six legislators to make comments about animal bills. Representative Trujillo confirmed that he would like her to sit at a committee table with him and attend a press conference. Two days later, on February 18, 2015, Ms. Jennings thanked Representative Trujillo for his persistence in working on HB 415, and later that evening stated, “Thank you so much for all the hard work you’re doing on this bill.” On March 27, 2015, Ms. Jennings again thanked Representative Trujillo for his “great work on HB 415” and noted that “we’re excited to hear from you that the Governor will sign the bill.” Finally, on April 9, 2015,

Ms. Jennings sent an e-mail to Representative Trujillo stating “Congratulations! Governor signed HB 415!”

3. The 2016 legislative session was a short session, and a special message from the Governor would have been required to introduce bills unrelated to budgets, appropriations, or revenue. As a result, Representative Trujillo did not introduce any animal-related legislation during that session, and no records or written communications have been produced indicating any contact between Representative Trujillo and APV employees during that year.

4. During the 2017 legislative session, contacts between Representative Trujillo and APV employees and representatives increased substantially. On January 19, 2017, two days after the session began, Ms. Jennings forwarded to Representative Trujillo data showing that public and private shelters spent over \$38.5 million housing homeless dogs and cats. On January 24, 2017, Ms. Johnson shared a Facebook post with a comment “Thank you Representative Carl Trujillo for standing up for dogs, cats and families all across New Mexico. . . .” Ms. Johnson followed up with a post on February 10, 2017, again applauding Representative Trujillo’s leadership on animal overpopulation. On February 20, 2017, Ms. Bonar indicated that she “loved Ms. Johnson’s post” (using a heart emoji) describing the work done by Representative Trujillo.

5. Representative Trujillo sponsored HB 123 during the 2017 legislative session, which imposed a fee on animal food purchases to fund a sterilization program. HB 123 successfully passed the House and the first Senate committee, but never was heard in the Senate Finance Committee. Therefore, the bill never reached the Senate Floor for a vote.

6. In July 2017, Ms. Johnson asked Representative Trujillo to be an honorary chair for “animals and architecture,” a regular event held by APV. On September 19 and 20, 2017, Ms.

Johnson sent an e-mail to Representative Trujillo regarding a fundraiser that APV intended to host for him, stating on the invitation:

Time and again, we must remind ourselves that we can never take for granted the policymakers that *always* vote for the humane way. We must stand up for the champions that repeatedly stand up for animal protection. Representative Trujillo is one of those champions.

The invitation complimented Representative Trujillo's leadership and noted his 98% report card rating by APV.¹²

7. On October 17, 2017, APV continued its support of Representative Trujillo and held a fundraiser for him. In November and December of 2017, Ms. Jennings and Ms. Johnson assisted Representative Trujillo in drafting a pet food bill. They also thanked Representative Trujillo for attending an APV event on December 14, 2017, and for supporting APV's mission.

8. During late 2017, Ms. Jennings and others at APV became aware of the national Humane Society Director's resignation due to allegations of sexual harassment. Ms. Jennings considered whether to provide a statement about the matter on behalf of APNM/APV, but ultimately declined to do so. When discussing the issue with staff, Ms. Bonar allegedly mentioned to Ms. Jennings that "We have our own perpetrator friends in Santa Fe." Ms. Bonar specifically mentioned Representative Trujillo to Ms. Jennings, but gave no details of their prior interactions. That was the first time Ms. Jennings had heard about Ms. Bonar's complaints regarding Representative Trujillo.

9. In order to learn more about the alleged interaction between Ms. Bonar and Representative Trujillo, Ms. Jennings held a meeting with Ms. Bonar in the APNM/APV Albuquerque conference room on or about January 2, 2018. Ms. Bonar explained to Ms. Jennings

¹² It appears Representative Trujillo would have received a 100% rating from APV, but he missed one Floor vote APV had used for its scoring procedure.

that she had suffered sexual harassment by Representative Trujillo, but again did not share any details of their interactions. After the meeting, Ms. Jennings decided to contact Julianna Koob, a person with knowledge and experience about how to respond to alleged harassment issues, to ask for input concerning APV's obligation to respond to Ms. Bonar's general disclosure.

10. During this period, APV continued to work closely with Representative Trujillo on animal-related issues, while concurrently exploring options for an appropriate response to Ms. Bonar's general disclosure. On January 3, 2018, Ms. Jennings sent an e-mail to Representative Trujillo, with a copy to Ms. Johnson, enclosing a draft opinion article for submission to the *Santa Fe New Mexican*. During that period, Representative Trujillo actively worked to resurrect legislation imposing a pet food fee for animal programs. Because a similar bill in 2017 (HB 123) was never heard in the Senate Finance Committee, Ms. Jennings and Representative Trujillo enlisted Senator Gay Kernan to sponsor the bill (SB 51) in the Senate. Senator Kernan successfully obtained a "do pass" recommendation on SB 51 through the Senate Finance Committee, and Ms. Jennings and Representative Trujillo thereafter collaborated in a joint effort to persuade the Governor to sign it.

