

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

REBECCA BIRCH, RICHARD	§	IN THE DISTRICT COURT OF
FRANKLIN, III, <i>and</i> ESTHER GOVEA,	§	
	§	
Plaintiffs	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
TRAVIS COUNTY HEALTHCARE	§	
DISTRICT d/b/a CENTRAL HEALTH <i>and</i>	§	
DR. PATRICK LEE, <i>in his official capacity</i>	§	
<i>only,</i>	§	
	§	
Defendants	§	345 <sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANTS’ MOTION TO DISMISS FOR  
LACK OF SUBJECT MATTER JURISDICTION AND  
BRIEF IN SUPPORT OF AMENDED PLEA TO THE JURISDICTION**

Defendants Travis County Healthcare District d/b/a Central Health and Dr. Patrick Lee, Central Health’s President and Chief Executive Officer (“CEO”), in his official capacity, file this motion to dismiss the claims brought by Plaintiffs Rebecca Birch, Richard Franklin, III, and Ester Govea (jointly, “Plaintiffs”) for lack of subject matter jurisdiction and brief in support of their previously filed amended plea to the jurisdiction and respectfully show the Court as follows:

**INTRODUCTION**

By this lawsuit Plaintiffs improperly seek to control Central Health’s constitutionally and statutorily authorized spending and substitute their judgment for that of duly-appointed state actors. Although Plaintiffs have been vague in their pleadings, it appears that the purpose of this lawsuit is to challenge the annual payment to the University of Texas at Austin (“UT”) under the parties’ Affiliation Agreement—spending which began in 2014 and was authorized by the Travis County voters and approved by the Central Health Board of Managers and Travis County

Commissioners Court—as well as certain other vaguely alleged past expenditures. However, even if Plaintiffs had alleged the challenged expenditures with the requisite specificity, any challenged expenditures are within the constitutional and statutory authority of Central Health and are not a gift of public funds in violation of Article III, section 52(a) of the Texas Constitution.

To the contrary, the annual payment under the Affiliation Agreement, which must be spent on permitted investments that further the mission of Central Health, including support for the ongoing operation of the UT Dell Medical School, is fully authorized by and compliant with the Texas Constitution and Texas Health & Safety Code, a proper exercise of Central Health's discretion about how to best provide high quality health care to low-income residents of Travis County, and necessary to expand the health care services Central Health is able to fund and improve outcomes for the patients it serves. Decisions about how to provide and improve public health care in Travis County, and especially for its low-income residents, should be made by Central Health, not a few Travis County residents.

Plaintiffs' claims therefore must be dismissed for lack of subject matter jurisdiction for at least the following independent reasons:

- Governmental immunity protects Central Health, a hospital district and political subdivision of the state, and its President and CEO, a governmental official acting within his official capacity, from this suit seeking to control their legitimate actions.
- The narrow *ultra vires* exception, which allows citizens to seek prospective, declaratory relief against governmental officials who act without legal authority, does not extend to political subdivisions of the state such as Central Health. It also does not apply to Central Health's President and CEO in this case, as any challenged

expenditures are within Central Health’s constitutional and statutory authority and do not violate Article III, section 52 of the Texas Constitution

- The *ultra vires* exception also does not apply to the extent Plaintiffs’ petition seeks retrospective relief, including declaratory relief regarding past expenditures.
- Plaintiffs do not have standing to bring this suit. Citizens generally lack standing to challenge the propriety of governmental action, and the only exception to this rule is that a taxpayer has standing to enjoin future, illegal expenditures of public funds. Plaintiffs’ petition does not identify specific proposed future expenditures to be enjoined, but rather improperly focuses on alleged past expenditures and seeks to broadly enjoin Central Health’s spending.
- Even if Plaintiffs’ petition can be read as seeking to enjoin Central Health from making or contributing to the annual payment to UT under the Affiliation Agreement, Plaintiffs do not have standing because any such funding is within Central Health’s constitutionally and statutorily authorized discretion and does not constitute a gift of public funds in violation of Article III, section 52(a) of the Texas Constitution.

### **LEGAL AND FACTUAL BACKGROUND**

#### **I. Central Health Is a Hospital District with Broad Constitutional and Statutory Authority to Provide Medical and Hospital Care for Needy Travis County Residents.**

Central Health is a hospital district created by the voters of Travis County pursuant to Article IX, section 9<sup>1</sup> of the Texas Constitution and Chapter 281 of the Texas Health & Safety

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<sup>1</sup> While Plaintiffs allege that Central Health was created pursuant to Article IX, section 4 of the Texas Constitution, *see* Plaintiffs’ Second Amended Petition (“2d Amend. Pet.”) at 3, Article IX, section 9, rather than section 4, is applicable to Central Health. Article IX, section 4 authorizes the creation of hospital districts in counties over 190,000 in population and in Galveston County. *See* TEX. CONST. ART. IX, § 4. Section 9, however, was later passed as an all-purpose provision to allow the creation of hospital districts in all Texas counties. TEX. CONST. ART. IX, § 9. Section 9 therefore superseded section 4 with

Code. As such, it is charged with providing medical and hospital care for Travis County's needy inhabitants. TEX. CONST. ART. IX, § 9

Under Article IX, section 9 of the Texas Constitution, once a hospital district is created, that district shall assume full responsibility for providing medical and hospital care for its needy inhabitants. *Id.* After the creation of a hospital district, no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district. *Id.* This provision assumes that such taxes are levied for medical care as well as hospital care and does not assume that such taxes are used only to provide care to indigent residents.

Article IX, section 9A states that “[t]he legislature by law may determine the health care services a hospital district is required to provide, the requirements a resident must meet to qualify for services, and any other relevant provisions necessary to regulate the provision of health care to residents.” TEX. CONST. ART. IX, § 9A. This provision assumes that the Legislature may empower hospital districts to provide health services to any resident, not solely the indigent.

Chapter 281 of the Texas Health & Safety Code governs the creation and administration of hospital districts in counties having at least 190,000 residents. TEX. HEALTH & SAFETY CODE chap. 281. It provides that a hospital district has the authority to “to furnish medical aid and hospital care to indigent and needy persons residing in the district.” TEX. HEALTH & SAFETY CODE § 281.002. Chapter 281 further provides that hospital districts may broadly take action to fulfill their purpose to furnish such care to indigent and needy persons and makes clear that permissible uses of district resources include the direct furnishment of care, as well as additional services that contribute to the furnishment of such care. *See, e.g., id.* § 281.047 (granting board

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respect to hospital districts that were created after its passage in 1962, which includes Central Health. Nonetheless, sections 4 and 9 grant hospital districts similar powers and obligations, such that the analysis in this motion would not change if section 4 was applied rather than section 9.

general powers to “manage, control, and administer the hospital or hospital system of the district”); *id.* § 281.043 (permitting the district to assume outstanding contract obligations incurred before the creation of the district for the “construction, support, maintenance, or operation of hospital facilities and the provision of health care services or hospital care . . . .”); *id.* § 281.050(a) (permitting the board, with approval of the commissioners court, to “construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital, building, or other facility or to provide a service required by the district.”).

Chapter 281 expressly provides that a hospital district’s board “may contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services.” *Id.* § 281.0511(b).

