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

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

DEFENDANTS' SUMMARY JUDGMENT RESPONSE

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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 response to the motion for final summary judgment brought by Plaintiffs Rebecca Birch, Richard Franklin, III, and Ester Govea (jointly, "Plaintiffs") and respectfully show the Court as follows:

INTRODUCTION

Central Health was created in 2004 to provide access to and coordinate high-quality health care for low-income residents of Travis County. Central Health and its partners provide a broad array of health care services including 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 to low-income residents at approximately 190 locations in Travis County. Central Health is always working to increase the volume and type of health care services it funds and to improve health outcomes for the patients it serves, assessing the needs of its patients, and identifying and implementing strategies and partnerships to meet those needs. A fundamental and necessary prerequisite to Central Health's ability to deliver health care services to low-income residents is development of the infrastructure, partnerships, community ties, and other components that make possible Central Health's successful delivery of those services to its low-income residents.

Through this lawsuit and their motion for summary judgment, Plaintiffs improperly challenge Central Health's judgment about how to best provide health care to Travis County's low-income residents and related spending going back to 2014—all of which complies with Central Health's constitutional and statutory authority—and seek to control Central Health by substituting their judgment for that of duly-appointed and duly-elected state actors, including the

Central Health Board of Managers and the Travis County Commissioners Court. Crucially, if Central Health's authority were constrained as Plaintiffs request, Central Health would not be able to provide the same level of health care services it currently provides to low-income Travis County residents, and those residents would be directly and significantly harmed.

Plaintiffs' motion for summary judgment must be denied for several independent reasons. As a starting point, much of Plaintiffs' motion for summary judgment focuses on past spending and unspecified possible future spending. Central Health, however, is wholly protected from such claims by governmental immunity, and while there are certain circumstances under which *ultra vires* claims can be brought against a governmental official acting within his official capacity, such claims can only seek prospective relief. The doctrine of taxpayer standing similarly allows taxpayers only to assert claims aimed at actual prospective governmental expenditures—once the money has been spent, taxpayers no longer have standing to bring such claims. Plaintiffs' request for summary judgment against Central Health, as well as their request for summary judgment relating to past and unspecified possible future Central Health spending, must be denied for these reasons alone. The challenged past and unspecified possible future spending is also within Central Health's constitutional and statutory authority, further requiring that Plaintiffs' request for summary judgment relating to this spending be denied.

The only evidence of actual prospective Central Health spending Plaintiffs provide in support of their motion for summary judgment relates to the ongoing annual payment to the University of Texas at Austin ("UT") under the parties' Affiliation Agreement—spending which began in 2014 and is authorized by the Travis County voters and approved by the Central Health Board of Managers and Travis County Commissioners Court. The Affiliation Agreement is not a typical fee-for-services contract, but rather an agreement designed to build the heath care

infrastructure in Travis County, expand the health care services Central Health is able to fund, and improve outcomes for the patients it serves. Contrary to Plaintiffs' arguments otherwise, the annual payment under the Affiliation Agreement 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. Thus, it is fully authorized by and compliant with the Texas Constitution and Texas Health & Safety Code and a proper exercise of Central Health's discretion about how to best provide high quality health care to low-income residents of Travis County. Plaintiffs' requests for summary judgment related to the annual payment under the Affiliation Agreement must be denied for this reason as well.

Finally, even if Plaintiffs were entitled to summary judgment relief (and they are not), Plaintiffs' requested injunction both lacks the requisite specificity and is impermissibly broad. Plaintiffs seek to broadly enjoin Defendants from (1) "taking any action or expend[ing] any public funds on activities that do not constitute medical care services to eligible recipients as defined by the Texas Constitution, Article IX, Section 4 and Chapter 61 of the Texas Health & Safety Code;" and (2) "expending any public funds without complying with the financial controls and accountability required under Article III, Section 52 of the Texas Constitution and Texas Health & Safety Code Chapter 281." Mot. at 64. This requested injunction does not comply with Texas law's mandate that 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. It also impermissibly seeks to impose restrictions on Central Health beyond those imposed by Texas law by limiting Central Health to expending funds on the "basic health care services" or "optional health care services" listed in sections 61.028 and 61.0285 of the Texas Health & Safety Code.

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[1] of the Texas Constitution and Chapter 281 of the Texas Health & Safety 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.

[1] Plaintiffs incorrectly 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. However, 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 adopted 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 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.

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 general powers to "manage, control, and administer the hospital or hospital system of the district"); *id.* § 281.048 (granting board power to "adopt rules governing the operation of the hospital or hospital system"); *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 281 additionally provides that a hospital district's board, with the approval of the commissioners court, may "enter into a lease, including a lease with an option to purchase, an installment purchase agreement, an installment sale agreement, or any other type of agreement that relates to real property considered appropriate by the board to provide for the development, improvement, acquisition, or management of developed or undeveloped real property designed to generate revenue for the financial benefit of the district." *Id.* at § 281.050(b). The board may do so, "directly or through a nonprofit corporation, may contract or enter into a joint venture with a public or private entity as necessary to enter into an agreement under this subsection." *Id.*

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) impatient 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(a). Section 61.028(b) expressly provides that "additional health care services" beyond those listed in section 61.028(a) may be provided. *Id.* § 61.028(b).

Section 61.0285 addresses "optional health care services" counties may provide and states that, "[i]n addition to basic health care services provided under Section 61.028, a county may . . . provide other medically necessary services or supplies that a county determines to be cost-effective, including: (1) ambulatory surgical center services; (2) diabetic and colostomy medical supplies and equipment; (3) durable medical equipment; (4) home and community health care services; (5) social work services; (6) psychological counseling services; (7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists; (8) dental care; (9) vision care, including eyeglasses; (10) services provided by federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B); (11) emergency medical services; (12) physical and occupational therapy services; and (13) any other appropriate health care service identified by department rule that may be determined to be cost-effective." *Id.* § 61.0285(a). Unlike section 61.028, section 61.0285 has not expressly been made applicable to hospital districts. *See id.* § 61.055. Section 61.0285(c) also expressly provides that a county may provide additional health care services beyond those specified in section 61.0285(a). *Id.* § 61.0285(c).

Neither section 61.028 nor section 61.0285 (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, 61.0285; *see also id.* § 61.055 (expressly contemplating that in addition to endeavoring to provide the services listed in section 61.028, hospital districts shall endeavor to provide "any other services required under the Texas Constitution and the statute creating the district."). To the contrary, their express terms contemplate that hospital districts and counties may provide additional health care services. *Id.*

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.*

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 the 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.*

Under the Affiliation Agreement, UT receives a $35 million annual payment, which can be used only for "Permitted Investments" (the "Permitted Investment Payment"). *Id.* § 3.1, 4.7. 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 Investment Payments under the Affiliation Agreement were wholly made by the CCC—not Central Health.[2] Knodel Decl. ¶ 12. In 2023, the CCC did not have funds to make the full Permitted Investment Payment, so the CCC paid

[2] 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 during the 2014 to 2022 time period. The cases Plaintiffs cite in support of their commingling argument, *see* Mot. at 61-62, arise in very different contexts and do not change this conclusion. *See, e.g.*, *Wilz v. Flournoy*, 228 S.W.3d 674, 676-77 (Tex. 2007) (per curiam) (affirming imposition of a constructive trust on a farm where funds to purchase the farm might have belonged to incapacitated son and defendants invoked the Fifth Amendment when asked about the source of funds used to purchase the farm); *Meyers v. Baylor Univ. in Waco*, 6 S.W.2d 393, 395 (Tex. Civ. App.—Dallas 1928, writ refused) (affirming imposition of constructive trust on property purchased from an account holding embezzled funds); *State v. Mink*, 990 S.W.2d 779, 783-84 (Tex. App.—Austin 1999, pet. denied) (holding corporate officer individually liable for depositing tax money into the corporation's bank account such that corporation failed and refused to pay the full amount due to the state); *Davis v. Texas*, 904 S.W.2d 946, 948, 953-54 (Tex. App.—Austin 1995, no writ) (holding corporation's president and director liable where he collected sales tax, commingled tax receipts in corporation's operating account, and failed to remit tax to the state).

$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. More specifically, Central Health's 2024 budget 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. *Id*. ¶ 14. This budget was approved by both the Central Health Board of Managers and the Travis County Commissioners Court in September 2023. *Id.*

The Affiliation Agreement defines Permitted Investments 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.

Affiliation Agreement § 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.

