

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

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

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION AND TO AMENDED PLEA TO THE  
JURISDICTION**

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Plaintiffs file this Response in Opposition to Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction and would show:

**I. Overview: Central Health’s Motion to Dismiss Should Be Denied Because It Fundamentally Misunderstands State Law and Lacks Probative Evidentiary Support**

Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction (“MTD”) makes four fundamental, fatal legal errors:

**1. Central Health does not have, in its own words, “broad constitutional and statutory authority: as a special purpose district, it has only those express powers that are clearly stated and implied powers that are indispensable and without reasonable doubt.** Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction (“MTD”), p. 3. Under Texas law, Central Health is a special purpose hospital district—the lowest form of government—with limited powers. It only has those powers that are clearly expressed or are unquestionably implied and indispensable. See, e.g., Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d 945, 947 (Tex. 1940); Pecos County Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist., 672 S.W.3d 401 (Tex. 2023). See Plaintiffs’ Motion for Final Summary Judgement, pp. 11-20.<sup>1</sup>

**2. Central Health has constitutional and statutory authority to provide only unreimbursed “hospital and medical care” to the poor; it does not have authority or discretion to rewrite its constitutional and statutory enabling laws to completely transform the plain meaning of “hospital and medical care” to include medical education, research, general administration of a medical school, and economic development—none of which provide**

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<sup>1</sup> Because of the overlap of the evidence and arguments in this Response to Defendants’ Motion to Dismiss and Plaintiffs’ Motion for Summary Judgement, in the interest of efficiency and usefulness, the Plaintiffs’ Motion and all its exhibits and exhibit citations (hereafter collectively “MSJ”) are incorporated herein in full by reference for all purposes in this Response.

*treatment to patients, i.e., “medical care.”* Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W. 3d 154, 164-165 (Tex. 2016). MSJ, pp. 20-23, 54-59.

**3. The *ultra vires* exception to governmental immunity applies in this case because Supreme Court cases hold that special purpose districts and their administrators do not have discretionary authority to exceed the plain meaning of their enabling laws or their statutory definitions.** “[A]s is generally the case, the limits of Krueger’s [the administrator’s] authority are found *in the authority-granting law itself—the ordinance.*” Id. at 165 (emphasis added). “[A] government officer with *some discretion to interpret and apply a law may nonetheless act ‘without legal authority,’ and thus ultra vires, if he exceeds the bounds of his granted authority or if his acts conflict with the law itself.*” Id. at 157 (emphasis added). See MSJ, 20-23.

**4. CH’s affiliation agreement and 2012 ballot measure cannot expand the scope of CH’s authority beyond that provided in the constitution and its enabling acts.** For its authority to spend funds on non-medical care activities, Central Health relies heavily on a voter-approved 2012 ballot measure and on its Affiliation Agreement with Dell Medical School (“DMS”). Neither can expand CH’s authority beyond that prescribed in state law. A voter-approved measure cannot enlarge the powers of a special purpose district beyond its legislatively granted authority under the constitution and statutes: “*The people of this district do not have the power to determine for themselves such corporate functions as they may wish to inaugurate...* This district may exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication.” Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 946 (emphasis added). Similarly, Central Health has no authority to enter into or implement any contractual provision that purports to authorize it to fund activities that exceed its constitutional

and statutory authority. *Id.* at 947; Foster v. City of Waco, 255 S.W. 1104, 1106 (Tex. 1923):  
Hendee v. Dewhurst, 228 S.W.3d 354, 380 (Tex. App.–Austin 2007, no writ)

**II. As A Special Purpose District, Central Health Does Not Have Broad Authority, But Only Those Powers That Are Clearly Expressed or Implied Powers That Are Indispensable And Without Reasonable Doubt.**

Contrary to defendants’ contention, plaintiffs do not seek to control defendants (hereafter collectively “Central Health”) and override their lawfully authorized discretion. “*Ultra vires* suits do not attempt to exert control over the state -- they attempt to reassert the control of the state. Stated another way, these suits do not seek to alter government policy but rather to enforce existing policy [adherence to state law].” City of El Paso, v. Heinrich, 284 S.W.3d 366, 372 (Tex. 2009).

Central Health has broad discretion in the type of medical care it may provide, the type and location of its facilities, the areas of health care to prioritize, and the health care providers it may hire. Plaintiffs do not seek to control any of these types of lawfully authorized discretionary decision-making by Central Health. Rather, plaintiffs’ *ultra vires* action seeks to require Central Health to comply with the plain meaning in state law of “hospital and medical care” and “hospital purpose” and the related statutory definitions. Tex. Const Art. IX, Sec. 4. Texas Health & Safety Code, Sections 281.002, 61.028, and 61.0285. Plaintiffs seek declaratory and injunctive relief to stop Central Health from continuing to illegally fund medical education, research, general operations of a medical school, and other activities that do not constitute medical care or its administration (hereafter “medical care”).

**A. Central Health has *express* constitutional and statutory power only to establish “a hospital system” and provide “hospital and medical care” for Travis County’s poor residents.**

Tex. Const. Art IX, Sec. 4 (“operation of any *county owned hospital*...provided further, that such Hospital District shall assume full responsibility for *providing medical and hospital care to needy inhabitants of the county*, and thereafter such county and cities therein shall not levy any

other tax for *hospital purposes.*”) (emphasis added); Texas Health & Safety Code, Sec. 281.002(c) (“to assume ownership of the *hospital or hospital system* and to *furnish medical aid and hospital care to indigent* and needy persons residing in the district.”) (emphasis added). Central Health has express power only to create a hospital system and provide unreimbursed medical and hospital care to the county’s poor and reimbursed care to patients able to pay or non-residents.<sup>2</sup>

**B. Central Health’s *implied* powers are limited to those that are indispensable and without reasonable doubt.**

The seminal case on the implied powers of special purpose districts is Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d 945, 947 (Tex. 1940):

[the special purpose fresh-water supply] district has only such implied powers as are reasonably necessary to make effective the powers expressly granted. *That is to say, such as are indispensable to the declared objects of the corporation and the accomplishment of the purposes of its creation.* Powers which are not expressed and which are *merely convenient or useful may not be included and cannot be maintained... Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation*, and the power is denied.

(emphasis added).

Recent Texas Supreme Court cases have relied on Tri-City Freshwater Supply to deny special purpose districts (and other limited power entities) implied powers because these powers were not indispensable to their express powers or were not without reasonable doubt. Builder Recovery Services v. Town of Westlake, 650 S.W.3d 499, 503 (Tex. 2022); State v. Hollins, 620 S.W.3d 400, 407 (Tex. 2022) (per curiam); Pecos County Appraisal Dist. v. Iraan-Sheffield Indep.

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<sup>2</sup> “Based on the constitutional and statutory scheme for providing hospital and medical care, we conclude that the District may offer medical care to nonindigent Garza County residents provided it collects from these persons the cost of the medical services.” Tex. Atty. Gen. Op. No. JC-220 (2000), at 10 (emphasis added). See also Tex. Atty. Gen. Op. No. JC-434 (2001), at 8; Tex. Atty. Gen. Op. No. CM-382 (1965), at 2. By requiring those financially able to pay for their medical care, the hospital district’s property tax levy is preserved for its primary and absolute constitutional duty: medical care for the poor. Tex. Atty. Gen. Op. No. JC-220, at 7. See MSJ, pp. 16-18.

Sch. Dist., 672 S.W.3d 401 (Tex. 2023); Town of Lakewood Vill. v. Bizios, 493 S.W.3d 527, 536 (Tex. 2016). See MSJ, pp. 11-14.

Furthermore, the Supreme Court has emphasized that the “power will be implied only when *without its exercise the expressed duty or authority would be rendered nugatory*,” i.e., worthless. Builder Recovery Services v. Town of Westlake, 650 S.W.3d at 503, quoting Foster v. City of Waco, 255 S.W. 1104, 1106 (Tex. 1923). Similarly, the Attorney General has relied on Tri-City Fresh Water Supply to require a hospital district’s implied powers to be “by clear and unquestioned implication.” Tex. Atty. Gen. Op. No. JM-258, at 3 (1984). This legal doctrine is the reason Attorney General opinions consistently have strictly construed the meaning of “hospital and medical care.” See MSJ, pp. 16-20 (discussing Attorney General opinions finding hospital districts cannot fund public health department, medical examiner, or school nurse).

**III. Central Health’s authorized discretion is limited by the plain meaning of its constitutional and statutory terms to providing only medical care.**

Central Health’s authority to administer a “hospital system” and provide “hospital and medical care” does not extend to funding activities beyond the plain meaning and statutory definitions of “hospital and medical care” and “hospital purpose” in Article IX, Section 4. As a matter of statutory construction, Central Health has no implied powers to fund activities that do not serve a “hospital purpose” and are not “medical care” as these terms are plainly and commonly understood. These common terms do not encompass general medical school administration (such as a medical school’s communications, fundraising, business affairs and student admissions), academic educational departments, research labs and related administrative activities. These activities do not constitute medical care; they serve educational or research purposes and not the constitutionally required “hospital purpose” of providing “medical care.”

**A. The plain meaning of medical care is *treating a person to maintain or promote their physical and emotional well-being*.**

Merriam-Webster's Online Law Dictionary provides these common, ordinary definitions:

- “health care: efforts made to maintain, restore, or promote someone’s physical, mental, or emotional well-being especially when performed by trained and licensed professionals.”
- “take care of: to attend to or provide for the needs, operation, or treatment of someone or something.”

<https://www.merriam-webster.com/dictionary/mission#legalDictionary>. In addition, the plain meaning of hospital is “an institution where the sick or injured are given medical or surgical care.”

Id.

**Dell Medical School (DMS) is not a licensed hospital or health clinic. It is an accredited institution of higher education.** MSJ, p. 57. The medical school’s education and research activities do not serve a “hospital purpose.” Central Health contracts with Seton Hospital for hospital care and non-acute care at clinics, as well as CommUnity Care, Lone Star Circle of Care, People’s Community Clinic, and UT Health Austin (UTHA). Id. UTHA is a licensed clinical group affiliated with the medical school, which is a separate entity from the school’s educational and research components. Id. Central Health funds UHTA to provide medical care for the poor in very limited specialty areas through a specialty services agreement-- *for which CH pays UTHA in addition to the \$35 million annual payment* to the medical school. MSJ, pp. 47

Our legal complaint is not with Central Health’s payments to UTHA that provide medical care for the poor, but the use of Central Health’s \$35 million annual payments (or any others) to DMS for non-medical care activities (or unreimbursed non-poor or non-resident medical care). For the indisputable internal accounting records of DMS show that only 10% of the \$35 million annual payments are expended on medical care for anyone; 90%, as classified officially by DMS, goes to education, research and general administration of a medical school. MSJ, pp. 26-31. As for the

10% that goes to for medical care, there are no records (after many discovery requests and deposition inquiries) that any of this medical care actually goes to CH-eligible low-income patients. MSJ, pp. 29-30, 45-47.

**Central Health is not an omnibus, all-purpose governmental agency.** It is a limited, special purpose district for operating a *hospital system* that provides hospital and medical care for poor residents of the county. The medical education of students is not the treatment of patients. Research is not the treatment of patients. The general administration of a medical school (excluding clinical administration) is not related to the treatment of patients. MSJ, pp. 32-33. Economic development and non-medical social welfare programs are not medical care (CH funds these activities via other entities). MSJ, pp. 51-53.

**A local medical school is not indispensable to providing health care: the vast majority of hospital districts across Texas today provide medical care to the poor without the presence of a local medical school. In fact, so did Brackenridge Municipal Hospital and Central Health for years in Travis County before DMS existed.** MSJ, pp. 56. Response, *infra*.

Central Health, however, argues that it “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.” MTD, p 30. CH, however, has presented no justification without reasonable doubt that its funding of the establishment and operations of a medical school is indispensable to its express power to fund “hospital and medical care.” Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 947. (See the MSJ, pp. 11-15 for further discussion and cases). Builder Recovery Services v. Town of Westlake, 650 S.W.3d at 503 (“power will be implied only when without its exercise the expressed duty or authority would be rendered *nugatory*”—of no value or



useless) (emphasis added); Pecos County Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist., 672 S.W.3d 401 (Tex. 2023).

**Central Health’s express power to provide medical care to the poor would not be rendered worthless or useless (“nugatory”) without CH’s future funding of a medical school’s non-clinical operations and administration.** Before CH began funding DMS in 2013, Brackenridge Municipal Hospital and Central Health undeniably provided medical care to the poor without funding the non-clinical operations of a medical school. Second, before DMS received CH funding, both Brackenridge Municipal Hospital and CH public hospital systems had medical residents, which were provided by UT Southwestern Medical School in Dallas and UT Medical Branch in Galveston. MSJ, Exhibit 1 (Depo. of Dr. Young), pp. 109-112, 117-118. See also MSJ, p. 58. Moreover, the current residents are funded by Seton and the federal government, not DMS. Id.

**Third, like every other hospital district, Central Health does not indispensably and without question need a medical school to procure additional medical services.** It simply needs, like every other medical provider, to recruit and hire in the marketplace additional necessary medical personnel and services. And in fact, according to its former President Geeslin, that is exactly what Central Health has been doing to staff its new healthcare clinics: hiring medical personnel “though recruiting and making job offers,” as well as “[a]ll suitable means that are available including web sites and job board.” MSJ, Exhibit 6 (Geeslin Deposition), p.173.

These CH recruiting and hiring efforts “would be similar” to those of other health care providers. Id. Hospitals, HMOs, and health clinics pay the market rate to procure necessary medical personnel; they don’t fund the general operations of a medical school in the “trickle-down” hope that *someday that some of the medical students will become local medical residents, and some*

*of these residents will practice medicine in Travis County, and then some of these doctors will practice in the medical areas CH needs to serve the poor, and finally some of these doctors will provide medically necessary clinical care for CH poor patients for a sufficient period of time to justify all the prior years of unrelated expenses. Perhaps this is useful, but clearly it is not indispensable without reasonable doubt.*

Central Health argues it needs to continue providing the \$35 million annual payments to DMS in the future because it is entering with DMS and UTHA into two new agreements: 1) “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 more medical services”; and 2) “a Professional Services Agreement to assist Central Health [in] expand[ing] 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.” MTD, p. 14. Assuming that these agreements are reasonable, necessary, and actually for providing medical care for poor residents—and that there are sufficient financial controls and recordkeeping to ensure that the funds are spent as intended—plaintiffs have no legal dispute with Central Health funding these activities.

