



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

February 28, 2022

Governor Tony Evers
State of Wisconsin
115 East State Capitol
Madison, WI 53072

RE: Grants to Planned Parenthood of Wisconsin, Inc.

Dear Governor Evers:

We represent Wisconsin Family Action, Inc., Wisconsin Right to Life, Inc. and Pro-Life Wisconsin, Inc., and write this letter on their behalf seeking additional information from your administration, which has given approximately \$2.4 million to Planned Parenthood of Wisconsin, Inc. through various newly created grant programs not authorized by state law.

We believe these grants were unlawful: they were created without statutory authority and administered without validly promulgated rules. Further, even if these programs were lawfully created and administered, then the grants still violate the requirements of your own program and state law prohibitions on the funding of abortion and related services.

For these reasons, we write today to inquire as to legal authority to make and administer these grants, and why you believe Wisconsin's statutory abortion funding prohibitions do not apply.

The Grant Programs

During the COVID-19 pandemic, Congress sent Wisconsin an unprecedented amount of money. Under the 2020 Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Wisconsin received \$1.9 billion. And in 2021, the federal government appropriated another \$2.533 billion to Wisconsin through the American Rescue Plan Act ("ARPA").

When Wisconsin receives federal funds, state law permits the governor to accept the funds and "designate" the appropriate agency to "administer any such funds." *See Wis. Stat. § 16.54.* That is all. The limited authority to accept funds and designate an agency is not a license to create whatever new programs you desire. Two legal principles support our contention. First, all new grant programs must be specifically authorized by law. Our state constitution vests lawmaking in the

legislative branch, and the act of creating a new program is within the legislative power, not the executive power. Second, even assuming you have statutory authority to create a new program, Chapter 227 requires your agencies to promulgate rules when creating standards that are to be “administered by the agency.”

In administering Wisconsin’s \$4.5 billion in federal COVID-19 funds, you have disavowed any legal restriction on your ability to create new programs. For example, on November 3, 2020, you [announced](#) the creation of a \$10 million “COVID-19 Pandemic Response Nonprofit Grant Program” that was to be funded using CARES Act money. When announcing the grant program, you also designated the Department of Administration (“DOA”) to administer this newly established grant program. In response, DOA established [numerous requirements](#) (“Preparing and Submitting an Application”) and created various new standards to be applied when reviewing grant applications (“Application Selection and Award Process”).

There is no such thing as a “COVID-19 Pandemic Response Nonprofit Grant Program” in the Wisconsin Statutes. You created this new program out of thin air. And the agency you designated, DOA, did not even bother to promulgate administrative rules imposing new standards on those who seek to apply to this program.

The Legislature routinely authorizes state agencies to create grant programs and promulgate administrative rules. For example, in 2013, the Legislature created the “Primary Care and Psychiatry Shortage Grant Program” and then required the Higher Educational Aids Board to promulgate rules to administer the grant program. Wis. Stat. § 39.385. In 2017, the Legislature created the “Technical Education Equipment Grants” program, set specific standards, and then authorized the Department of Workforce Development to promulgate rules administering the program. Wis. Stat. § 106.275. The list goes on.

And when the Legislature grants permission to create a new grant program, state agencies promulgate rules to implement those programs as required by Chapter 227. *See, e.g.*, Wis. Admin. Code § ATCP 161, Subch. IV (“Buy Local Grant Program”); Wis. Admin Code § VA 2 (“Veterans Assistance Grants”).

Before the influx of federal COVID-19 funds, Wisconsin agencies created grant programs through rulemaking and through a specific grant of legislative power. But now, you have created many grant programs with neither type of authority, despite the Legislature’s willingness to grant you such authority, as [explained](#) by the Legislative Reference Bureau. We are therefore requesting that you identify your legal authority to create your COVID-19 grant programs such as the “COVID-19 Pandemic Response Nonprofit Grant Program.”

Funding Planned Parenthood of Wisconsin, Inc.

Apart from your lack of authority to implement these new grant programs and your failure to follow basic rulemaking requirements, we also believe that DOA made illegal grants to Planned Parenthood. In November 2020, DOA announced \$1.4 million in grants to Planned Parenthood clinics through the “Nonprofit Grant Program” mentioned above. Even assuming this program is explicitly authorized by statute, and that DOA’s requirements are not rules requiring promulgation, entities may not receive grants if they “have received funding from another CARES Act program.” *See* Nonprofit Grant Program Announcement § 4.2(5) (“ineligible applicants”). Yet Planned Parenthood of Wisconsin [received](#) funding from the Paycheck Protection Act, which is a CARES Act [program](#). Therefore, by the terms of DOA’s own program, Planned Parenthood was ineligible, yet you granted their application for funds anyway.

In February 2022, Planned Parenthood received a second grant, this one for \$1 million from the Equitable Recovery Grant Program (another program you created without authority). While this grant announcement did not have the CARES Act funding prohibition, this grant, as well as the previous \$1.4 million grant, must comply with Wis. Stat. § 20.9275. Under this statute, no “federal funds passing through the state treasury as a grant” may be awarded “wholly or partially or directly or indirectly” to a pregnancy program that (1) “provides abortion services,” (2) “promotes, encourages or counsels in favor of abortion services,” or (2) “makes abortion referrals.”

Planned Parenthood indisputably provides all these services. The entity provides surgical abortion services in Madison and Milwaukee, and chemical abortion services in those same offices plus in Sheboygan. And all of Planned Parenthood’s other clinics make abortion referrals. *See, e.g.,* [PPW Madison Park Street Website](#) (“If you learn you are pregnant and decide to terminate the pregnancy, we will provide you with abortion services or refer you to an abortion provider.”)

Conclusion

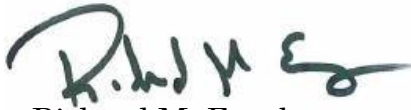
We believe the funds your administration has provided to Planned Parenthood were done through an unlawful grant program. Alternatively, or in addition to that, we believe the provision of those funds by state government violates state law as outlined here.

For these reasons, we write today to inquire as to what legal authority your administration is relying on to make these grants, and to inquire as to why you believe Wisconsin’s statutory abortion funding prohibitions do not apply.

We look forward to your response.

Sincerely,

THE WISCONSIN INSTITUTE FOR LAW AND LIBERTY



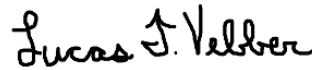
Richard M. Esenberg
President & General Counsel



Daniel P. Lenington
Deputy Counsel



Anthony F. LoCoco
Deputy Counsel



Lucas T. Vebber
Deputy Counsel



Katherine D. Spitz
Associate Counsel