Plaintiffs' allegation that UT "owes Central Health nothing" under the Affiliation Agreement, *see* Mot. at 38, wholly ignores the fact that the Affiliation Agreement requires UT to, among other things:

- 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.[3]

Plaintiffs' summary judgment motion also wholly ignores that Central Health's relationship with the UT Dell Medical School pursuant to the Affiliation Agreement significantly benefits Central Health's patient population. *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;

[3] Plaintiffs' allegation that the UT Dell Medical School classified the Permitted Investment Payment as a "gift" mischaracterizes the deposition testimony of Dwain Morris, the former Chief Financial and Administrative Officer at the UT Dell Medical School, and appears to be based on the classification of that revenue as "State and Local Sponsored Programs – Nonoperating," which is defined in part as "[f]unding received from state or local governments for which no exchange of goods or services is perceived to have occurred." Deposition of Dwain Morris ("Morris Depo.") at 168, Ex. 1 at 8 (the Morris deposition transcript is exhibit 3 to Plaintiffs' summary judgment motion and true and correct copies of the pages cited herein are contained in Exhibit 1 to the Declaration of Sinead O'Carroll, which is Exhibit C to this summary judgment response). While the Affiliation Agreement is not a typical fee-for-services contract, it does impose these multiple duties and obligations on UT. *See* Affiliation Agreement § 4.

- 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.

In improperly focusing on their narrow definition of what constitutes the provision of health care services, Plaintiffs further ignore testimony from UT Dell Medical School personnel addressing how the UT Dell Medical School's education, research, and general administration activities work together to contribute to expanding and improving health care for the safety-net population in Travis County. For example, Dr. Amy Young, a professor in the Department of Women's Health and former Vice Dean of Professional Practice at the UT Dell Medical School, testified in part:

- discussing the director of genetic counseling for Women's Health, "She is the first genetic counselor in -- or perinatal genetic counselor that our CommUnityCare clinics have had access to in Austin. It's one of the differences that the medical school has made here in Austin. Her duties involve direct genetics counseling services. Genetic counseling services are not reimbursed directly unless there is on-site oversight by a physician, and so this is a service that we could have not otherwise provided to our safety net population without the hiring of [her]. Additionally, she had responsibility for the development of genetic counseling protocols with the development of noninvasive

prenatal testing and the evolution of that from patients that were high risk to low risk patients. We were able to collaboratively modernize care by developing new treatment protocols to put us in -- in a place that would be normal for other communities of our standing in Texas and across the United States. We were substantially behind. She also played a role in educating residents and medical students regarding prenatal genetics and prenatal genetic counseling, who benefited in their ability to translate that education to patient care for the safety net population," Deposition of Dr. Amy Young ("Young Depo.")[4] at 41-42**;**

- "When I think about medicine, it's a team sport, right. So research enhances clinical care. Education enhances clinical care. Clinical care enhances research and education," *id.* at 63;

- "There's no way to provide clinical care unless somebody opens the door, someone schedules appointments, someone receives the patients, someone helps develop the new program," *id.* at 68;

- "So we have project management that supports the clinical practice. So, for example, when you start a new program such as the whole clinic, or -- we've had project management since the inception -- or Women's Health or MSK, the amount of effort that is involved in planning, especially these complex and new models of care delivery, that I think are particularly beneficial for Central Health patients, the amount of steps it takes to get a patient in, make sure that you provide the right services to ensure that the services are coordinated, and to make sure the quality is there, requires project management, and then there are some ongoing work related to operation -- operations in the clinical environment that requires project management," *id.* at 70;

- "we've gone from 15 residencies, which were mostly primary care residencies, to 45 training programs since the medical school started, and so we've grown the subspecialty residencies and the fellowships. So, for example in diagnostic medicine, I have a brand new radiology resident. And the thing that's . . . so great about that is that, based on 2021 AAMC data, if you have a medical student that trains in Texas and you have a resident that trains in Texas, so if they did both, we -- there's an 80 percent chance that that resident, or that medical student/resident will end up staying in Texas. So . . . we're growing a workforce for Central Texas, but it's also subspecialized," *id*. at 113-114;

- Prior to the opening of the UT Dell Medical School, "advanced level gynecologic services were not available to [Central Health's] patients in this community. . . . And MSK was undersubscribed, or not undersubscribed, but there was not adequate resources for MSK, and there was a huge long waiting list for Central Health patients prior to the creation of that agreement and the very unique clinical care delivery models that are very equitable for Central Health patients," *id.* at 123;

[4] The Young deposition transcript is exhibit 1 to Plaintiffs' summary judgment motion and true and correct copies of the pages cited herein are contained in Exhibit 2 to the Declaration of Sinead O'Carroll, which is Exhibit C to this summary judgment response.

- "Without the Department of Medical Education it would be practically impossible to have a medical school and medical students provide clinical care services in various venues across Central Texas to safety net patients," *id.* at 127;

- "There are some research programs, for example, that [the Department of] Development also does help support. So, for example, we recently got a donation of $250,000 to help support the clinical PASC or the post-acute sequelae of Covid or the long Covid clinic. That's a clinic that is -- renders clinical care but it's also where research is being done to try to better understand why certain patients get long Covid and why they are so affected," *id.* at 132;

- Health Ecosystems "worked with some of the managed care organizations to improve health of patients, specifically with the Medicaid managed care organizations to improve the health of patients that have diabetes. So specifically partnering with them, but have built programs to deliver healthy food to patients with diabetes to ensure that -- or to facilitate them getting better control of their diabetes. And they measure that through outcomes of their hemoglobins, A1C," *id.* at 135;

- Health Ecosystems is "a convener. So for example, there was a big pink bus that provided mammography screening to underinsured populations here in Austin that was sort of -- you know, that was truncated or terminated. They got -- they were a convener and brought different stakeholder organizations together, and they have revived the big pink bus. So the big pink bus goes into underinsured populations and provides needed access to screening mammography for the prevention of late stage breast cancer," *id.* at 137;

- "I would say that the majority of the work that the Health Ecosystem does is oriented towards the safety net population," *id*. at 138;

- One of the initiatives that [the Office of Health Equity] brought to us is a language access policy so that we can make sure that, to the best of our ability, that patients are understanding -- or being understood and are understanding their care," *id.* at 141-42; and

- "I think that's a place where Dell Med has really done what we were asked to do. So, for example, the example I gave you earlier of Women's Health and MSK, there were services that weren't provided in any sort of concentrated way to the community, and we were able to do that both for the safety net population as well as insured population. The patients are seen side by side in the same clinical setting with the same level of services. Sometimes our safety net patients need more services, and that's what equitable care is, and so our ability to have integrated behavioral health service on site, PT on site, means that – it's already a barrier when you get in your car and you have to drive around Austin in this traffic that we were talking about earlier today, to get services, so one condition that we take care of at UT Health Austin, a patient might have used to have to go to seven sites, they can get all that care in the same site in one particular day, so -- [s]pecifically for the safety net population. Sometimes different levels of care were available to other

populations, sometimes they weren't, so, for example, the ophthalmology services that we're expanding right now really were not plentifully available to, specifically, I think MAP Basic patients. So this has been an opportunity for us to build a Department of Ophthalmology and be able to provide those services, have streamlined interaction between our colleagues at CommUnityCare and Dell Med and Ascension Texas," *id.* at 149-50.

See also id. at 37-38, 39-40, 66-67, 125-26, 130, 133.

Mr. Morris similarly testified in part:

- the material growth in residency spots from 2014 to present increases the UT Dell Medical School's ability to "provide safety net care to the residents of Travis County," explaining, "Those residents treat patients, and they fill critical roles in specialties and subspecialties that weren't adequately represented in the past," Morris Depo. at 178;

- the UT Dell Medical School is "bringing luminary . . . provider talent physicians to Travis County and to Austin because of the academic environment. And that is a significant attraction whenever you're talking about very highly skilled subspecialists and specialists . . . Dell Medical School has attracted many in the last several years that would never come to Austin without that – that UT Austin and that academic affiliation," *id.* at 178-79;

- the UT Dell Medical School, in partnership with Central Health and Seton, has "built significant presence in clinical areas that didn't exist previously, or they were significantly underrepresented . . . . Everything from . . . pediatric cardiovascular to gastroenterology," *id.* at 179.

Turning to the Design Institute, one of the departments Plaintiffs focus on as not providing clinical care or clinical administration, Mot. at 43-44, its former Executive Director Stacey Chang testified in part:

- at the Design Institute, "all of the work that we do improves the patient outcomes of the community we serve," Deposition of Stacey Chang ("Chang Depo.")[5] at 71;

- the Design Institute is focused on "redesigning, I would say, almost every aspect of the health care system . . . We think about and create solutions to how you deploy health care or health in the community setting when it's not in a clinical environment," *id.* at 20-21;

[5] The Chang deposition transcript is exhibit 8 to Plaintiffs summary judgment motion and true and correct copies of the pages cited herein are contained in Exhibit 3 to the Declaration of Sinead O'Carroll, which is Exhibit C to this summary judgment response.

- "in many cases we have done research and then executed on it. The clinical -- The clinics are an example of that," *id* at 71.