Chapter 281 also permits a hospital district to “create a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district.” TEX. HEALTH & SAFETY CODE § 281.0565(b). A district may then make capital or financial contributions to the charitable organization, and the charitable organization may “contract, collaborate, or enter into a joint venture or other agreement with a public or private entity.” *Id.* § 281.0565(d).

Chapter 285 of the Texas Health & Safety Code similarly authorizes a hospital district, either “directly or through a nonprofit corporation created or formed by the district” to “contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions or provide services to the district.” TEX. HEALTH & SAFETY CODE § 285.091(a).

Chapter 61 of the Texas Health & Safety Code also addresses hospital districts. It provides that a hospital district “shall endeavor to provide the basic health care services a county is required to provide under section 61.028, together with any other services required under the Texas Constitution and the statute creating the district.” TEX. HEALTH & SAFETY CODE § 61.055. The basic health care services listed in section 61.028 include: (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.” *Id.* § 61.028. Neither section 61.028 nor section 61.055 (nor any other section of chapter 61) contains a list of the exclusive services a hospital district is permitted to provide or prohibits services beyond those listed. *Id.* §§ 61.028, 61.055.

**II. Pursuant to this Authority, Central Health Is Working to Increase the Health Care Services It Provides to Travis County’s Low-Income Residents.**

Since its formation in 2004, Central Health has performed its constitutional and statutory duties, providing health care to Travis County’s low-income residents and working to increase the volume and type of health care services it funds and improve outcomes for the patients it serves. The services available to low-income Travis County residents through Central Health include adult and pediatric primary and preventative health, women’s health services, immunizations, cancer screenings, urgent care, hospital services, dental services, behavioral health services, pharmacy services, specialty care, physical therapy, hospice and palliative care, skilled nursing, home health, and durable medical equipment. Declaration of Jeff Knodel (“Knodel Decl.”) ¶ 3, attached hereto as Exhibit A. More specifically, in 2022 (the most current

year for which comprehensive details currently are published), Central Health, among other things:

- served 152,453 people—a 4% increase over 2021;
- provided 51,318 uninsured Travis County residents health coverage through Central Health’s Medical Access Program (“MAP”);
- provided 68,739 Travis County residents coverage through MAP Basic, a program that covers essential primary care and prescription services for low-income residents who earn too much to qualify for MAP;
- increased its provider network by 12%, adding twenty-four new providers to the network including opioid treatment, primary care, and specialty providers;
- funded 532,644 primary care visits through this expanded provider network;
- moved from a temporary clinic in eastern Travis County to a more permanent clinic at Del Valle and began construction on a new facility to house Del Valle clinical services;
- provided clinical services at Hornsby Bend and began construction on a new facility to house the Hornsby Bend clinical services (this new facility is now open);
- worked towards opening a permanent clinic at Colony Park and a multi-specialty clinic at Rosewood Zaragosa and providing clinical services at the Hancock Center, all of which create more access points for care; and
- worked to expand services for podiatry (a major concern for people living with diabetes), dialysis, substance use disorder treatment, and medical respite care to allow people a stable place to heal and restore health.

*Id.* ¶ 5.

**III. Central Health Partnered with the UT Dell Medical School to Increase Central Health's Ability to Deliver High Quality Health Care to Low-Income Residents of Travis County.**

One of several strategies Central Health has used to further its goals of increasing the health care services it funds for Travis County's low-income residents and improving outcomes for the patients it serves is to build innovative partnerships to develop and implement a health care system that delivers a high level of coordinated care for low-income residents. Central Health's relationship with the UT Dell Medical School is one such partnership. Knodel Decl. ¶ 7. Central Health needs the expertise, resources, and research of the UT Dell Medical School to expand and support the human health care infrastructure in Travis County, thereby increasing access to and improving the quality of care for low-income residents of Travis County. *Id.* ¶ 7.

In November 2012, Travis County voters passed Proposition 1, which authorized Central Health to raise additional ad valorem tax revenue to improve health care by, among other things, using funds to support a new medical school. *Id.* ¶ 8, and 2012 Proposition 1, attached thereto as Exhibit 2. Specifically, Proposition 1 stated that the funds would be used for:

. . . improved healthcare in Travis County, including support for a new medical school consistent with the mission of Central Health, a site for a new teaching hospital, trauma services, specialty medicine such as cancer care, community-wide health clinics, training for physicians, nurses, and other healthcare professionals, primary care, behavioral and mental health care, prevention and wellness programs, and/or to obtain federal matching funds for healthcare services.

2012 Proposition 1. Following the passage of Proposition 1, Central Health partnered with the UT Dell Medical School to fulfill the promise made to Travis County voters and bring the very best care to low-income Travis County residents. Knodel Decl. ¶¶ 8-10.

In furtherance of that partnership, Central Health and the Seton Healthcare Family formed the 501(c)(3) organization Community Care Collaborative ("CCC"), in large part to



participate as a provider in 1115 Waiver Delivery System Reform Incentive Payment (“DSRIP”) program projects to improve and enhance health care service delivery for low-income patient populations in Travis County. *Id.* ¶ 9.

Central Health, the CCC, and UT then entered into an Affiliation Agreement. *Id.* ¶ 10 and Affiliation Agreement, attached thereto as Exhibit 3. The Affiliation Agreement sets out various duties of the parties in support of Central Health’s mission to improve the health of our community by ensuring comprehensive health care delivery for low-income residents of Travis County. The Affiliation Agreement acknowledges that Central Health is a hospital district obligated to provide medical care for the indigent and safety-net population of Travis County, and that Central Health fulfills this obligation by supporting the maintenance, development, and improvement of health care services and infrastructure by independent health care providers and others in the Travis County medical community. *See* Affiliation Agreement at 1. The Affiliation Agreement also recognizes that an essential aspect of Central Health’s vision for Travis County is the construction and operation of a teaching hospital by Seton to replace the University Medical Center Brackenridge hospital facility. *See id.* Consistent with Central Health’s obligations and vision, the Affiliation Agreement requires UT to:

- develop, own, and operate the UT Dell Medical School, *id.* § 4.1;
- assist in serving low-income communities by offering to train residents and medical students in community-based settings, *id.* § 4.2.1;
- assist in developing appropriate levels of clinical services at nonprofit medical clinics in Travis County that provide services to the safety-net population, *id.* §§ 4.2.2, 1;
- promote effective and efficient medical practice by training professionals to work together in multi-disciplinary teams, *id.* § 4.2.3;

- assist with DSRIP projects under the existing Medicaid 1115 Waiver Program, *id.* § 4.2.4;
- provide medical care with a focus on preventative health care and the multitude of factors that impact health outcomes, *id.* § 4.2.5;
- recruit, train, and educate medical students, *id.* § 4.2.6;
- generate and utilize data to educate physicians and patients on methods to achieve better health outcomes and reduce disparities in Travis County, *id.* § 4.2.7;
- endeavor to promote training that promotes biomedical sciences with other disciplines, *id.* § 4.2.8;
- engage in clinical research to improve the quality of care in the community, *id.* § 4.2.9;
- make available appropriate members of its faculty and residents to provide clinical services at clinics and other facilities acting as providers of the integrated delivery system, *id.* § 4.3;
- assist in providing comprehensive education and training in women’s health services to UT Dell Medical School residents and medical students, *id.* § 4.4; and
- make available faculty and residents to provide part of the physician services component of the i) MAP Healthcare Services and Charity Care Healthcare Services, as those terms are defined in the Affiliation Agreement, in comparable specialties and scope as are provided as of the effective date of the Affiliation Agreement by UTSW faculty and residents under the Omnibus Agreement through or in conjunction with that certain UTSW and Seton Affiliation Agreement effective as of November 30, 2009; and ii) women’s or other health services that Seton cannot provide because of the Ethical Religious Directives for Catholic Health Care Services, *id.* § 4.9.