11. During the remainder of January 2018, Representative Trujillo and Ms. Johnson conversed by telephone about potential political opposition to Representative Trujillo's re-election efforts, and Ms. Johnson confirmed her support of Representative Trujillo during those calls. Ms. Jennings also sent e-mails to Representative Trujillo, with copies to Ms. Johnson and Ms. Torza Condit, about editorials concerning the pet food fee legislation and the Governor's potential veto of the legislation.

12. During the week of January 25, 2018, Ms. Jennings continued to work to obtain the Governor's support for SB 51, while also investigating further an appropriate response to Ms.

Bonar's general claims of sexual harassment. Ms. Jennings located Ms. Koob in the hallway of the Capitol during that week, introduced herself, and asked if they could meet. Ms. Jennings explained to Ms. Koob that she desired to obtain information about an employer's obligations after hearing allegations of sexual harassment. Ms. Koob indicated that she was willing to meet, but they ultimately never found time to do so before the end of the 2018 session.

13. Approximately one month later, on February 27, 2018, Ms. Jennings informed Daniel Abram, the Deputy Director of APNM, who also served as the Human Resources Director within APNM/APV, that she needed to discuss a sensitive human resource issue. Ms. Jennings explained to Mr. Abram that Ms. Bonar had recently disclosed to her that Representative Trujillo had sexually harassed Ms. Bonar during the 2013 and 2014 legislative sessions.¹³ Mr. Abram recalled Ms. Jennings having described that Representative Trujillo had propositioned Ms. Bonar on several occasions, including asking her out to dinner and requesting that they "get together." Ms. Jennings, according to Mr. Abram, was unsure of an appropriate response, given that the events occurred four and five years earlier. During that conversation, Ms. Jennings requested Mr. Abram to contact Steven Meilleur, Senior Vice President of Risk Management, Poms & Associates Risk Services. In addition to serving as insurance brokers to APNM/APV, Poms & Associates offered comprehensive risk management and reduction services to advise clients before employment claims occurred.

14. During that same week, Ms. Jennings sent a text message to Representative Trujillo, alerting him that "Our bill got to the Governor's office last night. We're doing a second package of support today." One day later, on March 1, 2018, the Governor announced her veto of the

¹³ Mr. Abram's transcription of his notes states that the first alleged encounter between Representative Trujillo and Ms. Bonar occurred in 2012. In subsequent interviews, Mr. Abram stated that he recalled the encounter to be in the 2012-2013 timeframe. Representative Trujillo did not serve in the legislature until the 2013 session.

legislation. On that same day, Ms. Jennings sent an e-mail to Representative Trujillo and Senator Kernan, thanking both for their “valiant work” and stating, “We would be honored to have your help again next year.” Ms. Jennings also sent a text message to Representative Trujillo later that day, inquiring about the possibility of an override to the Governor’s veto of HB 64, a duplicate of SB 51.

15. On March 3, 2018, Mr. Abram contacted Mr. Meilleur at Poms & Associates and consulted with him about Ms. Bonar’s disclosure. Mr. Meilleur reported that APNM/APV had an obligation to protect Ms. Bonar from further contact with Representative Trujillo, and that Ms. Bonar should not attend any APV events where Representative Trujillo was present. Mr. Meilleur also recommended that Ms. Jennings bring the matter to the attention of Representative Trujillo and that if Representative Trujillo helps the causes of APNM, “You should focus your thanks and kudos on the accomplishments, not on the man.”

16. On March 12, 2018, approximately ten days after Mr. Abram contacted Poms & Associates for advice, Representative Trujillo sent a text message to Ms. Jennings, asking whether APV would be willing to host a fundraiser for him. On the next day, Ms. Jennings responded, “Of course, we definitely want to help with your re-election!” She also asked him whether he would prefer a fundraising event, or financial support without holding an event. Representative Trujillo responded the same day that he thought an event would be more helpful. On March 16, 2018, Ms. Jennings sent a text message to Representative Trujillo asking, “Would April 18 work for an event?” Representative Trujillo responded, “Yes,” and Ms. Jennings replied, “Please pencil that in at our office in Santa Fe. We’ll be in touch. . . .”

17. Also on March 16, 2018, Ms. Jennings and Mr. Abram held a meeting with Ms. Bonar, during which Ms. Bonar recounted the specifics of her interactions with Representative

Trujillo. Ms. Jennings asked Ms. Bonar to describe the encounters in detail, and to document them as well. Explaining the specifics of the encounters, Ms. Bonar expressed “obvious concerns” about endorsing Representative Trujillo, as well as “concerns about his judgment and abuse of power.” However, during the March 16 meeting, Ms. Bonar emphasized that she was “not interested in talking about it publicly.”

