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

REBECCA BIRCH, RICHARD FRANKLIN III, AND ESTHER GOVEA, *PLAINTIFFS*,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
TRAVIS COUNTY HEALTHCARE DISTRICT D/B/A CENTRAL HEALTH, AND DR. PATRICK LEE, IN HIS OFFICIAL CAPACITY ONLY *DEFENDANTS*.	§	345TH JUDICIAL DISTRICT

PLAINTIFFS' UNOPPOSED REQUEST FOR A PERMISSIVE INTERLOCUTORY APPEAL UNDER TEX. PRAC. & REM. CODE, SEC. 51.014(d), OF THE DENIAL OF THEIR MOTION FOR SUMMARY

Comes now Plaintiffs and file this Unopposed Request For A Permissive Interlocutory Appeal, pursuant to Tex. Prac. & Rem. Code, Sec. 51.014(d)(hereafter "Unopposed Request"), of the Court's denial of Plaintiffs' Motion for Summary Judgment. Plaintiffs would respectfully ask the Court to amended her Order of June, 3 2024 (hereafter "Original Order") to add a recommendation that plaintiffs may file a permissive interlocutory appeal. Based on conferences with Defendants' attorney on June 7, 2024, Defendants do not oppose Plaintiffs' Request for a recommendation of a permissive interlocutory appeal. Plaintiffs respectfully request that the Court consider and rule on this Unopposed Request for an amended order within 15 days (June 18, 2024), as appears required by Tex. R. Civ. P. Rule 168 and Tex. R. App. P. Rule 28.3 (c). In support, Plaintiffs would show:

I.

Case Background

On May 9, 2024, the Court heard both Plaintiffs' Motion for Summary Judgment and Defendants' Motion to Dismiss for Subject Matter Jurisdiction and Amended Plea to the Jurisdiction (hereafter "Defendants' Plea to the Jurisdiction"). On June 3, 2024, the Court entered an Original Order granting in part, and denying in part, Defendant's Plea to the Jurisdiction: the Court dismissed Plaintiffs' claims against Defendant Central Health and any allegations by Plaintiffs for retroactive relief against Defendant Dr. Patrick Lee, in his official capacity; and the Court denied Defendants' Plea to the Jurisdiction as to Dr. Patrick Lee, in his official capacity, as to prospective relief. Court's Original Order, attached as Exhibit 1. The Court also denied in full Plaintiff's Motion for Summary Judgment, including denying summary judgment as to the *ultra vires* claims for prospective relief against Dr. Patrick Lee in his official capacity. Exhibit 1.

Plaintiffs' and Defendants' respective dispositive motions entail the same controlling legal issue but from different vantage points. Defendants' Plea to the Jurisdiction alleges that as a matter of law Defendant Lee is immune from suit because he is acting within his lawful authority on behalf of Central Health in publicly funding non-medical care activities. On the other hand, Plaintiffs allege in their Motion for Summary Judgment that as a matter of law Defendant Lee is exceeding his lawful authority on behalf of Central Health, and is acting *ultra vires,* in using property taxes to fund these same non-medical care activities. The parties' central dispute is legal, not factual: the expenditures in question are not factually in dispute, but whether they legally exceed the hospital district's constitutional and statutory authority.

1. Defendant Lee, in his official capacity, has the right to an interlocutory appeal of the Court's order "based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state." Tex. Prac. & Rem. Code, Sec. 51.014(a)(5). Defendant Lee, via his counsel, has indicated to Plaintiffs that he intends to timely file an interlocutory appeal of the Court's order denying his plea to the jurisdiction.

2. Although the controlling legal issue is the same for Plaintiffs and for the Defendant, Plaintiffs do not have as a matter of right an interlocutory appeal of the denial of their Motion for Summary Judgment as to the Defendants' alleged *ultra vires* actions. Tex. Prac. & Rem. Code, Sec. 51.014(a). However, Tex. Prac. & Rem. Code, Sec. 51.014(d) does authorize a permissive appeal on certain grounds to Plaintiffs.

II.

Plaintiffs Meet the Grounds for a Permissive Interlocutory Appeal Pursuant to Tex. Civ. Prac. And Rem Code, Sec. 51.014(d)

Tex. Prac. & Rem. Code, Sec.51.014(d) provides for a permissive interlocutory appeal: "On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if: (1) the order to be appealed involves *a controlling question of law* as to which there is a substantial ground for difference of opinion; and (2) an immediate appeal from the order may *materially advance the ultimate termination of the litigation*" (emphasis added).

The pleadings, briefs, evidence, and argument show that this Unopposed Request clearly satisfies Section 51.014(d)'s two requirements.

A. The Original Order, denying Plaintiff's Motion for Summary Judgement as to Defendant Lee's alleged *ultra vires* actions, contains a controlling question of law as to which there is a substantial ground for difference of opinion.

1. There is a controlling, dispositive question of law in the requested interlocutory appeal: is Defendant Lee exceeding his statutory authority on behalf of the hospital district to provide "medical and health care," under the Texas Constitution, Article IX, Sec. 4 and Texas Health & Safety Code, Chapters 61 and 281? Plaintiffs allege Defendant Lee is exceeding

his lawful authority, and acting *ultra vires*, by expending property taxpayer funds on non-clinical medical education, non-clinical research, and the operations and administration of a medical school not involving clinical care of patients.[1] To the contrary, Defendant alleges he is as a matter of law acting within his statutory authority when he is authorizing these same, factually undisputed expenditures, and, therefore, Defendant is immune from suit.[2] The controlling issue of law in this case is whether Defendant Lee is exceeding his lawful authority in making expenditures for Central Health other than for medical care and related administration (hereafter collectively "medical care").

a. The controlling question of Central Health's constitutional and statutory authority is a matter of law: "Statutory construction is a question of law, which we review de novo." Texas Municipal Power Ag. v. PUC of Texas, 253 S.W.3d 184, 193 (Tex. 2007) (summary judgment granted because issues of express or implied legal authority are a matter of law); Serv. Lloyds Ins. Co. v. Am. Alternative Ins. Corp., 306 S.W.3d 414, 416 (Tex. App.—Austin 2010, no pet.) (summary judgement upheld because agency's statutory authority is a matter of law for the court). Whether an agency has express or implied authority is an issue of law for which summary