In exchange, UT receives a \$35 million annual payment to be used only for “Permitted Investments” (the “Permitted Investment Payment”). *Id.* § 3.1, 4.7. Permitted Investments are defined as follows:

. . . the continuing investment in programs, projects, operations, and providers that furthers the missions of the CCC and Central Health, benefits UT, and complies with all Laws that apply to each Party, and shall include, but not be limited to, the enhancement of medical services for residents of Travis County; directly or indirectly increasing the health care resources available to provide services to Travis County residents; the discovery and development of new procedures, treatments, drugs, and medical devices that will augment the medical options available to Travis County residents; and the development and operation of collaborative and integrated health care for Travis County residents. With respect to this Agreement, Permitted Investments include the provision of direct operating support to UT that will be used by UT in its discretion to facilitate and enhance the (i) development, accreditation, and on-going operation of the UT Austin Dell Medical School and its administrative infrastructure, (ii) recruitment, retention, and work of the UT Austin Dell Medical School Faculty, Residents, Medical Students, researchers, administrators, staff, and other clinicians, and (iii) other related activities and functions as described in the Recitals to this Agreement.

*Id.* § 1. The recitals referred to in (iii) of the definition include investments necessary to create infrastructure and support the recruitment of faculty, residents, and medical students who will provide medical services in Travis County. *Id.* at 1-6. Additionally, those recitals indicate other purposes for which funds may be spent, including:

- to develop methods to increase the efficiency of health care delivery and to reduce cost;
- to develop and implement strategies to improve and maintain the health of the population;
- to recruit faculty who will further develop and implement programs to educate primary care physicians, including expanded educational experiences in ambulatory sites, including clinics; and
- to recruit faculty who can provide the highest quality of “cutting edge” clinical care for the residents of Travis County.

*Id.*

Under the terms of the Affiliation Agreement, the CCC has the primary obligation to make the annual Permitted Investment Payment to UT. If the CCC defaults, in whole or in part, in the timely payment to UT of the Permitted Investment Payment or is dissolved or otherwise ceases to exist or operate, Central Health has secondary responsibility for the annual Permitted Investment Payment. *Id.* §§ 3.1; 3.2.

From 2014 through 2022, the Permitted Investments Payments under the Affiliation Agreement were wholly made by the CCC—not Central Health.<sup>2</sup> Knodel Decl. ¶ 12. In 2023, the CCC did not have funds to make the full Permitted Investment Payment, so the CCC paid \$12,570,000 and Central Health paid \$22,430,000. *Id.* ¶ 13. Central Health has budgeted to make the full Permitted Investment Payment in 2024. *Id.* ¶ 14.

The UT Dell Medical School has used the annual Permitted Investment Payment to fund Permitted Investments as outlined in the Affiliation Agreement, as confirmed by independent accountants Atchley & Associates. Knodel Decl. ¶¶ 15-16. Central Health also hired Atchley & Associates to perform the Agreed Upon Procedures for the fiscal years 2014-2023 to determine UT’s compliance with the Affiliation Agreement, including whether the UT Dell Medical School’s costs and expenditures comply with the Affiliation Agreement’s definition of

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<sup>2</sup> While in years past Central Health made a member payment to the CCC, that member payment accounted for only a portion of the CCC’s funding. *See* Joint Agreed Stipulation ¶¶ 7-8, attached hereto as Exhibit B. For example, in 2017, Central Health made a \$24,615,508 member payment to the CCC, and the CCC received \$26,000,000 from Ascension Seton and \$62,692,721 from the Texas Health and Human Services Commission for the successful achievement of 1115 Delivery System Reform Incentive Payment projects (“DSRIP). *Id.* ¶¶ 7, 8. In 2018, Central Health made a \$23,200,000 member payment to the CCC, and the CCC received \$36,266,490 from Ascension Seton and \$59,153,831 from DSRIP. *Id.* Similarly, in 2019 Central Health made a member payment of \$35,348,600, and the CCC received \$21,266,490 from Ascension Seton and \$75,365,262 from DSRIP. *Id.* Central Health has not made a member payment to the CCC since 2019, and the CCC received \$60,414,314 and \$59,363,558 from DSRIP in 2020 and 2021, respectively. *Id.* Thus, it is not possible to say that the CCC used Central Health funds to make the Permitted Investment Payments to UT.

“Permitted Investment.” Knodel Decl. ¶ 15; Declaration of Jeremy Myers, CPA (“Myers Decl.”) ¶ 3 and Exs. 1-4, attached hereto as Exhibit C. Atchley & Associates has prepared and delivered to Central Health an Independent Accountants’ Report in connection with the Agreed Upon Procedures for fiscal years 2014-2022, and with one minor exception in 2017, no discrepancies were noted. Knodel Decl. ¶ 16; Myers Decl. ¶¶ 4-6 and Ex. 1-4. The fiscal year 2023 Agreed Upon Procedures are currently being scheduled, and Atchley & Associates will provide a related Independent Accountants’ Report to Central Health when they are completed. Knodel Decl. ¶ 17; Myers Decl. ¶ 5.

Central Health’s partnership with the UT Dell Medical School is enabling Central Health to fulfill its promise to the voters to improve delivery of health care to low-income residents of Travis County. *See* Knodel Decl. ¶ 7; Declaration of Jonathan Morgan (“Morgan Decl.”) ¶ 3, attached hereto as Exhibit D; Declaration of John Daigre (“Daigre Decl.”) ¶¶ 5-7, attached hereto as Exhibit E; Declaration of Ryan Johnson (“Johnson Decl.”) ¶ 4, attached hereto as Exhibit F. The UT Dell Medical School, in partnership with Central Health, has increased and improved the health care provided to low-income residents of Travis County, including as follows:

- Serving MAP patients at UT Health Austin specialty clinics, including women’s health and musculoskeletal, with 8,917 unique patients—approximately 36% of all unique patients—using MAP, Medicaid, or Medicare during the 2022-2023 academic year, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;
- Eliminating the 12-month wait for MAP patients to see a specialist for orthopedic care, and establishing measures to improve patient-reported outcomes, Morgan Decl. ¶ 3;

- Designing better pre-natal and postpartum care for low-income women and their babies, Morgan Decl. ¶ 3;
- Entering into a new Master Service Agreement covering ophthalmology, reproductive care not available from Ascension Seton, surgeries by Central Health employed podiatrists, long COVID, and advanced imaging, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;
- Entering into a Professional Services Agreement with Central Health to assist Central Health expand delivery of medical and health care services at its own facilities in Travis County, including through the co-recruitment of physicians and the provision of other professional services focused on collaboratively advancing comprehensive care in areas including gastroenterology, pulmonology, neurology, and nephrology, Johnson Decl. ¶ 4; Morgan Decl. ¶ 3;
- Initiating and conducting lung, breast, and colon cancer screening projects in collaboration with CommUnityCare and other safety-net providers, Morgan Decl. ¶ 3;
- Actively working to expand access to eye care by hiring Dr. Jane Edmond and three other faculty, doubling the community faculty roster to forty-five, establishing the Mitchel & Shannon Wong Eye Institute, and starting an ophthalmology residency program that accepts 3 residents a year, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;
- Leading a collaborative integrated care program for people experiencing homelessness with CommUnityCare and Integral Care, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;
- Engaging in research projects targeting stress reductions in low-income people with COPD, understanding barriers to organ transplants in Central Texas, the value of PrEP for HIV prevention in Central Texas, suicide prevention for young adults in

Texas, the impact of telehealth visits in avoiding urgent care for pregnancy among the under-served, culturally-tailored preventative care for individuals with risk factors for kidney disease, and a culturally-tailored, scalable asthma intervention for high-risk children, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3.