18. Ms. Bonar then explained to Mr. Abram and Ms. Jennings the details of her past interactions with Representative Trujillo. She stated that during the 2013 legislative session, while she was providing materials to Representative Trujillo relevant to an animal-protection bill introduced by him, he commented that “he didn’t realize she was up here all the time” and that “We should go have dinner sometime.” Ms. Bonar then described the first encounter in 2014, when Representative Trujillo was preparing to present the spay/neuter funding bill (HB 20) to the House Consumer and Public Affairs Committee. Mr. Abram reported that Ms. Bonar stated she went to sit down in an open seat in the front row of chairs in the committee room, and an open seat existed next to Representative Trujillo. She reported she asked Representative Trujillo if she could sit there, and Representative Trujillo answered, “She could sit down next to me anytime, by the pool, at home, at night by the fire.” Mr. Abram then stated Ms. Bonar told him and Ms. Jennings that she tried to show no reaction, and that after they presented the bill, “she just left the room.” Notably, Mr. Abram’s notes from the meeting do not reflect that Ms. Bonar referenced any physical contact by Representative Trujillo during this encounter, including a brushing or touching of her thigh while he spoke.

19. Finally, Ms. Bonar recounted the second interaction with Representative Trujillo during the 2014 legislative session, where she allegedly encountered Representative Trujillo in the hallway outside of the House Chambers. Mr. Abram’s notes indicate the encounter took place on

February 5, 2014, and that Ms. Bonar stated Representative Trujillo “pulled her aside” and whispered to her “Where can I meet you this weekend?” Mr. Abram then reported that Ms. Bonar had explained to Representative Trujillo that she had a boyfriend whose family was sick and that she was going to help take care of them this weekend. Ms. Bonar also stated to Mr. Abram that Representative Trujillo allegedly stopped returning phone calls from APV and from her in particular.

20. In response to a request from Ms. Jennings and Mr. Abram at the March 16, 2018 meeting, Ms. Bonar prepared a memorandum dated March 19, 2018, regarding the alleged sexual harassment she experienced from Representative Trujillo. Ms. Bonar’s memorandum states that “she was harassed by Carl Trujillo in a series of escalating *comments*.” (emphasis added). She did not state in her memorandum that Representative Trujillo physically touched her in any way. Moreover, when describing the incident of January 28, 2014, Ms. Bonar referred to it as a “comment,” which occurred when she sat next to Representative Trujillo in the first row of the House Consumer and Public Affairs Committee hearing room. In describing the details of this encounter, Ms. Bonar’s memorandum referenced “suggestive phrases,” including “by the fire,” or “on the floor,” but did not reference any physical contact, including a touching of her thigh.

21. Also on March 19, 2018, Ms. Jennings, Ms. Bonar and Julianna Koob met in the APNM-Albuquerque office, and Ms. Bonar disclosed to Ms. Koob the details of the alleged sexual harassment by Representative Trujillo.¹⁴ As indicated, Ms. Jennings sought the assistance of Ms. Koob because of Ms. Koob’s experience in the area of sexual harassment. Ms. Koob works as a lobbyist for the Coalition of Sexual Assault Programs, Every Town for Gun Safety, Planned

¹⁴ Ms. Koob recalled generally that the meeting probably occurred in April. Ms. Jennings’ calendar notes indicate the meeting occurred on March 19, 2018.

Parenthood of Rocky Mountains, and the New Mexico Association of Nurse Anesthetists (“NMAPTA”), True Health, Center for Civic Values, and ACLU-NM.

22. During the meeting, Ms. Koob recommended to Ms. Bonar that she not file a complaint under the new Anti-Harassment Policy because Ms. Koob did not think it would be effective. Specifically, Ms. Koob believed the matter would not be kept confidential because it would have to be disclosed first to the Speaker of the House, to the leaders of both caucuses, and then to private counsel. Ms. Koob also recommended to Ms. Bonar that she retain an advocate on her behalf, and Ms. Koob provided Ms. Bonar with some recommendations. At the conclusion of the meeting, Ms. Bonar had made no decision whether to proceed with the complaint under the Anti-Harassment Policy, or even to make her allegations public.

23. On the same day Ms. Jennings and Ms. Bonar met with Ms. Koob, Ms. Jennings sent a text message to Representative Trujillo stating, “I’m sorry but we’re going to have to cancel the April 18 fundraiser. Jessica [Johnson] is off until mid-April and will be working on endorsements once she gets back, so we’ll be in touch after then.” On April 11, 2018, after additional contacts to and from Representative Trujillo, Ms. Jennings reported to Representative Trujillo that “APV was still reviewing endorsements.” Subsequently, on May 2 and May 3, 2018, after dissemination of Ms. Bonar’s open letter, Ms. Jennings, Ms. Johnson, and Ms. Torza Condit submitted their letters supporting Ms. Bonar’s actions. APV withdrew its support of Representative Trujillo.

