

CAUSE NO. D-1-GN-17-005824

REBECCA BIRCH, RICHARD FRANKLIN
III, *and* ESTHER GOVEA,
Plaintiffs,

v.

TRAVIS COUNTY HEALTHCARE
DISTRICT d/b/a CENTRAL HEALTH and
MIKE GEESLIN, *in his official capacity only,*
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

COME NOW Plaintiffs, Rebecca Birch, Richard Franklin, III, and Esther Govea, complaining of the conduct of defendants and file this First Amended Original Petition. In support thereof, plaintiffs respectfully show as follows:

I.

The key issue in this case is whether defendants are violating the Texas Constitution, Article IX, Section 4, and Texas statutes, Texas Health & Safety Code, ch. 61 and 281, by expending property taxpayer funds on items other than healthcare services to poor residents of Travis County. The issue in this case is *not* whether it would be cool or wonderful to have a medical school in Austin (or whether defendants consider other goals cool or wonderful). This suit is necessary because defendants are not complying with Texas law and are expending funds on items unrelated to Central Health's constitutional and statutory authorization of providing health care to the poor residents of Travis County.

II.

Plaintiffs intend for this suit to be conducted under Discovery Level 2, pursuant to TEX. R. CIV. P. 190.

III.

Plaintiffs request that defendants serve upon plaintiffs disclosure of information required by TEX. R. CIV. P. 194.2.

IV.

Plaintiffs are property taxpayers in Travis County, Texas, who have paid property taxes directly to Central Health. Central Health property taxes have been used to pay illegally for the items specified below that are not direct healthcare services and/or are not for poor residents of Travis County. In fact, Travis County property taxpayers have paid tens of millions of dollars in property tax dollars that go to pay for these illegal expenditures of Central Health. Central Health continues to make, and intends to continue to make, these illegal expenditures.

V.

Defendant, *Travis County Healthcare District* (doing business and/or known as “*Central Health*”), is a hospital district organized under Art. IX, §4, of the Texas Constitution and has been served and has answered in this case.

Defendant, *Mr. Mike Geeslin*, is sued in his official capacity only and has been served and has answered in this case.

Defendants may be referred to, collectively, as “Central Health.”

VI.

Venue is proper in Travis County, Texas.

FACTS

VII.

Central Health plays a key role in Travis County in ensuring health care services for the poor, who are predominately people of color. Texas has the country’s weakest safety net for the poor: the state is last in the country in the percentage of its population with health care coverage. Texas is just

one of a handful of states that have not enacted Medicaid expansion. As a result, countywide hospital districts, such as Central Health, play a crucial role in providing healthcare for the poor in Texas.

Central Health's illegal diversion of tens of millions from health care for resident poor disproportionately impacts people of color in our county. Most of the 185,000 Travis County residents who lack health coverage are people of color. While only 7.9% of Anglos in Travis County lack health coverage, 14.9% of African Americans, 42% of Hispanics and 27.1% of other races lack coverage.

It is well-documented that a lack of health coverage results in people having worse health and shorter life spans: "Studies demonstrate that a lack of insurance commonly results in poorer health status, and that once an individual gains insurance, he or she experiences improvements in health outcomes, resulting in cost-savings for the state." TEXAS ALLIANCE FOR HEALTH CARE, THE IMPACT OF UNINSURANCE ON TEXAS' ECONOMY (January 14, 2019), pp. 5-6. Travis County residents without health coverage who will unnecessarily die and suffer are overwhelmingly poor people of color.