Additionally, the UT Dell Medical School has attracted more than 440 new doctors to Austin since 2014, and approximately 260 faculty members employed by UT Dell Medical School—approximately 81%—work full or part time in the community with a range of clinical partners, including CommUnityCare Health Centers, Ascension Seton, and Integral Care. Daigre Decl. ¶ 6; Morgan Decl. ¶ 3. The UT Dell Medical School faculty provide approximately 395,000 hours of care annually through these partners in addition to the care provided at UT Health Austin. Daigre Decl. ¶ 6. Faculty-provided specialty care includes internal medicine, cardiology, gastroenterology, neurology, and psychiatry, all areas of need identified in Central Health’s Equity-Focused Service Delivery Strategic Plan. *Id.*

The UT Dell Medical School also enrolls over 440 residents and fellows that play a critical role in providing local care, with approximately 450,000 hours of trainee-provided care occurring at CommUnityCare Health Center, Dell Seton Medical Center, Dell Children’s Medical Center, and Ascension Seton Shoal Creek during the 2022-2023 academic year. Daigre Decl. ¶ 7; Morgan Decl. ¶ 3. Almost half of the approximately 500 residency and fellowship graduates who have immediately entered practice since 2015 stayed in Central Texas. Daigre Decl. ¶ 4; Morgan Decl. ¶ 3.

Every year since 2016, the UT Dell Medical School has prepared a report or presentation outlining how it is supporting Central Health’s mission and provided or presented that report or presentation to the Central Health Board of Managers. Knodel Decl. ¶ 18; Daigre Decl. ¶ 4. The

UT Dell Medical School anticipates making a similar report in 2024. Daigre Decl. ¶ 7. The UT Dell Medical School also shares information with Central Health regarding its efforts to improve and enhance health care delivery for low-income residents of Travis County and the contributions made by the Permitted Investments through its participation in the Joint Affiliation Committee (“JAC”) as provided for in the Affiliation Agreement and through ongoing collaboration with Central Health staff. Knodel Decl. ¶ 19; Johnson Decl. ¶ 6.

**IV. Central Health’s 2024 Budget.**

Focusing on Central Health’s 2024 budget, it allots \$295,246,806 for health care delivery, \$28,647,030 for administration, and \$35,000,000 for the Permitted Investment Payment under the Affiliation Agreement. Knodel Decl. ¶ 14. The Central Health Board of Managers first approved the 2024 budget on September 6, 2023 and amended it on September 25, 2023 to add \$2,000,000 in funding for inmate health care in Travis County’s jails, as requested by the Travis County Commissioners Court, and an additional \$500,000 in funding to support clinical services at the Black Men’s Health Clinic. Knodel Decl. ¶ 14. The Travis County Commissioners Court approved Central Health’s 2024 budget, as amended, on September 27, 2023. *Id.*

**ARGUMENTS AND AUTHORITIES**

**I. Applicable Standard for Ruling on Plea to the Jurisdiction.**

A plea to the jurisdiction<sup>3</sup> can both challenge the pleadings and the existence of jurisdictional facts. *Texas Dept. of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004); *Bland Independent School Dist. v. Blue*, 34 S.W.3d 547, 554-55 (Tex. 2000). When considering a plea to the jurisdiction, a court “is not required to look solely to the pleadings but

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<sup>3</sup> Under Texas law, a plea to the jurisdiction does “not refer to particular procedural vehicle, but rather the substance of the issue raised,” and may be raised by a plea to the jurisdiction, motion to dismiss, or motion for summary judgment. *City of Magnolia 4A Econ. Dev. Corp. v. Smedley*, 533 S.W.3d 297, 299-300 (Tex. 2017) (quotation omitted).



may consider evidence and must do so when necessary to resolve the jurisdictional issues raised.” *Bland*, 34 S.W.3d at 555. In a plea to the jurisdiction, a party may present evidence to negate the existence of a jurisdictional fact alleged in the pleadings, which would otherwise be presumed to be true. *Texans Uniting for Reform and Freedom v. Saenz*, 319 S.W.3d 914, 919 (Tex. App.—Austin 2010, pet. denied) (citing *Miranda*, 133 S.W.3d at 227). To the extent that the challenge implicates the merits of a plaintiff’s cause of action, the party asserting the plea has the burden of negating a genuine issue of material fact as to the jurisdictional fact’s existence, in a manner similar to a traditional summary judgment motion. *Id.* (citing *Miranda*, 133 S.W.3d at 227-28). Whether a party meets this burden is a question of law. *Id.* (citing *Miranda*, 133 S.W.3d at 228).

## **II. Governmental Immunity Bars Plaintiffs’ Claims.**

### **A. Defendants Enjoy Governmental Immunity from Plaintiffs’ Claims.**

Governmental immunity protects political subdivisions of the state and their officers and employees acting within their official capacity from suit, including suits seeking to control state action, unless immunity from suit is waived. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 369-76 (Tex. 2009); *City of Round Rock v. Whiteaker*, 241 S.W.3d 609, 626 (Tex. App.—Austin 2007, pet. denied) (citing *City of Galveston v. State*, 217 S.W.3d 466, 467-68 (Tex. 2007)). Immunity can only be waived by the Legislature and “depends entirely upon statute.” *Galveston*, 217 S.W.3d at 469 (quotation omitted). Indeed, the Legislature has mandated that no statute should be found to waive immunity absent “clear and unambiguous language.” TEX. GOV’T CODE § 311.034 (“[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language.”). Where defendants have

governmental immunity and immunity has not been waived, the court lacks subject matter jurisdiction. *Miranda*, 133 S.W.3d at 225-26.

Texas Supreme Court authority unambiguously requires dismissal of Plaintiffs' claims against Central Health for lack of subject matter jurisdiction. Central Health is a hospital district and a political subdivision of the state. As expressly held by the Texas Supreme Court, "[h]ospital districts have [governmental] immunity." *Harris Cty. Hosp. Dist. v. Tomball Regional Hosp.*, 283 S.W.3d 838, 842 (Tex. 2009); *see also Martinez v. Val Verde Cty. Hosp. Dist.*, 140 S.W.3d 370, 371 (Tex. 2004) ("The Hospital District is a governmental unit immune from suit."). The Texas Supreme Court has further held that hospital districts' immunity has not been waived under the Texas Constitution, or chapters 61 or 281 of the Texas Health & Safety Code. *Harris Cty. Hosp. Dist.*, 283 S.W.3d at 842-846. The Texas Supreme Court has also made clear that hospital districts' immunity has not been waived by implication. *Id.* at 848 ("If the Legislature intends to waive hospital districts' immunity from suit, we have confidence it will do so clearly and unambiguously, not by implication."). Indeed, the Texas Supreme Court has explained that suits like Plaintiffs' are not proper, stating: "Even though a hospital district assumes responsibility for providing medical and hospital care as a condition of collecting a tax, none of the statutes . . . clearly waive a hospital district's governmental immunity so it can be sued over how and when the tax receipts are spent." *Id.* at 847.