[1] Plaintiffs' Motion for Summary Judgement identifies the controlling issue of law as whether Defendant Lee is exceeding his legal authority and acting *ultra vires* as a matter of statutory construction: "The central legal issue concerns Central Health's authority under state law: is Central Health acting ultra vires by spending public funds illegally on items not contained within the hospital district's constitutional purpose and statutory authority to provide "medical and hospital care to needy inhabitants in the county"? Tex. Const. Art. IX, Sec. 4; Tex. Health & Safety Code § 281.002. Based on Central Health and Dell Medical School's ("DMS") budget and accounting records, and depositions explicating them, there is no material factual dispute on what items DMS spends Central Health funds on. The only disagreement is legal: whether Central Health has legal authority in the future to spend its public funds on education, research, and other expenditures not related to medical care." Plaintiffs' Motion for Summary Judgement, p. 1, attached as Exhibit 2. See also Plaintiffs' Third Amended Original Petition, pp. 1-2, attached as Exhibit 4.

[2] Defendants' Plea To the Jurisdiction alleges that they are acting within their legal statutory authority and therefore are immune: "To the contrary, the annual payment under the Affiliation Agreement, which must be spent on permitted investments that further the mission of Central Health, including support for the ongoing operation of the UT Dell Medical School, is fully authorized by and compliant with the Texas Constitution and Texas Health & Safety Code, a proper exercise of Central Health's discretion about how to best provide high quality health care to low-income residents of Travis County, and necessary to expand the health care services Central Health is able to fund and improve outcomes for the patients it serves." Defendants' Plea to the Jurisdiction, p. 2, attached as Exhibit 3.

judgment is proper: "We agree with the detainees' argument, which they made in their summary-judgment motion, that the Department lacks the express or implied statutory authority to license the Dilley and Karnes facilities… ." Tex. Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc., 665 S.W.3d 135, 145 (Tex. App.—Austin 2023, pet. filed). See also Tex. Tel. Ass'n v. PUC of Tex., 653 S.W.3d 227, 255 (Tex. App.—Austin 2022, no pet.) (summary judgment granted for plaintiffs on their *ultra vires* claim that agency had exceeded its express and implied powers).

b. Issues of whether a governmental official is acting *ultra vires*, or has immunity, are matters of law: "Whether a claimant has alleged a valid *ultra vires* claim is a question of law that we review de novo." Univ. of Texas v. S.O., 672 S.W.3d 304, 312 (Tex. 2023) (partial summary judgement granted that Defendant had acted within his statutory authority and not *ultra vires*). If as a matter of law Defendant Lee has no express or implied authority, under the state constitution (Tex. Const. IX, Sec. 4) or various provisions under Tex. Health & Safety Code, Chapters 281 and 61 (delineated in the pleadings and briefs), to fund the activities in question, then Plaintiffs are entitled to summary judgment on their *ultra vires* cause of action. Tex. Tel. Ass'n v. PUC of Texas, 653 S.W.3d at 255. In Tex. Tel. Ass'n v PUC of Texas, the Austin Court of Appeals held that "considering the statutory scheme as a whole and construing the pleadings in the Rural Providers' favor, we conclude that the Rural Providers' pleadings are sufficient to confer the trial court with jurisdiction over these viable ultra vires claims and that they have e*stablished as a matter of law that the Commissioners acted without legal authority*." Id. (emphasis added).

c. There are no genuine issues of material facts as to the activities in controversy that are publicly funded by Central Health. The undisputed financial and budget documents show that Central Health expenditures were officially classified as education, research, and related

administration-- and not as medical care. Exhibit 2, Plaintiffs' Motion for Summary Judgement, pp. 25-51. These official governmental records show exactly what items the public funds were spent on. The only dispute is legal: does Central Health have legal authority to spend public funds in the future on non-medical care activities? Central Health contends it has such authority as a matter of law; Plaintiffs allege that as a matter of law it does not. Resolving this controlling legal issue will essentially resolve this case, except for the entry of appropriate trial court orders.

2. There are substantial grounds for disagreement of opinion on the controlling issue of law. First, there is a substantial disagreement because the controlling issue of law—the limits of a hospital district's authority to expend funds—has never been addressed by Texas Courts. There are no cases that hold if and when a hospital district may expend public funds on non-medical care activities, such as undergraduate medical education classes, medical school fundraising, student admissions and communications, or non-clinical research. The case involves a novel legal question.

a. Plaintiffs and Defendant fundamentally disagree on the limits of the legal authority of a hospital district. Plaintiffs point to various statutory language and analogous cases that they contend show Central Health is a special purpose district with very limited express and implied authority to spend unreimbursed public funds. Ex. 2, Plaintiffs' Motion for Summary Judgment, pp. 11-25, 53-63; Ex. 5, Plaintiffs' Response to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and to Amended Plea to the Jurisdiction, pp. 3-6, 12-16. Plaintiffs interpret these laws as authorizing a hospital district to provide only unreimbursed medical care for low-income patients residing in the county.

In contrast, Defendants point to statutory provisions and cases that they argue show hospital districts have broad authority to spend public funds on medical education and research unrelated

to direct patient care, on non-county residents and non-low eligible patients, and on the social determinants of health (housing, education, poverty, etc.). Ex. 3, Defendants' Plea to the Jurisdiction, pp. 3-6, 21-25; Ex. 6, Defendants' Summary Judgment Response, pp. 4-8, 35-41.

Moreover, Plaintiffs contend that a hospital district is exceeding its lawful authority because a hospital district has only those implied powers that are unquestionably indispensable to its express power to provide medical care to poor county residents. On the other hand, Defendants maintain a hospital district has broad discretion to fund what it believes is reasonable and necessary to their operations, including medical education, medical research, and administration and operations of a medical school that do not relate to medical care of a person.