Central Health is a hospital district organized under Article IX, §4 of the Texas Constitution for the purpose of (in the words of the Constitution) "providing medical and hospital care to needy inhabitants of [Travis] county." Once Travis County voters established the Central Health, it "assume[d] full responsibility for providing medical and hospital care" from the County government. Tex Const. Art. IX, §4. A hospital district organized under Art. IX, §4, may levy a property tax on residents within its district, which the plaintiffs are. Correspondingly, a hospital district organized under Art. IX, §4, may legally only expend taxpayer funds for the specific purpose enumerated in the constitution and the statutes governing such districts, particularly Texas Health & Safety Code chapters 61 and 281.¹

Central Health authorized legal purpose is "medical and hospital care" for poor residents of

¹ The same is true for hospital districts organized under sections 5, 7, 8, 9, 9B and 11 of Article IX of the Texas Constitution.

the county. For example, under §281.002 of the Texas Health and Safety Code, Central Health may expend funds only for “a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district,” which in this case would be indigent and needy persons residing within Travis County. Under Chapter 61 of the Texas Health & Safety Code, the “Indigent Health Care and Treatment Act,” Central Health is required to provide specific “basic health care services” to “eligible residents,” as defined in the statute. The term “basic healthcare services” for hospital districts is defined in Texas Health and Safety Code section 61.028(a) as the following medical services:

- (1) primary and preventative services designed to meet the needs of the community, including:
 - (A) immunizations;
 - (B) medical screening services; and
 - (C) annual physical examinations;
- (2) inpatient and outpatient hospital services;
- (3) rural health clinics;
- (4) laboratory and X-ray services;
- (5) family planning services;
- (6) physician services;
- (7) payment for not more than three prescription drugs a month; and
- (8) skilled nursing facility services, regardless of the patient’s age.

See also Tex. Health & Safety Code §§61.0285 & 61.055; Tex. Const. Art. IX, §9A.

Moreover, the term “eligible resident” is defined as “a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital or hospital district in whose jurisdiction the person resides.” Tex. Health & Safety Code §61.002(3). Central Health, as a hospital district, may not legally expend any funds on goods or services that are not specifically authorized as “healthcare services” for “eligible residents,” and/or other legal requirements, under the Texas Constitution or by statute.

VIII.

Central Health has expended, and continues to spend, taxpayer funds on items not authorized by Art. IX, §4, of the Texas Constitution and by Texas statutes, Texas Health & Safety Code chs. 61 and 281. Central Health has consistently expended funds entrusted to it on items unrelated to the provision of “medical and hospital care to needy inhabitants” of Travis County, contrary to specific legal requirements and definitions prescribed in the Texas Constitution and statutes. Central Health has expended, and continues to spend, tens of millions of dollars of Travis County property taxes on the Dell Medical School, its staff personnel and other expenditures that are not authorized under Art. 9, §4, and statutes governing Central Health.

IX.

By way of example, only, the records of Central Health, the University of Texas and the Community Care Collaborative, reveal that, since 2014, Central Health has provided, directly or indirectly through Central Health’s non-profit subsidiary, the Community Care Collaborative, approximately \$35 million dollars annually to the UT Austin Dell Medical School (“Medical School”). These Central Health property tax funds have not been expended on providing medical and hospital care to needy inhabitants of Travis County, but have paid illegally for the Medical School’s personnel and goods for such things as its development office, business operations, communications and public relations, accounting, admissions, student affairs, professional development, medical education, strategy and partnerships, non-poor or non-resident health care, research, the Value Institute, the Design Institute, academic studies, Dean’s office administration, and other items that are not “medical and hospital care” for the county’s poor. From 2014, defendants have expended tens of millions of dollars on such illegal items at the Medical School.

“Affiliation Agreements” between Central Health and the University of Texas cannot legally authorize the Medical School to expend Central Health property taxpayer funds on items that are not

permitted by law, such as the non-health care, non-poor residents expenditures above. Nor can Central Health agree legally to not maintain, or to not require the Medical School to maintain, documentation to show that Central Health's funds are being spent in accordance with Texas law. Nor did Travis County voters have the legal authority to allow Central Health and the Medical School to spend Central Health funds outside the constitution's and statute's requirements. These illegal actions are void.