Central Health's President and CEO is a governmental official acting in his official capacity and is therefore also entitled to governmental immunity based on Central Health's immunity from suit. *See Heinrich*, 284 S.W.3d at 380 (except for the limited *ultra vires* exception, "governmental immunity protects government officers sued in their official capacities to the extent that it protects their employers."); *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex.

2017) (absent a waiver of immunity, suit against a governmental official may proceed only in certain narrow instances if the official's actions are *ultra vires*). As discussed below, the narrow *ultra vires* exception to immunity is not applicable here. Thus, the Court has no subject matter jurisdiction over Plaintiffs' claims against Central Health and its President and CEO, and the claims must be dismissed.

**B. Central Health's President and CEO's Actions Are Not *Ultra Vires*.**

In an attempt to avoid governmental immunity, Plaintiffs allege that the challenged expenditures of Central Health funds are *ultra vires* acts, committed outside of its President and CEO's legal or statutory authority and constitute a gift of public funds in violation of Article III, section 52(a) of the Texas Constitution. *See* 2d Amend. Pet. at 8.<sup>4</sup> Plaintiffs, however, cannot meet their burden to establish that Central Health's President and CEO's actions are *ultra vires*.

“[I]n certain narrow circumstances, a suit against a state official can proceed even in the absence of a waiver of immunity if the official's actions are *ultra vires*.” *McRaven*, 508 S.W.3d at 238. “An *ultra vires* action requires a plaintiff to allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *Id.* (quotation omitted). “Otherwise, the suit, even if seeking only prospective declaratory or injunctive relief, implicates sovereign immunity because it seeks to control state action.” *Saenz*, 319 S.W.3d at

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<sup>4</sup> Plaintiffs do not plead the *ultra vires* exception as to Central Health. *See* 2d Amend. Pet. at 8-9. Nor could they, as the *ultra vires* exception does not encompass governmental entities themselves; it applies only to governmental officials in their official capacity. *See, e.g., Heinrich*, 284 S.W.3d at 372-73; *McRaven*, 508 S.W.3d at 238-39 (“[G]overnmental entities themselves [a]re not proper parties to an *ultra vires* suit . . . Instead, a plaintiff must sue the relevant officers in their official capacities.”); *Chambers-Liberty Counties Navigation Dist. v. State*, 575 S.W.3d 339, 348 (Tex. 2019) (“An *ultra vires* claim may name a government official in his official capacity, but the underlying governmental entity remains immune from suit.”). Thus, regardless of whether Plaintiffs' claim against Central Health's President and CEO falls within the *ultra vires* exception (and it does not), Plaintiffs' claims against Central Health must be dismissed. *Heinrich*, 284 S.W.3d at 377; *Saenz*, 319 S.W.3d at 921.

920. An official with “discretion to interpret and apply a law may nonetheless act ‘without legal authority,’ and thus *ultra vires*, if he exceeds the bounds of his granted authority or if his acts conflict with the law itself.” *McRaven*, 508 S.W.3d at 238 (quotation omitted). “Ministerial acts, on the other hand, are those where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Id.* (quotation omitted).

In addition, an *ultra vires* claim must seek prospective, rather than retrospective, relief. *Chambers-Liberty*, 575 S.W.3d at 348 (“Such *ultra vires* claims must be brought against government officials in their official capacity and may seek only prospective injunctive remedies.”) (quotation omitted); *Saenz*, 319 S.W.3d at 920 (“[E]ven if the suit complains of *ultra vires* actions, the remedy sought cannot have the effect of awarding retrospective monetary relief against the State or other relief that would independently implicate sovereign immunity.”). Because Plaintiffs’ *ultra vires* claim against Central Health’s President and CEO does not meet any of these requirements, it must be dismissed.

### **1. Central Health’s President and CEO Is Acting Within His Legal Authority.**

An *ultra vires* claim based on actions taken without legal authority has two fundamental components: (1) authority giving the official some (but not absolute) discretion to act and (2) conduct outside of that authority. *McRaven*, 508 S.W.3d at 239. In other words, Plaintiffs have the burden to establish that Central Health’s President and CEO’s actions were “without reference to or in conflict with the constraints of the law authorizing [him] to act.” *Chambers-Liberty*, 575 S.W.3d at 349 (quotation omitted). Here, Central Health and its President and CEO are not acting without legal authority or in conflict with the applicable statutes or Constitution in making the Permitted Investment Payment (or any of the other vaguely referenced

expenditures)—to the contrary, such expenditures fall within the district’s express and implicit authority. Plaintiffs cannot point to any constitutional or statutory provision that prohibits these expenditures, nor requires that they be spent elsewhere. “Where, as here, a governmental body has been delegated authority to make some sort of decision or determination, immunity jurisprudence has long emphasized a critical distinction between alleged acts of that body that are truly *ultra vires* of its decision-maker authority, and are therefore not shielded by immunity, and complaints that the body merely ‘got it wrong’ while acting within this authority, which are shielded.” *City of Austin v. Utility Assoc. Inc.*, 517 S.W.3d 300, 310 (Tex. App.—Austin 2017, pet. denied) (citation omitted). Ultimately, because Plaintiffs complain, not about actions that are outside of Central Health and its President and CEO’s legal authority, but rather about an exercise of discretion within the bounds of Central Health’s authority, Plaintiffs cannot maintain an *ultra vires* claim.

**a. Any Challenged Spending Is Within Central Health’s Constitutional and Statutory Authority.**

The Legislature has broadly granted hospital districts the power to manage and administer the provision of care to indigent and needy residents within the district. *See Harris Cty. Hosp. Dist.*, 283 S.W.3d at 843 (describing authority granted to hospital districts under chapter 281 as showing that “the Legislature intended to invest districts with powers and authority necessary to conduct their business, subject in large part to approval of the county commissioners court.”). Central Health’s decisions to create the CCC and enter into the Affiliation Agreement under which the Permitted Investment is made fall squarely within the authority granted to Central Health under and are fully authorized by the Texas Constitution and the Texas Health & Safety Code. *See* TEX. CONST. ART. IX, §§ 9, 9A; TEX. HEALTH & SAFETY CODE §§ 281.002, 281.0511, 281.0565, 285.091(a).

Moreover, within these constitutional and statutory confines, it is within Central Health's discretion to determine how to best provide medical and hospital care to Travis County's low-income residents. In so doing, Central Health may exercise all the powers expressly delegated to Central Health by the Texas Constitution and Legislature, as well as those that "exist by clear and unquestioned implication." *Jackson County Hosp. Dist. v. Jackson County Citizens for Continued Hosp. Care*, 669 S.W.2d 147, 154 (Tex. App.—Corpus Christi 1984, no writ) (citing *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940)). Implied powers are those that "are reasonably necessary to make effective the powers expressly granted." *Tri-City*, 142 S.W.2d at 947. "In the construction of Constitutions, as well as of statutes, the powers necessary to the exercise of power clearly granted will be implied," and "[a] public grant for a public advantage should be liberally construed in an endeavor to accomplish the purpose of the grant." *First Nat'l Bank of Port Arthur v. City of Port Arthur et al.*, 35 S.W.2d 258, 263 (Tex. Civ. App.—Beaumont, 1931, no writ).