**But CH’s \$35 million annual payments are not the source of funding for the purported medical care services under these two new agreements: CH is paying DMS and UTHA funds *in addition to the \$35 million annual payment* to provide these services.** MSJ, Exhibit 1 (Deposition of Dr. Young), p. 122-124). If these health care agreements are as represented, then logically an injunction to prohibit CH from continuing to illegally fund medical

education, research and general medical school administration would not interfere with these agreements.

Funding the creation of a medical school, as well as the establishment of its non-clinical care operations and administration, is *not indispensable* to obtaining medical providers or reasonable and necessary hospital system consultants because these services are available from many other sources. If Central Health needs reasonable and additional medical care providers, then it can recruit and pay them for their services, as it is doing now for its new public clinics.

**B. Central Health’s funding of education and research is also *ultra vires* because these activities are not encompassed within Chapter 61’s definitions for hospital districts of basic and optional “health care services.”**

The Texas Legislature adopted “The Indigent Health Care and Treatment Act, Chapter 61 of the Health and Safety Code, [which] *defines the responsibilities of hospital districts in providing medical care to the indigent.*” Tex. Atty. Gen. Op. No. JC-394 (2001) at 1(emphasis added); Tex. Const. Art IX, Sec. 9a. Section 61.028 states that “a county shall...provide the following basic health care services,” and then lists only services that are plainly and undeniably medical care (treatment for patients).<sup>3</sup> This statutory definition has no reference of any kind to medical education or research. Likewise, section 61.0285 states “a county may...provide *other medically necessary services or supplies* that the county determines to be cost-effective and lists additional optional services that are plainly understood to be medical care. This provision also does not mention medical education, research, and general medical school administration, which are not ordinarily understood to be “medically necessary services or supplies” for treating patients. (A

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<sup>3</sup> Tex. Health & Safety Code, Section 61.055 applies these sections’ definitions of mandatory and optional “health care services” for the poor to hospital districts.

common definition of “medically necessary” is “[h]ealth care services or supplies *needed to diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.*” (emphasis added). Healthcare.gov online definition at <https://www.healthcare.gov/glossary/medically-necessary/#:~:text=Health%20care%20services%20or%20supplies,meet%20accepted%20standards%20of%20medicine>).

This ordinary understanding of indigent health care services reflected in Sections 61.028 and 61.0285 is reinforced by language expressly conditioning these definitions to being “in accordance with department rules adopted under Section 61.006.” Pursuant to this section, the Texas Health and Human Services Commission has adopted administrative rules fleshing out these statutory definitions. 26 T.A.C. 363.101 (Attached as Plaintiffs’ Response Exhibit 1, with verification by attached affidavit). Every basic or optional health care service listed or explicated in the rule comports with the plain meaning of medical care as treatments for patients. *Id.* No listed service mentions education, research, medical school operations, or economic development.

**In addition, this understanding of the plain meaning of medical care is bolstered by the fact that Central Health’s health care services agreements reflect *the same meaning: medical care is providing treatment to patients.*** Central Health’s Omnibus Healthcare Services Agreement with Seton defines charity care and MAP “health care services” as the term is commonly understood and then itemizes a long list of medically necessary, covered treatments. Master Agreement Between CH and Seton (2013) (MSJ, Exhibit 22, Attachment C, pp. C-1, C-3). Similarly, the specialty services agreement between CH and DMS defines “medically necessary” as “*the use of services and supplies provided...to an Eligible Patient ... which are appropriate for the symptoms, diagnosis or treatment of the Eligible Patient’s medical condition... and provided*

*for the diagnosis/treatment or direct care of illness, disease or injury of the Eligible Patient's medical condition as directed by the treating physicians.” Specialty Agreement of CCC and UTHA (October 1, 2019) (MSJ Exhibit 23, pp. 2-3 (Sec. 1.18)) (emphasis added). Even Central Health’s own definitions of health care services in its health care agreement do not include education, research, or the general operations of a medical school.*

**C. Central Health mistakenly claims various, vague statutory provisions impliedly authorize it to fund non-medical care activities.**

In support of such implied authority, defendants point to isolated, vague phrases in various statutes, which they then take out of context, to claim a previously unrecognized and enormous implied power to fund a medical school. El Paso Healthcare Sys. v. Murphy, 518 S.W.3d 412, 418 (Tex. 2017) (“we look at the entire act, and not a single section in isolation”).<sup>4</sup> See also, MSJ, pp. 20-23.

**1. Defendants’ argument is fundamentally flawed because it fails to read the cited provisions in light of hospital districts’ limited authorized powers in the constitution and in Section 281.002.<sup>5</sup> It overlooks that the constitution authorizes hospital districts to establish only “a hospital or hospital system” and levy taxes only for “hospital purposes.”<sup>6</sup> Bexar**

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<sup>4</sup> “[O]ur analysis ‘begins with the Legislature’s words,’ looking first to their plain and common meaning. Fitzgerald v. Advanced Spine Fixation Sys., 996 S.W.2d 864, 865-66 (Tex. 1999). In conducting this analysis, ‘we look at the entire act, and not a single section in isolation.’ Id. Our ‘text-based approach to statutory construction requires us to study the language of the specific provision at issue, within the context of the statute as a whole, endeavoring to give effect to every word, clause, and sentence.’ Ritchie v. Rupe, 443 S.W.3d 856, 867 (Tex. 2014).” El Paso Healthcare Sys. v. Murphy, 518 S.W.3d 412, 418 (Tex. 2017).

<sup>5</sup> Section 281.002, titled “District Authorization,” provides a county “may create a countywide hospital district to assume ownership of the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district.” Tex. Health & Safety Code, Sec. 281.002(c) (emphasis added). It contains no express power for hospital districts to provide non-medical care services.

<sup>6</sup> Hospital district taxes may be levied and used only for the purposes authorized in the constitution and a hospital district’s enabling legislation. See Bexar County Hosp. Dist. v. Crosby, 327 S.W.2d 445 (Tex. 1959) (Article IX, section 9 tax levied for bond debt service may only be used for that purpose); Tri-City Fresh Water Supply Dist. No.

County Hospital District v. Crosby, 327 S.W.2d 445, 447 (Tex. 1959) (taxes “were levied for hospital purposes and are *limited to that use*.”) (emphasis added). Texas Attorney General opinions have consistently held that the words of a district’s statutory provision “does not end the analysis”; because the constitution requires consideration of whether the activity “would serve [a] hospital purpose consistent with article IX, Sec. 9”). Tex. Atty. Gen. Op. No. JC-220 (2000), at 5; Tex. Atty. Gen. Op. No. DM-131 (1991), at 1-2 (a hospital district’s express general statutory authority to lease facilities only extends to leasing facilities that *serve a hospital purpose*); Tex. Atty. Gen. Op. No. DM-37 (1991), at 1. The plain meaning of hospital (or system of hospitals and clinics), is “an institution where the sick or injured are given medical or surgical care.” <https://www.merriam-webster.com/dictionary/hospital>. Hospital purpose does not include a medical school’s non-medical care activities.

**2. Defendants cite to various statutory provisions as implicit authorization for funding a medical school; none, however, clearly and unquestionably provides the requisite authority. The three provisions directly below explicitly limit a particular district statutory provision to those of “a hospital or hospital system” or “health care services”—in short, to a “hospital purpose.”**

-- Sec. 281.047 generally authorizes Central Health to “manage, control, and administer *the hospital or hospital system* of the district.” (emphasis added). Funding a medical school does not serve a hospital purpose and does not treat patients; general authority to administer a program

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2 v. Mann, 142 S.W.2d 945, 948 (Tex. 1940) (taxing power may be exercised only for purposes distinctly included in constitutional or legislative provision); Tex. Atty. Gen. LO-97-004, at 1 (use of hospital district taxes limited to purposes set out in constitution); LO-95-088, at 1 (same).” Tex. Atty. Gen. Op. No. JC-220, at 5. Hospital districts’ statutory tax authority, which Texas courts construe strictly, is expressly conditioned “on the district assum[ing] full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.” Tex. Health & Safety Code, Section 281.046. See MSJ, pp. 14-15.

does not authorize activities outside the plain meaning of the law or its statutory purpose. Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W. 3d 154, 165-167 (Tex. 2016) (broad administrative authority does not authorize activities contradicting the plain meaning of the text); City of San Antonio v. City of Boerne, 111 S.W.3d 22, 28, 31-32 (Tex. 2002) (a county’s broad general authority over roads cannot authorize activities that exceed its express purpose). See MSJ, pp. 21-23.

-- Similarly, Section 281.043 authorizes a hospital district to assume the prior obligations of the county or municipal public hospital “for the construction, support, maintenance, or operation of *hospital facilities and the provision of health care services* or hospital care, including mental health care, *to indigent residents...*” (emphasis added)

-- Section 281.0565 (d) authorizes a hospital district to “make a capital or other financial contribution to a charitable organization created by the district to provide regional administration and delivery of *health care services* to or for the district.” (emphasis added). Again, this provision is expressly limited to providing administration and delivery of “health care services.” Properly read, these are necessary components of “health care services” and serve a “hospital purpose.”

**The next two statutory provisions defendants cite also explicitly reference “hospital systems” and “medical care,” but defendants point to vague language which they take out of context—which is a very thin reed for a finding of clear indispensable authority for a special purpose hospital district to fund a medical school’s non-medical care activities.**

-- Sec. 281.050 (a) provides that Central Health “may 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.* (emphasis added). The “service[s] *required*” by a

district are those that serve a hospital purpose: establishing and administering a hospital system to provide medical care. Medical education and research serve valuable purposes, but they do not serve a “hospital purpose” in treating patients: they serve education and research functions, as DMS’s official accounting records admit.

-- Section 281.565 (b) provides a “district may 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.” (emphasis added). A district-established charitable organization may facilitate only “management of a health care program” that serves a “hospital purpose” because it would encompass medical care administration. Under this provision, such healthcare management for “hospital purposes” can be provided in three ways. The first two ways expressly reference “health care services.” The third way is by “providing ancillary support services for the district.” Read properly—in context of a hospital district’s express authority—this includes only “ancillary supportive services” for “hospital purposes” and medical care. “Ancillary health care services” are ordinarily defined as “[h]ealth services ordered by a provider, including but not limited to, laboratory services, radiology services, and physical therapy.” Law Insider Online (<https://www.lawinsider.com/dictionary/ancillary-health-services>.) See also Insuranceopedia Online (“Ancillary services are health services that are not directly administered by a physician but which are still covered by health insurance. *These services provide support for a physician’s diagnosis and treatment...*in a medical setting, the physician performs the primary obligation of assessing and treating a patient. *Physicians, however, also rely on a support system that includes laboratories, therapists, nurses, and other healthcare providers. This support system constitutes*



*ancillary care.*”) (emphasis added) (<https://www.insuranceopedia.com/definition/5469/ancillary-services>).<sup>7</sup>

The defendants’ reading of “ancillary support services” as providing implicit, indispensable authority to fund “ancillary” non-medical care services is at doubtful at best. Their reading relies on the term “ancillary support services” without any reference to the constitution’s express purpose for a hospital district to provide medical care. If the Legislature wants to authorize a hospital district to have such an enormous, heretofore nonexistent power, it can pass and recommended to the voters a plainly stated constitutional amendment to that effect. Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 948 (“Had the Legislature intended to invest Fresh Water Supply Districts with corporate powers to purchase and install apparatus for fire prevention and fire protection and to construct and operate a sewerage system within a given territory, *it doubtless would have so enacted in plain language.*”) (emphasis added).<sup>8</sup>

Lastly, defendants reference Sec. 281. 0511(b), which provides Central Health “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.” The district’s general authority to contract must be limited by its constitutional and statutory purpose: to provide medical care to poor county

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<sup>7</sup> “Ancillary is commonly defined as providing necessary support to the primary activities or operation of an organization, institution, industry, or system.” Webster’s Legal Dictionary Online (<https://www.merriam-webster.com/dictionary/ancillary#legal>). Medical education, research, and general operations of a medical school do not provide necessary, indispensable ancillary support for a hospital district to provide “medical care” to the poor.

<sup>8</sup> It is noteworthy that a bill was filed (and failed to pass) to attempt to authorize Central Health’s use of a charitable organization to fund medical education and research. SB 821, filed in the Texas Legislature’s 2011 Regular Session, sought to amend Section 281.0565(d) to add the following italicized text: “A district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003 [bracketing Central Health], may make a capital or other financial contribution to: ... (2) a charitable organization for the support of medical, dental, or clinical education, training, or research occurring within the district for the purpose of delivery of health care services to or for the district.” Plaintiffs’ Response, Exhibit 2 (with attached verification).

residents. Otherwise, this vague provision would empower Central Health to contract for any services, however unrelated to its express powers. Tex. Atty Gen. Op. No DM-131, at 1-2 (general statutory authority to lease is not sufficient; the lease also must also serve a “hospital purpose.”); Tex. Atty. Gen. Op. No. JC-220, at 5. Tex. Health & Safety Code, Sec 285.091(a) suffers from the same legal malady.

**D. Central Health’s evidence of its expenditures on medical care is irrelevant to this *ultra vires* lawsuit.**

**This action is brought challenging as illegal and *ultra vires* Central Health’s funding of activities that are *NOT* medical care. We are not challenging its expenditures for “hospital and medical care” within the plain meaning and statutory definitions of these terms (which demarcate the limits of their legal authority).** We are challenging as illegal CH’s funding of activities that DMS officially classifies according to standard national codes as constituting education, research, general medical school administration, and other non-medical care functions. We seek to declare and enjoin from CH funding in the *future only such non-medical care activities by DMS and others.*

Plaintiffs are *not* challenging Central Health’s unreimbursed funding of *medical care services for low-income eligible residents* provided by Seton Hospital and various local health clinics, including UTHA. In fact, plaintiffs are bringing this lawsuit to ensure that in the future CH’s public funds are spent only on “hospital and medical care” by these medical providers or others of CH’s choosing—and not diverted from their constitutional and statutory purpose.