Plaintiffs contend Central Health has discretionary authority only as to the type, manner, facilities and location of the medical care and directly related administration it provides poor county residents. Central Health maintains it has discretionary authority to also fund non-clinical education, non-clinical research, non-clinical administration, and social determinants of health programs. The limits of a hospital discretion is a matter of constitutional and statutory construction and an issue of law. Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W.3d 154, 158-159 (Tex. 2016),

b. The controlling legal issue—as to the limits of a hospital district's statutory authority—is novel, intricate, and of major importance to the poor and taxpayers. Central Health's affiliation agreement calls for future expenditures of $35 million a year for at least 14 more years (totaling $490 million) and a possible extension for an additional 25 years beyond that (for an additional $875 million)—few if any of which to date have gone directly for medical care of poor county residents. The controlling issue of lawful authority also greatly impacts the other 150 plus hospital districts in Texas, which levied in 2023 $ 4.29 billion in property taxes. See Texas

Comptroller, Rates and Levies of Special District (https://comptroller.texas.gov/taxes/propertytax/rates/index.php) (sorting the hospital districts listed and summing the total amount of taxes levied).

B. An immediate permissive appeal from the Court's Original Order denying Plaintiffs' Motion for Summary Judgment will materially advance the ultimate termination of the litigation.

The controlling legal issue as to the limits of Central Health's authority should essentially resolve this case. If Central Health is exceeding the limits of its lawful authority as to the expenditures in question, then Defendant Lee is acting *ultra vires* as a matter of law and the trial court should enter an injunction preventing such future expenditures. If Central Health is acting within the bounds of its statutory authority, then Defendant Lee is acting lawfully, has governmental immunity, and this case should be dismissed.

If the order is not appealable at this time, then plaintiffs and defendants will have to conduct extensive additional discovery. Discovery has been limited to date because of the pending plea to the jurisdiction. Extensive discovery now will have to be conducted to ready this case for a full evidentiary trial. Going forward, plaintiffs will need:

1. to take a number of depositions of Central Health's current executive leadership, only two of the eleven of which have been deposed. https://www.centralhealth.net/about-central-health/executive-leadership/ (Jeff Knodel and Stephanie McDonald).

2. to take for the first time depositions of its Board Chair and Board committee heads, such as of the Strategic Planning Committee and Budget & Finance Committee.

3. to take depositions of Central Health's corporate representatives as to their current and future planned expenditures, including pursuant to their new Master Services Agreement and

Professional Services Agreement with Dell Medical School (See Ex. 6, Defendants' Summary Judgment Response, p. 15).

4. to take depositions of Central Health's corporate representatives as to its current and future funding of extensive social determinants of health programs, including its funding of Integral Care and the Travis County Jail Diversion program.

5. to take depositions of Central Health's designated experts.

6. to take depositions of additional corporate representatives of Dell Medical School as to its future expenditures of Central Health funds at Dell Medical School and UT Health Austin under the Affiliation Agreement as well as the new Professional and Master Services Agreements.

7. to take depositions of corporate representatives of Dell Medical School related to its involvement and payments from Central Health as to Central Health's healthy equity strategic plan, including its extensive non-medical social service programs.

8. to take depositions of corporate representatives of Dell Medical School as to their current and future recordkeeping and reporting of aggregate patient data for Central Health eligible patients as well as other activities funded by Central Health.

9. to obtain through subpoena duces tecum and requests for production all the additional documents related to the above deposition subjects.

It should be noted that Central Health has taken no depositions to date, so it may seek to depose the individual plaintiffs, plaintiffs' experts and other relevant witnesses.

Plaintiffs estimate that to present this voluminous testimony and the tens of thousands of financial and other documents will take approximately four weeks for the parties to try. In summary, plaintiffs believe a permissive interlocutory appeal of the controlling legal issue of the limits of a hospital district's lawful authority as to non-medical expenditures, as described above,

will essentially resolve this matter and save the parties and judicial system the extensive future time and resources described above.

III.

Unopposed Request to Enter an Amended Order with a Permission Appeal Recommendation Within Fifteen Days of the Execution of the Original Order

Plaintiffs respectfully request that the Court enter an amended written order recommending a permissive appeal of the denial of their Motion for Summary Judgement alleging that as a matter of law Defendant Lee has acted *ultra vires* by exceeding his legal authority as to non-medical care expenditures. Plaintiffs specifically request that the Court add to the Original Order the necessary sections recommending that the Third Court of Appeals allow Plaintiffs to file a permissive interlocutory appeal of the denial of their motion for summary judgment as specified above because Plaintiffs have satisfied the grounds specified in Tex. Prac. & Rem. Code, Sec. 51.014(d).

Plaintiffs are respectfully requesting that the Court amend its Court's Original Order of June 3, 2024, to include a recommendation for a permissive interlocutory appeal, rather than a separate order recommending such an appeal. This is because Tex. R. Civ. Proc. 168 requires that a permissive appeal recommendation be in the Court's order being appealed. Rule 168 states that the Court "may permit an appeal from an interlocutory order that is not otherwise appealable, as provided by statute. *Permission must be stated in the order to be appealed. An order previously issued may be amended to include such permission*." (emphasis added). The Plaintiffs also respectfully request that the amended order include a stay of all proceeding in the trial court. Tex. Civ. Prac. & Rem. Code, Sec. 51.014 (e)(2)

The Plaintiffs respectfully request that the Court enter the amended order by June 18, 2024, which is within fifteen (15) days of the original order as appears to be required. Tex.

R. App. P. Rule 28.3 (c) for permissive appeals requires the order, whether original or amended, to be appealed with 15 days: "The petition must be filed within 15 days after the order to be appealed is signed. If the order is amended by the trial court, either on its own or in response to a party's motion, to include the court's permission to appeal, the time to petition the court of appeals runs from the date the amended order is signed." Id.

A proposed Amended Order with the required grounds is attached for the Court's convenience.