- the Design Institute is responsible for: "Creating elements of the [value-based model of care] to allow those better outcomes to happen," including "how the clinics are oriented in order for the kind of interactions to happen that are necessary to improve those patient outcomes. Another one is developing the service blueprints, so if -- you know, who does the patient see and in what order and what is the communication between the care providers in order to drive to the best outcome is the model that we have developed as some of the primary work in standing up the clinics . . . We help the clinical teams decide what the best model of care is," *id.* at 34-35;

- "[o]ne of the focuses of the Design Institute in the -- in the foreseeable future is actually trying to redesign the model of primary care, essentially care that's delivered before people get sick, and that's primarily going to be in the community. So we have three projects currently, one in the urban core near Chalmers Court, if you're familiar with that housing development, to develop a combined dental and medical clinic as part of the rebuild of that community. We're working on a project in -- a little bit further east in this neighborhood called thinkEAST, near Bolm Road and Govalle Park, where they've just built a – a bunch of affordable housing, and we're going to start developing medical and social interventions that improve people's health in that . . . neighborhood," and explained "the work that we're being funded to do is focused on, which is, you know, only something like 20 percent of the health outcomes of these individuals are dependent on their access to care, so many of them are around social determinants; so figuring out what resources they need in order to lead healthier lives, and then developing the capabilities to provide those services is the focus of that project," *id.* at 40-41;

- when asked to give an example of a technology the Design Institute has worked on that will improve quality and care: "We're working on a project right now with a pharmaceutical company using ascension vision - essentially vision technologies to look at the eyes of a -- of a patient to determine whether or not they have diabetes. It screens for diabetic retinopathy. It's a very low-cost device, which would allow us then to actually better effectively screen a larger swath of the population to identify those who are suffering from diabetes;" *id.* at 25-26.

At the end of his deposition, Plaintiffs' counsel asked Mr. Chang "Are you going to tell me that a hundred percent of your time is devoted towards improving health care for everyone who lives in Travis County?" Mr. Chang responded, "Yes. That's the reason I came here." Chang Depo. at 72-73. John Daigre, the Executive Director of Communications & External Affairs similarly testified, "I think all of my time and my -- my team's time is supporting the mission of the school, which is about directing better care and better health for the people of

Travis County, in particular those who are historically underserved." Deposition at John Daigre ("Daigre Depo.")[6] at 37-38.

Plaintiffs' contention that there are no financial controls on UT's spending of the Permitted Investment Payment is also wrong. The Affiliation Agreement itself limits how the Permitted Investment Payment can be spent though its definition of Permitted Investments. Indeed, contrary to Plaintiffs' representation that UT Dell Medical School personnel testified they use the Permitted Investment Payments as a "slush fund," Mot. at 39—a gross mischaracterization of the actual deposition testimony—Mr. Morris repeatedly testified during this deposition that the Affiliation Agreement governs how the UT Dell Medical School can spend the Permitted Investment Payments. *See, e.g.*, Morris Depo. at 46, 170, 173-174. The UT Dell Medical School also carefully accounted for the spending of the Permitted Investment Payment, as evidenced by the Excel spreadsheets produced by the UT Dell Medical School and relied upon by Plaintiffs in support of their motion for summary judgment. *See* Pls. MSJ Ex. 9.

The UT Dell Medical School reports annually to the Central Health Board of Managers outlining how the UT Dell Medical School is supporting Central Health's mission. Knodel Decl. ¶ 18; Daigre Decl. ¶ 4 and Exs. 1-8. 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

[6] The Daigre deposition transcript is exhibit 7 to Plaintiffs summary judgment motion and true and correct copies of the pages cited herein are contained in Exhibit 4 to the Declaration of Sinead O'Carroll, which is Exhibit C to this summary judgment response.

Agreement and through ongoing collaboration with Central Health staff. Knodel Decl. ¶ 19; Johnson Decl. ¶ 6.

The Affiliation Agreement also has termination provisions that allow Central Health to terminate the agreement immediately should certain events occur, including if UT closes the UT Dell Medical School or if the UT Dell Medical School fails to maintain its accreditation. *See* Affiliation Agreement §§ 7.2, 7.21-7.27. Central Health additionally can terminate the Affiliation Agreement following the exhaustion of the agreement's dispute resolution process if the UT Dell Medical School significantly and materially reduces the number of graduate medical education programs its sponsors in Austin, Texas or the scope of clinical services proved by faculty and residents at certain service sites. *See id.* §§ 7.28, 7.29; *see also id.* § 8 (outlining the Affiliation Agreement's dispute resolution procedures).

In addition to the controls in the Affiliation Agreement, Central Health 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; Declaration of Jeremy Myers, CPA ("Myers Decl.") ¶ 3 and Exs. 1-4, attached hereto as Exhibit G. 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 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.

IV. The Remaining Challenged Past and Possible Future Spending Was or Is Also Necessary to Central Health's Strategies and Initiatives for Providing High Quality Health Care to Low-Income Residents of Travis County.

While Plaintiffs challenge other spending by Central Health, the only evidence they provide of that spending is from several years ago or contains only a vague reference to possible future spending. More specifically, Plaintiffs provide the following evidence of past payments in support of their motion for summary judgment:

- $250,000 in seed capital provided to the non-profit Capital City Innovation in 2016 and 2017, *see* Mot. at 51-52 and Pls. MSJ Ex. 4 at 31;
- sponsorships of local non-profits from 2016-2018, *see* Mot. at 52-53 and Pls. MSJ Ex. 26; and
- work-force development training for medical technicians in 2018 and 2019, *see* Mot. at 53 and Pls. MSJ Ex. 29.

With respect to unspecified future spending, Plaintiffs cite testimony that Central Health was considering possible future workforce development funding, as well as possible collaborations with partners focused on social determinants of health. *See* Mot. at 53 and Pls. MSJ Ex. 6. Plaintiffs submit no summary judgment evidence of actual, planned future spending on workforce development or social determinants of health.

Plaintiffs also mischaracterize these areas of challenged spending, each of which directly serves Central Health's mission of providing health care services to low-income Travis County residents. Starting with the Innovation District, Plaintiffs ignore essential testimony from Stephanie McDonald, who was Central Health's Chief of Staff and is now its Vice President of Enterprise Alignment and Coordination, regarding Central Health's participation in Capital City Innovation ("CCI") and other evidence relating to the Innovation District. As Plaintiffs' own evidence establishes, the Innovation District was focused on transforming the Brackenridge Campus, which is owned by Central Health, including for ultimate lease to other entities, and

enabling innovation and collaboration "in ways that create better health, new jobs and economic benefits for all Central Texans, especially those from historically underserved populations." *See* Pls. MSJ Ex. 27 at CH009967-CH009968; Deposition of Stephanie McDonald ("McDonald Depo.")[7] at 26-27. As Ms. McDonald testified, because Central Health owns the Brackenridge Campus, "anything generated from this property will go back to serving our mission and the health care needs of low income, uninsured of Travis County, while also meeting potentially health care innovation goals." McDonald Depo. at 24. She further explained that Central Health's goal was to "try to do something that has health care innovation on that campus that also generates . . . revenue to serve the low income and uninsured of Travis County." *Id.* at 52; *see also id.* at 26-27 (Central Health's participation in the CCI "was a way to . . . take what had been a longstanding community vision for an innovation section in our economy and try to put it [in] to place while it helped Central Health generate revenue and redevelop its property.").

With respect to the challenged sponsorships, Central Health recognizes the imperative of addressing systematic discrimination within health care systems that has engendered distrust among marginalized communities, resulting in exacerbated health disparities. Declaration of Charles E. Burton ("Burton Decl.") ¶ 3, attached hereto as Exhibit H. Central Health is committed to bridging this gap through comprehensive community engagement and outreach initiatives tailored to the unique needs of underserved communities. *Id.* ¶ 4. Central Health has a multifaceted community engagement outreach approach that encompasses a variety of strategies, including sponsorships limited to $500 per event. *Id.* ¶¶ 5-8. Relatedly, Central Health adopted a policy for "Requests for Expenses related to Outreach and Education,"

[7] The McDonald deposition transcript is exhibit 4 to Plaintiffs summary judgment motion and true and correct copies of the pages cited herein are contained in Exhibit 5 to the Declaration of Sinead O'Carroll, which is Exhibit C to this summary judgment response.

effective October 27, 2017 ("Outreach Policy"), which ensures that Central Health's expenditures for such programs fulfills its constitutional and statutory purpose. *Id.* ¶¶ 7, 9, and Outreach Policy, attached thereto as Exhibit 1. Pursuant to this policy, Central Health in its discretion may contribute up to $500 on specific outreach and education efforts, including for events hosted by outside organizations. *Id.* ¶¶ 7, 9; Outreach Policy. A contribution for such purposes is not fixed or guaranteed and the factors considered in determining whether Central Health will participate in an event or contribute to an organization include how the event or entity:

- "[s]erves an outreach or educational purpose";
- "[b]enefits the population served by Central Health";
- "[e]ncourages diversity and inclusion or local sourcing in contracting for services with Central Health";
- "[f]ocuses on alleviating a known disparity or inequity that relates or facilitates Central Health's mission"; and
- "[a]ffords Central Health or its enterprise partners the ability to educate the community about our work or how we serve the community."