In support of its Motion to Dismiss, Central Health discusses at length the “medical care services” it has provided the poor, indicating, for example, that in 2022 its funds “provided 51,318 uninsured Travis County residents health coverage through...MAP”; “add[ed] twenty-four new providers,” and “funded 532,644 primary care visits.” Central Health also lists a number of health

clinics and medical care services it is funding. But we are not contesting its unreimbursed funding of medical care for the poor; we are challenging as *ultra vires* its funding of activities that are not medical care to poor residents. **Evidence of Central Health’s legally authorized funding of unreimbursed medical care for the eligible poor is not relevant to our *ultra vires* lawsuit.**

**The evidence, however, that Central Health does not, and cannot, present is quite relevant to our *ultra vires* action:**

**Central Health and DMS have produced *no evidence* (despite repeated discovery requests and deposition questions) of the *aggregate patient visits and treatments, if any, provided by the medical school from its \$35 million annual payments*, as opposed to other CH funding for medical care to Seton’s hospital and clinics, other community clinics, *and* UT Health Austin under the specialty services agreement. MSJ, pp. 29-30.**

**Central Health and DMS have produced *no evidence* of the aggregate number of CH-eligible patients treated or their treatments, if any, funded from the 10% of Central Health’s annual payments that DMS has expended on what it officially classifies as medical care and medical care administration. MSJ, pp. 29-30.**

**Nor has Central Health or DMS produced any evidence of how much, if any, of these clinically classified expenditures has served eligible low-income county residents. MSJ, pp. 29-30, 45-47.**

**Nor has DMS and CH produced any evidence that CH has received any reimbursement from DMS for any medical care for which DMS has used CH funds to treat**

**paying or non-resident patients**—which CH is required to collect for the reasonable costs of funding these services.<sup>9</sup> MSJ, pp. 49, 60-61.

In summary, as a matter of law, DMS has indisputably expended tens of millions of CH public funds on activities beyond the plain meaning and statutory definitions of its enabling laws. MSJ, pp. 25-53 (discussing in depth the indisputable evidence as to DMS’s expenditures with CH public funds). CH’s funding of these unauthorized activities (non-medical care), or unreimbursed medical care for ineligible patients (who have the ability to pay or are not residents of Travis County) exceed the limits of its legally authorized discretion and are *ultra vires*.

#### **IV. Nor Can CH By Contract or Local Ballot Measure Expand Its Constitutional and Statutory Authority.**

**Deflecting from its clear lack of express or implied power to fund non-medical care services, Central Health contends it has such authority from the voter-approved Central Health tax increase ballot measure and from its Affiliation Agreement with DMS.** These contentions are simply legally wrong: (1) Travis County voters have no authority under the constitution and statutes to empower Central Health to raise and spend taxes on anything outside its express and implied powers; and 2) Central Health has no authority to enter into or implement any contractual provisions that purport to authorize it to fund activities that exceed its constitutional and statutory authority.

##### **A. The 2012 voter-approved, CH ballot measure cannot expand CH’s legal authority.**

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<sup>9</sup> See, e.g., Tex. Health & Safety Code, Secs 281.072 (hospital district required to seek reimbursement for non-resident health care services); 61.006 (standards required for eligibility), 61.007 (required residency and income information for applicants); 61.008 (resource eligibility standards); 61.025 (required to review eligibility); 61.052 (general eligibility requirements for hospital districts); 61.052 (required eligibility application procedures).

In November 2012, Travis County voters approved a CH ballot measure to increase CH property taxes, which provide, in relevant part, that “funds will be used for *improved healthcare in Travis County*, including support for a new medical school *consistent with the mission of Central Health...*.” Central Health Ballot Measure (Nov 2012), available at <https://www.centralhealth.net/library/legal-documents/2012-election-proposition-1/> (last visited May 1, 2024) (emphasis added). Local voters have no authority to expand the powers of constitutional and statutorily authorized special purpose districts. A voter-approved measure cannot enlarge the powers of hospital special purpose districts that are limited by state law. (Travis County voters do have authority to establish a hospital district (after Legislative authorization), approve its lawful bonds, and to change its property tax rates). Tex. Const. Art. IX, Sec. 4; Tex. Health & Safety Code, Secs. 281.003, 281.004, 281.102, 281.107, 281.124.

The leading case again is Tri-City Fresh Water Supply Dist. v. Mann, *supra*. A special purpose water supply district held a bond election in which “notices given for the voting of the bonds and the bonds themselves” explicitly stated the bond funds would be used for purposes that the district did not have authority to engage. *Id.* at 946. Voters approved the bonds. The Supreme Court upheld the Texas Attorney General’s refusal to authorize the bonds: “The people of this district *do not have the power to determine for themselves such corporate functions as they may wish to inaugurate*, such as are granted to cities and towns operating under home-rule charters. *This district may exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication.* *Id.* at 946. (emphasis added). See also Foster v. City of Waco, 255 S.W. at 1106 (Tex. 1923).

Furthermore, this ballot language can, and should, be read to comport with Central Health’s constitutional and statutory authority: that the funds are spent on “health care in Travis County”

and on a medical school's activities that are "consistent with the mission of Central Health." Central Health's legal authorized purpose (mission) is to provide "hospital and medical care" for poor county residents. Since only one function of a medical school provides medical care, CH taxes may be spent only on that function "consistent with Central Health's mission." Central Health has no express or implied power to spend its taxes and public funds on medical school education, research, or general school administration, or other non-medical care services—no matter how valuable they may be. See MSJ, pp. 14-15.

**B. CH's Affiliation Agreement cannot expand its legal authority.**

Defendants discuss at length the DMS Affiliation Agreement and its definition of "permitted investments." They contend Affiliation Agreement provisions provide them *contractual authority* for DMS's use of CH's funds for non-medical care. MTD, pp. 21-30. They point to the contractual definition of "permitted investments," which is very broad and purports to allow DMS, in its "discretion," to expend CH's funds on essentially any activities related, "directly or indirectly," to the operations or administration of a medical school. See MSJ, pp. 39-41, 56-57 (discussing the incredibly broad language of the definition of "permitted investments").

In practice, CH and DMS officials interpret "permitted investments" as broadly as possible to allow DMS to spend CH funds on essentially any medical school expenditure. MSJ, Exhibit 3, Depo. of Morris, p. 175-176; Exhibit 1, Depo. of Dr. Amy Young, p. 63; Exhibit 6, Depo. of Geeslin, pp. 108-113. CH and DMS look solely to this contractual definition for the scope of DMS's authority *and not to the district's enabling legislation*. MSJ, Exhibit 3, Depo. of Morris, p. 85-86, 96, 172-173. Exhibit 1, Depo. of Dr. Amy Young, p. 63. Exhibit 6, Depo. of Geeslin, pp. 106-107, 194, 215.

**As a special purpose district, Central Health may not enter into or implement contractual provisions that exceed its express or implied constitutional and statutory**

**authority.** Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 947; Foster v. City of Waco, 255 S.W. 1104, 1106 (Tex. 1923). The determining sources for the scope of CH's legal authority to contract are the constitution and next its enabling statutes. Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 946-947. If, as plaintiffs contend, defendants have no express or implied authority to spend unreimbursed CH funds except for "hospital purposes" for "medical care" for the county's poor, then the Affiliation Agreement's definition of permitted investments are illegal. Hendee v. Dewhurst, 228 S.W.3d 354, 380 (Tex. App.—Austin 2007, no writ) ("We see no meaningful distinction, for example, between a taxpayer suit to enjoin expenditures under an allegedly void or illegal contract, long permitted in Texas law... and a taxpayer suit to prevent expenditures under an unlawful legislative appropriation." Courts have enjoined enforcement of unauthorized contracts as *ultra vires*. See also Osborne v. Keith, 177 S.W.2d 198, 200 (Tex. 1944); Miller v. Long–Bell Lumber Co., 148 Tex. 160, 222 S.W.2d 244, 246 (Tex.1949). In summary, Central Health is looking for authority in all the wrong places.

**In conclusion, defendants' motion to dismiss fundamentally misunderstands the very limited powers of special purpose districts and the heavy burden Texas caselaw places on such entities to show they have express or implied powers.** Defendants maintain that they have broad implied powers because there is no "list of the exclusive services a hospital district is permitted to provide or [of] prohibit[ed] services." Defendants' MTD, pp.6, 25. This argument turns Texas law upside down. *It is not plaintiffs, but Central Health that has the heavy burden as a special purpose district to show it clearly has such express power or such indispensable implied power.* A special purpose district's implied power *cannot be "merely convenient or useful"* but so indispensable that the implied power's *absence renders its express power "nugatory."* (of no value). Tri-City Fresh Water Supply District v. Mann, 142 S.W.2d at 947 (emphasis added);

Builder Recovery Services v. Town of Westlake, 650 S.W.3d 499, 503 (Tex. 2022) (emphasis added).

**V. The Texas Supreme Court Holds That Special Purpose Districts Have Limited Discretion to Administer Their Legally Authorized Activities, But They Act *Ultra Vires* When They Engage in Activities Beyond the Plain Meaning of Their Enabling Laws.**

**A. The leading Supreme Court case on the limits of an agency official’s lawfully authorized discretion is Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W. 3d 154 (Tex. 2016).**

Houston Belt & Terminal Ry. Co. v. City of Houston concerns a drainage program administrator’s interpretation of Houston’s drainage ordinance. Because the ordinance gave the director authority for the program’s “administration,” the city, like the defendants in this litigation, maintained that the law “implies a broad grant of authority and discretion, citing dictionary definitions of ‘administration’ and ‘ministerial.’” 487 S.W. 3d 154, 164-165 (Tex. 2016). The city further contended that “because Krueger [the administrator] has authority to administer, he necessarily has authority to interpret ‘benefitted property [the term in question]’, *and so his determination—even if wrong—cannot be ultra vires.*” Id. (emphasis added).

The Supreme Court ruled against the City of Houston, even though it was a home-rule city with plenary power and not a special purpose district such as Central Health with very limited powers. The Court held that the administrator’s interpretation of the text conflicted with the “plain meaning” of the definitions, and, therefore, was beyond his authority. Id. at 166. The Court pointed out that “as is generally the case, *the limits of Krueger’s [the administrator’s] authority are found in the authority-granting law itself—the ordinance.*” Id. at 165 (emphasis added). Looking at the ordinance’s definitions, the Court found that they were clear and that the administrator’s interpretation—that the drainage fee applied to all property in Houston regardless of whether the property was part of the city’s drainage system—“is contradicted by the ordinance’s plain language.” Id. at 166. The Court held that although the administrator had discretion to administer



the drainage program, “no language in the ordinance grants Krueger discretion to interpret ‘benefitted property’—or any other definition—in a way that is contrary to the definition itself.” *Id.* at 167. A number of other recent Supreme Court cases have held similarly and are referenced and discussed in our motion for final summary judgement. MSJ, pp. 22-23.

**B. Defendants rely heavily on Hall v. McRaven 508 S.W.3d 232 (Tex. 2017), which is inapposite for the very reasons the Supreme Court distinguished that case from Houston Belt.**

That unusual, politically charged case involves an *ultra vires* suit by UT Regent Hall against UT Chancellor McRaven. Hall alleged *ultra vires* acts by McRaven for redacting student names under federal privacy law from student admission records that Hall sought regarding UT’s affirmative action policies. *Id.* at 234. The Court, with four concurring opinions, held that the Chancellor had not acted *ultra vires*.

**The Court never reached the issue whether Chancellor McRaven illegally interpreted federal privacy law or whether Regent Hall had a statutorily required legitimate educational interest in the records under the federal law.** *Id.* at 241 n.1.<sup>10</sup> The Court simply assumed for purposes of argument that McRaven had misinterpreted federal privacy law. *Id.*

**The Supreme Court explicitly distinguished Hall v. McRaven from its Houston Belt holding:** “But the *ultra vires* claim in Houston Belt differs from Hall’s claim in two key respects.” *Id.* at 241. First, the Court held that McRaven was not interpreting his institution’s state enabling law but a collateral federal law: “[T]he [Houston Belt] Director’s *misinterpretation was of the requirements of his enabling law*.... Consequently, when the [Houston Belt] Director

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<sup>10</sup> “We do not decide what constitutes a ‘legitimate educational interest’ under FERPA or any other questions of federal privacy law. For purposes of addressing whether Hall’s *ultra vires* claim is proper, we assume for the sake of argument that McRaven and his legal advisors incorrectly interpreted FERPA.” *Id.* at 241 n.1 (emphasis added).

misinterpreted the limits of the ordinance, he misinterpreted the bounds of his own authority—exceeding the scope of what the City permitted him...*Here, McRaven’s interpretation is not of his organic authority* but rather federal privacy law—a law collateral to McRaven’s authority.” *Id.* at 241-242. (emphasis added and citations omitted).

Second, McRaven had implemented a specific regent’s resolution granting him the unrestricted discretion to make privacy record redactions as to particular student admissions records: “It is Section 5.4.6 of Regents’ Rule 10801, not FERPA [the Federal Educational Rights and Privacy], that supplies the parameters of McRaven’s authority...Based on *the unrestricted nature of McRaven’s authority* under Section 5.4.6, we find his discretion to interpret collateral federal privacy law to be ‘absolute’ under our framework from Houston Belt.” *Id.* at 242-243 (emphasis added). “The Board instructed him to redact information he determined protected under FERPA, and he did just that.” *Id.* at 243.

