

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
DR. PATRICK LEE, *in his official capacity only,*
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

PLAINTIFFS' THIRD AMENDED PETITION

COME NOW Plaintiffs, Rebecca Birch, Richard Franklin, III, and Esther Govea, complaining of the conduct of defendants and file this Third Amended 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, §4, and Texas statutes, Texas Health & Safety Code, ch. 61 and 281, by expending property taxpayer funds on items other than healthcare services for poor residents of Travis County. The issue in this case is *not* whether it would be good public policy to have a medical school in Austin; that is an issue for the Texas Legislature. The issue in this litigation is whether a hospital district, which is a constitutionally authorized local governmental entity with very limited powers, may spend property tax dollars on items that are allowed under state law. 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. To clarify beyond any dispute what we pled previously, the suit does not seek retroactive relief or damages; it seeks only: 1) a declaratory judgement that defendants have acted ultra vires and that they legally cannot spend public funds on illegal, ultra vires activities in the future; and 2) and an

injunction to prevent them from expending in the future Central Health public funds illegally in violation of the state's constitution and statutes, as specified below.

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, and 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 or are not provided to poor residents of Travis County. In fact, Travis County property taxpayers have paid tens of millions of dollars in property tax dollars that have gone to pay for these illegal expenditures of Central Health. Central Health continues to make, and intends to continue to make, these illegal, unauthorized 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, *Dr. Patrick Lee*, the current Central Health President and C.E.O., is sued in his official capacity only. Pursuant to TEX. R. CIV. P. 37, Dr. Patrick Lee in his official capacity only has been substituted for the prior President and C.E.O. of Central Health, Defendant Mike Geeslin, who recently stepped down. Former Defendant Geeslin, whom Defendant Lee substitutes, was served and 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 crucial role in Travis County in ensuring health care services for the poor, who are disproportionately people of color. Texas 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, Central Health plays a critical role in providing healthcare for the approximately 200,000 poor residents in Travis County without health coverage.

Central Health’s illegal diversion of tens of millions of property tax dollars from health care for poor residents is not only an illegal use of these taxes but results in greater deaths, worse health outcomes, and more suffering for the county’s poor.

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.

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 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 for only this purpose on residents within its district, which the plaintiffs are. Correspondingly, a hospital district

organized under Art. IX, §4, may legally expend taxpayer funds for only 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's authorized legal purpose is "medical and hospital care" for poor residents of the county. Tex. Const Art. IX, § 4. Following the constitution, Section 281.002 of the Texas Health and Safety Code states that 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. The plain meaning of medical and hospital care is professional treatment of the physical and mental health needs of a patient. Under Chapter 61 of the Texas Health & Safety Code, the "Indigent Health Care and Treatment Act," the Legislature specifies the "basic health care services" that Central Health may provide and the "eligible residents" it may serve without pay. 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

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.

(8) skilled nursing facility services, regardless of the patient's age.

See also Tex. Health & Safety Code §§61.0285 (“optional healthcare services”) & 61.055; Tex. Const. Art. IX, §9A. The plain meaning of medical and hospital care, as well as the statutory definition in Chapter 61, do not include education, research, the general administration of a medical school, or other non-medical services.

Moreover, Central Health may provide medical and hospital care for free only for poor residents of the county². Chapter 61 defines “eligible resident” 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 funds on any 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 public 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. It also has expended, and continues to spend, property taxes on other unauthorized activities, such as economic development, workforce

² Central Health may expend funds to provide medical care to patients able to pay or non-residents of Travis County, but these persons must pay the reasonable and necessary costs for their services. In this way, Central Health's property taxes are preserved for its primary purpose: providing health care for poor residents.

development, memberships and contributions to non-medical care non-profit organizations, and social services and the social determinants of health that do not constitute medical care. In addition, it has expended, and continues to spend, taxpayer funds illegally on providing services for non-residents and non-income eligible recipients, without seeking reimbursement for the costs.

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 funded, directly, and indirectly through commingled funds in one account by 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 non-health care services 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, community service, the Value Institute, the Design Institute, academic studies, Dean's office administration, and other items that are not "medical and hospital care," as this term is ordinarily understood or as statutorily defined. From 2014, defendants have expended tens of millions of dollars of Central Health property tax dollars on such illegal items at the Medical School.

The "Affiliation Agreement" 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 state law, such as the non-health care and, non-poor resident expenditures above. Nor can Central Health agree legally to not maintain, or to not require the Medical School to maintain, documentation and final controls to show that Central Health's funds are being spent in accordance with Texas law. Article III, §52 of the Texas Constitution and Texas Health and Safety Code, § 281.073

require Central Health to maintain sufficient financial controls to show that public funds are being spent on constitutionally and statutorily authorized purposes. Central Health has failed to do this under the Affiliation Agreement by not requiring basic payor-provider protections, such as specifying the specific healthcare services to be provided, the payment methodology, the right to audit and inspect health care records, and the right of reimbursement for duplicate or erroneous payments. 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. Central Health's property tax dollars can fund "consistent with Central Health's mission" health care services for poor residents that are provided by a medical school clinical entity. But these tax dollars cannot fund expenditures that do not constitute medical care for the poor and directly related administration, such as general medical school administration and operations, medical education, medical research, community and social services, and unreimbursed medical care for patients able to pay or non-county residents. All the Central Health expenditures above are ultra vires and illegal.

Since 2022, Central Health has provided \$57 million in public funds directly to the Medical School for these illegal expenditures. Prior to 2022, Central Health provided \$137.3 million to the Medical School indirectly through its nonprofit, the Community Care Collaborative ("CCC"). With Central Health's knowledge and approval, these statutorily restricted public funds went into an unsegregated CCC account, where they were commingled with other funds. From this unsegregated account, the CCC transferred \$35 million in annual payments to the Medical School. Because Central Health's restricted funds were improperly commingled with other funds, all of the \$35 million annual payments for Fiscal Years 2014- 2022 transferred by the CCC to the Medical School are presumed to be Central Health's statutorily restricted funds.

Defendants have also made illegal expenditures, other than to the Medical School, that are not healthcare, not restricted to the poor, or not limited to Travis County residents. These illegal

expenditures, include but are not limited to, workforce development, economic development (the Innovation District and others), 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.

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 a gift of public dollars, as specified above.

XII.

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, definitional requirements and restrictions in Chapters 281 and 61 of the Texas Health and Safety Code, and the strictures of Art III, §52 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 supersede state law by using 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 (including its administration) 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 Lee, 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: (1) on items 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 and Safety Code; and (3) with sufficient financial controls to ensure that public funds are spent in compliance with Article III, §52 and state law. Plaintiffs further seek declaratory relief that defendants have been expending funds on 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: (1) on any item not related to the furnishing of unreimbursed medical aid and hospital care to indigent and financially needy persons residing in Travis County; (2) on any purpose or item not statutorily authorized, such as any expenditure not expressly authorized in Chapter 61 of the Texas Health and Safety Code; and

without sufficient financial controls to ensure that public funds are spent in compliance with Article III, §52 and state law.

XIV.

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

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. Should the court find that there is a pleading defect or deficiency of any kind, we respectfully request a reasonable opportunity to replead.

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 22nd day of April 2024, to:

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Manuel Quinto-Pozos on behalf of Manuel Quinto-Pozos

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