Id. ¶ 9; Outreach Policy. These outreach and education opportunities are essential to building trust and engagement in communities that are systematically discriminated against and have been harmed historically by the health care system and contribute to Central Health's efforts to provide health care to these traditionally underserved communities. *Id.* ¶¶ 4-5.

Turning to workforce development, contrary to Plaintiffs' characterization that Central Health "funded general job training for medical technician students not working for it," Mot. at 53, Plaintiffs' own evidence demonstrates that the primary purpose of past workforce development efforts was "to provide workforce development in healthcare delivery careers for Central-Health's safety-net population," Pls. MSJ Ex. 29 at CH011475, and generate an "[a]n

increase in skilled, local employees to fill in-demand positions at CommUnity Care and other Central Health Enterprise facilities." Pls. MSJ Ex. 29 at CH011467. Mike Geeslin, who was then the President and CEO of Central Health, testified that it was his "understanding that some of [the students who participated in this program] went to work in CommUnity Care." Deposition of Mike Geeslin ("Geeslin Depo.")[8] at 202-203. Central Health additionally undertook such efforts in recognition that it "can improve patient satisfaction and increase cultural competency in how [it] delivers care" by "increasing the number of racial and ethnic minorities and underprivileged people who choose careers in safety-net heath care delivery, and are locally educated." Pls. MSJ Ex. 29 at CH011492. Central Health continues to experience a significant shortage of needed health care workers to serve Travis County's safety-net population. Supplemental Declaration of Jonathan Morgan ("Supp. Morgan Decl.") ¶ 8, attached hereto as Exhibit I.

Finally, with respect to social determinants of health, Plaintiffs did not submit any summary judgment evidence of any actual ongoing or planned Central Health spending on social determinants of health and have not specified any such particular spending they are challenging. However, the Healthcare Equity Plan Plaintiffs reference in their summary judgment motion, *see* Mot. at 53, is based in part on "an in-depth safety-net community health needs assessment" Central Health undertook "to systematically identify and prioritize health needs in low-income populations and to understand the safety-net health care delivery system across Travis County." Supp. Morgan Decl. ¶ 4, and Healthcare Equity Plan, attached thereto as Exhibit 1, at 3 This assessment indicated, among other things, that the communities served by Central Health "are

[8] The Geeslin deposition transcript is exhibit 6 to Plaintiffs motion for summary judgment and true and correct copies of the pages cited herein are contained in Exhibit 6 to the Declaration of Sinead O'Carroll, which is Exhibit C to this summary judgment response.

facing many social economic disparities impacting physical and mental wellbeing," including "limited access to adequate preventative care" and "other necessary resources to achieve health and wellness," housing challenges that "can exacerbate certain chronic illnesses as they often limit a household's ability to allocate sufficient income to necessities such as food and health resources," language barriers, and less "stable access to computers and the internet" that need to "be considered as providers begin to deploy new technologies to expand access to health services for safety-net communities." Healthcare Equity Plan at 10-11.

In response to the safety-net community health needs assessment, Central Health identified four key strategic initiatives:

- Access and Capacity—"Central Health will more equitably meet the health care needs of Travis County residents with low incomes, by increasing the number of providers and care team and the availability of comprehensive, high-quality and timely care." *Id*. at 17.

- Care Coordination—"Care coordination will allow Central Health to manage transitions of care and improve medical information transfer between providers or points of care. This will improve patient health outcomes by optimizing a cross-continuum approach to health that is anchored in high impact, preventative, virtual, and community-based services deployed in coordination with clinical and social services partners and underwritten by actionable population health analytics and technology." *Id*. at 21.

- Member Engagement and Enrollment—"Central Health will focus on enrollment in identified high-need planning and assessment regions and enhance engagement for the enrolled population, with special emphasis on care transitions, people experiencing homelessness, justice-involved individuals, and communities where English and Spanish are not the primary language." *Id*. at 23.

- Systems of Care Infrastructure—"Central Health will develop a high functioning system of care to improve health for Travis County's safety-net population via alignment of relationships including joint service-delivery planning and facilitation of timely sharing of health care data." *Id*. at 25.

Central Health has since identified and created over 150 projects to address the critical unmet needs of patients, including health care for the homeless, same-day care and extended

hours, primary care, expanded access to specialty care, substance-abuse disorder and addiction medicine services, access to mental health services, expanded access to dental care, post-acute care, expanded access to surgical and procedural care, access to hospital care, care coordination, enrollment and eligibility, technology, pharmacy, coverage programs, and social determinants of health. Supp. Morgan Decl. ¶ 6. Any Central Health spending on social determinants of health, while essential to address the many social economic disparities negatively impacting low-income Travis County residents' access to health care and health outcomes, is a relatively small part of Central Health's larger Health Equity Plan, related initiatives, and overall health care delivery strategy and falls firmly within Central Health's constitutional and statutory authority.

ARGUMENTS AND AUTHORITIES

I. Applicable Summary Judgment Standard.

To prevail on a traditional motion for summary judgment, a movant must show that "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." TEX. R. CIV. P. 166a(c). In deciding whether a fact issue exists, courts accept all evidence favorable to the nonmovant as true, indulge the nonmovant with every favorable reasonable inference, and resolve doubt in the nonmovant's favor. *See Nixon v. Mr. Property Mgmt. Co., Inc.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

II. Plaintiffs Are Not Entitled to Summary Judgment Against Central Health as a Matter of Law.

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. *Texas Dept. of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 225-26 (Tex. 2004).

Texas Supreme Court authority unambiguously bars 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. Because governmental immunity bars Plaintiffs' claims against Central Health, Plaintiffs are not entitled to summary judgment against Central Health.

III. Plaintiffs Are Not Entitled to Summary Judgment Against Central Health's President and CEO as a Matter of Law.

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*). However, "in certain narrow circumstances, a suit against a state official can proceed . . . if the official's actions are *ultra vires*." *McRaven*, 508 S.W.3d at 238. As relevant here, an *ultra vires* action requires a plaintiff to prove "that the officer acted without legal authority." *Id.* (quotation omitted).

More specifically, 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. 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 Counties Navigation Dist. v. State*, 575 S.W.3d 339, 349 (Tex. 2019) (quotation omitted). "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). 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); *Texas Educ. Agency v. American YouthWorks, Inc.*, 496 S.W.3d 244, 256 (Tex. App.—Austin 2016), *aff'd sub nom., Honors Acad., Inc. v. Tex. Educ. Agency*, 555 S.W.3d 54 (Tex. 2018) ("Only some forms of prospective relief are allowed to remedy an ultra vires action; retrospective relief, whether monetary or otherwise, is barred.").

Independent from, but very similar to, the question of governmental immunity is the question of Plaintiffs' standing to bring this suit, 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 Independent School Dist. v. Blue*, 34 S.W.3d 547, 555-56 (Tex. 2000).

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." *Texans Uniting for Reform and Freedom v. Saenz*, 319 S.W.3d 914, 920 (Tex. App.—Austin 2010, pet. denied). 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). As explained below, Plaintiffs have not presented any evidence of actual prospective spending that is not within Central Health's constitutional and statutory authority. Thus, the Court does not have subject matter jurisdiction over Plaintiffs' claims against Central Health's President and CEO under either the *ultra vires* exception to governmental immunity or tax-payer standing doctrine. Plaintiffs' motion for summary judgment against Central Health's President and CEO must be denied for these reasons alone. But even if the Court were to determine it does have subject matter jurisdiction over Plaintiffs' claims against Central Health's President and CEO (and it does not), Plaintiffs are not entitled to summary judgment against Central Health's President and CEO because all the Central Health spending Plaintiffs challenge is within Central Health's constitutional and statutory authority as a matter of law.

A. Plaintiffs Are Not Entitled to Summary Judgment on Any Past Spending.

Plaintiffs seek summary judgment that "$57 million in direct expenditures from Central Health to DMS" and "$137 million in . . . Central Health funds, which were commingled with other CCC funds, and then transferred as part of the $35 million annual payment to DMS" are illegal expenditures under the Texas Constitution and statutes. Mot. at 54. Plaintiffs' summary

judgment evidence, however, establishes all but $35 million of this challenged spending occurred in the past. Central Health made a $22 million Permitted Investment Payment to UT in 2023. Pls. MSJ Ex. 11 at 24; Pls. MSJ Ex. 12 at 11; *see also* Knodel Decl ¶ 13. Central Health's member payments to the CCC occurred between 2014 and 2019. Pls. MSJ Ex. 24 ¶ 7; *see also* Knodel Decl ¶ 12. Even if it could be determined that these member payments were used to make the Permitted Investment Payment (and it cannot be so determined, *see supra* at 11 n. 2), that spending necessarily ended in 2022 when the CCC ran out of funds. Pls. MSJ Ex. 24 ¶ 13; *see also* Knodel Decl ¶ 13.