In the instant case, unlike in Hall v. McRaven, plaintiffs maintain that the defendants exceeded their legal authority as to Central Health’s *enabling acts* under the state constitution and statutes. The plain meaning and statutory definitions of “hospital and medical care” do not extend to education and research; the state’s enabling laws do not authorize defendants to completely transform and massively enlarge the powers of a special purpose hospital district beyond its express powers to provide hospital and medical care. Houston Belt’s *ultra vires* reasoning applies in this case because the defendants have far exceeded their limited state enabling authority without

express or indispensable, unquestioned implied power, unlike the Chancellor in the very narrow, unique matter in Hall v. McRaven.<sup>11</sup>

**C. In Chambers-Liberty Counties Navigation Dist. v. State, 575 S.W.3d 339 (Tex. 2019), the Supreme Court distinguished Hall v. McRaven on the grounds explained above, upholding reasoning in Houston Belt allowing *ultra vires* lawsuits when governments exceed their limited discretionary authority by violating state law.**

In Chambers-Liberty Counties Navigation Dist. v. State, the Court held that the special purpose navigation district acted *ultra vires* and exceeded its limited discretion by entering into a lease that conflicted with state law: “Commissioners do not have discretion to misinterpret state statutes constricting their authority... Unlike McRaven, the Commissioners acted ‘without state authority’ by exceeding ‘the bounds of [their] granted authority.’ The District’s alleged actions fit squarely within the *ultra vires* doctrine as we described it in Hall and prior cases.” 575 S.W.3d 339, 354 (Tex. 2019) (citations omitted). An official acts “‘beyond his granted discretion’—if he exercises judgment or limited discretion ‘without reference to or in conflict with the constraints of the law authorizing the official to act,’ because ‘a public officer has no discretion or authority to misinterpret the law.’” Id. at 349, citing Houston Belt, 487 S.W.3d at 163.

The other immunity cases CH relies upon are equally unavailing. Defendants cite Harris Cty. Hosp. Dist. v. Tomball Regional Hosp., 283 S.W.3d 838, 847 (Tex. 2009) and Martinez v. Val Verde Cty. Hosp. Dist., 140 S.W.3d 370, 372 (Tex. 2004) for the proposition that hospital districts are immune from suit. In both cases, however, plaintiffs sought damages against the hospital district and the Court held that the Legislature had not waived governmental immunity to

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<sup>11</sup> In addition to suing CH’s head administrator, in his official capacity only, for *ultra vires* acts, plaintiffs sued Central Health itself (out of an abundance of caution) before the holding in Chambers-Liberty Counties Navigation Dist. v. State, 575 S.W.3d 339 (Tex. 2019). Plaintiffs recognize that current state law technically does not allow suit against the governmental entity but wished to ensure that an injunction against illegal expenditures applied, if necessary, to the entity as a whole.

sue or be sued. Neither case involved the exception to governmental immunity for *ultra vires* lawsuits to enjoin future illegal acts.

As for Jackson County Hosp. Dist. v. Jackson County Citizens for Continued Hosp. Care, 669 S.W.2d 147, 148-149, 151 (Tex. App.—Corpus Christi 1984, no writ), the Court of Appeals held simply that a hospital district has discretion to determine where to provide certain medical care, in this case determining to close the emergency room at one of its two hospitals. Plaintiffs don't dispute that hospital districts have authority on how and where to provide medical care; Central Health, however, has no authority to exceed the plain language and definitions of their enabling laws to fund non-medical care activities.

**VI. Defendants' argument is spurious that Central Health is immune from this *ultra vires* action for violating Article III, Sec. 52(a).**

**First, contrary to defendants' assertion, Article III, Sec 52 (a) applies to public fund transfers between governmental entities such as Central Health and DMS.** The Supreme Court applied this constitutional amendment to Bexar County Hospital District in 1959. Bexar County Hosp. v. Crosby, 327 S.W.2d 445, 447-448. (Tex. 1959). The lawsuit was between two governmental entities (the hospital district and the county represented by the county auditor Crosby) and alleged a violation of Article III, Sec. 52 (a). The Court applied the constitutional provision but held the funds in question were not a gift in those circumstances. Id. at 449. See also Fort Worth Ind. Sc. Dist. v. City of Ft. Worth, 22 S.W.3d 831, 841-843 (Tex. 2000) (analyzing under Article III, Sec. 52 whether city property taxes were spent on the school district, which would have violated Article III, Sec. 52(a) because the city had no authority to make such a transfer

of city funds to the school district).<sup>12</sup> Private as well as governmental entities such as DMS, pursuant to Article III, Sec. 52(a), are constitutionally required to spend public funds as authorized by state law.

**Second, Defendants misunderstand the thrust of plaintiffs’ reasons for alleging a violation of Article III, Sec. 52(a). Our argument focuses on the second, independent requirement for “determin[ing] if a statute accomplishes a public purpose consistent with section 52(a)...Specifically, the Legislature must: (2) *retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment... .*”** Texas Municipal League Intergovernmental Risk Pool v. Texas Workers’ Compensation Commission, 74 S.W.3d 377, 384 (Tex. 2002) (emphasis added). Defendants focus at length on constitutional requirements one and three: a public purpose and return benefit. Central Health’s \$35 million annual payment to DMS *generally* serves a public purpose and *generally* provides a benefit—but *not the legally authorized public purpose or benefit required by law*: medical care services. (This is why DMS budgets officially classify the \$35 million annual payment as a gift and not as restricted funds subject to statutory prescriptions. MSJ, pp. 38-39). The tens of millions

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<sup>12</sup> Defendants’ reliance on this quotation from Texas Municipal League Intergovernmental Risk Pool v. Texas Workers’ Compensation Commission, 74 S.W.3d 377, 384 (Tex. 2002) is misplaced: “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.” (emphasis added). The Court actually applied and analyzed Article III, Sec. 52(a) in that case; this quotation is dicta. *Id.* at 383-386.

Furthermore, the Court distinguished the municipal risk pool in question from other governmental entities by stating it “is not an association; it is an account in the State treasury.” *Id.* Special purpose districts such as Central Health are unquestionably included within Article III, Sec. 52(a)’s scope because special purpose districts are “commonly referred to by courts as quasi municipal corporations, for the reason that they are constituted by the legislature to exercise, in a prescribed area, a very limited number of corporate functions.” Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 948. Hospital districts are not simply an account in the state treasury.

of CH funds that are expended on non-medical care services at DMS do not serve *the specific constitutional and statutory purpose of Central Health*.

CH does not “retain public control over the funds to ensure that *the public purpose* [of a hospital district] is accomplished” – rather than a general governmental purpose that is not expressly or impliedly authorized for special purpose hospital districts. *Id.* at 384.

**At a constitutional minimum, public control requires that the governmental entity has the ability to oversee and control its funds to ensure that they are spent legally on its authorized constitutional and statutory purposes.** *Id.* In the recent case of Corsicana Indus. Found., Inc. v. City of Corsicana, 685 S.W.3d 171 (Tex. App.—Waco 2024, pet. filed), the Court of Appeals affirmed a partial summary judgement that as a matter of law the city’s agreement with private parties lacked adequate controls to ensure that its funds were spent on its authorized purpose. “[C]ourts require some form of *continuing public control to ensure* that the governmental entity receives its consideration, that is, accomplishment of *the public purpose*.” *Id.* (emphasis added). The Court held that the city’s expenditures violated Article III, Section 52 because “[w]e have been unable to discern any provisions in the Agreements that constitute an element of oversight by Appellees to ensure the public purposes are met, nor has Chase identified any. The right to mere document review does not provide authority to address irregularities. There is no provision allowing Appellees to back out for any reason, to change any terms, or seek reimbursement.” *Id.* at 185 (emphasis added). See Am. Precision Ammunition, L.L.C. v. City of Min. Wells, 90 F.4th 820, 827 (5th Cir. 2024) (contract constituted as a matter of law a gratuitous payment of public money in violation of Article III, Sec. 52(a)).

**The affiliation agreement clearly and unambiguously lacks sufficient financial control provisions as a matter of law.** MSJ, pp. 5-6, 20-23, 59-63. When the terms of a contract are

unambiguous, as here, the courts “will determine its meaning as a matter of law.” Piranha Partners v. Neuhoff, 596 S.W.3d 740, 744 (Tex. 2020); Am. Precision Ammunition, L.L.C v. City of Min. Wells, 90 F.4th at 827 (5th Cir. 2024) (determining as a matter of law the contract violated Article III, Sec. 52(a)).

Defendants contend that the Affiliation Agreement provides sufficient financial controls through its definition of “permitted investments” and DMS’s reporting on its compliance with this definition. MTD, pp. 28-31. These “constitute sufficient financial controls to ensure that the *Permitted Investment Payment is used for the outlined public purposes* [in the agreement].” MTD, p. 31 (emphasis added). This argument misconstrues Article III, Sec. 52(a). Texas Municipal League Intergovernmental Risk Pool v. Texas Workers’ Compensation Commission, 74 S.W.3d at 384, holds that this constitutional provision requires the governmental entity have sufficient financial controls to ensure its public funds are spent on *its legislatively authorized constitutional and statutory purpose*: it must “retain public control over the funds to ensure that *the public purpose is accomplished* and to protect the public’s investment.” (emphasis added). A contractual provision cannot expand an agency’s power beyond those authorized by state law; reviewing and reporting to ensure compliance with illegally authorized contractual provisions does not constitute sufficient financial controls to ensure compliance with state enabling law limitations.

DMS’s “community benefit” reports and the Atchley & Associates “permitted investments” compliance report provide no financial control ensuring that the \$35 million payments were *spent on authorized purposes: “hospital and medical care.”* DMS has *no records of the medical care, if any, it provided the poor for the \$35 million annual payments.* Brief, *supra*. The Atchley & Associates report was “to determine if [DMS] costs comply within the definition of ‘permitted investments’ within the Affiliation Agreement.” Response Exhibit 3, pp. 1-2 (bates

CH009768-CH009769). The report never mentions medical care expenditures for the poor or the laws governing hospital districts. Defendants’ “financial controls” do not even remotely ensure that CH’s funds are spent according to legislative strictures.

**It is telling that the affiliation agreement fails to contain the most basic, standard payor-provider provisions to monitor and control DMS uses of Central Health’s \$35 million annual payments *on medical care*: it has no scope of specified medical care services, no payment methodology, no recordkeeping requirements or right to audit, no medical care reporting requirements, and no right to reimbursement for duplicate or improper medical care payments.** As a healthcare payor, Central Health’s provider contracts with DMS should “reflect essential provisions of a typical provider agreement” related to financial controls. MSJ, Exhibit 3, Deposition of Morris, pp. 14, 151-152. See Jason Brocks, Health Plan Network Provider Agreement Essentials (Lexis-Nexis Practical Guidance Journal: Healthcare Practice Special Edition, April 2019).<sup>13</sup>

The affiliation agreement has none of these basic financial controls and payor protections to ensure CH funds at DMS are spent on medical care for the eligible poor. MSJ, Exhibit 3, Deposition of Morris, attached depo. exhibit 14 (Affiliation Agreement). See MSJ, pp. 39-41: 8-41, 60-61. The affiliation agreement purports to allow DMS in *its* “discretion” to fund directly or indirectly *any* operations and administration of the medical school. MSJ, Exhibit 3, Deposition of Morris, attached exhibit 14 (Affiliation Agreement), Section 1 (pp. 2-5, 9). It contains no list of

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<sup>13</sup> <https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/health-plan-network-provider-agreement-essentials> (last visited May 1, 2024).



required medical services DMS must provide and no payment methodology. *Id.* at i-ii (table of contents), Sec. 1 (definitions).

Absurdly, the agreement precludes Central Health from inspecting or auditing DMS's patient and claims records to ensure CH funds are spent as required by law on medical care. *Id.*, Sections 9.5.1 (p. 31) (inspecting and auditing DMS applies only to governmental authorities), Section 1 (p. 8) (the definition of "governmental authority" expressly and incorrectly excludes CH). See MSJ, pp. 5-6. Nor does the agreement give Central Health the right to seek reimbursement for duplicate or improper payments. MSJ, Exhibit 3, Deposition of Morris, exhibit 14 (Affiliation Agreement), pp. i-ii. It is revealing that versions of these basic provisions are in CH's specialty services agreement with DMS and its Omnibus Healthcare Services Agreement. MSJ, pp. 60-61.<sup>14</sup> In conclusion, as a matter of law there are not legally sufficient "provisions in the Agreements that constitute an element of oversight by Appellees to ensure the public purposes are met." Corsicana Indus. Found., Inc. v. City of Corsicana, 685 S.W.3d at 185.

**In conclusion, Defendants' MTD should be denied.** Central Health has only those express powers that are clearly stated and those implied powers that are indispensable and without reasonable doubt. Central Health has express authority to provide only unreimbursed "hospital and

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<sup>14</sup> MSJ, Exhibit 23, the Specialty Services Agreement with UT Health Austin ("UTHA") (October 2019), has all the standard payor-provider protection provisions: it specifies UTHA's duties (Section 2, pp. 4-6), the specific medical care services that UTHA will provide (Section 1.26, p. 3; Attachment A, pp. 22-55), the terms and method of payment (Section 3, pp 6-7; Section, 6.29, p. 18; Attachment A, pp. 22-55), the recordkeeping and reporting requirements (Sections 2.3 and 2.7, pp. 5-6; Attachment A, pp. 24, 28), the payor's right to inspect and audit (Section 2.4, pp. 5-6; Section 6.4, pp. 12-13), and reimbursement and coordination of benefit provisions (Section 4.4., pp. 7-9).

Central Health and Seton's Omnibus Health Care Services Agreement (June 1, 2013) (MSJ Exhibit 22, Attachment C) has all these standard provisions as well: it delineates Seton's specific duties (Articles 2- 3, pp. 8-14; Article 5, pp. 16-24), the specific medical care services that Seton will provide (Annex, C-1- C-10), the terms and method of payment (Annex B, B-14- B-16), the recordkeeping requirements (Section 2.7, p. 9; Section 8.19, p. 34), periodically providing to Central Health service reports (Section 2.14, pp. 12- 13), the right to inspect and audit (Section 8.18, p. 34) and reimbursement (Section 5.9, p. 20) and coordination of benefit provisions (Section 5.13, p.24).

medical care” to the poor; it has no implicit indispensable power beyond a reasonable doubt to fund non-medical care activities or provide unreimbursed medical care to ineligible patients. The plain meaning and statutory definitions define “medical care” as treatment of patients. They do not include medical education, research, general administration of a medical school, and economic development. The *ultra vires* exception to governmental immunity applies in this case because special purpose hospital districts and their administrators do not have lawful discretionary authority to exceed the plain meaning of their enabling laws or their statutory definitions.