K. Political Motivations.

1. Representative Trujillo’s campaign has published posts on Facebook claiming that Ms. Bonar’s accusations, together with the support she has received from APV, have been politically motivated, designed to assist his opponent in the primary election, Ms. Andrea Romero.

Representative Trujillo has also claimed that Ms. Bonar's claims are suspiciously old and partially orchestrated by Ms. Koob because the attorney-advocate retained by Ms. Bonar is a friend of and was recommended by Ms. Koob. In one of the later posts on May 19, 2018, Representative Trujillo's campaign criticized Ms. Koob's association with Planned Parenthood, published Ms. Koob's mobile phone number, and asked Representative Trujillo's supporters to "consider calling Planned Parenthood local and national offices to tell them to stick to the high road." Ms. Koob, in turn, has alleged that Representative Trujillo retaliated against her, for her support of Ms. Bonar, by publishing her mobile phone number and that she has received profane voice messages as a result.

2. With respect to the contention that APV had a "political motivation" to support Ms. Bonar's account of the events, Special Counsel find the issue to be a tangential distraction wholly unrelated to the issues in this investigation. First, no representative of APV knows Ms. Romero and none has any knowledge of her views on animal rights issues. As noted, APV does not support candidates based on party or other affiliation, but only on the candidate's stance on animal issues. Moreover, as the evidence establishes, Representative Trujillo has been a zealous advocate for APV and the issues central to its mission. Representative Trujillo has advocated stringently on behalf of animal protection ever since his arrival in the House of Representatives in 2013, and his passion for the issues has never waned throughout his tenure, or prior to, during and after the interactions alleged by Ms. Bonar. Ms. Jennings of APV is acutely aware of the difficulties of locating a legislator with comparable passion in the arena of animal rights, and the organization nonetheless decided to support Ms. Bonar, knowing full-well that the loss of Representative

Trujillo as an advocate would be against APV's pecuniary interests and the goals of its mission statement.¹⁵

3. Finally, Special Counsel are persuaded, under the present circumstances, that Ms. Bonar's delay in reporting Representative Trujillo's alleged conduct is not significantly material to the assessment of the veracity of the allegations. Representative Trujillo served as an important advocate for APV, and the loss of his support is undeniably detrimental both to APV's accomplishment of its mission and to Ms. Bonar's effectiveness in advancing the goals of that mission. Additionally, as stated by Mr. Grant, Ms. Bonar's partner during the relevant period, he and Ms. Bonar discussed the matter and determined there was no avenue for recourse available to them. Even with the revisions to the Anti-Harassment Policy some four years later, Ms. Koob recommended that Ms. Bonar not file a complaint under the Anti-Harassment Policy because she believed it would be ineffective. Ultimately, Ms. Bonar elected to voice her concerns because she believed the newly-revised Anti-Harassment Policy provided a legitimate means to do so.

L. Analysis of the Incidents and Alleged Sexual Harassment.

1. The 2013 Encounter – Verbal Conduct.

a. As previously explained, Special Counsel must view the alleged conduct of Representative Trujillo with an objective standard, as viewed by a reasonable person situated similarly to Ms. Bonar. In this regard, while Ms. Bonar's personal interpretation of the encounter is useful and relevant to determining whether sexual harassment has occurred, as viewed from the lens of a reasonable person, it is not dispositive. In the present circumstance, Special Counsel find that the alleged suggestion by Representative Trujillo that "We should have dinner sometime" does not satisfy an objective definition of sexual harassment under the Anti-Harassment Policy.

¹⁵ Ms. Jennings reported that APV has lost some donors as a result of its decision to support Ms. Bonar in this matter.

Certainly, many reasons exist for legislators and lobbyists to share a meal together. Even Ms. Bonar acknowledged that she did not give serious consideration to the request, although she felt it was “unusual” under the circumstances. *See Ulibarri v. State of New Mexico Dep’t of Corrections Acad.*, 2006-NMSC-009, ¶ 12, 139 N.M. 193 (isolated incident or an offhand comment does not support a sexual harassment claim). Accordingly, Special Counsel recommend a determination of no probable cause that Representative Trujillo violated the Anti-Harassment Policy by asking Ms. Bonar to dinner in 2013.