Wherefore, premises considered, Plaintiffs respectfully request the Court enter an amended order within fifteen days of the Original Order of June 3, 2024 recommending a permissive interlocutory appeal pursuant to Tex. Civ, Prac. Rem. Code, Sec 51.014, specify the grounds for the permissive appeal, enter a stay of all proceedings in the trial court pending the appeal, and for such other and further relief, in law or in equity, to which plaintiffs are entitled.

Respectfully submitted,

/s/ Manuel Quinto-Pozos

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CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for Defendants regarding this motion on June 7, 2024, and she indicated that Defendants do not oppose this motion.

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 7th day of June 2024, to:

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

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

[PROPOSED] ORDER ON DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND PLAINTIFFS' MOTION FOR FINAL SUMMARY JUDGMENT

On May 9, 2024, the Court heard Defendants Travis County Healthcare District d/b/a Central Health ("Central Health") and Dr. Patrick Lee's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Amended Plea to the Jurisdiction ("Defendants' Motion to Dismiss") and Plaintiffs Rebecca Birch, Richard Franklin, III and Ester Govea's Motion for Final Summary Judgment ("Plaintiffs' Motion for Summary Judgment"). After considering the parties' respective briefing, the evidence, the pleadings on file, and the arguments of counsel, the Court finds that Defendants' Motion to Dismiss should be GRANTED in part and DENIED in part and Plaintiffs' Motion for Summary Judgment should be DENIED, as set forth herein.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is GRANTED with respect to Central Health and any retrospective relief against Dr. Patrick Lee in his official capacity, and those claims are DISMISSED with prejudice.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss is DENIED as to Dr. Patrick Lee in his official capacity in all other respects.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgement is DENIED in all respects.

SIGNED this 3rd day of June, 2024.

HONORABLE JUDGE AMY CLARK MEACHUM

APPROVED AS TO FORM:

/s/ Fred I. Lewis (with permission)

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

PLAINTIFFS' MOTION FOR FINAL SUMMARY JUDGMENT

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Plaintiffs, each a City of Austin property taxpayer, bring this action asking the Court to grant this Motion for Final Summary Judgment and enjoin the Defendants, Travis County Healthcare District d/b/a Central Health ("Central Health" or "CH") and Dr. Patrick Lee (the new CEO and President of Central Health), in his official capacity only, to stop their *ultra vires* acts in spending public funds on illegal expenditures outside Central Health's constitutional and statutory authority to provide medical and hospital medical care, particularly to Travis County's poor.

INTRODUCTION

I. SUMMARY OF THE MOTION AND ARGUMENT

This case is ripe for final summary judgement because the issues in question are solely a matter of law; there are no genuine material issues of fact. The central legal issue concerns Central Health's authority under state law: is Central Health acting *ultra vires* by spending public funds illegally on items not contained within the hospital district's constitutional purpose and statutory authority to provide "medical and hospital care to needy inhabitants in the county"? Tex. Const. Art. IX, Sec. 4; Tex. Health & Safety Code § 281.002. Based on Central Health and Dell Medical School's ("DMS") budget and accounting records, and depositions explicating them, there is no material factual dispute on what items DMS spends Central Health funds on. The only disagreement is legal: whether Central Health has legal authority in the future to spend its public funds on education, research, and other expenditures not related to medical care.

Hospital districts are special purpose districts authorized by the Texas Constitution to assume from the county and cities therein responsibility for the poor's medical care: "such Hospital District shall assume *full responsibility for providing medical and hospital care* to *needy inhabitants* of the county." Tex. Const. Article IX, Sec. 4 (emphasis added). For this limited purpose, the hospital district has the power to establish a hospital system and levy property taxes; however, thereafter the county and cities therein are precluded from spending any taxes on the

hospital system or the poor's medical care. Tex. Const. Art. IX, § 4.

Texas Health & Safety Code, Chapters 281 and 61 are the primary statutes governing the operations of hospital districts. Chapter 61 defines in detail the "health care services" that hospital districts have authority to provide the poor. Sections 61.028 and 61.0285 itemize a list of specific "health care services," which comports with the plain and ordinary meaning of this term. Tex. Health & Safety Code, Secs. 61.028, 61.0285.

The plain meaning of "medical and hospital care" is attending to and treating a person's physical and emotional health. Merriam-Webster's Law Dictionary, infra. Medical and hospital *care* (patient treatment) is not ordinarily understood to include medical school education, research, and other non-clinical operations of a medical school. Nor are these matters included in Chapter 61's statutory definitions of "health care services."

As shown below, the facts are indisputable that Central Health has spent millions of property tax dollars at DMS on the school's non-clinical operations and administration. In fact, based on the school's official accounting and budgeting, DMS itself has classified only 10% of its expenditures of Central Health's funds as clinical and clinical administration and *90% as education, research, public service, and general administration*. DMS's own records recognize that it spends the vast majority of Central Health funds on activities that are not "medical and hospital care" (which DMS describes as clinical and clinical administration).

Medical schools provide four valuable functions— education, research, medical care to patients able to pay, and medical care to poor patients— but Central Health has legal authority to fund only the last function. Nor is it disputed that Central Health also has spent hundreds of thousands of dollars on an innovation district for economic development, sponsoring chambers of commerce, and various social programs that do not constitute medical care.

As a special purpose district, Central Health has very limited powers. It has the express power to establish a hospital system and provide medical care for the poor; its implied powers extend only to activities that are indispensable to fulfill its express powers. Brief, *infra*, section V.B. Any reasonable doubt about its implied powers is construed by courts against it as a special purpose district. Brief, *infra*, section V.B. Central Health's funding of a medical school's education, research, public service and general administration is not indispensable to the hospital district providing a hospital system and medical care for the poor. While Central Health has discretion in administering "medical care" (such as determining the type and manner of medical care it provides), it has no authority to interpret constitutional and legislative terms contrary to their statutory and plain meaning to fund activities that do not attend to or treat patients.