Texas Attorney General opinions have acknowledged that "[i]n regard to medical care for the needy, it is the responsibility of the board of directors of a hospital district to determine what medical care is to be provided." See Tex. Att'y Gen. Op. No. DM37, 1991 WL 527450, \*3 (1991) (citing Attorney General opinions). Attorney General opinions have also recognized that hospital district activities that maintain or improve public health care, facilities, and other resources for both indigent and non-indigent residents are constitutionally permitted. See, e.g., Tex. Att'y Gen. Op. No. JC—0220 (2000), 2000 WL 574570 at \*5 ("lease of hospital district facilities for the operation of a clinic to provide medical care to county residents, including the needy, is entirely consistent with the requirements of article IX, section 9 of the Texas Constitution") (citing Attorney General opinions). As then-Attorney General Cornyn explained,

“Article IX, section 9 was adopted to maintain or improve public health care and facilities, especially for indigent persons[,] and shift the financial burden of providing the care and facilities from cities and counties to hospital districts.” JC—0220, 2000 WL 574570 at \*7.

Here, section 281.0511 of the Texas Health & Safety Code expressly provides that a hospital district’s board “may contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services.” TEX. HEALTH & SAFETY CODE § 281.0511(b). Section 281.0565 expressly allows Central Health to create and make financial contributions to a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district and to create a charitable organization to “contract, collaborate, or enter into a joint venture or other agreement with a public or private entity.” *Id.* § 281.0565(b), (d); *see also id.* § 285.091(a). It further expressly permits districts to make “capital or other financial contribution[s]” to such a charitable organization “to provide regional administration and delivery of health care services to or for the district.” *Id.* § 281.0565(d). This is exactly what Central Health has done through its creation of the CCC and its participation in the Affiliation Agreement.

Additionally, the annual Permitted Investment Payment must be used for investments that further the mission of Central Health. *See* Affiliation Agreement § 1. As confirmed by Atchley & Associates, the UT Dell Medical School has spent the Permitted Investment Payments on Permitted Investments. Myers Decl. ¶ 3-6; *see also* Knodel Decl. ¶ 16. This investment has and will continue to improve Central Health’s ability to deliver high-quality health care to low-income residents in Travis County. Indeed, Central Health’s partnership with the UT Dell Medical School has already led to the launch of multiple specialty clinics serving MAP patients,

an increased number of medical resident doctors providing services to low-income and uninsured patients, decreased wait times and improved health outcomes for low-income patients needing certain specialty care appointments, better pre-natal and postpartum care for low-income women and their babies, and improved cancer screening for people with low incomes. *See Morgan Decl.* ¶ 3; *Daigre Decl.* ¶¶ 5-7; *Johnson Decl.* ¶¶ 4-5; *supra* at 13-15.

While Plaintiffs vaguely allege that Central Health and its President and CEO have violated chapters 61 and 281 of the Texas Health & Safety Code by making illegal or unauthorized expenditures, they fail to identify any provision within those statutes that preclude the Permitted Investment Payment (or any other vaguely alleged expenditure). That is because there is no such provision. As noted above, chapter 281 authorizes, rather than precludes, the Permitted Investment Payment, including by allowing a hospital district to “contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services” and permitting the creation of a charitable organization which, among other things, provides “ancillary support services for the district” and “may make a capital or other financial contribution to [such] charitable organization . . . to provide regional administration and delivery of health care services to or for the district.” TEX. HEALTH & SAFETY CODE §§ 281.0511(b), 281.0565(b), (d).

Chapter 61, the Indigent Health Care and Treatment Act, also does not provide support for Plaintiffs’ *ultra vires* claims. Chapter 61 contains general provisions regarding the provision of health care services to indigent and needy residents, but neither mandates nor prohibits any specific expenditures for that purpose. *See generally* TEX. HEALTH & SAFETY CODE, chap. 61. Instead, it states only that “a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028.” *Id.* § 61.055(a). Section 61.028



in turn requires the provision of certain basic health care services including immunizations, annual physical examinations, hospital services, laboratory and X-ray services, among others. *Id.* § 61.028. Neither section contains a list of the exclusive services a hospital district is permitted to provide, nor does it prohibit spending on anything other than the listed services. *Id.* §§ 61.028, 61.055.

Indeed, multiple Texas Attorney Generals have issued opinions finding spending by hospital districts on activities not expressly listed in Chapter 61 to be within constitutional and statutory authority of the hospital districts, including:

- housing and managing a private imaging business in the district's hospital to obtain capacity the hospital district otherwise would not have and allow the district to treat patients in a manner that would not be available absent the proposed arrangement, Tex. Att'y Gen. Op. No. GA-0546, 2007 WL 1413245 (2007);
- establishing a self-insurance fund to provide professional liability coverage to a physician group and its health care provider employees, where the physician group was "crucial to accomplishing" the hospital district's purpose, Tex. Att'y Gen. Op. No. GA-0188, 2004 WL 1091520, \*4 (2004);
- constructing a building to lease to private physicians for the purpose of attracting and retaining physicians to practice in the hospital district, Tex. Att'y Gen. No. LO-97-068, 1997 WL 419081 (1997); and
- constructing a building to lease to private physician to operate dialysis center, where the dialysis center would provide cost-effective dialysis services adjacent to the hospital, Tex. Att'y Gen. Op. No. DM-66, 1991 WL 527477 (1991).

**b. The Challenged Spending Does Not Violate Article III, Section 52(a) of the Texas Constitution.**

Article III, section 52(a) of the Texas Constitution provides that the Legislature may not authorize any county, city, town, or other political subdivision of the state to lend its credit or grant public funds. TEX. CONST. art. III, § 52(a). This provision is often referred to as the “gift clause,” and its purpose is to prevent the gratuitous transfer of public funds for private use. *Tex. Mun. League Intergovt’l Risk Pool v. Texas Workers’ Comp. Comm’n*, 74 S.W.3d 377, 383 (Tex. 2002). The Texas Supreme Court has explained that “A political subdivision’s paying public money is not ‘gratuitous’ if the political subdivision receives return consideration.” *Id.* The Texas Supreme Court has further explained that section 52(a) “does not prohibit payments to individuals, corporations, or associations so long as . . . such payments (1) serves a legitimate public purpose; and (2) affords a clear public benefit in return.” *Id.* at 383-84. The Texas Supreme Court established a three-part test to determine whether a payment accomplishes a public purpose consistent with section 52(a), stating: “Specifically, the Legislature must: (1) ensure that the . . . predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure the that the political subdivision receives a return benefit.” *Id.* at 384.

Here, again, Plaintiffs’ allegations focus on the Permitted Investment Payment. Plaintiffs cursorily allege that “Defendants have violated Article III, § 52 by failing to maintain sufficient financial controls in its Affiliation Agreement to ensure that its funds have been spent by the Medical School in compliance with state law[] and that the funds are not treated as a gift of public dollars.” 2d Amend. Pet. at 8. Plaintiffs do not, and could not, allege that the annual Permitted Investment Payment is gratuitous or that its predominant purpose is not to accomplish

a public purpose that affords a clear public benefit in return. An analysis of the factors outlined by the Texas Supreme Court confirms that the Permitted Investment Payment does not violate Article III 3, section 52(a).