Plaintiffs also seek summary judgment that "hundreds of thousands of dollars in direct expenditures to an innovation district, workforce development, chambers of commerce and non-profit organizations, and social service programs not related to medical care" are illegal expenditures under the Texas Constitution and statutes. Mot. at 54. Plaintiffs' only summary judgment evidence regarding this spending, however, relates to past or unspecified possible future spending. *See* Mot. at 51-52 and Pls. MSJ Ex. 4 at 31 (discussing $250,000 in seed capital provided to the non-profit Capital City Innovation in 2016 and 2017); *Id.* at 52-53 and Pls. MSJ Ex. 26 (discussing sponsorships of local non-profits from 2016 to 2018); *id.* at 53 and Pls MSJ Ex. 29 (discussing funding for work-force development training for medical technicians in 2018 and 2019); *id.* at 53 and Pls MSJ Ex. 6 (discussing testimony that Central Health was considering possible future workforce development funding, as well as possible collaborations with partners focused on social determinants of health, and Central Health's Health Equity Plan).

The *ultra vires* exception and taxpayer standing doctrine do not permit Plaintiffs to challenge this past spending as a matter of law. *See Chambers-Liberty*, 575 S.W.3d at 345 ("Only *prospective* injunctive relief is available on an *ultra vires* claim.") (emphases in the

original); *Saenz*, 319 S.W.3d at 929-30 (taxpayer standing "is limited solely to challenging future or ongoing illegal expenditures.").[9] Nor can Plaintiffs challenge unspecified possible future spending as a matter of law. *See Andrade v. Venable*, 372 S.W.3d 134, 138 (Tex. 2012) ("in order to establish taxpayer standing a plaintiff must plead facts showing that the government is *actually* spending money on the allegedly illegal activity"); *Zimmerman v. City of Austin*, 620 S.W.3d 473, 487 (Tex. App.—Austin 2021, pet. granted and opinion vacated) (a taxpayer's claim is not ripe "until the proposed expenditures are not contingent or hypothetical events that may never take place"), *vacated and remanded on other grounds by Zimmerman v. City of Austin*, 658 S.W.3d 289 (Tex. 2022). Accordingly, Plaintiffs are not entitled to summary judgment on any challenged past or unspecified possible future Central Health spending.

B. Plaintiffs Are Not Entitled to Summary Judgment that the Permitted Investment Payments Are *Ultra Vires* or Otherwise Illegal.

Plaintiffs argue that the Permitted Investment Payments are illegal because they do not fall within Central Health's constitutional and statutory authority and because "the lack of basic financial controls in the [A]ffiliation [A]greement violates Article III, Section 52 of the Texas Constitution." Mot. at 59. Both of these arguments fail as a matter of law.

[9] Perhaps recognizing this, Plaintiffs recently filed a Third Amended Petition stating, "the suit does not seek retroactive relief or damages, it seeks only: 1) *declaratory judgment that defendants have acted ultra vires* and that they cannot spend public funds on illegal, ultra vires actions 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 states constitution and statutes." Third Amended Petition at 1-2 (emphasis added). However, this very sentence demonstrates Plaintiffs continue to seek a backward-looking declaration that Central Health and its President and CEO "acted ultra vires," which is confirmed later in the Third Amended Petition which states, "Plaintiffs further seek declaratory relief that defendants have been expending funds on illegal items and purposes as set out above." *Id.* at 9. Such declaratory relief is not prospective and does not challenge future, ongoing expenditures.

1. *The Permitted Investment Payments Are Within Central Health's Constitutional and Statutory Authority*.

As the Texas Supreme Court has recognized, 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"); *see also* Tex. Att'y Gen. Op. No. GA-0102, 2003 WL 22206220, *2, 4 (2003) ("chapter 281 states the Board's governing powers in broad terms" and "chapter 281 grants the Board broad powers of hospital governance, including the authority to promulgate rules and employ health professionals"). 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).[10]

Plaintiffs misguidedly contend that Central Health's authority is limited to providing the services enumerated in sections 61.028 and 61.0285 of the Health & Safety Code, arguing that "Chapter 61 defines in detail the 'health care services' that hospital districts have authority to provide the poor" and that "[s]ections 61.028 and 61.0285 itemize a list of specific 'health care services,' which comports with the plain and ordinary meaning of this term." Mot. at 2; *see also*

[10] Plaintiffs appear to concede that clinical and clinical administration expenditures of the Permitted Investment Payment are within Central Health's constitutional and statutory authority. *See* Mot. at 26, 31, 33, 34, 41.

Mot. at 23 ("Chapter 61 specifically defines the medical care services that hospital districts can provide. Although Central Health has discretion to determine which of these medical care services to provide patients, it does not have the authority to redefine the statutory definition of medical care services beyond its plain meaning and clear definitions."). However, it is Plaintiffs that misconstrue the plain meaning and express language of the applicable statutes and Constitution. The plain terms of sections 61.028 and 61.0285, as well as other sections of chapter 61 and chapter 281, confirm that Plaintiffs' contention is incorrect. Indeed, the constitutional and statutory framework governing hospital districts confirms that hospital districts have the discretion to determine both the health care services to be provided and the best way to provide those services to their indigent populations.

Chapter 61 contains general provisions regarding the provision of health care services to indigent and needy residents but does not mandate or prohibit 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, *together with any other services required under the Texas Constitution and the statute creating the district*." *Id.* § 61.055(a) (emphasis added). Accordingly, section 61.055, by its plain terms, provides that hospital districts have authority to take action and provide services beyond those listed in 61.028, including as broadly enumerated in chapter 281. Section 61.028 in turn lists certain basic health care services including immunizations, annual physical examinations, hospital services, laboratory and X-ray services, among others. *Id.* § 61.028(a). Section 61.0285, although not expressly applicable to hospital districts, provides a non-exhaustive list of additional health care services that a county may provide. *Id.* § 61.0285(a). Both sections 61.028 and 61.0285 also expressly state that counties

may provide health care services not specified in the enumerated lists. *See id.* §§ 61.028(b) ("The county may provide additional health care services . . . ."); 61.0285(c) ("A county may provide health care services that are not specified in Subsection (a) . . . ."). Consequently, by their plain terms, none of these sections contain a list of the exclusive services a hospital district is permitted to provide or prohibits spending on anything other than the listed services. *Id.* §§ 61.028, 61.0285, 61.055. Plaintiffs' efforts to constrain Central Health's authority to providing only the services enumerated in sections 61.028 and 61.0285 are contrary to both the letter and spirit of the law, ignoring both the plain terms of the statute and reading out other statutory provisions granting Central Health additional enumerated and implied authority.

In addition to the sections of Chapter 61 on which Plaintiffs rely, Chapter 281 of the Texas Health & Safety Code 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 directly furnishing care, as well as additional services that contribute to the furnishing of such care. *See, e.g.*, *id.* § 281.047 (granting board general powers to "manage, control, and administer the hospital or hospital system of the district"); *id.* § 281.048 (granting board power to "adopt rules governing the operation of the hospital or hospital system"); *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.").

More specifically, 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). The Legislature's express grant of authority for Central Health to perform these functions through a charitable organization necessarily confirms that Central Health has the statutory authority to perform these functions directly as well.

Moreover, within the applicable 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).