The Texas Supreme Court has held acts as *ultra vires* of governmental entities with broad administrative authority, when their interpretations of the law are beyond the plain meaning of the text. In this case, Central Health has exceeded its legal authority as a hospital district, and acted *ultra vires*, in expending funds at the medical school and elsewhere on items that are not medical care or its related administration (hereafter collectively "medical care" or "health care"). While very beneficial, undergraduate medical education, faculty research, and non-clinical operations (business affairs, student services, communications, fundraising, etc.) are not medical care. As a matter of law, defendants Central Health and Lee have spent public funds illegally and defendants should be enjoined from further spending funds that do not constitute medical care as defined by Chapter 61.

II. THE STANDARD FOR SUMMARY JUDGEMENT

The purpose of summary judgment is to provide a method of summarily terminating a case when only a question of law is involved and there is no genuine issue of material fact. Gaines v. Hamman, 163 Tex. 618, 626, 358 S.W.2d 557, 563 (1962). The standards are well established for

granting a motion for summary judgment. Nixon v. Mr. Property Mgmt. Co., 690 S.W.2d 546, 548-49 (Tex. 1985). The standards are: 1) the movant for summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law; 2) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true; and 3) every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. Id.

III. CENTRAL HEALTH'S HISTORY AND BACKGROUND

Travis County was the last large urban county in Texas to adopt a countywide hospital district. In 2003, the Texas Legislature passed a bill authorizing Travis County voters to hold an election on whether to establish a countywide hospital district. Exhibit 20, Central Health Audit Report FY2022, p. 4. In May 2004, Travis County voters approved establishing a hospital district. Id. This vote resulted in the City of Austin transferring its municipal public hospital (Brackenridge Hospital) and its related assets to the newly formed Travis County Healthcare District (aka Central Health). Id. With Central Health's creation, it "assum[ed] full responsibility for providing medical and hospital care to needy inhabitants of the county" and the power to levy a property tax for that purpose. Tex. Const. Article IX, Sec. 4.

In November 2012, Travis County voters approved a measure to increase the hospital district's property tax rate and for the taxes to "be used for *improved health care in Travis County, including support for a new medical school consistent with the mission of Central Health*, a site for a new teaching hospital, trauma services, specialty medicine such as cancer care, community-

wide health clinics . . . ."[1] As a medical school could provide "heath care in Travis County," this particular part of its activities would be "consistent with Central Health's mission." Brief, *infra*, Section X.

In July 2014, Central Health, its non-profit entity the Community Care Collaborative ("CCC"), and UT-Austin entered into an affiliation agreement. Central Health and the CCC agreed to make a $35 million annual payment for 25 years (with potential automatic extensions) to DMS. Exhibit 3, Deposition of Dwain Morris (March 2023), attached Morris Depo. Ex. 14: Central Health-UT Affiliation Agreement, Section 6, p. 20. The affiliation agreement, through its term "permitted investments," purports to give the medical school broad "discretion" in spending the $35 million annual payments, including on the medical school's "on-going operations," "administration infrastructure," or "other related activities and functions." Id. Section 1, p. 9. "Permitted investments" specifically includes education, research, and any other activities of the medical school. Id., pp. 2-5, 9.

Furthermore, the agreement does not afford Central Health or CCC the standard payor right to access the related books and documents of DMS, including those showing DMS's expenditure of the $35 million annual payments. Although the agreement provides that governmental authorities may access DMS records, it inexplicably (and erroneously) defines Central Health as not a governmental authority. Id., Section. 9.5.1, p. 31 (providing governmental authorities access

[1] Central Health Ballot Measure (Nov 2012): "Approving the ad valorem tax rate of $0.129 per $100 valuation in Central Health, also known as the Travis County Healthcare District, for the 2013 tax year, a rate that exceeds the district's rollback tax rate. The proposed ad valorem tax rate exceeds the ad valorem tax rate most recently adopted by the district by $0.05 per $100 valuation; funds will be used for improved healthcare in Travis County, including support for a new medical school consistent with the mission of Central Health, a site for a new teaching hospital, trauma services, specialty medicine such as cancer care, community-wide health clinics, training for physicians, nurses and other healthcare professionals, primary care, behavioral and mental health care, prevention and wellness programs, and/or to obtain federal matching funds for healthcare services." *Available at* https://www.centralhealth.net/library/legal-documents/2012-election-proposition-1/ (last visited April 16, 2024).

to DMS documents); Id, Section 1, p. 8 (defining "governmental authorities" to specifically exclude Central Health). Nor does the Affiliation Agreement specify any health care services DMS will provide Central Health patients, any methodology for determining the cost of these services, or any ability to recoup duplicate payments or incorrect expenses. Id. at i-ii.

THE LAW

IV. RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

A. The Texas Constitution, Article IX, Section 4, authorizes special purpose hospital districts such as Central Health.

In 1954, voters approved Article IX, Section 4 to the Texas Constitution. This amendment authorizes the Legislature and voters in Texas counties over 190,000 to establish special purpose, county-wide hospital districts to assume from counties "full responsibility" for the poor's medical and hospital care. Tex. Atty. Gen. Op. No. JC-220, p. 7 (2000). In relevant part, the amendment states:

> The Legislature may by law authorize the creation of county-wide Hospital Districts *in counties having a population in excess of 190,000* and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and 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…*

Tex. Const. Article IX, Sec. 4 (emphasis added).[2]

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[2] In full, Tex. Const. Art. IX, Section 4 states:

> The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000 and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county owned hospital, or where the hospital system is jointly operated by a county and city within the county, and to provide for the transfer to the county-wide Hospital District of the title to any land, buildings or equipment, jointly or separately owned, and for the assumption by the district of any outstanding

Article IX, Section 4 begins by empowering the Texas Legislature through statutory enactments to authorize countywide hospital districts in larger counties. Id. With voter approval, the amendment establishes a hospital district to levy property taxes and "to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county-owned hospital." Id. A hospital district is constitutionally required to assume "full responsibility" for "providing medical and hospital care to needy inhabitants of the county." Id. See, e.g., Tex. Atty. Gen. Op. No. JC-220, p. 7 (2000); Tex. Atty. Gen. Op. No. JH-31, p. 2 (1988); Tex. Atty. Gen. Op. No. WC-382, p. 2 (1965). With a hospital district's assumption of full responsibility for the poor's medical care, county and cities within a hospital district's territory are precluded from providing further financial support for the hospital district: "such county and cities therein shall not levy any other tax for hospital purposes." Tex. Const. Article IX, Sec. 4. In addition, a hospital district's responsibility for maintaining and operating a hospital "shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for that purpose." Id.