2. The January 28, 2014 Encounter – Physical Conduct.

a. Unlike oral comments, physical contact leaves little, if any, room for interpretation and either fits within or outside of conduct proscribed by the Anti-Harassment Policy. In this instance, Ms. Bonar stated in her interview, as well as in “Notes Regarding Sexual Harassment by Representative Carl Trujillo,” submitted on the date of her interview, that Representative Trujillo “engaged in physical conduct” during the encounter with Ms. Bonar on January 28, 2014, when HB 20 was scheduled to be heard by the House Consumer and Public Affairs Committee. Ms. Bonar’s notes, which are consistent with her interview, stated that she asked, “May I sit next to you, Mr. Representative?” In response, Ms. Bonar reported that Representative Trujillo stated:

Rep. Trujillo leaned very close to me and said smoothly and quietly, ‘you can sit next to me anytime, Laura. At dinner. By the fire. In the pool. He touched my leg and I could feel his breath on my neck.’

b. When describing the alleged touching on her leg, Ms. Bonar indicated it was a caress on her left thigh, “like if you were in a consensual relationship.” However, when Mr. Abram prepared the personnel report based on the Human Resources meeting he held with Ms. Jennings and Ms. Bonar on March 16, 2018, he did not mention any physical touching reported by

Ms. Bonar, but referred exclusively to the verbal comments that were substantially similar to the comments reported by Ms. Bonar in her interview. After the Human Resources interview held on March 16, 2018, Ms. Jennings requested Ms. Bonar to prepare a detailed written statement concerning her interactions with Representative Trujillo to maintain in the APNM/APV personnel file. Ms. Bonar submitted her written document, dated March 19, 2018, beginning with the statement, “I was harassed by Carl Trujillo in a series of escalating *comments*.” (emphasis added). When describing the encounter on January 28, 2014, before the House Consumer and Public Affairs Committee, Ms. Bonar’s written statement used a similar description as contained in Mr. Abram’s record of conversation: “As I sat down, you leaned close and said quietly into my ear, you can sit next to me anytime . . . over dinner . . . together” However, Ms. Bonar’s written statement of March 19, 2018, like Mr. Abram’s report, neglected to mention any physical contact by Representative Trujillo, including the touching of Ms. Bonar’s left thigh or any part of her person.

c. In assessing the existence or absence of probable cause, Special Counsel must necessarily seek corroborating or exculpatory evidence, given that no witnesses typically exist to support or refute the claims of an alleged comment or incident of touching, other than the complainant and the respondent. Corroboration may exist through consistency of reports, or spontaneous or planned disclosures that have a certain temporal proximity to the event in question. Special Counsel have no doubt as to Ms. Bonar’s sincerity and her attempts to recollect the circumstances accurately. However, Special Counsel find it difficult to assess probable cause against a legislator based on uncorroborated allegations when the complainant herself deems them not significant enough to include within a written report specifically requested by her employer. *See Weiland v. Vigil*, 1977-NMCA-003, ¶¶ 36-38, 41 (prior inconsistent statements are extrinsic

evidence which are properly considered by the fact finder); *Rodriguez v. State Highway Dep't*, 1974-NMCA-083, ¶ 7 (fact finder may determine that prior statement, made before the case arose, was more accurate and credible than subsequent statement).

d. Likewise, other witnesses to whom Ms. Bonar subsequently reported the incident were unclear about whether she referred to physical touching, with some saying some touching may have been involved, and others not recalling if Ms. Bonar reported that touching had occurred. As a result, Special Counsel recommend a determination of no probable cause that Representative Trujillo violated the Anti-Harassment Policy by allegedly physically touching Ms. Bonar on the thigh prior to the hearing on HB 20 on January 28, 2014.

3. The January 28, 2014 Encounter – Verbal Conduct.

a. Unlike the allegation of physical touching, sufficient credible evidence exists to support and corroborate Ms. Bonar's allegation that, on January 28, 2014, Representative Trujillo violated the Anti-Harassment Policy through verbal conduct directed to Ms. Bonar prior to the hearing on HB 20. While it would be inappropriate to fault any witness for not repeating precisely the same version of events over a multi-year period, in the present circumstances Ms. Bonar's reports, both verbal and written, use remarkably similar descriptions. In her interview with Mr. Abram, which he confirmed he accurately recorded, as well as in her March 19, 2018 written statement to APNM/APV for her personnel file, in her written notes submitted on the date of her interview, and in her interview itself, Ms. Bonar consistently noted the phrases used by Representative Trujillo and that he whispered the phrase into her ear: "You can sit next to me anytime, Laura. At dinner. By the fire. In the pool." She also consistently indicated that she could "feel his breath on [her] neck" during the interaction.