Consistent with the Texas Supreme Court's guidance, AG Opinions recognize that the board of a hospital district, as overseen by the county commissioners, has the authority to determine what is necessary for the administration and operation of the hospital district and the provision of care to the indigent, and this authority goes beyond the express authority contained in a district's enabling statute. *See, e.g.*, Tex. Att'y Gen. Op. No. GA-0721, 2009 WL 1726361, *1 (2009) ("[T]he board has the authority to determine in the first instance what is necessary to provide for the operation of such service" and citing *Barrington v. Cokinos*, 338 S.W.2d 133, 142 (Tex. 1960) for the proposition that "a court has no right to substitute its judgment and discretion for the judgment and discretion of the governing body upon whom the law visits the primary power and duty to act."); Tex. Att'y Gen. Op. No. GA-0102, 2003 WL 22206220, *2, 4 (2003) ("chapter 281 states the Board's governing powers in broad terms" and "chapter 281 grants the Board broad powers of hospital governance, including the authority to promulgate rules and employ health professionals."); Tex. Att'y Gen. Op. No. DM-37, 1991 WL 527450, *3 (1991) ("[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."); Tex. Att'y Gen. Op. No. JM-1052, 1989 WL 430697, *2 (1989) ("[T]he question of whether an expenditure by a political subdivision within a hospital district is an expenditure for medical care must be

determined on a case-by-case basis.").[11]

Indeed, multiple Texas Attorney Generals have issued opinions finding spending by hospital districts on activities not expressly listed in Chapters 61 or 281 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 allowing 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);

- finding ambulance services were "an ancillary function which a hospital district *could undertake* if it were deemed necessary" and "to the extent a district does provide those services, it is also for the district to determine the scope of those services" and that hospital district was permitted to offer doctor financial incentives as part of a consulting and service contract in order to induce the doctor to relocate and practice medicine in the district, Tex. Att'y Gen. Op. No. GA-0472, 2006 WL 3044002, *1-3 (2006) (emphasis in the original) (internal citations omitted);

- 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);

- leasing hospital district facilities for the operation of a clinic to provide medical care to both indigent and non-indigent county residents, including the needy, was "entirely consistent with the requirements of article IX, section 9 of the Texas Constitution," Tex. Att'y Gen. Op. No. JC-0220 (2000), 2000 WL 574570 at *5;

- 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. Op. No. LO-97-068, 1997 WL 419081 (1997); and

[11] Because all other municipalities or political subdivisions are prohibited from levying taxes or issuing bonds or other obligations for hospital purposes or for providing medical care within the boundaries of a hospital district once a hospital district is formed, a hospital district necessarily may provide medical care for the nonindigent as well, because no other entity may do so. *See* TEX. CONST. ART. IX, § 9; Tex. Att'y Gen. Op. No. JC-0220, 2000 WL 574570, *11 (2000) (finding article IX, section 9 implicitly contemplates that a hospital district will furnish hospital and medical care to nonindigent district residents).

- 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).

This authority confirms that the Permitted Investment Payment is within Central Health's constitutional and statutory authority. Central Health determined that, to provide health care services to fulfill its purpose, it was and is necessary for it to partner with the UT Dell Medical School. Knodel Decl. ¶ 7. Consistent with sections 281.0565(d) and 281.0511, Central Health created the CCC and contracted with UT through the Affiliation Agreement to build the heath care infrastructure in Travis County and expand the health care services that Central Health is able to fund and improve outcomes for the patients it serves. *Id*. ¶¶ 9-10. The annual Permitted Investment Payment is and must be used for investments that further the mission of Central Health, including to support the operation of the UT Dell Medical School and to recruit faculty, residents, and medical students who will provide medical services in Travis County. Affiliation Agreement §§ 1, 3. In exchange for the Permitted Investment Payment, UT is obligated to assist in serving low-income communities by offering to train residents and medical students in community-based settings, assist in developing appropriate levels of clinical services at nonprofit medical clinics in Travis County that provide services to the safety-net population, 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, and make available faculty and residents to provide the physician services including to provide women's or other health services that Seton cannot provide because of the Ethical Religious Directives for Catholic Health Care Services, among other duties and obligations outlined in section 4 of the Affiliation Agreement. *Id.* § 4.

Plaintiffs' argument that the Permitted Investments impermissibly include expenditures for education, research, and general administration misses the point. *See* Mot. at 26-49.[12] The Affiliation Agreement is not a typical fee-for-services contract, but rather an agreement designed to build the heath care infrastructure in Travis County, thereby expanding the health care services Central Health is able to fund and improving outcomes for the patients it serves. As highlighted by Dr. Young's, Mr. Morris's, and Mr. Chang's testimony, the various departments and functions of the UT Dell Medical School work together to expand the health care infrastructure in Travis County and serve its low-income population. *See supra* at 16-20. The Permitted Investment Payment 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 14-16. Plaintiffs' singular focus on the listed services contained in sections 61.028 and 61.0285, in addition to being inconsistent with the plain terms of the relevant statutory and constitutional authority, ignores the reality underlying the provision of health care services to the indigent. Central Health would not be able to provide the health care services

[12] While Plaintiffs argue that the UT Dell Medical School "illegally provided services to statutorily ineligible persons," they provide no summary judgment evidence that the UT Dell Medical School actually did so or used Central Health funds to do so. *See* Mot. at 49. Nor do Central Health's residency and income requirements apply to all patients treated at the UT Health Austin Clinics affiliated with the UT Dell Medical School.

listed in those provisions without building the necessary infrastructure that permits those services to be offered to Travis County's low-income population. Knodel Decl. ¶ 7.

Finally, Plaintiffs assert, with no evidentiary support, that the Permitted Investment Payment "prevents Central Health from covering and providing care to a significant number of . . . eligible low-income country residents who do not have MAP coverage" and "substantially decreases the amount of medical and hospital treatment Travis County's poor can receive." Mot. at 58. This assertion ignores Mr. Geeslin's express testimony that providing coverage to more of the county's indigent is "not a function of funds available." Geeslin Depo. at 173. It is also wrong. As evidenced by the declarations of Mr. Morgan, Mr. Daigre, and Mr. Johnson and the deposition testimony of Dr. Young, Mr. Morris, and Mr. Chang, Central Health's relationship with the UT Dell Medical School through the Affiliation Agreement allows Central Health to provide more and higher quality health care to low-income Travis County residents than it otherwise could. *See supra* at 14-20. While Plaintiffs do not contend that the other spending they challenge prevents Central Health from providing health care to low-income Travis County residents, those expenditures similarly facilitate, rather than hinder, Central Health's ability to deliver health care services to the population it serves. The challenged workforce development spending is necessary to increase the amount of health care Central Health is able to provide to low-income Travis County residents, while the outreach and social determinant of health spending is necessary to increase utilization of MAP coverage and other health care by offered by Central Health by eligible Travis County residents. *See* Burton Decl. ¶¶ 3-4, 6, 10; Supp. Morgan Decl. ¶ 4-9; Healthcare Equity Plan at 10-11.

The case law Plaintiffs cite to argue that Central Health's authority should be construed narrowly is inapposite. *See* Mot. at 11-14. None of the cases Plaintiffs cite involve hospital

districts or the specific statutory and constitutional scheme that governs hospital districts, and instead analyze the powers of other entities and special purpose districts operating under significantly different statutory frameworks and their accompanying restrictions, as well as policy considerations. *See id.* Indeed, in many of the cases Plaintiffs cite, the courts relied on the fact that the special purpose district or other entity or individual at issue had narrow enumerated or prescribed powers that prevented a finding of broader implied powers. That is not the case for hospital districts, which, within the confines of their constitutional and statutory authority, have broader express and implied powers to administer and manage the provision of health care services within the district.[13]

[13] Many of the Attorney General Opinions cited by Plaintiffs are similarly inapposite or distinguishable, including because, unlike Central Health's spending at issue here, they involve spending that was clearly not for legitimate purposes. *See, e.g.*, Tex. Att'y Gen. Op. No. JM-258, 1984 WL 182323, (1984) (concluding hospital district could not lease a portion of its hospital property for use as private offices for private physicians prior to amendment of section 281.050 in 2009 and 2015, which now broadly permits hospital districts to enter into leases "designed to generate revenue for the financial benefit of the hospital district."); Tex. Att'y Gen. Op. No. JH-31 (1973) (finding regulatory inspections of restaurants, meat, milk, sewage, and water did not have hospital purpose and were not permissible use of hospital district funds); Tex. Att'y Gen. Op. No. LO-97-004, 1997 WL 113950, (1997) (considering request for reconsideration of Letter Opinion No. 95-088, which held that hospital district could not fund medical examiner's office, explaining that prior opinion was not intended to imply that the hospital district's "sole legitimate authority is limited to the provision of medical and hospital services to needy inhabitants of the county," finding that medical examiner's office's purpose was to determine whether deaths were caused by an unlawful act, and therefore not for hospital purpose, but finding that hospital district could enter into contract with examiner for performance of laboratory tests); Tex. Att'y Gen. Op. No. WW-1170 (1961) (finding hospital district could not fund public health nurse where nurse dealt principally with outlying schools in the county for the purpose of controlling communicable diseases among school children, and not needy and indigent persons, and other statutory provision allocated responsibility for such funding to commissioners' court rather than hospital district). Moreover, several of the opinions to which Plaintiffs cite only confirm that Central Health's spending is proper and within its authority. *See, e.g.*, Tex. Att'y Gen. Op. No. DM-66, 1991 WL 527477, (1991) (finding hospital district's enabling statute expressly authorized the hospital district to lease a building on its premises to private physicians); Tex. Att'y Gen. Op. No. JC-0220, 2000 WL 574570, (2000) (finding hospital district was authorized to lease its hospital facilities to private hospital system for the

For example, in *Foster v. City of Waco*, 113 Tex. 352, 354-55 (Tex. 1923), the Court held that a city did not have an express or implied power to enter into a contract and notes for the purchase of land for cemetery purposes where the city's charter prescribed the exclusive methods by which the city was permitted to incur debts, and the notes and contract were not executed in substantial compliance with those methods. In *Pecos Cty. Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist.*, 672 S.W.3d 401, 412 (Tex. 2023), in a case involving a school district's authority to enter into a contingent-fee contract with an attorney to pursue appraisal litigation, the Court found that it must consider the school district's claim to implied authority "against the backdrop of these related statutory provisions and in light of the well-recognized concerns that accompany contingent-fee agreements in the taxation context." Accordingly, due to policy considerations against the use of contingent-fee agreements in the tax context, as well as a statutory provision that permitted contingent-fee arrangements in a single enumerated instance, the Court found that the school district did not have the implied authority to enter into such an agreement. *Id.*; *see also State v. Hollins*, 620 S.W.3d 400, 407-09 (Tex. 2022) (a county clerk with enumerated, limited statutory powers did not have the implied authority to expand the use of mail-in ballots beyond as statutorily prescribed). Here, Central Health's authority to determine how it administers health care to the indigent is not expressly prescribed or constrained as in *Foster, Pecos County,* and *Hollins*, nor is there any public policy against the means Central Health has determined are necessary to accomplish its purpose as in *Pecos County.* Rather, Central Health's exercise of its discretion with respect to the Permitted

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operation of clinic to provide care to the district's needy inhabitants if Board determined that the lease was in the district's best interests).