B. Texas Health and Safety Code, Chapter 281 governs Central Health's general statutory powers.

Chapter 281 of the Texas Health and Safety Code prescribes the statutory powers for

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bonded indebtedness theretofore issued by any county or city for the establishment of hospitals or hospital facilities; to levy a tax not to exceed seventy-five ($ .75) cents on the One Hundred ($100.00) Dollars valuation of all taxable property within such district, provided, however, that such district shall be approved at an election held for that purpose, and that only qualified voters in such county shall vote therein; 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; and provided further that should such Hospital District construct, maintain and support a hospital or hospital system, that the same shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for the construction, maintenance or improvement of the said hospital or hospitals.

hospital districts with over 190,000 residents, such as Central Health. Titled "District Authorization," Section 281.002(c) permits counties, like Travis County, with a population over 190,000 and a municipal hospital (Brackenridge Hospital), to "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, Section 281.002(c)(emphasis added).[3] This statutory language closely tracks the constitutional language authorizing larger hospital districts to "assume full responsibility for providing medical and hospital care to needy inhabitants of the county." Tex. Const., Article, IX, Section 4.

Consistent with Section 281.002, Section 281.046's taxing authority provides that "[b]eginning on the date on which taxes are collected for the district, the *district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district*." Tex. Health & Safety Code 281.046 (emphasis added). This section highlights that a hospital district's power to levy taxes is for the specific purpose of establishing a hospital system to provide medical care for the poor residing in the county.

Other provisions in Chapter 281 also emphasize that a hospital district's powers "apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents," whether in hiring physicians, contracting, or managing assets.[4]

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[3] Texas Health and Safety Code Section 281.002(c) states in full: "A county with at least 190,000 inhabitants that has within its boundaries a municipality that owns a hospital or hospital system for indigent or needy persons that is operated by or on behalf of the municipality 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."

[4] See, e.g., Tex. Health & Safety Code, Section 281.02815(e) (authority to employ physicians "to fulfill the district's statutory mandate to provide medical care for the indigent"); Section 281.041(a) (authority to take over and manage public hospital assets "to provide medical services or hospital care, including geriatric care, to indigent or needy persons."); and Section 281.043 (authority to assume public hospitals contractual rights and obligations for "provision of health care services or hospital care, including mental health care, to indigent residents.").

Furthermore, no provision in Chapter 281 states that a hospital district has statutory authority to provide for medical education, medical research, general public service, or administration of a medical school.

C. Texas Health & Safety Code, Chapter 61 expressly defines the health care that Central Health may provide and the eligibility requirements for district services.

To ensure that hospital districts (as well as public hospitals and counties) provide medical care to the poor consistent with their powers, the Legislature in 1989 adopted Texas Health & Safety Code, Chapter 61, "The Indigent Health Care and Treatment Act." The Legislature enacted this Act pursuant to its constitutional authority granted in 1985 in Article IX, Section 9A to determine the health care services a hospital district may provide and the eligibility for those services: "The legislature by law may *determine the health care services a hospital district is required to provide*, *the requirements a resident must meet* to qualify for services, and any other relevant provisions necessary to regulate the provision of health care to residents." (emphasis added). See also Tex. Atty. Gen. Op. No. JM-858 (1988), at 3.

Section 61.055 specifies that hospital districts *shall* endeavor to provide the same "basic health care services" that counties (without hospital districts) are required to provide in Section 61.028: "a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district." Tex. Health & Safety Code § 61.055(a). Section 61.028 defines "basic health care services," as they are commonly understood:

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

Tex. Health & Safety Code § 61.028(a). In addition, under Section 61.0285, counties and hospital

districts *may provide* "*other medically necessary services or supplies* that the county determines to be cost-effective, including":

> (1) ambulatory surgical center services; (2) diabetic and colostomy medical supplies and equipment; (3) durable medical equipment; (4) home and community health care services;(5) social work services; (6) psychological counseling services; (7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists; (8) dental care; (9)vision care, including eyeglasses; (10) services provided by federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B); (11) emergency medical services; (12) physical and occupational therapy services; and (13) *any other appropriate health care service identified by department rule* that may be determined to be cost-effective.

Tex. Health &Safety Code § 61.0285(a) (emphasis added).

Nowhere in Sections 61.028 and 61.0285's list of authorized health care services, does the Legislature empower hospital districts to fund medical research, medical education, or the operations and administration of a medical school. In fact, nowhere in any section of Chapter 61, which defines the scope of "indigent health care and treatment," are medical education and research even mentioned. Moreover, state regulations also define "basic" and optional" "health care services" as they are commonly understood and do not include within their ambit medical education, research, or other non-medical care services. 25 Tex. Admin. Code § 14.021.

Chapter 61 of the Texas Health & Safety Code also prescribes the eligibility requirements for receiving health care services from a hospital district. Tex. Atty. Gen. Op. No JC-220 (2000), at 2, 9. Texas Health & Safety Code § 61.052(a) mandates that a "hospital district shall provide health care assistance to each eligible resident in its service area." Section 61.002(3) defines an eligible resident as a person who meets the county residence and income and resources requirements. Id. at 61.002(3). Sections 61.03 and 61.045 define "residence" in a hospital district's jurisdiction and how to determine it. Sec. 61.052(a) prescribes the income and resource requirements for a hospital district resident, which must either be set at the state's very low

prescribed maximum income level or by a hospital district (which for Central Health is 200% of the federal poverty level). A hospital district must establish eligibility procedures for applying for its services and for seeking payment for its services from financially able patients. Id., §§ 61.053 and 61.60. In summary, a hospital district may provide free health care services only to eligible low income residents of the county; non-resident and financially able patients are required to pay for their services.