### **PRAYER**

Wherefore, premises considered, plaintiffs respectfully request that the Court deny Defendants’ Motion to Dismiss and Plea to the Jurisdiction, and for such any and other relief, in law or in equity, to which plaintiffs are entitled.

Respectfully submitted,  
/s/ Manuel Quinto-Pozos

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein on this the 2nd day of May 2024, to:

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(512) 334-4492 (Facsimile)

Daniel Richards  
Clark Richards  
Richards Rodriguez & Skeith LLP  
611 W 15th St.  
Austin, TX 78701  
(512) 476-1513 (Facsimile)

Attorneys for Defendants

/s/ Manuel Quinto-Pozos

\_\_\_\_\_  
Manuel Quinto-Pozos

**TABLE OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
-	Affidavit of Fred Lewis
1	26 Tex. Admin. Code 363.101
2	SB 821, 82nd R.S.
3	Atchley & Associates, "Report on Agreed Upon Procedures with respect to the Affiliation Agreement between Central Health, the University of Texas at Austin, and the Community Care Collaborative."
4	Affidavit of Esther Govea
5	Affidavit of Richard Franklin
	Ex. A to R. Franklin Affid.: Franklin Property Records
	Ex. B to F R. Franklin Affid.: R. Franklin 2023 Tax Records

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

Plaintiffs

v.

TRAVIS COUNTY HEALTHCARE  
DISTRICT d/b/a CENTRAL HEALTH *and*  
DR. PATRICK LEE, *in his official capacity*  
*only,*

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345<sup>TH</sup> JUDICIAL DISTRICT

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**AFFIDAVIT OF FRED I. LEWIS**

“My name is Fred I. Lewis and I am an attorney for plaintiffs in the lawsuit of *Rebecca Birch, Richard Franklin, III, and Esther Govea v. Travis County Healthcare District D/B/A Central Health and Dr. Patrick Lee, in his official capacity only*, Cause No. D-1-GN-17-005824, in the 345<sup>th</sup> District Court of Travis County, Texas. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and, under penalty of law, are true and correct.”

“On April 30, 2024, I used Google’s browser to download, from the Texas Secretary of State’s official website for the current Texas Administrative Code, 26 T.A.C. 363.101 at [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=26&pt=1&ch=363&rl=101](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=26&pt=1&ch=363&rl=101) . A true and correct copy is attached as Plaintiffs’ Response Exhibit 1. As a Texas lawyer since 1985, I have used this website for many years to look up Texas administrative regulations, and I have always

found the website to be reliable and accurate.”

“On April 30, 2024, I also used Google’s browser to download from Texas Capitol Online, the official State of Texas website for the Texas Legislature, including for past bills, at <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=82R&Bill=SB821>, a copy of SB821 (2011 Regular Tex. Legislative Session). A true and correct copy of SB821 is attached as Plaintiffs’ Response Exhibit 2. I have worked on and off as a paid and pro bono public interest lobbyist at the Texas Capitol for 25 years, and Texas Capitol Online and its bill look up search feature are accurate and reliable and are used by many lobbyists and legislative offices.”

“FURTHER AFFIANT SAYETH NOT.”

JURAT

My name is Fred I. Lewis, my date of birth is [REDACTED], and my address is 800 Brent Street, Winston-Salem NC 27103. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Winston Same, NC on the 30<sup>th</sup> day of April, 2024.



Fred I. Lewis

# Texas Administrative Code

<u>TITLE 26</u>	HEALTH AND HUMAN SERVICES
<u>PART 1</u>	HEALTH AND HUMAN SERVICES COMMISSION
<u>CHAPTER 363</u>	COUNTY INDIGENT HEALTH CARE PROGRAM
<u>SUBCHAPTER C</u>	PROVIDING SERVICES
RULE §363.101	Basic and Optional Services

(a) Except as specified in the department-established service exclusions and limitations, counties are required to provide the following basic health care services to eligible households by reimbursing providers of services who meet the requirements of this chapter and the responsible county.

(1) Inpatient hospital services. Services must be medically necessary and:

- (A) provided in an acute care hospital;
- (B) provided to hospital inpatients;
- (C) provided by or under the direction of a physician; and
- (D) provided for the care and treatment of patients.

(2) Outpatient hospital services. Services must be medically necessary and:

- (A) provided in an acute care hospital or hospital-based ambulatory surgical center;
- (B) provided to hospital outpatients;
- (C) provided by or under the direction of a physician; and
- (D) are diagnostic, therapeutic, or rehabilitative.

(3) Physician services. Services must be medically necessary and provided by a physician in the doctor's office, a hospital, a skilled nursing facility, or elsewhere.

(4) Up to three prescriptions for drugs per recipient per month. New and refilled prescriptions count equally toward this total prescription limit. Drugs must be prescribed by a physician or other practitioner within the scope of practice under law. The quantity of drugs prescribed depends on the prescribing practice of the physician and the needs of the patient.

(5) Skilled nursing facility services (SNF). Services must be medically necessary, ordered by a physician, and provided in a skilled nursing facility that provides daily services on an inpatient basis.

(6) Rural health clinic services. Rural health clinic services must be provided in a rural health clinic by a physician, a physician's assistant, a nurse practitioner, a nurse midwife, or other specialized nurse practitioner.

(7) Family planning services. These are preventive health and medical services that assist an individual in controlling fertility and achieving optimal reproductive and general health.

(8) Laboratory and x-ray services. These are technical laboratory and radiological services ordered and provided by, or under the direction of, a physician in an office or a similar facility other than a hospital outpatient department or clinic.

(9) Immunizations. These are given when appropriate.

(10) Medical screening services. These medical services include blood pressure, blood sugar, and cholesterol screening.

(11) Annual physical examinations. These are examinations provided once per calendar year by a physician or a physician's assistant (PA). Associated testing, such as mammograms, can be covered with a physician's referral. These services may also be provided by an Advanced Practice Nurse (APN) if they are within the scope of practice of the APN in accordance with the standards established by the Board of Nurse Examiners and published in 22 Texas Administrative Code, §221.13.

(b) The following services are optional health care services.

(1) Ambulatory surgical center (ASC) services. These services must be provided in a freestanding ASC, and are limited to items and services provided in reference to an ambulatory surgical procedure, including those services on the Center for Medicare and Medicaid Services (CMS)-approved list and selected Medicaid-only procedures.

(2) Federally Qualified Health Center (FQHC) services. These services must be provided in an FQHC by a physician, a physician's assistant, a nurse practitioner, a clinical psychologist, or a clinical social worker.

(3) Physician assistant (PA) services. These services must be medically necessary and provided by a PA under the direction of a physician and may be billed by and paid to the supervising physician.

(4) Advanced practice nurse (APN) services. An APN must be licensed as a registered nurse (RN) within the categories of practice, specifically, a nurse practitioner, a clinical nurse specialist, a certified nurse midwife (CNM), and a certified registered nurse anesthetist (CRNA), as determined by the Board of Nurse Examiners. APN services must be medically necessary, provided within the scope of practice of an APN, and covered in the Texas Medicaid Program.

(5) Counseling services. Psychotherapy services must be medically necessary based on a physician referral, and provided by a licensed professional counselor (LPC), a licensed master social worker-advanced clinical practitioner (LMSW-ACP), a licensed marriage family therapist (LMFT), or a Ph.D. psychologist. These services may also be provided based on an APN referral if the referral is within the scope of their practice in accordance with the standards established by the Board of Nurse Examiners and published in 22 Texas Administrative Code, §221.13.

(6) Diabetic medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are lancets, alcohol prep pads, syringes, test strips, humulin pens and glucometers. These supplies and equipment may also be prescribed by an APN if this is within the scope of their practice in accordance with the standards established by the Board of Nurse Examiners and published in 22 Texas Administrative Code, §221.13.

(7) Colostomy medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are colostomy bags/pouches; cleansing irrigation kits, paste, or powder; and skin barriers with flange (wafers). These supplies and equipment may also be prescribed by an APN if this is within the scope of their practice in accordance with the standards established by the Board of Nurse Examiners and published in 22 Texas Administrative Code, §221.13.

(8) Durable medical equipment. This equipment must be medically necessary; meet the Medicare/Medicaid requirements; and provided under a written, signed, and dated physician's prescription. The county may require the supplier to receive prior authorization. Items can be rented or purchased, whichever is the least costly. Items covered are crutches, canes, walkers, standard wheel chairs, hospital beds, home oxygen equipment (including masks, oxygen hose, and nebulizers), and reasonable and appropriate appliances for measuring blood pressure.



These supplies and equipment may also be prescribed by an APN if this is within the scope of their practice in accordance with the standards established by the Board of Nurse Examiners and published in 22 Texas Administrative Code, §221.13.

(9) Home and community health care services. These services must be medically necessary; meet the Medicare/Medicaid requirements; and provided by a certified home health agency. A plan of care must be recommended, signed, and dated by the recipient's attending physician prior to care being given. The county may require prior authorization. Items covered are Registered Nurse (RN) visits for skilled nursing observation, assessment, evaluation, and treatment provided a physician specifically requests the RN visit for this purpose. A home health aide to assist with administering medication is also covered. Visits made for performing housekeeping services are not covered.

(10) Dental care. These services must be medically necessary and provided by a DDS, a DMD, or a DDM. The county may require prior authorization. Items covered are an annual routine dental exam and the least costly service for emergency dental conditions for the removal or filling of a tooth due to abscess, infection, or extreme pain.

(11) Vision care, including eyeglasses. The county may require prior authorization. Items covered are one examination of the eyes by refraction and one pair of prescribed glasses every 24 months.

(12) Emergency medical services. These services are ground ambulance transport services. When the client's condition is life-threatening and requires the use of special equipment, life support systems, and close monitoring by trained attendants while en route to the nearest appropriate facility, ground ambulance transport is an emergency service.

(13) Physical therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or freestanding rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Occupations Code, Chapter 453.

(14) Occupational therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Occupations Code, Chapter 454.

(15) Other medically necessary services or supplies that the local governmental municipality/entity determines to be cost effective.

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**Source Note:** The provisions of this §363.101 adopted to be effective April 1, 2004, 29 TexReg 3177; amended to be effective February 28, 2008, 33 TexReg 1549; amended to be effective November 13, 2012, 37 TexReg 8975; transferred effective March 1, 2022, as published in the Texas Register February 11, 2022, 47 TexReg 673

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[OPEN MEETINGS](#)

By: Watson

S.B. No. 821

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the authority of the Travis County Healthcare District  
3 to make capital or financial contributions to charitable  
4 organizations.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 281.0565(d), Health and Safety Code, is  
7 amended to read as follows:

8 (d) A district created in a county with a population of more  
9 than 800,000 that was not included in the boundaries of a hospital  
10 district before September 1, 2003, may make a capital or other  
11 financial contribution to:

12 (1) a charitable organization created by the district  
13 to provide regional administration and delivery of health care  
14 services to or for the district; or

15 (2) a charitable organization for the support of  
16 medical, dental, or clinical education, training, or research  
17 occurring within the district for the purpose of delivery of health  
18 care services to or for the district.

19 SECTION 2. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2011.

**Travis County Healthcare District  
d/b/a Central Health  
Report on Agreed Upon Procedures  
with respect to the Affiliation Agreement  
between Central Health,  
the University of Texas at Austin,  
and the Community Care Collaborative**



Independent Accountants' Report

The Board of Managers and Mr. Jeff Knodel  
Travis County Healthcare District d/b/a Central Health  
1111 East Cesar Chavez St.  
Austin, Texas 78702

We have performed the procedures enumerated in Exhibit A, which were agreed to by you, solely to assist in the application of certain procedures related to certain records and transactions of the University of Texas at Austin (the University or UT) to determine compliance with the Affiliation Agreement, dated July 10, 2015, between Central Health, the University of Texas at Austin, and Community Collaborative Care. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described in Exhibit A either for the purpose for which this report has been requested or for any other purpose.

**Procedure 1:**

We obtained copies of and reviewed the external auditors reports as presented below.

	<u>Fiscal Year</u>	<u>Date of Report</u>
University of Texas at Austin	August 31, 2017	December 4, 2017

For the audited financial statements listed above, we ascertained that the external auditors issued unmodified opinions.

**Procedure 2:**

We inquired with representatives of the University's external audit firm and discussed the internal control environment regarding the University's financial reporting systems and processes. Through those inquiries, we ascertained that, in the course of their performance of the audit of the University's financial statements, there were no material reportable conditions or findings concerning internal controls or any other reportable conditions encountered which directly related to the amounts reported within the "Central Health funded expenditures."

**Procedure 3:**

We obtained copies of the audit committee letters issued by external audit firm of Deloitte & Touche in connection with the above audit engagements of the financial statements of the University. We noted no comments related to any reported issues or deficiencies related to the UT-Dell Medical School (DMS).

**Procedure 4:**

During our discussions with the University's external auditors discussed in Procedure 2, we inquired and received confirmation that they did not issue any deficiency letters for the period covered by this engagement.

**Procedure 5:**

We reconciled the “Central Health funded expenditures” reported in the University of Texas at Austin Dell Medical School’s January 2017 Progress Report to the underlying financial records of the University. Amounts reported are presented below.

Category of Expenditure	Fiscal Year 2016-2017
Payroll & Related	\$ 45,782,154.34
Non-Payroll	173,665.78
	\$ 45,955,820.12

No discrepancies were noted.

**Procedure 6:**

We reviewed allocation formulas, including fringe benefits associated with salary costs, used by the University to allocate costs to “Central Health funded expenditures” to determine if the allocations appear reasonable. Allocations are based upon time spent on the project by the employee. Other expenses are direct charges to the project. The University's methods of expenditure allocations appear reasonable.

**Procedure 7:**

We selected a sample of 438 personnel transactions, which included salaries, wages, or other personnel related costs charged to "Central Health funded expenditures", and reviewed payroll records and personnel files to determine if costs comply within the definition of “permitted investments” within the Affiliation Agreement and to trace the expenditure to the appropriate departmental classification. Our sample was designed to test a sufficient number of transactions to achieve a confidence level of ninety-five percent. Our test of the 438 transactions represented expenditures totaling \$9,161,664.45. No discrepancies were noted.