Investment Payment squarely falls within its statutory and constitutional authority, and Plaintiffs are not entitled to summary judgment on this ground as a matter of law.[14]

2. *The Permitted Investment Payments Do 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, Plaintiffs argue that the Affiliation Agreement's "lack of basic financial controls" violates article III, section 52 of the Texas Constitution. Mot. at 59. In so arguing, Plaintiffs

[14] Because Central Health has acted within its constitutional and statutory authority in making the Permitted Investment Payment, Central Health has similarly acted within its authority to levy taxes for such purpose. Plaintiffs' arguments to the contrary, *see* Mot. at 14-15, are meritless.

largely ignore the tests above and many of the applicable facts, arguing instead that the Affiliation Agreement does not contain financial controls typically found in payor-provider contracts. *Id.* at 59-61. The Affiliation Agreement, however, is not a payor-provider contract and there is no rule that the financial controls found in such an agreement are required in every contract entered into by a public entity. Applying the applicable tests confirms that the Affiliation Agreement does not violate article III, section 52 as a matter of law.

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 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).

The Affiliation Agreement also allows Central Health to terminate the agreement immediately should certain events occur, including if UT closes the UT Dell Medical School or if the UT Dell Medical School fails to maintain its accreditation. *See* Affiliation Agreement §§ 7.2, 7.21-7.27. Central Health additionally can terminate the Affiliation Agreement following the exhaustion of the agreement's dispute resolution process if the UT Dell Medical School significantly and materially reduces the number of graduate medical education programs its sponsors in Austin, Texas or the scope of clinical services proved by faculty and residents at certain service sites. *See id.* §§ 7.28, 7.29; *see also id.* § 8 (outlining the Affiliation Agreement's

dispute resolution procedures).

Indeed, *Corsicana Indus. Found, Inc. v. City of Corsicana*, 685 S.W.3d 171 (Tex. App.—Waco 2024, pet. filed), on which Plaintiffs heavily rely to argue otherwise, *see* Mot. at 24-25, 61, confirms that there are sufficient financial controls in place here to satisfy art. III, section 52. In *Corsicana*, the court expressly included "an authorization for the governmental entity to terminate or modify the agreement if the recipient fails to comply with the terms of the agreement" in a list of terms that would constitute the requisite governmental control. *Corsicana Indus. Found.*, 685 S.W.3d at 184. In that case, the agreements in question would have required the governmental entities to continue to make payments on the loan for a retail facility after the retail business closed. *Id.* In holding that such agreements lacked sufficient controls, the court focused on the fact that the governmental entity had no right to terminate the agreement even if the retail business stopped doing business in Corsicana. *Id.* at 184-85. Here, Central Health has the express right to immediately terminate the Affiliation Agreement should the UT Dell Medical School close or lose its accreditation, as well as other termination rights should the UT Dell Medical School fail to comply with material terms of the Affiliation Agreement. *See* Affiliation Agreement § 7.2.

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, as well as the termination and dispute resolution provisions, of the Affiliation Agreement, 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; *supra* at 16-20 (quoting deposition testimony from Dr. Amy Young, Mr. Morris, and Mr. Chang). 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.*

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.

C. Plaintiffs Are Not Entitled to Summary Judgment that Any Other Challenged Spending Is *Ultra Vires* or Otherwise Illegal. [15]

In addition to the Permitted Investment Payments, Plaintiffs argue that expenditures by Central Health on "an innovation district, workforce development, chambers of commerce and non-profit organizations, and social service programs not related to medical care" are illegal because they do not fall within Central Health's constitutional and statutory authority. Mot. at 54.[16] Each of these challenged expenditures is within Central Health's constitutional and statutory authority and related discretion to determine how to best provide medical and hospital care to Travis County's low-income residents outlined above. *See supra* at 34-40.

Focusing on the innovation district, section 281.050(b) of the Texas Health & Safety Code expressly allows Central Health to "enter into a lease, including a lease with an option to purchase, an installment purchase agreement, an installment sale agreement, or any other type of agreement that relates to real property considered appropriate by the board to provide for the development, improvement, acquisition, or management of developed or undeveloped real property designed to generate revenue for the financial benefit of the district." TEX. HEALTH & SAFETY CODE § 281.050(b). As Ms. McDonald testified, Central Health owns the Brackenridge Campus and its involvement in CCC was focused on determining the best way to use this property to generate income to serve Central Health's "mission and the health care needs of low income, uninsured of Travis County," including by ultimately leasing the property, while also meeting potentially health care innovation goals. McDonald Depo. at 24; *see also id.* at 26-27.

[15] If the Court agrees that the Plaintiffs are not entitled to summary judgment on any past spending, *see supra* at Section III.A., the Court need not consider this argument.

[16] Plaintiffs do not argue that these expenditures violate article III, section 52 of the Texas Constitution. *See* Mot. at 59.

Thus, Central Health's prior spending on the Innovation District was entirely consistent with its authority under section 281.050(b).

Turning to workforce development, the Attorney General opinions cited above make clear that activities designed to develop the necessary workforce to provide health care services to low-income residents fall within the constitutional and statutory authority of the hospital districts. *See supra* at 39-40 (discussing Tex. Att'y Gen. Op. No. GA-0188, 2004 WL 1091520, *4 (2004) (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 was within the hospital district's authority); Tex. Att'y Gen. Op. No. LO-97-068, 1997 WL 419081 (1997) (constructing a building to lease to private physicians for the purpose of attracting and retaining physicians to practice in the hospital district was within the hospital districts authority); Tex. Att'y Gen. Op. No. GA-0472, 2006 WL 3044002, *2-3 (2006) (offering doctor financial incentives to relocate and practice in the hospital district was within the hospital district's authority)). As discussed above, there is a significant shortage of health care workers to serve Travis County's safety-net population. Supp. Morgan Decl. ¶ 8. Developing this workforce is essential to Central Health's ability to increase "the number of providers and care teams and the availability of comprehensive, high-quality and timely care." *See* Health Equity Plan at 17.

Plaintiffs' own evidence demonstrates that the primary purpose of past workforce development efforts was "to provide workforce development in healthcare delivery careers for Central-Health's safety-net population," Pls. MSJ Ex. 29 at CH011475, and generate an "[a]n increase in skilled, local employees to fill in-demand positions at CommUnity Care and other Central Health Enterprise facilities." Pls. MSJ Ex. 29 at CH011467. Recruiting and training

heath care professionals from the community Central Health serves has the additional benefit of "improv[ing] patient satisfaction and increase[ing] cultural competency in how [it] delivers care" by "increasing the number of racial and ethnic minorities and underprivileged people who choose careers in safety-net heath care delivery, and are locally educated." Pls MSJ Ex. 29 at CH011492. For all these reasons, Central Health's past workforce development efforts, as well as similar efforts they may adopt in the future, are within its constitutional and statutory authority.

The donations to non-profit organizations Plaintiffs challenge were part of Central Health's community outreach and education efforts, which also are necessary to Central Health's ability to provide care to its low-income residents. *See* Burton Decl. ¶ 3, 4, 6, 10. Specifically, this outreach and education is essential to Central Health's stated goal of increasing member engagement and enrollment. Health Equity Plan at 23. It is also necessary to build trust in communities that are systematically discriminated against and have been harmed historically by the health care system. Burton Decl. ¶¶ 3-5. Moreover, Central Health adopted a policy for "Requests for Expenses related to Outreach and Education," effective October 27, 2017. *Id.* ¶ 7; Outreach Policy. This policy puts a $500 limit on expenditures for outreach and education efforts, and factors considered when deciding whether Central Health will contribute to any particular organization or event include whether that organization or event serves an outreach or educational purpose, benefits the population served by Central Health, encourages diversity and inclusion or local sourcing in contracting for services with Central Health, focuses on alleviating a known disparity or inequity that relates or facilitates Central Health's mission, and affords Central Health or its enterprise partners the ability to educate the community about our work or how we serve the community. *Id.* ¶¶ 8-9; Outreach Policy. These limited outreach expenditures,

which are crucial to Central Health's ability to provide care to its indigent population, are within Central Health's discretion.