V. HOSPITAL DISTRICTS ARE SPECIAL PURPOSE DISTRICTS AND COURTS STRICTLY CONSTRUE THEIR POWERS.

A. Hospital Districts are special purpose districts.

Hospital districts-- with their specific purpose and narrow powers-- are special purpose districts. Dallas County Hosp. Dist. v. Hospira Worldwide, 400 S.W. 3d 182, 185-186 (Tex. App.—Dallas 2013, no pet.); Sabine County Hosp. Dist. v. Packard, 12-11-00272-CV, 2012 WL 1268386 (Tex. App.—Tyler Apr. 12, 2012, no pet.). See also Tex. Atty. Gen. Op. No. JM-258, at 1 (1984). Special purpose districts are "[t]he most basic, and lowest level, of local government." C. Kay, "Special Purpose Districts in Texas," (LBJ School of Public Affairs Texas Water Policy Conference, December 6, 2014), p. 2 (https://docplayer.net/100833441-Invisible-government-special-purpose-districts-in-texas.html). Central Health's special purpose is providing medical care, particularly for the poor.

B. Texas Law recognizes for a special purpose district only those implied powers that are indispensable to its express purposes.

The leading Texas case on construing the powers of special purpose districts is Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d 945 (Tex. 1940). It involves a water supply district that issued voter-approved bonds and levied taxes to equip and operate fire protection and sewage systems. Id. at 946. The Texas Supreme Court voided the water supply district's bond contracts, holding that it had no implied powers to provide fire protection and sewage systems—even though

they both require water supplies—because such powers are not indispensable to its authorized purpose:

> [the 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.

Id. at 947 (emphasis added). The Supreme Court further held that any reasonable doubt concerning the district's powers should be resolved against it: "'Any fair, reasonable, substantial doubt concerning the existence of power is *resolved by the courts against the corporation*, and the power is denied.'" Id., quoting, Foster v. City of Waco, 255 S.W. 1104, 1106 (Tex. 1923) (emphasis added).

The Court pointed out that special purpose districts have very limited powers and can exercise only those powers that are clearly granted: "Governmental agencies, or bodies corporate such as Fresh Water Supply Districts…are constituted by the Legislature to *exercise, in a prescribed area, a very limited number of corporate functions*, and they are said to be *'low down in the scale or grade of corporate existence'…they can exercise no authority that has not been clearly granted by the Legislature*." Id. at 948 (emphasis added). Finally, the Court noted that if the Legislature had wanted the water supply district to have the power to engage in fire protection and sewage treatment, then it would have said so in plain language:: "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 languag*e." Id. (emphasis added).

Relying on its holding in Tri-City Fresh Water Supply Dist. v. Mann, the Texas Supreme Court has held recently that a county clerk with enumerated, limited statutory powers (like a special purpose district) has no implied authority to expand the use of mail-in ballots. State v. Hollins, 620

S.W.3d 400, 407 n.28 (Tex. 2022) (per curiam). The Court reiterated that "powers 'necessarily or fairly implied' must be indispensable": "Because Hollins [the County Clerk] acts on behalf of Harris County, he possesses only those powers 'granted in express words' or 'necessarily or fairly implied in' an express grant—*powers 'not simply convenient' but 'indispensable.' Any reasonable doubt must be resolved against an implied grant of authority.*" Id. at 406, quoting, Foster v. City of Waco, 255 S.W. at 1106 (emphasis added).

Similarly, and close to home, in Builder Recovery Services v. Town of Westlake, 650 S.W.3d 499, 503 (Tex. 2022), the Texas Supreme Court relied on Tri-City Fresh Water Supply District v. Mann to hold that a limited-power entity has an "indispensable" implied power only when without its exercise the entity's express powers "would be rendered nugatory." The City of Westlake, a general law city without the plenary power of home-rule cities, passed an ordinance to impose a license fee based on a percentage of revenue on garbage haulers. Id. at 501. The Court struck down the fee, holding: "The reasonable *necessity of an implied power will not be lightly assumed*. To the contrary, we have held that a general-law city's implied powers are limited to those that are *'indispensable' to carrying out expressly granted powers*. Mann, 142 S.W.2d at 947. Stated another way, '[a] municipal power will be implied only when without its exercise the expressed duty or authority *would be rendered nugatory*.'" Id. at 503 (emphasis added).

Last year, the Texas Supreme Court held again, based on Tri-City Fresh Water Supply District v. Mann, that it would not imply powers for limited purpose districts except when they are indispensable to its operation. Pecos County Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist., 672 S.W.3d 401 (Tex. 2023). The Court found that the school district had no implied power to hire a lawyer on a contingent-fee basis to increase the appraised value of properties in the district: "*Authority will not be implied lightly*. We have explained that the 'reasonably necessary to make

effective' standard encompasses those powers that are *'indispensable' or 'essential' to the exercise of expressly granted powers*." Id. at 407. The Court held that "*any reasonable doubt concerning the existence of an implied power is resolved against the political subdivision."* Id., quoting, Tri-City Fresh Water Supply District v. Mann and Foster v. City of Waco (emphasis added).

In summary, the Texas Supreme Court has held repeatedly that it will not imply powers that are merely convenient or useful for special purpose districts or governmental entities with limited powers. The Court has emphasized that reasonable doubts concerning implied power are resolved against such entities. The Court will find implied powers only when such powers are *indispensable* to the exercise of the entity's express powers. By indispensable, the Court means implied powers that are so essential that if they did not exist it would render the entity's express powers nugatory (of no value). The Court has noted that if the Legislature had wanted a special purpose district to have an additional power, it would have said so clearly in the statute.