b. Moreover, virtually every witness with whom Ms. Bonar spoke repeated the same description Ms. Bonar provided, and used the exact phrases “at dinner,” “by the fire,” “on the floor,” and similar terms. Notably, Ms. Johnson remembered the terms expressed by Ms. Bonar during her pre-session orientation meeting in the fall of 2014, approximately eight to nine months after the interaction between Ms. Bonar and Representative Trujillo concerning HB 20 allegedly occurred. Special Counsel also note that Ms. Johnson’s recitation of the events alleged by Ms. Bonar to constitute harassment corresponds with Ms. Bonar’s statement and is consistent with the isolated events of alleged harassment as stated by Ms. Bonar. Although Ms. Bonar did not express to Ms. Johnson (or anyone else) at APV the alleged problems she had experienced with Representative Trujillo until approximately eight months after the two occurrences in 2014, the sequential accuracy and general compatibility with Ms. Bonar’s version of events lend credibility to Ms. Bonar’s charges.¹⁶

c. Under these circumstances, Special Counsel find sufficient credible evidence that the verbal conduct of Representative Trujillo directed to Ms. Bonar, while waiting for HB 20 to be heard by the House Consumer and Public Affairs Committee on January 28, 2014, violated the Anti-Harassment Policy because such verbal conduct was objectively humiliating and would cause a reasonable person to perceive sexual harassment under similar circumstances. *See Turnbull v. Topeka State Hosp.*, 255 F.3d 1238, 1243-44 (10th Cir. 2001) (a single incident is sufficient to constitute a hostile work environment where the incident is objectively abusive or humiliating); *Macias v. Southwest Cheese Co., LLC*, 624 Fed. Appx. 628 (10th Cir. 2015) (noting that the legal standard for assessing severity does not require physical contact), citing *Wright v.*

¹⁶ Both Ms. Jennings and Ms. Johnson respected the confidentiality of the interview proceedings. Ms. Jennings reported that Ms. Johnson refused to discuss any aspect of the interview prior to Ms. Jennings’ scheduled interview with Special Counsel.

Rolette Cty., 417 F.3d 879 (8th Cir. 2005) and *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991). Accordingly, Special Counsel recommend a determination of probable cause that Representative Trujillo’s verbal conduct on January 28, 2014, violated the Anti-Harassment Policy by having the purpose or effect of interfering with Ms. Bonar’s work by creating an intimidating, hostile or offensive working environment.

4. The February 5, 2014 Encounter – Verbal and Physical Conduct.

a. The Special Counsel also find sufficient credible evidence that, on February 5, 2014, Representative Trujillo engaged in verbal and physical conduct with Ms. Bonar by “pulling” her aside outside the Floor of the House of Representatives and asking her, “When can we meet?” Similar to her statements about the verbal encounter on January 28, 2014, Ms. Bonar has been remarkably consistent when recounting the specific circumstances of the February 8, 2014 encounter. Substantially identical descriptions of the incident appear in the Human Resources notes taken by Mr. Abram on March 16, 2018, the written report of Ms. Bonar to APV on March 19, 2018, and the various statements of witnesses with whom Ms. Bonar confided from 2014 through the present.

b. Additionally, in this instance independent evidence supporting the allegation also exists. On the very day of the alleged incident, Ms. Bonar returned to her home and reported the incident in detail to Mr. Grant, her partner at the time. Mr. Grant described the location of the incident, substantially similar to the reporting by Ms. Bonar, he reported the physical encounter by which Representative Trujillo “pulled” Ms. Bonar to the side of the hallway, and he related the specific request to “get together.” Mr. Grant’s recollection of the incident is extremely persuasive for two reasons. First, there is a compelling temporal proximity between the time of the alleged event and the reporting of the incident to Mr. Grant, i.e., that very evening.

See e.g. United States v. Hawkins, 59 F.3d 723, 730 (8th Cir. 1995) *cert. granted, judgment vacated on other grounds*, 516 U.S. 1168 (1996) (substantial contemporaneity of event and statement minimizes unreliability). Under those circumstances, it is reasonable that Ms. Bonar accurately and fully reported the incident to her then-partner, Mr. Grant, without a significant passage of time to erode or otherwise diminish her memory. Second, Ms. Bonar has never requested the assistance of Mr. Grant in this process and had no contact with him from 2016 through May 2018, when Mr. Grant sent an e-mail to Ms. Bonar and unilaterally offered to support her position based on what she had expressed to him in 2014.

c. According to Mr. Grant, he decided to contact Ms. Bonar on May 8, 2018, because he had read about Representative Trujillo’s denials and felt he had an obligation to come forward. Notably, Ms. Bonar thanked Mr. Grant for his offer, but did nothing to persuade him to contribute his support. Accordingly, under the circumstances presented, Special Counsel recommend a finding of probable cause that Representative Trujillo violated the Anti-Harassment Policy by physically touching Ms. Bonar in the corridor outside of the House Chambers on February 5, 2014 and asking her “When can we meet?,” because such conduct was objectively humiliating and had the purpose or effect of interfering with Ms. Bonar’s work by creating an intimidating, hostile or offensive working environment.

M. Claim of Retaliation Against APV.

1. Special Counsel find insufficient credible evidence that Representative Trujillo retaliated against Ms. Bonar and APV after Ms. Bonar’s rejection of Representative Trujillo’s conduct by allegedly foregoing work on HB 20 (the spay/neuter bill) and otherwise failing to communicate with APV about animal-related legislation.