**Procedure 8:**

We selected a sample of 11 non-personnel transactions charged to "Central Health funded expenditures" and examined supporting documents to determine compliance of the expenditure with the “permitted investments” within the Affiliation Agreement and to trace the expenditure to the appropriate departmental classification. Our sample was designed to test a sufficient number of transactions to achieve a confidence level of ninety-five percent. Our test of the 11 transactions represented expenditures totaling \$128,510.68. No discrepancies were noted.

**Procedure 9:**

We determined that funds received by the University from Travis County Healthcare District are segregated within the University’s accounting records.

**Procedure 10:**

We determined that the balance of unexpended funds have been appropriately reported in the University’s audited financial statements for the period of time covered by this engagement.

**Procedure 11:**

We determined unexpended funds received from Travis County Healthcare District were appropriately invested by the University and the income from the investments was not appropriately allocated back to “Central Health funded expenditures”. During our review of the interest allocation, it was determined that approximately \$35,000,000 in funds were allocated to various departments and were not included in the original interest allocation calculation. UTA’s cash management department reviewed their calculation and included the \$35,000,000 funds. UTA during fiscal year 2018 had made a "true up" entry to allocate an additional \$149,879.13 to the DMS funds.

**Procedure 12:**

We discussed with DMS and UTA representatives the identification of DMS or UTA expenditures which were eligible to be charged, within the parameters of “permitted investments” within the Affiliation Agreement, but were not included and reported in the Central Health expended funds within the stand alone statement of revenues, expenses, and changes in net assets for the year ended August 31, 2017, as provided by UTA. DMS management has provided the following information regarding those unreported costs:

Capital equipment	\$	1,207,421
Contract services		4,384,682
Recruitment		130,365
Utilities /operations		614,745
		<u>6,337,213</u>
	\$	<u>6,337,213</u>

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the specified accounts and items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report relates only to the items specified in our arrangement letter to you and does not extend to any financial statements of Central Health taken as a whole.

This report is intended solely for the information and use of the specified parties listed above, and management, and is not intended to be and should not be used by anyone other than these specified parties.



Austin, Texas  
November 6, 2018

Central Health  
Exhibit A  
Procedures to be Performed

1. Review UT-Austin system financial statements for period(s) covered in engagement and ascertain receipt of an Unmodified Opinion (known as a “clean opinion”) as reported by external audit firm.
2. Meet with the University’s external audit firm to discuss internal control environment regarding the University’s financial reporting systems and processes. Ascertain whether, in the course of their performance of the audit of the University’s financial statements, any material reportable conditions or findings concerning internal controls or any other reportable conditions were encountered that may directly relate to the amounts reported within the “Central Health funded expenditures.”
3. If applicable, obtain copies of and review the audit committee letters associated with the annual financial statement audit of the University related to DMS and performed by the external audit firm of Deloitte, for the period of time covered by and reported on by this engagement.
4. If applicable, obtain copies of and review the external auditors’ deficiency letters associated with their audits of the University for any deficiencies related to DMS, for the period of time covered by this engagement.
5. Reconcile the “Central Health funded expenditures” reported in the University of Texas at Austin Dell Medical School’s January 2017 Progress Report to the underlying financial records, journals, or general ledger of the University.
6. Review allocation formulas, including fringe benefits associated with salary costs, used by the University to allocate costs to “Central Health funded expenditures” to determine if the allocations appear reasonable.
7. Select a sample of personnel whose salaries, wages, or other personnel related costs, were charged to Central Health funded expenditures and review payroll records and personnel files to determine if costs comply within the definition of “permitted investments” within the Affiliation Agreement.
8. Select a sample of non-personnel costs charged to Central Health funded expenditures and examine supporting documents to determine compliance of the expenditure with the “permitted investments” within the Affiliation Agreement.
9. Determine that funds received by the University from Travis County Healthcare District are segregated within the University’s accounting records.

Central Health  
Exhibit A  
Procedures to be Performed

10. Determine that the balance of unexpended funds have been appropriately reported in the University's audited financial statements for the period of time covered by this engagement.
11. Determine if unexpended funds received from Travis County Healthcare District have been appropriately invested by the University and the income from the investments have been appropriately allocated back to "Central Health funded expenditures" and available to be expended for "permitted investments" as defined in the Affiliation Agreement.
12. Discuss with DMS and UTA representatives the identification of DMS or UTA expenditures that may be eligible within the parameters of "permitted investments" within the Affiliation Agreement and are not included and reported in the Central Health expended funds.



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

Plaintiffs

v.

TRAVIS COUNTY HEALTHCARE  
DISTRICT d/b/a CENTRAL HEALTH *and*  
DR. PATRICK LEE, *in his official capacity*  
*only,*

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345<sup>TH</sup> JUDICIAL DISTRICT

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**AFFIDAVIT OF ESTHER GOVEA**

“My name is Esther Govea and I am a plaintiff in the lawsuit of *Rebecca Birch, Richard Franklin, III, and Esther Govea v. Travis County Healthcare District D/B/A Central Health and Dr. Patrick Lee, in his official capacity only*, Cause No. D-1-GN-17-005824, in the 345<sup>th</sup> District Court of Travis County, Texas. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and, under penalty of law, are true and correct.”

“I currently own a homestead property in Travis County at 5100 Spruce Cove, Austin, Texas 78744. I have owned 100% of this property since April 19, 2006, and before that I owned a 50% undivided interest since October 31, 1996. The deed history of this property is attached as Exhibit A from the official online governmental records of the Travis County Central Appraisal District. The information in Exhibit A is true and correct in all respects.

“Since 1996, I have paid in full every year property taxes on this property. Since 2004, I have paid in full property taxes every year to the Travis County Healthcare District, also known as Central Health. My 2023 property tax bill for this property is attached as Exhibit B, and it is from the official online governmental records of the Travis County Tax Assessor-Collector’s office. The information in Exhibit B is true and correct in all respects. I owed in 2023 property taxes on this property to Central Health of \$217.15. Exhibit B also reflects accurately the amount of property taxes I have paid to Central Health in the prior five years from 2018-2022. I paid in full all my property taxes owed for 2023 as well as for each prior year.”

“FURTHER AFFIANT SAYETH NOT.”

JURAT

My name is Esther Govea, my date of birth [REDACTED], and my address is 5100 Spruce Cove, Austin, Texas 78744. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Austin, TX, on the 17 day of April, 2024.

Esther Govea

Esther Govea

**GENERAL INFO**

**ACCOUNT**

Property ID: 292856  
 Geographic ID: 0317020101  
 Type: R  
 Zoning: SF3  
 Agent:  
 Legal Description: LOT 1 BLK 1 PEPPERTREE PARK  
 SEC 2

**OWNER**

Name: GOVEA ESTHER  
 Secondary Name:  
 Mailing Address: 2215B TERI RD AUSTIN TX 78744-1913  
 Owner ID: 1877679  
 % Ownership: 100.00  
 Exemptions: DP - Disability, HS - Homestead

Property Use:

**LOCATION**

Address: 5100 SPRUCE CV, TX 78744

Market Area:  
 Market Area CD: H0540  
 Map ID: 032301

**PROTEST**

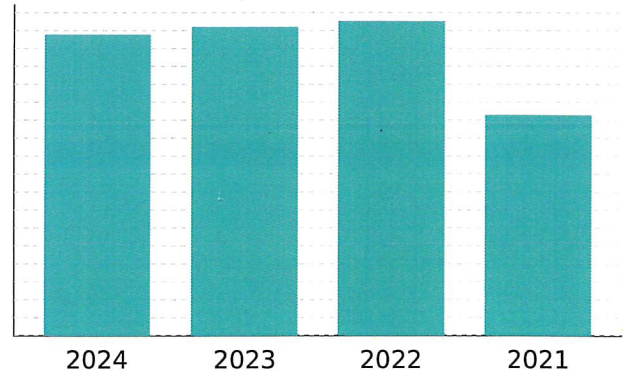
Protest Status:  
 Informal Date:  
 Formal Date:

**VALUES**

**CURRENT VALUES**

Land Homesite: \$60,000  
 Land Non-Homesite: \$60,000  
 Special Use Land Market: \$0  
 Total Land: \$120,000  
 Improvement Homesite: \$150,198  
 Improvement Non-Homesite: \$150,198  
 Total Improvement: \$300,396  
 Market: \$420,396  
 Special Use Exclusion (-): \$0  
 Appraised: \$420,396  
 Value Limitation Adjustment (-): \$92,201  
 Net Appraised: \$328,195

**VALUE HISTORY**



**VALUE HISTORY**

Year	Land Market	Improvement	Special Use Exclusion	Appraised	Value Limitation Adj (-)	Net Appraised
2024	\$120,000	\$300,396	\$0	\$420,396	\$92,201	\$328,195
2023	\$120,000	\$311,322	\$0	\$431,322	\$108,391	\$322,931
2022	\$120,000	\$319,083	\$0	\$439,083	\$122,023	\$317,060
2021	\$63,000	\$245,228	\$0	\$308,228	\$65,461	\$242,767

## TAXING UNITS

Unit	Description	Tax Rate	Net Appraised	Taxable Value
01	AUSTIN ISD	0.859500	\$328,195	\$210,198
02	CITY OF AUSTIN	0.445800	\$328,195	\$210,198
03	TRAVIS COUNTY	0.304655	\$328,195	\$210,198
0A	TRAVIS CENTRAL APP DIST	0.000000	\$328,195	\$328,195
2J	TRAVIS COUNTY HEALTHCARE DISTRICT	0.100692	\$328,195	\$210,198
68	AUSTIN COMM COLL DIST	0.098600	\$328,195	\$248,195

DO NOT PAY FROM THIS ESTIMATE. This is only an estimate provided for informational purposes and may not include any special assessments that may also be collected. Please contact the tax office for actual amounts.

## IMPROVEMENT

Improvement #1: **2 FAM DWELLING** Improvement Value: **\$300,396** Main Area: **1,776**  
 State Code: **B2** Description: **2 FAM DWELLING** Gross Building Area: **4,211**

Type	Description	Class CD	Exterior Wall	Number of Units	EFF Year Built	Year	SQFT
1ST	1st Floor	R5		0	1977	1977	1,776
061	CARPORT ATT 1ST	R5		0	1977	1977	414
522	FIREPLACE	R5		0	1977	1977	1
095	HVAC RESIDENTIAL	R5		0	1977	1977	1,776
612	TERRACE UNCOVERD	R5		0	1977	1977	64
612	TERRACE UNCOVERD	R5		0	1977	1977	64
251	BATHROOM	R5		0	1977	1977	2
581	STORAGE ATT	R5		0	1977	1977	114

### Improvement Features

1ST Roof Covering: COMPOSITION SHINGLE, Foundation: SLAB, Grade Factor: A, Roof Style: GABLE, Floor Factor: 1ST, Shape Factor: U

## LAND

Land	Description	Acres	SQFT	Cost per SQFT	Market Value	Special Use Value
LAND	Land	0.2628	11,447.11	\$10.48	\$120,000	\$0

## DEED HISTORY

Deed Date	Type	Description	Grantor/Seller	Grantee/Buyer	Book ID	Volume	Page	Instrument
4/19/06	DV	DIVORCE	NAJERA ESTHER GOVEA	GOVEA ESTHER				DV#99-07827
6/30/13	QD	QUIT CLAIM DEED	NAJERA JUAN JR	NAJERA ESTHER GOVEA				2013120645 TR
6/29/06	SW	SPECIAL WARRANTY	NAJERA JUAN M JR & ESTHER G	NAJERA ESTHER GOVEA				2006095130 TR
6/29/06	SW	SPECIAL WARRANTY	NAJERA JUAN M JR & ESTHER G	NAJERA ESTHER GOVEA				2006095130 TR
10/31/96	WD	WARRANTY DEED		NAJERA JUAN M JR & ESTHER G		12808	00457	
10/31/96	WD	WARRANTY DEED	OTTO JAY P	NAJERA JUAN M JR & ESTHER G		12808	00457	

Deed Date	Type	Description	Grantor/Seller	Grantee/Buyer	Book ID	Volume	Page	Instrument
3/24/95	WD	WARRANTY DEED	LYONS THOMAS PETER & FAITH F	OTTO JAY P		12427	00189	
10/7/93	AD	ASSUMPTION DEED	STONE ROBERT L & GERALDINE	LYONS THOMAS PETER & FAITH F		12048	00202	
5/24/91	CS	CONTRACT OF SALE	STEDMAN ROBERT R	STONE ROBERT L & GERALDINE		11464	01433	
11/22/77	WD	WARRANTY DEED	WEEKLEY R E BUILDER INC	STEDMAN ROBERT R		05993	00156	
11/22/77	WD	WARRANTY DEED		WEEKLEY R E BUILDER INC		05993	00026	

Exhibit A

**Bruce Elfant**  
 Tax Assessor - Collector  
 P.O. BOX 149328  
 Austin, TX 78714-9328  
 (512) 854-9473 SE HABLA ESPAÑOL



**Travis County Tax Office**  
 2433 Ridgepoint Drive  
 Austin, TX 78754-5231  
 Pay online at [www.traviscountytax.org](http://www.traviscountytax.org)  
 or by phone at 1-888-286-9242

11/20/2023

**TRAVIS COUNTY TAX BILL**

Taxes for the current year (2023) are due upon receipt. Payments by mail are credited according to U.S. Postmark (not meters). Taxes not paid in full by January 31 are charged penalty and interest by state law and may be subject to legal fees. Penalty and interest is added on the 1st day of each month as follows, with an additional 12% interest charged per year thereafter:

February	7%	May	13%	August	19%	November	22%
March	9%	June	15%	September	20%	December	23%
April	11%	July	18%	October	21%	January	24%

IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED, AND YOU OCCUPY THE PROPERTY DESCRIBED IN THIS DOCUMENT AS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE TAX OFFICE REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES.