Initially, the Permitted Investment Payment is made to UT, a state agency—not an “individual, association, or corporation.” TEX. CONST. art. III, § 52(a). As the Texas Supreme Court explained, “while section 52(a) prohibits granting public money to private individuals or commercial enterprises, it does not prohibit transfers to a state agency like TWCC.” *See Texas Mun. League*, 74 S.W.3d at 384.

But even if the Permitted Investment Payment were covered by Article III, section 52(a), the Permitted Investment Payment is not gratuitous. When considering this issue, courts look at the contract as a whole, *see Borgelt v. Austin Firefighters Assoc.*, 684 S.W.3d 819, 830-32 (Tex. App.—Austin 2022, pet. granted), and a transfer of public funds is not gratuitous if consideration is received in exchange for the payment. *Texas Mun. League*, 74 S.W.3d at 383. Indeed, Texas law “requires only sufficient—not equal—return consideration to render a public subdivision’s paying public funds constitutional.” *Id.* at 384. Here, the Permitted Investment Payment is made to UT under the Affiliation Agreement, and in exchange for the payment, UT is required to, among other things, develop, own, and operate the UT Dell Medical School and assist in serving low-income communities in the multiple ways as outlined above. *See* Knodel Decl. ¶ 11; Affiliation Agreement § 4; *supra* at 9-10. This is sufficient consideration for the Permitted Investment Payment.

The Permitted Investment Payment also serves a legitimate public purpose. First, the predominant purpose of the Permitted Investment Payment is to accomplish a public purpose, not benefit private parties. The Affiliation Agreement expressly requires that the Permitted

Investment Payment “shall be used by UT to fund Permitted Investments.” Affiliation Agreement § 3.1; *see also* Knodel Decl. ¶ 11. As explained above, Permitted Investments are defined as:

the continuing investment in programs, projects, operations, and providers that furthers the missions of the CCC and Central Health, benefits UT, and complies with all Laws that apply to each Party, and shall include, but not be limited to, the enhancement of medical services for residents of Travis County; directly or indirectly increasing the health care resources available to provide services to Travis County residents; the discovery and development of new procedures, treatments, drugs, and medical devices that will augment the medical options available to Travis County residents; and the development and operation of collaborative and integrated health care for Travis County residents. With respect to this Agreement, Permitted Investments include the provision of direct operating support to UT that will be used by UT in its discretion to facilitate and enhance the (i) development, accreditation, and on-going operation of the UT Austin Dell Medical School and its administrative infrastructure, (ii) recruitment, retention, and work of the UT Austin Dell Medical School Faculty, Residents, Medical Students, researchers, administrators, staff, and other clinicians, and (iii) other related activities and functions as described in the Recitals to this Agreement.

Affiliation Agreement at 9. The recitals referred to in this definition include investments necessary to create infrastructure and support the recruitment of faculty, residents, and medical students who will provide medical services in Travis County, as well as to develop methods to increase the efficiency of health care delivery and to reduce cost; to develop and implement strategies to improve and maintain the health of the population; to recruit faculty who will further develop and implement programs to educate primary care physicians, including expanded educational experiences in ambulatory sites, including clinics; and to recruit faculty who can provide the highest quality clinical care for the residents of Travis County. *Id.* at 1-6. All of these Permitted Investments indisputably accomplish a public purpose.

Second, there are sufficient financial controls in place to ensure that the Permitted Investment Payment is used for the outlined public purposes. The Affiliation Agreement itself expressly provides how the Permitted Investment Payment can be used, stating it “shall be used

by UT to fund Permitted Investments,” as that term is defined by the Affiliation Agreement. Affiliation Agreement § 3.1; *see Borgelt*, 684 S.W.3d at 835-36 (an agreement that sets forth the parameters for which funds may be used contributes to adequate control). The Affiliation Agreement also requires UT to participate in the JAC and to “periodically inform the JAC and its members [which include two Central Health appointees] as to the nature of the Permitted Investments being supported by the Permitted Investment Payments and the progress of such Permitted Investments.” *Id.* § 4.7; Knodel Decl. ¶ 19; Johnson Decl. ¶ 6. And every year since 2016, the UT Dell Medical School has presented a report or presentation to the Central Health Board of Managers outlining how the Dell Medical School is supporting Central Health’s mission through the Affiliation Agreement and anticipates providing a similar report or presentation in 2024. Knodel Decl. ¶ 18; Daigre Decl. ¶ 4; *see Borgelt*, 684 S.W.3d at 835-38 (meeting and working together on mutually beneficial projects contributes to adequate control).

Central Health also hired Atchley & Associates to perform the Agreed Upon Procedures for the fiscal years 2014-2023 to determine UT’s compliance with the Affiliation Agreement, including whether the UT Dell Medical School’s costs and expenditures comply with the Affiliation Agreement’s definition of “Permitted Investment.” Knodel Decl. ¶ 15; Myers Decl. ¶ 3 and Ex. 1-4. Atchley & Associates has prepared and delivered to Central Health an Independent Accountants’ Report in connection with the Agreed Upon Procedures for fiscal years 2014-2022, and with one minor exception in 2017, no discrepancies were noted. Knodel Decl. ¶ 16; Myers Decl. ¶¶ 4, 6, Exs. 1-4. The fiscal year 2023 Agreed Upon Procedures are currently being scheduled, and Atchley & Associates will provide a related Independent Accountants’ Report to Central Health when they are completed. Knodel Decl. ¶ 17; Myers Decl. ¶ 5. These annual Agreed Upon Procedures, the spending and JAC requirements of the

Affiliation Agreements, and the UT Dell Medical School's regular reporting to the Central Health Board of Managers and collaboration with Central Health staff constitute sufficient financial controls to ensure that the Permitted Investment Payment is used for the outlined public purposes. *See Borgelt*, 684 S.W.3d at 835-38.

Third, Central Health receives a return benefit from the Permitted Investment Payment. Central Health receives the expertise, resources, and research of the UT Dell Medical School that Central Health needs to expand and support the human health care infrastructure in Travis County to increase access to and improve the quality of health care for the low-income residents of Travis County it serves. Knodel Decl. ¶ 7; Morgan Decl. ¶ 3; Daigre Decl. ¶ 5-7; Johnson Decl. ¶ 4. Central Health's partnership with the UT Dell Medical School is enabling Central Health to increase and improve the health care provided to low-income residents of Travis County in the multiple ways outlined above. *See id.; supra* at 13-15.

Finally, the Permitted Investment Payment affords a clear public benefit in return. The benefit received by Central Health and the low-income Travis County residents it serves discussed above, inures to the public as a whole, as there is a clear public benefit to ensuring that the safety-net population has increased access to high quality health care and improved health outcomes. The Permitted Investment Payment also has the ancillary public benefit of improving health care more generally in Travis County through its support of the UT Dell Medical School.

Because the Permitted Investment Payment and any other challenged spending is both within Central Health's constitutional and statutory authority and compliant with Article III, section 52(a), Central Health's President and CEO's challenged actions are not *ultra vires*.