2. Ms. Jennings supports Ms. Bonar's assertion that Representative Trujillo retaliated against her and APV after Ms. Bonar's interactions with Representative Trujillo during the 2014 legislative session. According to Ms. Jennings' statement, after HB 20 (the spay/neuter bill seeking \$250,000 in funding for spay/neuter service) passed one House committee, the bill simply died and Representative Trujillo was not involved in helping secure the funding that was eventually approved in 2014. Ms. Jennings' statement alleges the following:

After HB 20 passed one House committee, Rep. Trujillo was not involved whatsoever in helping secure the funding that was eventually approved in 2014. What actually happened was this. The request for spay/neuter funding had not been included in the original budget, and the deadline for state budget amendment was quickly approaching. I repeatedly contacted Representative Trujillo to see if he could help us get the content of HB 20 included in the final version of the budget. Rep. Trujillo completely ignored my messages asking for his help in the crucial last days and hours that mattered for the budget. I didn't know why at the time, as Rep. Trujillo was usually very responsive to our organization, but I do now. Laura's letter provides the missing piece of the puzzle.

3. While the Special Counsel find Ms. Jennings to be credible, the evidence establishes that she was mistaken on this point. On January 28, 2014, HB 20 passed the House Consumer and Public Affairs Committee with a 5-0 vote. On January 28, 2014, and on the following date, Ms. Bonar expressed her approval of Representative Trujillo's efforts, first by tagging him in a Facebook post, stating "Proud to support Representative Carl Trujillo's bill to bring more S/N to our state," and then by an e-mail on January 29, 2014, with a copy to Debra Torza Condit, referring to HB 20 and stating, "Thank you so much Rep. Trujillo!!!"

4. According to a memorandum from David Abbey and Charles Sallee, Director and Deputy Director, respectively, of the Legislative Finance Committee, stand-alone appropriation bills, including HB 20, are generally tabled (or the appropriation section removed) within the House Appropriations and Finance Committee and thereafter placed within the General

Appropriations Act (“GAA”). This is what would have happened to HB 20. In order to achieve the objective of placing the funding for HB 20 within HB 2 (the GAA), Ms. Jennings sent an e-mail to Representative Trujillo asking for “authorization to work with an LCS [Legislative Council Service] attorney [so] I can get an amendment drafted to get \$150K taken from the cash reserve and used for spay/neuter. There won’t be enough money to get \$250K this year. Thank you.” In response, Representative Trujillo replied, “Yes, absolutely. Go see Gordon Meeks [a bill drafter with the Legislative Council Service].”

5. Later that evening, Ms. Jennings sent another e-mail to Representative Trujillo indicating that she did not see his prior e-mail about seeing Mr. Meeks “in time tonight.” Ms. Jennings acknowledged in this e-mail that, “We missed the deadline for House amendments to the budget.” As a result of the expiration of the deadline, there existed no viable method to include funding for the spay/neuter program within HB 2. Moreover, HB 2 (the GAA) failed to pass the Floor of the House in 2014, by a 34-34 vote.

6. Ms. Jennings then indicated to Representative Trujillo that she would be “working on a Senate budget memo to Senator Martinez” because the only viable method to obtain funding for spay/neuter was to include it within SB 313 in the Senate, which would become the General Appropriations Act constituting the state’s operating budget. Senator Martinez, who had previously sponsored SB 84 in 2013, an animal cruelty definition and penalty bill, and had worked with Representative Trujillo on animal issues in the past, confirmed that Representative Trujillo, along with APV, requested an amendment to SB 313 (the Senate version of the GAA because HB 2 failed to pass in the House) “with as much money as I could justify for the same purposes of HB 2.” According to Senator Martinez:

In 2014, HB 2 failed on the House Floor with a 34-34 vote. At that point, the Senate initiated their own GAA (SB 313). Because of the

failure of HB 2, Representative Trujillo, along with members of the Animal Protection Organization asked if I could amend SB 313 with as much money as I could justify for the same purpose of HB 2.

7. Ms. Jennings' written statement also includes an e-mail communication to info@carltrujillo.com on February 28, 2014, stating "I'm sorry if you missed my messages about this during the session, but we were able to get \$100,000 in the state budget for spay/neuter. It went in as a Senate amendment from Senator Richard Martinez. Thanks." The reply from that e-mail address stated: "I am ecstatic. Thank you for all your hard work.," apparently leaving the impression that Representative Trujillo was unaware of the Senate amendment. In fact, the referenced e-mail account is maintained by Representative Trujillo's political campaign, and is typically responded to by his Political Director, Faith McKenna. In this instance, the e-mail reply is actually signed "Carl (and Faith!)." It appears that Ms. Jennings was unaware of Representative Trujillo's coordination with Senator Martinez to include spay/neuter funding in SB 313, the bill that ultimately funded state government operations in 2014.