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2023 PROPERTY TAX NOTICE. THE ASSESSED VALUE IS: 322,931

EXEMPTIONS: HOMESTEAD/DISABILITY EXEMPTION



1 TAXES DUE TAXING UNIT	2 EXEMPTION AMOUNTS	3 NET TAXABLE VALUE	4 TAX RATE PER \$100	5 TAX AMOUNT	6 BILLING NO.
AUSTIN ISD	107,270	215,661	0.859500	1,853.61	149203
CITY OF AUSTIN (TRAV)	107,270	215,661	0.445800	961.42	
TRAVIS COUNTY	107,270	215,661	0.304655	657.02	7 PROPERTY REAL PERS
TRAVIS CENTRAL HEALTH ACC (TRAVIS)	107,270	215,661	0.100692	217.15	
	80,000	242,931	0.098600	212.64	
					X

Remark: LIEN-529 LOAN-31710605  
 CARRINGTON MORTGAGE SERVICES LLC

**8 PROPERTY DESCRIPTION**  
 5100 SPRUCE CV 78744  
 LOT 1 BLK 1 PEPPERTREE PARK SEC 2  
  
 ACRES: .2628



GOVEA ESTHER  
 2215B TERI RD  
 AUSTIN TX 78744-1913

<b>9 ACCOUNT NUMBER</b>	
03-1702-0101-0000	
<b>10 DUE DATE</b>	<b>11 TOTAL DUE</b>
01/31/2024	3,901.84

DETACH AND RETURN ORIGINAL BOTTOM COUPON WITH YOUR PAYMENT

\*YOUR CHECK MAY BE CONVERTED INTO AN ELECTRONIC FUND TRANSFER\*

GOVEA ESTHER  
 2215B TERI RD  
 AUSTIN TX 78744-1913

<b>12 BILLING NO.</b>	<b>13 DUE DATE</b>	<b>14 TOTAL DUE</b>
149203	01/31/2024	3,901.84
PAY the TOTAL DUE by the above DUE DATE to avoid added penalty & interest charges. Checks MUST be in U.S. funds.		
<b>15 AMOUNT ENCLOSED</b>		
4,174.96	<b>16</b> IF PAYMENT IS NOT RECEIVED BY DUE DATE, PAY THIS AMOUNT BY FEB 2024	

Pay to: TRAVIS COUNTY TAX OFFICE  
 P.O. BOX 149328  
 AUSTIN, TX 78714-9328  
 Pay online at [www.traviscountytax.org](http://www.traviscountytax.org) or by phone at 1-888-286-9242



NEW MAILING ADDRESS?  
 Update your mailing address electronically at  
[www.traviscountytax.org](http://www.traviscountytax.org)



2023 149203 0000390184 4

**TRAVIS COUNTY TAX OFFICE**  
 (512) 854-9473 www.traviscountytax.org  
 Contact the Tax Office for questions about:  
 • Tax Amounts • Tax Bills  
 • Tax Rates • Due Dates

**TRAVIS CENTRAL APPRAISAL DISTRICT**  
 (512) 834-9138 www.travisCAD.org  
 Contact the Appraisal District for questions about:  
 • Address Corrections • Exemptions  
 • Ownership • Property Value

**LIABILITY**

- By state law, failure to receive a tax bill does not relieve the property owner of the tax, penalty or interest liability.
- The Tax Office has no legal authority to waive penalty or interest. Per section Sec. 33.011 of the Texas Property Tax Code, the tax office is not responsible for lost payments and may result in penalty and interest.
- Taxes not paid in full by January 31 are charged penalty and interest by state law. Unpaid accounts run a high risk of legal action being taken.
- On REAL PROPERTY (land and buildings), the owner on January 1 of the tax year, and the current owner, can be held liable for any unpaid taxes on the property.
- On PERSONAL PROPERTY (business inventory, equipment, etc.), the person who owned the property on January 1 of the tax year is personally liable for the entire year's amount due, even if the property is sold.
- The assessment ratio for the taxing units on this tax bill is 100%.

If the Texas Legislature had not enacted property tax relief legislation during the 2023 legislative session, your tax bill would have been \$4,305.37. Because of action by the Texas Legislature, your tax bill has been lowered by \$403.53, resulting in a lower tax bill of \$3,901.84, contingent on the approval by the voters at an election to be held November 7, 2023, of the constitutional amendment proposed by H.J.R. 2, 88th Legislature, 2nd Called Session, 2023. If that constitutional amendment is not approved by the voters at the election, a supplemental tax bill in the amount of \$N/A will be mailed to you.

**Five Year Tax History** Parcel ID: 03-1702-0101-0000

Disclaimer: This information is provided to the taxpayer Per Senate Bill 18 and House Bill 1984, amended subsection (c) and added subsection (c-1) to Section 31.01 of the Tax Code, enacted by the legislature of the State of Texas.

Tax Year	Tax Unit	Appraised Value	Tax Value	Tax Rate	Tax Imposed	Tax Imposed Change From Previous Year	Tax Year	Tax Unit	Appraised Value	Tax Value	Tax Rate	Tax Imposed	Tax Imposed Change From Previous Year		
2023	IAU	322,931	215,661	0.859500	1,853.61	-22.31 %	2022	IAU	317,060	252,060	0.996600	2,385.90	30.08 %		
	CAT	322,931	215,661	0.445800	961.42	-5.36 %		CAT	317,060	219,542	0.462700	1,015.82	21.81 %		
	TCO	322,931	215,661	0.304655	657.02	-5.96 %		TCO	317,060	219,542	0.318239	698.67	26.86 %		
	THD	322,931	215,661	0.100692	217.15	0.23 %		THD	317,060	219,542	0.088684	216.65	25.77 %		
	ACT	322,931	242,931	0.098600	212.64	-1.87 %		ACT	317,060	237,060	0.098700	216.69	34.17 %		
<b>Total</b>						<b>3,901.84</b>	<b>-13.94 %</b>	<b>Total</b>						<b>4,533.73</b>	<b>27.62 %</b>
2021	IAU	242,767	192,767	1.061700	1,834.17	17.29 %	2020	IAU	204,462	154,462	1.102700	1,563.83	-1.51 %		
	CAT	242,767	154,114	0.541000	833.76	26.17 %		CAT	204,462	123,868	0.533500	660.84	20.40 %		
	TCO	242,767	154,114	0.357365	550.75	18.77 %		TCO	204,462	123,868	0.374359	463.71	1.37 %		
	THD	242,767	154,114	0.111834	272.32	26.12 %		THD	204,462	123,868	0.110906	136.63	4.48 %		
	ACT	242,767	154,114	0.104800	161.51	23.24 %		ACT	204,462	123,868	0.105800	131.05	0.85 %		
<b>Total</b>						<b>3,552.51</b>	<b>20.18 %</b>	<b>Total</b>						<b>2,956.06</b>	<b>3.55 %</b>
2019	IAU	197,135	147,135	1.122000	1,587.73	1.63 %	2018	IAU	181,058	131,058	1.192000	1,562.21	503.93		
	CAT	197,135	123,868	0.443100	548.86	8.92 %		CAT	181,058	114,452	0.440300	503.93	405.39		
	TCO	197,135	123,868	0.359299	457.44	12.84 %		TCO	181,058	114,452	0.354200	405.39	120.43		
	THD	197,135	123,868	0.105573	130.77	8.59 %		THD	181,058	114,452	0.105221	120.43	119.95		
	ACT	197,135	123,868	0.104900	129.94	8.33 %		ACT	181,058	114,452	0.104800	119.95			
<b>Total</b>						<b>2,854.74</b>	<b>5.27 %</b>	<b>Total</b>						<b>2,711.91</b>	

Tax Unit	2023		2018		2023		2018		Five Year % of Change			
	Appraised Value	Tax Value	Appraised Value	Tax Value	Tax Rate	Tax Rate	Tax Imposed	Tax Imposed	Appraised Value	Tax Value	Tax Rate	Tax Imposed
IAU	322,931	215,661	181,058	131,058	0.859500	1.192000	1,853.61	1,562.21	78.36 %	64.55 %	-27.89 %	18.65 %
CAT	322,931	215,661	181,058	114,452	0.445800	0.440300	961.42	503.93	78.36 %	88.43 %	1.25 %	90.78 %
TCO	322,931	215,661	181,058	114,452	0.304655	0.354200	657.02	405.39	78.36 %	88.43 %	-13.99 %	62.07 %
THD	322,931	215,661	181,058	114,452	0.100692	0.105221	217.15	120.43	78.36 %	88.43 %	-4.30 %	80.31 %
ACT	322,931	242,931	181,058	114,452	0.098600	0.104800	212.64	119.95	78.36 %	112.26 %	-5.92 %	77.27 %
<b>Total</b>							<b>3,901.84</b>	<b>2,711.91</b>				<b>43.88 %</b>

Taxing Unit Code and Description:  
 AUSTIN ISD TRAVIS CENTRAL HEALTH  
 CITY OF AUSTIN (TRAV) ACC (TRAVIS)  
 TRAVIS COUNTY

SCHOOL DISTRICT M&O/DEBT RATE INFORMATION

TAXING UNIT	2023		2022	
	M&O	DEBT	M&O	DEBT
IAU	0.736500	0.123000	0.883600	0.113000

Make payments payable to TRAVIS COUNTY TAX OFFICE  
 The mailing address is P.O. BOX 149328, AUSTIN, TEXAS 78714-9328.

Payments mailed for current taxes showing a postmark on or before January 31 (or the next business day if January 31 falls on a weekend) will be considered timely payment upon receipt.

**DO NOT MAIL CREDIT CARD PAYMENTS!**

You may pay property taxes (current, delinquent, and partial payments) online at [www.traviscountytax.org](http://www.traviscountytax.org) with an American Express, Visa, MasterCard, or Discover credit card or by electronic check from your bank account or by phone at 1-888-286-9242. All payments made with cards, electronic checks, whether by phone, or in person will include an additional fee.

Call (512) 854-9473 if you have questions about paying property taxes. SE HABLE ESPAÑOL.

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

Plaintiffs

v.

TRAVIS COUNTY HEALTHCARE  
DISTRICT d/b/a CENTRAL HEALTH *and*  
DR. PATRICK LEE, *in his official capacity*  
*only*,

Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345<sup>TH</sup> JUDICIAL DISTRICT

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**AFFIDAVIT OF RICHARD FRANKLIN, III**

“My name is Richard Franklin, III, and I am a plaintiff in the lawsuit of *Rebecca Birch, Richard Franklin, III, and Esther Govea v. Travis County Healthcare District D/B/A Central Health and Dr. Patrick Lee, in his official capacity only*, Cause No. D-1-GN-17-005824, in the 345<sup>th</sup> District Court of Travis County, Texas. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and, under penalty of law, are true and correct.”

“I currently own a homestead property in Travis County at 3906 Sojourner St, Austin, Texas 78725. I have officially owned this property since April 19, 2019, but inherited it in full when my father, Richard Franklin, Jr., died in 2011. The deed history of this property is attached as Exhibit A from the official online governmental records of the Travis County Central Appraisal District. The information in Exhibit A is true and correct in all respects.



“Since 2001, I have paid every year property taxes on this property. Since 2004, I have paid in property taxes every year to the Travis County Healthcare District, also known as Central Health. Since my marriage in 2005, both my spouse Rebecca Birch and I have paid these property taxes together from our joint incomes.

“The 2023 property tax bill for this property is attached as Exhibit B, and it is from the official online governmental records of the Travis County Tax Assessor-Collector’s office. The information in Exhibit B is true and correct in all respects. We owed in 2023 property taxes on this property to Central Health of \$69.45. Exhibit B also reflects accurately the amount of property taxes we have paid to Central Health in the prior five years from 2018-2022. My spouse and I have paid the taxes in full every year.

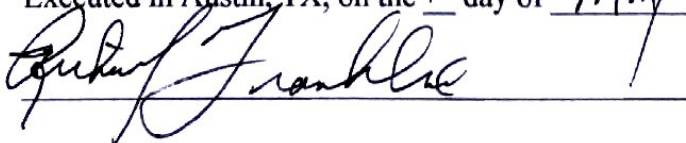
“ I married my spouse plaintiff Rebecca Birch on March 11, 2005. She has resided with me since 2001 in our house at 3906 Sojourner St. From 2005 to the present, she has paid from her wages much of the mortgage payments, home repairs, and property taxes. She has contributed over the years tens of thousands of dollars to buying and maintaining the property, as well as the property taxes.”

“FURTHER AFFIANT SAYETH NOT.”

JURAT

My name is Richard Franklin, III, my date of birth [REDACTED] and my address is 3906 Sojourner St, Austin, Texas 78725. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Austin, TX, on the 1<sup>st</sup> day of MAY, 2024.



Richard Franklin, III

**GENERAL INFO**

**ACCOUNT**

Property ID: 530002  
 Geographic ID: 0304521012  
 Type: R  
 Zoning:  
 Agent:  
 Legal Description: LOT 14 BLK G AUSTIN'S COLONY  
 PHS 3  
 Property Use:

**OWNER**

Name: FRANKLIN RICHARD III  
 Secondary Name:  
 Mailing Address: 2906 SOJOURNER ST AUSTIN TX 78725  
 Owner ID: 1801380  
 % Ownership: 100.00  
 Exemptions: HS - Homestead, OTHER

**LOCATION**

Address: 3906 SOJOURNER ST, TX 78725  
 Market Area:  
 Market Area CD: B0180  
 Map ID: 030750

**PROTEST**

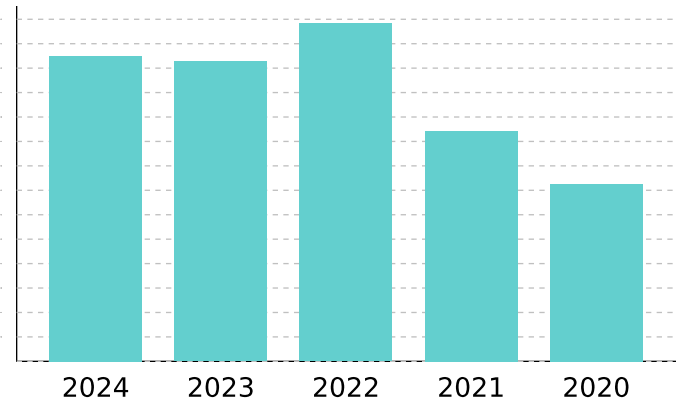
Protest Status:  
 Informal Date:  
 Formal Date:

**VALUES**

**CURRENT VALUES**

Land Homesite: \$40,000  
 Land Non-Homesite: \$0  
 Special Use Land Market: \$0  
 Total Land: \$40,000  
 Improvement Homesite: \$272,274  
 Improvement Non-Homesite: \$0  
 Total Improvement: \$272,274  
 Market: \$312,274  
 Special Use Exclusion (-): \$0  
 Appraised: \$312,274  
 Value Limitation Adjustment (-): \$46,935  
 Net Appraised: \$265,339

**VALUE HISTORY**



**VALUE HISTORY**

Year	Land Market	Improvement	Special Use Exclusion	Appraised	Value Limitation Adj (-)	Net Appraised
2024	\$40,000	\$272,274	\$0	\$312,274	\$46,935	\$265,339
2023	\$40,000	\$266,795	\$0	\$306,795	\$65,578	\$241,217
2022	\$40,000	\$305,614	\$0	\$345,614	\$126,326	\$219,288
2021	\$40,000	\$195,848	\$0	\$235,848	\$36,495	\$199,353
2020	\$40,000	\$141,230	\$0	\$181,230	\$0	\$181,230

Ex. A to R. Franklin Affid - RFranklinPropRecords.pdf

## TAXING UNITS

Unit	Description	Tax Rate	Net Appraised	Taxable Value
03	TRAVIS COUNTY	0.304655	\$265,339	\$88,271
06	DEL VALLE ISD	1.002800	\$265,339	\$155,339
0A	TRAVIS CENTRAL APP DIST	0.000000	\$265,339	\$265,339
2J	TRAVIS COUNTY HEALTHCARE DISTRICT	0.100692	\$265,339	\$88,271
57	TRAVIS CO ESD NO 4	0.040000	\$265,339	\$152,271
68	AUSTIN COMM COLL DIST	0.098600	\$265,339	\$185,339

DO NOT PAY FROM THIS ESTIMATE. This is only an estimate provided for informational purposes and may not include any special assessments that may also be collected. Please contact the tax office for actual amounts.