Defendants have also made improper expenditures, other than to the Medical School, that are not healthcare, not restricted to the poor, and/or not limited to Travis County residents. These illegal expenditures, include but are not limited to, workforce development (IDEA and others), economic development (the Innovation District and others), non-medical services to the non-poor homeless (ECHO and other homeless providers), general community support (school backpacks, dues to the Chamber of Commerce and other organizations, and non-health care sponsorships), public health, social determinants of health programs that do not constitute under Texas law health care to the poor, and public relations, including television, radio and social media ads, that are not aimed at providing the poor healthcare information but currying favor with elected officials or the general public.

CAUSES OF ACTION

X.

Defendants have violated the provisions of Art. IX, §4, Chapters 281 and 61 of the Texas Health and Safety Code, by expending tens of millions of property taxes illegally on items not related to the provision of medical and hospital care to the indigent and needy in Travis County, as defined by law and specified above.

XI.

Independently, and/or in addition to all that has been pleaded above, the expenditure of funds outside the legally enumerated purposes in Art. IX, §4, and definitional requirements and restrictions in Chapters 281 and 61 of the Texas Health and Safety Code, is an *ultra vires* act. While Central Health

has limited discretion on how it provides direct medical and hospital care for the poor in Travis County, it is prescribed by these constitutional and statutory provisions to use that discretion to provide direct medical and hospital care to the poor residing in Travis County. It has no discretion to violate the law by providing property taxpayer funds for medical education, medical research, health care for paying patients, public health (as defined by Texas Health and Safety Code section 121.002(1)), economic development, workforce development, general community benefits, social determinants of health programs that are not healthcare or not limited to poor residents, or any other expenditure that does not constitute the delivery of direct health care services to poor Travis County residents. Defendants have no authority to violate Texas legal provisions and fund items not constituting health care services for poor county residents. As such, plaintiffs are entitled to relief against defendant Geeslin, in his official capacity, prohibiting the illegal expenditure of funds by Central Health as set forth herein.

RELIEF SOUGHT

XII.

Plaintiffs seek a declaratory judgment, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, declaring that that defendants may expend funds only on: (1) items related to the furnishing of medical aid and/or hospital care to indigent and financially needy persons residing in Travis County; and/or (2) a statutorily authorized purpose such as those enumerated in Chapter 61 of the Texas Health and Safety Code. Plaintiffs further seek declaratory relief that defendants have been expending funds of illegal items and purposes as set out above.

XIII.

Independently, and/or in addition to all that has been pleaded above, plaintiffs seek a temporary and/or permanent injunction enjoining defendants from expending funds on: (1) any item not related to the furnishing of medical aid and hospital care to indigent and financially needy persons

residing in Travis County; and/or (2) any purpose or item not statutorily authorized, such as any expenditure not expressly authorized in Chapter 61 of the Texas Health and Safety Code.

XIV.

Plaintiffs seek such declaratory and injunctive relief against Central Health and/or its president and Chief Executive Officer, in his official capacity.

XV.

As a result of defendants' illegal conduct, plaintiffs have been forced to retain legal counsel to protect their legal rights. Plaintiffs are entitled to recover from defendants reasonable and necessary attorney's fees and expenses, including but not limited to attorney's fees in any appeal. An award of such fees would be equitable and just. Plaintiffs are entitled to the maximum amount of post-judgment interest on such award, as permitted by law.

XVI.

Plaintiffs do not seek monetary damages as categorized under Tex. R. Civ. P. 47 and seek only the relief (none of which is prohibited by governmental immunity) stated herein.

XVII.

Plaintiffs have fulfilled all jurisdictional prerequisites to bringing this suit and obtaining the relief stated in this pleading.

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully pray that, upon final trial hereof, plaintiffs be accorded declaratory and injunctive relief as stated herein, as well as reasonable and necessary attorney's fees and expenses, court costs, post-judgment interest, and/or all such other and further relief, at law or in equity, to which plaintiffs may show themselves justly entitled.

Respectfully submitted,

/s/ Manuel Quinto-Pozos

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein on this the 21st day of March 2022, to:

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/s/ Manuel Quinto-Pozos

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