8. Moreover, after the 2014 session, Representative Trujillo continued to advocate zealously for APV on behalf of animal protection issues in general. These efforts included sponsoring HB 415 in 2015, which placed a check-off option for New Mexico taxpayers to contribute part or all of their income tax return to the spay/neuter program. In 2017, Representative Trujillo pre-filed HB 123, which provided for a fee on animal food to fund a sterilization program. Representative Trujillo continued his efforts during the 2018 legislative session by pre-filing HB 64, again calling for a pet food fee for animal programs. Representative Trujillo, together with Ms. Jennings, enlisted the support of Senator Gay Kernan to "co-sponsor SB 51," a bill with identical provisions to the pre-filed HB 64. Although the Governor ultimately vetoed the pet food

fee bill, Representative Trujillo was actively involved in discussing the potential for a veto override and, failing that, for reintroduction of a similar bill in the next legislative session.

9. Based on Representative Trujillo's efforts in 2014 to work with Senator Martinez in achieving funding for the spay/neuter program in SB 313, and on his continued work to advance animal protection legislation in the subsequent years, Special Counsel find insufficient credible evidence that Representative Trujillo engaged in retaliation against Ms. Bonar or any APV employee based on Ms. Bonar's rejection of Representative Trujillo's alleged conduct. Accordingly, Special Counsel recommend a finding of no probable cause on this issue.

N. Claim of Retaliation Against Ms. Koob.

1. Ms. Julianna Koob has alleged Representative Trujillo retaliated against her for working with Planned Parenthood and other organizations which allegedly supported Representative Trujillo's opponent in the primary election, and that his alleged retaliation was also based on Ms. Koob's support of Ms. Bonar's allegations in the present circumstances. Representative Trujillo identified Ms. Koob in a Facebook post and asserted a nexus between Ms. Koob's position as a lobbyist and the allegations of sexual harassment presently lodged against Representative Trujillo. As a result of the post, Ms. Koob was the recipient of profane messages on her mobile phone, presumably because Representative Trujillo's post provided access to Ms. Koob's mobile phone number to his supporters.

2. Special Counsels' role is to determine whether Representative Trujillo committed prohibited retaliation against Ms. Koob under the Anti-Harassment Policy as a result of her support for Ms. Bonar and not whether Representative Trujillo retaliated against Ms. Koob as a result of her representation of Planned Parenthood of New Mexico. Special counsel express no opinion as to whether Representative Trujillo retaliated against Ms. Koob for her representation of Planned

Parenthood of New Mexico, or whether Representative Trujillo's comments and characterizations are simply an unfortunate part of the political process in which candidates typically engage.

3. Special Counsel find insufficient credible evidence that Representative Trujillo retaliated against Ms. Koob because of her support of Ms. Bonar. Representative Trujillo's post stated as follows:

With regard to it being a politically motivated lie, I've been told by supporters (though I haven't verified) that her lawyer is good friends with Julianna Koob. (Julianna being the director of Santa Fe Planned Parenthood and a supporter of Andrea Romero's.)

In a subsequent post, Representative Trujillo provided the mobile phone number of Julianna Koob, and asked his supporters to consider calling her about a "push-poll" Planned Parenthood had allegedly submitted in Representative Trujillo's district.¹⁷ Representative Trujillo's post contended that Planned Parenthood's alleged push-poll violated ethics standards and contained "a lie" about his record.

4. As previously mentioned, Representative Trujillo's political consultant, who is Faith McKenna, prepared both of the posts, and Representative Trujillo claims he did not review them before dissemination. While Representative Trujillo is nonetheless responsible for the content of those posts, it is difficult to find a sufficient nexus between the posts and any alleged retaliation for Ms. Koob's support of Ms. Bonar. The post which disclosed Ms. Koob's mobile phone number, although arguably reflecting poor judgment, did not mention Ms. Bonar's allegations in the present circumstances, but rather referred exclusively to Ms. Koob's work with Planned Parenthood and the alleged "push-poll." The earlier post, which did not include a reference to Ms. Koob's phone number, mentioned only that Ms. Bonar's counsel might be a friend

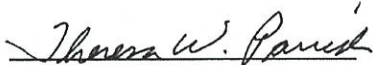
¹⁷ A "push-poll" is considered an ostensible opinion poll in which the true objective is to sway voters using manipulative questions.

of Ms. Koob's and that Ms. Koob was allegedly a supporter of Andrea Romero, Representative Trujillo's opposition in the primary election. Under these circumstances, Special Counsel cannot reasonably equate the claim that Ms. Bonar's counsel is a friend of Ms. Koob to retaliatory conduct prohibited by the Anti-Harassment Policy. Accordingly, Special Counsel recommend a finding of no probable cause on this issue.

Respectfully submitted,



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