Finally, addressing social determinants of health, the Centers for Medicare & Medicaid Services ("CMS") recently released an informational bulletin addressing coverage of services and supports to address health-related social needs in Medicaid and the Children's Health Insurance Program. Supp. Morgan Decl. ¶ 7, and CMS Informational Bulletin attached thereto as Exhibit 4. This bulletin acknowledges that a person's health-related social needs are derived from an assessment of social determinants of health, and that "extensive research has indicated that [social determinants of health] and associated [health-related social needs] can account for as much as 50 percent of health outcomes." CMS Information Bulletin at 1. It further recognizes that unmet health-related social needs "can drive lapses in coverage and access to care, higher downstream medical costs, worse health outcomes, and perpetuation of health inequities, particularly for children and adults at high risk for poor health outcomes, and individuals in historically underserved communities." *Id.* Accordingly, the CMS indicated that certain health-related social needs, including some housing and nutritional services, could be covered through multiple Medicaid and CHIP authorities and mechanisms. *Id.* The CMS further explained that coverage of health-related social needs complements existing social services and can be used "to improve consistent access to needed care, health outcomes, and health equity among Medicaid beneficiaries." *Id.* at 2. The fact that certain health-related social needs can be funded through Medicaid and CHIP supports Central Health's use of funds for similar purposes.

This is particularly true because Central Health confirmed through an in-depth safety-net community health needs assessment that the communities served by Central Health "are facing

many social economic disparities impacting physical and mental wellbeing," including "limited access to adequate preventative care" and "other necessary resources to achieve health and wellness," housing challenges that "can exacerbate certain chronic illnesses as they often limit a household's ability to allocate sufficient income to necessities such as food and health resources," language barriers, and less access to stable access to computers and the internet that need to be considered as providers begin to deploy new technologies to expand access to health services for safety-net communities." Healthcare Equity Plan at 10-11. To the extent Central Health is funding projects designed to counteract these social determinants of health and improve access to needed care, health outcomes, and health equity for low-income residents of Travis County it serves, doing so is within its constitutional and statutory authority.

IV. Plaintiffs' Requested Injunction Lacks the Requisite Specificity and Is Impermissibly Broad as a Matter of Law.[17]

Even if Plaintiffs were entitled to summary judgment relief (and they are not), Plaintiffs' requested injunction both lacks the requisite specificity and is impermissibly broad. Plaintiffs seek to broadly enjoin Defendants from (1) "taking any action or expend[ing] any public funds on activities that do not constitute medical care services to eligible recipients as defined by the Texas Constitution, Article IX, Section 4 and Chapter 61 of the Texas Health & Safety Code;" and (2) "expending any public funds without complying with the financial controls and accountability required under Article III, Section 52 of the Texas Constitution and Texas Health & Safety Code Chapter 281." Mot. at 64. This requested injunction does not comply with Texas Rule of Civil Procedure 683's mandate that an injunction must be specific in its terms and

[17] If the Court agrees that Plaintiffs are not entitled to summary judgment against Central Health or its President and CEO, *see supra* at Section I and II, the Court need not consider this argument.

describe in reasonable detail, and not by reference to any other document, the act or acts to be restrained. TEX. R. CIV. P. 683.

As one court explained, an injunction "must be 'in clear, specific and unambiguous terms' so that the party enjoined can understand the duties or obligations imposed by the injunction and so that the court can determine whether the injunction has been violated." *TMRJ Holdings, Inc. v. Inhance Techs., LLC*, 540 S.W.3d 202, 212 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (quoting *Ex parte Blasingame*, 748 S.W.2d 444, 446 (Tex. 1988) (orig. proceeding)). It "must be as definite, clear, and precise as possible and when practicable it should inform the defendant of the acts he is restrained from doing, without calling on him for inferences or conclusions about which persons might well differ and without leaving anything for further hearing." *Computek Computer & Off. Supplies, Inc. v. Walton*, 156 S.W.3d 217, 220–23 (Tex. App.—Dallas 2005, no pet.) ("trial court abused its discretion by entering a permanent injunction that lacks specificity and is overly broad").

The injunction itself—without reference to another document—must provide the specific information as to the prohibited conduct. *In re Luther*, 620 S.W.3d 715, 724 (Tex. 2021) ("the temporary restraining order's lack of specificity regarding the conduct to be restrained renders it and the [contempt judgment and order] void"). An injunction that "does not adequately identify the acts that it restrains . . . does not comply with the requirements of Texas Rule of Civil Procedure 683." *TMRJ Holdings, Inc.*, 540 S.W.3d at 214-15. An injunction may also be impermissible for lack of specificity where it seeks to enjoin activity beyond an enumerated list of permissible acts. *See Computek*, 156 S.W.3d at 221-22 (permanent injunction lacked specificity where "it includes a list of clients Computek may contact, but not a list of those it

must not contact" and enjoined Computek "from using or disclosing information and files that are not specifically identified in the permanent injunction").

Here, Plaintiffs ask this Court for an order enjoining Defendants from "spending public funds on illegal expenditures outside Central Health's constitutional and statutory authority." Mot. at 10; *see also id*. at 1. Plaintiffs' claims in this suit arise entirely from Central Health's and Plaintiffs' varied interpretations of Central Health's constitutional and statutory authority. Plaintiffs' requested injunction does nothing to tell Central Health the "precise conduct prohibited," *Whinstone US Inc. v. Rhodium 30MW*, LLC, No. 03-23-00853-CV, 2024 WL 1301203, at *3 (Tex. App. – Austin, Mar. 27, 2024), and would be susceptible to varied interpretations and continuing disputes. Because Plaintiffs' requested injunction lacks the required specificity and fails to identify the prohibited conduct, it must be denied. *Id.* ("the temporary injunction must be dissolved because it violates Rule 683's requirements that all injunctions be specific in terms and describe in reasonable detail . . . the act or acts sought to be restrained") (quotation omitted).

Plaintiffs' requested injunction also seeks to impose restrictions on Central Health beyond those imposed by Texas law. Specifically, Plaintiffs request an injunction enjoining Defendants from "taking any action or expend[ing] any public funds on activities that do not constitute medical care services to eligible recipients as defined by the Texas Constitution, Article IX, Section 4 and Chapter 61 of the Texas Health & Safety Code." Mot. at 64. This requested injunction appears designed to impermissibly prevent Central Health from expending funds on anything beyond the "basic health care services" or "optional health care services" set forth in sections 61.028 and 61.0285 of the Texas Health & Safety Code.

An injunction "must be narrowly tailored to address the offending conduct" and cannot "be so broad that it would enjoin a defendant from acting within its lawful rights." *TMRJ Holdings, Inc.*, 540 S.W.3d at 212-13 (injunction impermissibly broad where "the parameters of the restrained conduct are not sufficiently specific" and "the injunction prohibits lawful competition"). "The entry of an injunction that enjoins lawful as well as unlawful acts may constitute an abuse of discretion." *Computek*, 156 S.W.3d at 221; *see also Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53, 65 (Tex. 2016) (affirming appellate court's reversal of injunction which, among others, prohibited the City from erecting power lines, even though its deed gave the express right to do so and prohibited the City from mowing, blading, or destroying grass on the Ranch, which was effectively "a de facto moratorium on any surface activity").

As explained in section III.B.1 above, which is fully incorporated here for all purposes, Plaintiffs' contention that Central Health's authority is limited to providing the services enumerated in sections 61.028 and 61.0285 of the Texas Health & Safety Code is incorrect and their requested injunction is invalid, because by their very terms, these sections do not provide an exhaustive list of permissible services or expenditures. *See supra* at 34-40. Central Health simply is not prohibited from providing funding for services and activities beyond those identified in sections 61.028 and 61.0285. *See id.* Thus, Plaintiffs request for an order enjoining Central Health from funding anything beyond "basic health care services" in Chapter 61 lacks a cognizable legal basis and is impermissibly broad. Moreover, constraining Central Health's authority as Plaintiffs request, would negatively impact Central Health's ability to provide high-quality health care services to low-income Travis County residents and those residents would be directly and significantly harmed.

CONCLUSION AND PRAYER

For the foregoing reasons, Defendants Central Health and its President and CEO respectfully request that the Court deny Plaintiffs' Motion for Final Summary Judgment. Defendants further request all other relief to which they are entitled.

Respectfully submitted,

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