## IMPROVEMENT

Improvement #1: **1 FAM DWELLING** Improvement Value: **\$272,274** Main Area: **1,558**  
 State Code: **A1** Description: Gross Building Area: **3,742**

Type	Description	Class CD	Exterior Wall	Number of Units	EFF Year Built	Year	SQFT
1ST	1st Floor	R5		0	2002	2002	1,558
041	GARAGE ATT 1ST F	R5		0	2002	2002	424
522	FIREPLACE	R5		0	2002	2002	1
095	HVAC RESIDENTIAL	R5		0	2002	2002	1,558
011	PORCH OPEN 1ST F	R5		0	2002	2002	103
011	PORCH OPEN 1ST F	R5		0	2002	2002	96
251	BATHROOM	R5		0	2002	2002	2

### Improvement Features

1ST Roof Covering: COMPOSITION SHINGLE, Foundation: SLAB, Grade Factor: A, Shape Factor: L, Floor Factor: 1ST, Roof Style: HIP

## LAND

Land	Description	Acres	SQFT	Cost per SQFT	Market Value	Special Use Value
LAND	Land	0.1492	6,500	\$6.15	\$40,000	\$0

## DEED HISTORY

Deed Date	Type	Description	Grantor/Seller	Grantee/Buyer	Book ID	Volume	Page	Instrument
4/19/19	QD	QUIT CLAIM DEED	FRANKLIN RICHARD JR &	FRANKLIN RICHARD III				2019056540
6/11/02	WD	WARRANTY DEED	CENTEX HOMES	FRANKLIN RICHARD JR &		00000	00000	2002112093 TR
10/22/01	SW	SPECIAL WARRANTY	H B H DEVELOPMENT	CENTEX HOMES		00000	00000	2002203769 TR

Ex. A to R. Franklin Affid - RFranklinPropRecords.pdf

**Bruce Elfant**  
 Tax Assessor - Collector  
 P.O. BOX 149328  
 Austin, TX 78714-9328  
 (512) 854-9473 SE HABLA ESPAÑOL



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11/20/2023

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February	7%	May	13%	August	19%	November	22%
March	9%	June	15%	September	20%	December	23%
April	11%	July	18%	October	21%	January	24%

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- Pay by telephone at 1-888-286-9242

2023 PROPERTY TAX NOTICE. THE ASSESSED VALUE IS: 241,217

EXEMPTIONS: HOMESTEAD/SENIOR EXEMPTION



1 TAXES DUE TAXING UNIT	2 EXEMPTION AMOUNTS	3 NET TAXABLE VALUE	4 TAX RATE PER \$100	5 TAX AMOUNT	6 BILLING NO.
TRAVIS COUNTY	172,243	68,974	0.304655	210.13	719088
DEL VALLE ISD	110,000	131,217	1.002800	1,066.07	
TRAVIS CENTRAL HEALTH	172,243	68,974	0.100692	69.45	
TRAVIS COUNTY ESD #4	108,243	132,974	0.040000	53.19	
ACC (TRAVIS)	80,000	161,217	0.098600	15.04	
					7 PROPERTY REAL PERS
					X

**8 PROPERTY DESCRIPTION**  
 3906 SOJOURNER ST 78725  
 LOT 14 BLK G AUSTIN'S COLONY PHS 3  
 ACRES: .1492

FRANKLIN RICHARD III  
 2906 SOJOURNER ST  
 AUSTIN TX 78725  
INT 263 660

<b>9 ACCOUNT NUMBER</b>	
03-0452-1012-0000	
<b>10 DUE DATE</b>	<b>11 TOTAL DUE</b>
01/31/2024	1,413.88

**DETACH AND RETURN ORIGINAL BOTTOM COUPON WITH YOUR PAYMENT**

**\*YOUR CHECK MAY BE CONVERTED INTO AN ELECTRONIC FUND TRANSFER\***

FRANKLIN RICHARD III  
 2906 SOJOURNER ST  
 AUSTIN TX 78725

<b>12 BILLING NO.</b>	<b>13 DUE DATE</b>	<b>14 TOTAL DUE</b>
719088	01/31/2024	1,413.88

PAY the TOTAL DUE by the above DUE DATE to avoid added penalty & interest charges. Checks MUST be in U.S. funds.

**15 AMOUNT ENCLOSED**

**16** 1,512.84 IF PAYMENT IS NOT RECEIVED BY DUE DATE, PAY THIS AMOUNT BY FEB 2024

Pay to: **TRAVIS COUNTY TAX OFFICE**  
 P.O. BOX 149328  
 AUSTIN, TX 78714-9328  
 Pay online at [www.traviscountytax.org](http://www.traviscountytax.org) or by phone at 1-888-286-9242



**NEW MAILING ADDRESS?**  
 Update your mailing address electronically at [www.traviscountytax.org](http://www.traviscountytax.org)



Contact the Tax Office for questions about:

- Tax Amounts
- Tax Rates
- Tax Bills
- Due Dates

Contact the Appraisal District for questions about:

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- Ownership
- Exemptions
- Property Value

**LIABILITY**

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- On REAL PROPERTY (land and buildings), the owner on January 1 of the tax year, and the current owner, can be held liable for any unpaid taxes on the property.
- On PERSONAL PROPERTY (business inventory, equipment, etc.), the person who owned the property on January 1 of the tax year is personally liable for the entire year's amount due, even if the property is sold.
- The assessment ratio for the taxing units on this tax bill is 100%.

If the Texas Legislature had not enacted property tax relief legislation during the 2023 legislative session, your tax bill would have been **\$2,323.33**. Because of action by the Texas Legislature, your tax bill has been lowered by **\$909.45**, resulting in a lower tax bill of **\$1,413.88**, contingent on the approval by the voters at an election to be held November 7, 2023, of the constitutional amendment proposed by H.J.R. 2, 88th Legislature, 2nd Called Session, 2023. If that constitutional amendment is not approved by the voters at the election, a supplemental tax bill in the amount of **\$N/A** will be mailed to you.

**Five Year Tax History**

Parcel ID: 03-0452-1012-0000

Disclaimer: This information is provided to the taxpayer Per Senate Bill 18 and House Bill 1984, ammended subsection (c) and added subsection (c-1) to Section 31.01 of the Tax Code, enacted by the legislature of the State of Texas.

Tax Year	Tax Unit	Appraised Value	Tax Value	Tax Rate	Tax Imposed	Tax Imposed Change From Previous Year	Tax Year	Tax Unit	Appraised Value	Tax Value	Tax Rate	Tax Imposed	Tax Imposed Change From Previous Year	
2023	TCO	241,217	68,974	0.304655	210.13	0.92 %	2022	TCO	219,288	65,430	0.318239	208.22	-2.05 %	
	IDV	241,217	131,217	1.002800	1,066.07	-46.04 %		IDV	219,288	169,288	1.184600	1,975.52	0.00 %	
	THD	241,217	68,974	0.100692	69.45	7.56 %		THD	219,288	65,430	0.098684	64.57	-2.92 %	
	E04	241,217	132,974	0.040000	53.19	-23.20 %		E04	219,288	115,430	0.060000	69.26	-56.57 %	
	ACT	241,217	161,217	0.098600	15.04	0.00 %		ACT	219,288	139,288	0.098700	15.04	0.00 %	
<b>Total</b>								<b>Total</b>						
					1,413.88	-39.39 %						2,332.61	-3.97 %	
2021	TCO	199,353	59,482	0.357365	212.57	-60.84 %	2020	TCO	181,230	144,984	0.374359	542.76	-18.90 %	
	IDV	199,353	164,353	1.202000	1,975.52	0.60 %		IDV	181,230	156,230	1.257000	1,963.81	-17.28 %	
	THD	199,353	59,482	0.111814	66.51	-58.41 %		THD	181,230	144,984	0.110306	159.93	-16.41 %	
	E04	199,353	199,353	0.080000	159.48	-11.74 %		E04	181,230	181,230	0.099700	180.69	-0.30 %	
	ACT	199,353	14,353	0.104800	15.04	-91.93 %		ACT	181,230	176,230	0.103800	186.45	-1.93 %	
<b>Total</b>								<b>Total</b>						
					2,429.12	-19.93 %						3,033.64	-15.87 %	
2019	TCO	181,230	181,230	0.369293	669.27	4.05 %	2018	TCO	181,598	181,598	0.354200	643.22		
	IDV	181,230	181,230	1.310000	2,374.11	-5.95 %		IDV	181,598	181,598	1.390000	2,524.21		
	THD	181,230	181,230	0.105573	191.33	0.13 %		THD	181,598	181,598	0.105221	191.08		
	E04	181,230	181,230	0.100000	181.23	-0.20 %		E04	181,598	181,598	0.100000	181.60		
	ACT	181,230	181,230	0.104900	190.11	-0.11 %		ACT	181,598	181,598	0.104800	190.31		
<b>Total</b>								<b>Total</b>						
					3,606.05	-3.33 %						3,730.42		

Tax Unit	2023 Appraised Value	2018 Appraised Value	2023 Tax Value	2018 Tax Value	2023 Tax Rate	2018 Tax Rate	2023 Tax Imposed	2018 Tax Imposed	Five Year % of Change			
									Appraised Value	Tax Value	Tax Rate	Tax Imposed
TCO	241,217	181,598	68,974	181,598	0.304655	0.354200	210.13	643.22	32.83 %	-62.02 %	-13.99 %	-67.33 %
IDV	241,217	181,598	131,217	181,598	1.002800	1.390000	1,066.07	2,524.21	32.83 %	-27.74 %	-27.86 %	-57.77 %
THD	241,217	181,598	68,974	181,598	0.100692	0.105221	69.45	191.08	32.83 %	-62.02 %	-4.30 %	-63.65 %
E04	241,217	181,598	132,974	181,598	0.040000	0.100000	53.19	181.60	32.83 %	-26.78 %	-60.00 %	-70.71 %
ACT	241,217	181,598	161,217	181,598	0.098600	0.104800	15.04	190.31	32.83 %	-11.22 %	-5.92 %	-92.10 %
<b>Total</b>												-62.10 %

**Taxing Unit Code and Description:**

TRAVIS COUNTY TRAVIS COUNTY ESD #4  
DEL VALLE ISD ACC (TRAVIS)  
TRAVIS CENTRAL HEALTH

**SCHOOL DISTRICT M&O/DEBT RATE INFORMATION**

TAXING UNIT	M&O	2023 DEBT	2022 M&O	2022 DEBT
IDV	0.672800	0.330000	0.854600	0.330000

**Make payments payable to TRAVIS COUNTY TAX OFFICE**

The mailing address is P.O. BOX 149328, AUSTIN, TEXAS 78714-9328.

Payments mailed for **current** taxes showing a postmark on or before January 31 (or the next business day if January 31 falls on a weekend) will be considered timely payment upon receipt.

**DO NOT MAIL CREDIT CARD PAYMENTS!**

You may pay property taxes (current, delinquent, and partial payments) online at [www.traviscountytax.org](http://www.traviscountytax.org) with an American Express, Visa, MasterCard, or Discover credit card or by electronic check from your bank account or by phone at 1-888-286-9242. All payments made with cards, electronic checks, whether by phone, or in person will include an **additional fee**.

Call (512) 854-9473 if you have questions about paying property taxes. **SE HABLE ESPAÑOL.**

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Manuel Quinto-Pozos on behalf of Manuel Quinto-Pozos

Bar No. 24070459

mqp@ddollaw.com

Envelope ID: 87332559

Filing Code Description: RESPONSE

Filing Description: PLAINTIFFS' RESPONSE TO DEFENDANTS'

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER

JURISDICTION AND TO AMENDED PLEA TO THE JURISDICTION

Status as of 5/3/2024 1:25 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Manuel Quinto-Pozos	24070459	mqp@ddollaw.com	5/2/2024 4:50:51 PM	SENT
Daniel Read Richards	791520	drichards@rrsfirm.com	5/2/2024 4:50:51 PM	SENT
Fred I. Lewis		f_lewis@sbcglobal.net	5/2/2024 4:50:51 PM	SENT
Beverly Reeves		breeves@reevesbrightwell.com	5/2/2024 4:50:51 PM	SENT
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Susan Farris		sfarris@reevesbrightwell.com	5/2/2024 4:50:51 PM	SENT
Jacob Sanchez		jsanchez@reevesbrightwell.com	5/2/2024 4:50:51 PM	SENT