**2. Central Health’s President and CEO Is Not Failing to Perform a Purely Ministerial Act.**

Central Health’s decisions relating to expenditures plainly involve discretion, as even Plaintiffs concede. 2d Amend. Pet. at 8. Accordingly, these decisions necessarily do not involve the performance of (or failure to perform) “purely ministerial acts” leaving “nothing to the exercise of discretion or judgment.” *McRaven*, 508 S.W.3d at 238, 243 (“Perhaps it goes without saying, but if an official’s duty is discretionary, it is not also nondiscretionary.”). Indeed, decision-making relating to how district funds are appropriated lies within the sound judgment and discretion of Central Health, as made clear by chapters 61 and 281 of the Texas Health & Safety Code. Accordingly, Plaintiffs may not maintain an *ultra vires* claim against Central Health’s President and CEO based on any failure to perform a ministerial act.

**3. Plaintiffs’ Claims Impermissibly Seek Retrospective Relief.**

Plaintiffs’ *ultra vires* claims fail for the additional reason that they seek retrospective, rather than prospective, relief, which is not permissible under an *ultra vires* claim. *See Chambers-Liberty*, 575 S.W.3d at 345 (“Only *prospective* injunctive relief is available on an *ultra vires* claim.”) (emphases in the original). Plaintiffs challenge the 2014-2022 Permitted Investment Payments and further allege that Defendants have made a variety of improper expenditures, other than through the Permitted Investment Payment, that include workforce development, economic development, non-medical services to the non-poor homeless, and general community support, among others. 2d Amend. Pet. at 7-8. Plaintiffs contend that “Defendants have violated the provisions of Art. IX, §4, Chapters 281 and 61 of the Texas Health & 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.”

*Id.* at 8. Plaintiffs seek declaratory relief that Defendants “have been expending funds on illegal items and purposes.” *Id.* at 9.

Plaintiffs’ allegations make clear that their claims focus on, and they are seeking to have declared void, previously made expenditures, which is impermissible under an *ultra vires* claim. Accordingly, for this additional reason, the Court lacks subject matter jurisdiction over this matter.

### **III. Plaintiffs Lack Standing.**

Independent from, but very similar to, the question of governmental immunity is the question of Plaintiffs’ standing to bring this suit. Standing is a prerequisite to subject matter jurisdiction. *Texas Ass’n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). Generally, “a citizen lacks standing to bring a lawsuit challenging the lawfulness of governmental acts.” *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 7 (Tex. 2011). This is because “[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official’s public acts under judicial review.” *Osborne v. Keith*, 142 Tex. 262, 265 (1944). “Unless standing is conferred by statute, taxpayers must show as a rule that they have suffered a particularized injury distinct from that suffered by the general public in order to have standing to challenge a government action or assert a public right.” *Bland*, 34 S.W.3d at 555-56.

There is only a narrow exception to this rule—a taxpayer has standing to sue to enjoin the illegal expenditure of public funds. *Osborne*, 142 Tex. at 264-65. A taxpayer may maintain an action solely to challenge proposed illegal expenditures; a taxpayer may not sue to recover funds previously expended or challenge expenditures that are merely “unwise or indiscreet.” *Id.* at 265. Moreover, a taxpayer may only assert claims to “restrain prospective governmental



expenditures—money that has not yet been spent.” *Saenz*, 319 S.W.3d at 920. Once the money has been spent, a taxpayer no longer has standing to bring such claims. *Id.* To fit within this exception, a taxpayer must identify the purported illegal expenditure to be enjoined, prove that the governmental entity is actually spending money on a challenged activity, and establish that the challenged expenditure is illegal. *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2001). Because Plaintiffs have failed to do so, they do not have taxpayer standing.

**A. Plaintiffs Do Not Seek to Enjoin Specific Purportedly Illegal Future Expenditures.**

While Plaintiffs’ petition does reference a \$35 million annual payment to the UT Dell Medical School, it does not seek to enjoin any specific purported illegal future expenditures, and it otherwise vaguely references several expenditures Plaintiffs deem illegal. *See* 2d Amend. Pet. at 5-9). Plaintiffs’ complaints about previous expenditures, including past payments to the UT Dell Medical School, however, do not provide them standing to bring this action. *See, e.g., Bland*, 34 S.W.3d at 557-58 (concluding taxpayers lacked standing to sue over prior expenditures because “[t]he potential for disruption of government operations is too great to allow a taxpayer with no special injury distinct from the general public’s to sue to prohibit the government from paying for goods and services it has already received and placed in permanent use.”); *Saenz*, 319 S.W.3d at 929-30 (taxpayer standing “is limited solely to challenging future or ongoing illegal expenditures.”).

Rather than seeking to enjoin specific expenditures, Plaintiffs seek to broadly enjoin Central Health from expending funds on “(1) on items not related to the furnishing of unreimbursed medical aid and/or hospital care to indigent and financially needy persons residing in Travis County; (2) on constitutionally and statutorily authorized purposes such as those enumerated in Chapter 61 of the Texas Health & Safety Code; and (3) with sufficient financial

controls to ensure that public funds are spent in compliance with Article III, § 52 and state law.” 2d Amend. Pet. at 9.<sup>5</sup> Because Plaintiffs do not specifically identify the purportedly illegal future expenditures they seek to enjoin, their suit does not fall within the narrow exception for taxpayer standing. *See Williams*, 52 S.W.3d at 179; *see also* TEX. R. CIV. P. 683 (an injunction must be specific in its terms and describe in reasonable detail, and not by reference to any other document, the act or acts to be restrained).

**B. Even If Plaintiffs’ Petition Could Be Read to Challenge Future Payments to the UT Dell Medical School, Plaintiffs Have Not Proven that They Are Illegal.**

Even if Plaintiffs reference to \$35 million annual payments to the UT Dell Medical School is sufficient to save Plaintiffs’ claims from dismissal, Plaintiffs still lack standing because Plaintiffs have not established (and cannot establish) that the Permitted Investment Payment is illegal. To the contrary, it is fully authorized by and compliant with Texas law, as explained in section II.B.1. above, which is fully incorporated here for all purposes.

**CONCLUSION AND PRAYER**

For the foregoing reasons, Defendants Central Health and its President and CEO respectfully request that the Court grant Defendant’s motion to dismiss and amended plea to the jurisdiction and dismiss Plaintiffs’ claims for lack of subject matter jurisdiction. Defendants further request all other relief to which they are entitled.

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<sup>5</sup> Plaintiffs’ request for an injunction is also so broad and vague as to be meaningless. Plaintiffs do not specify who is to determine what items are “not related to the furnishing of medical aid and hospital care to indigent and financially needy persons” nor do they explain what “purpose or items” are not statutorily authorized. As explained above, Chapter 61, by its very terms, does not provide an exhaustive list of expenditures that are expressly authorized, making Plaintiffs’ request nonsensical. Plaintiffs’ vague request for relief only confirms that Central Health—the entity tasked by the Legislature with determining how tax dollars should be spent to effectuate its purpose and mission—should have the discretion to make decisions without second-guessing from taxpayers (however well-meaning) or the courts.

Respectfully submitted,

REEVES & BRIGHTWELL LLP

*/s/ Sinéad O'Carroll*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 2024 a true and correct copy of the foregoing document was served via electronic filing manager, in accordance with the Texas Rules of Civil Procedure to the following:

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Susan Farris		sfarris@reevesbrightwell.com	4/18/2024 5:06:19 PM	SENT
Jacob Sanchez		jsanchez@reevesbrightwell.com	4/18/2024 5:06:19 PM	SENT