C. Texas Courts also strictly construe the taxing power of special purpose districts.

In addition to strictly construing the powers of special purpose districts, the Texas Supreme Court Courts has held that these districts' power to levy taxes must be limited to expenditures for powers "granted in clear and unmistakable terms." Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 948, citing, Dallas Consol. Elec. St. Ry. Co. v. City of Dallas, 260 S.W. 1034, 1036 (Tex. Comm'n App. 1924, judgm't adopted). The seminal case on strictly construing the power of special purpose districts to levy taxes is again Tri-City Fresh Water Supply District v. Mann. The Texas Supreme Court held that the water supply district could not levy taxes for fire protection and sewage systems because it was not expressly authorized to impose taxes for such activities: "The power to levy assessments for the construction of drains can be exercised only when granted in *clear and unmistakable terms*, and statutes purporting to grant such power must be *strictly*

construed as against those asserting the right to exercise it." Id. at 948, quoting, Dallas Consol. Elec. St. Ry. Co. v. City of Dallas, 260 S.W. at 1036 (emphasis added). The Court concluded: "The power to tax belongs to the sovereignty [the people]. It can only be exercised by a subordinate corporate body when delegated to it either by the Constitution or by the legislature, and when so delegated, *it must be exercised for those purposes, only, which are distinctly included in the constitutional or legislative provision*." Id. (emphasis added)

Dallas Consol. Elec. St. Ry. Co. v. City of Dallas, which is relied upon in Tri-City Fresh Water Supply Dist., is also instructive. The Texas Supreme Court held that a city tax for street improvements could not be used for storm sewers under the streets. Id., 260 S.W. at 1036-1037. The Court found that the power to levy street improvement taxes for storm sewers "was not granted in clear and unmistakable terms" because it was not "necessary" for making street surface improvements. Id. at 1035 (reversing the Court of Appeals' holding that expending street taxes on storm sewers for streets was necessarily implied). See also Henry v. Kaufman County Dev. Dist. No. 1, 150 S.W 3d 498, 504 (Tex. App.—Austin 2004, pet. dism'd by agr.) (citing Tri-City Fresh Water Supply and Dallas Consol. Elec. St. Ry. Co. for the principle that the power to tax "can be exercised only when granted in clear and unmistakable terms.").

D. Hospital districts, like all governmental entities, cannot enter into agreements that do not conform to a strict construction of their authority.

Governmental entities' expenditures must strictly comply with their state law authority; agreements are illegal that attempt to make expenditures that are not clearly authorized by state law. Osborne v. Keith, 177 S.W.2d 198, 200 (Tex. 1944); Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 947; Hendee v. Dewhurst, 228 S.W.3d 354, 380 (Tex. App.–Austin 2007, no writ). Courts have enjoined enforcement of such unauthorized contracts as *ultra vires*. See, e.g., Tri-City Fresh Water Supply Dist. v. Mann, 142 S.W.2d at 947.

E. Texas Attorney General Opinions have strictly restricted hospital districts' powers to providing only medical care.

(1) Hospital Districts have an absolute duty to provide for the poor's medical care.

Over seventy years, Texas Attorneys General have defined strictly the powers of hospital districts.[5] While these opinions are not binding, they are persuasive. Farmers Grp., Inc. v. Geter, 620 S.W.3d 702, 712 (Tex. 2021). Their opinions repeatedly have found that a hospital district's "primary" constitutional purpose is to "assume full responsibility for providing medical and hospital care to needy inhabitants of the county." Tex. Atty. Gen. Op. No. JC-220, at 7 (2000) (property tax levy must be available and used to discharge district's "manifest purpose . . . to provide for indigent medical care."). See also, Tex. Atty. Gen. Op. No. JM- 858 (1988), at 4; Tex. Atty. Gen. Op. No. WC-382 (1965), at 2. Opinions have declared that a hospital district's duty to provide medical care for the poor is "absolute": "[A] hospital district is directed to assume responsibility for providing hospital and medical care to its needy inhabitants . . . . *Because of its absolute duty to provide medical and hospital care for its needy inhabitants*, a hospital district is responsible for those medical expenses." Tex. Atty. Gen. Op. No. JC-220, at 7 (emphasis added). See also Tex. Atty. Gen. Op. No. JM- 858 (1988), at 4.

(2) A District's "hospital purpose" is to provide medical care.

Texas Attorney General opinions have explained Article IX, Section 4's terms "hospital system" and "hospital purpose." By "hospital system," the constitution is indicating that a hospital district may fulfill its "hospital purpose" either through establishing public hospitals and clinics or

[5] Texas Attorney General Opinions discuss interchangeably hospital districts established under both the Texas Constitution, Article IX, Section 4 (in counties with over 190,000 residents) and Article IX, Section 9 (all other counties).

by funding private health care providers to provide care for the resident poor. Tex. Atty. Gen. Op. No. JC-220, at 9-11. See also Tex. Atty. Gen. Op. No. DM-37 (1991), at 1; Tex. Atty. Gen. Op. No. JM-858, at 5-6. In addition, these opinions explain that the term "hospital purpose" provides express power to hospital districts to use their hospital system to treat paying patients in addition to the poor—but that financially able patients must pay for the cost of their medical care. Tex. Atty. Gen. Op. No JC-220, at 10. "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*." (emphasis). Id. 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.

In Tex. Atty. Gen. Op. No JC-220, at 5, the Texas Attorney General pointed out that for a "hospital purpose" to be lawful, it must fulfill a hospital district's duty to provide medical care, especially for the poor: "To be permissible, however, a hospital district facility's lease must also *serve a hospital district purpose* consistent with article IX, section 9, requiring a hospital district *to provide medical care, particularly hospital and medical care to needy hospital district residents*." (emphasis added). See also Tex. Atty. Gen. Op. No. DM-66 (1999) at 3 (stating that statutory authority to lease a public hospital building does not end the legal analysis, but one must also consider whether leasing to private physicians would serve hospital purpose consistent with article IX, Sec. 9); Tex. Atty. Gen. Op. No. DM-131 (1992) at 1. Importantly, Texas Attorney General opinions also recognize that a hospital district's duty to provide medical care for the poor takes "precedence" over its "hospital purpose." Tex. Atty. Gen. Op. No. WC-382, at 2 (1965) ("the

primary function of the Hospital District is the furnishing of medical and hospital care for the indigent… and that such function must take precedence over all others"). See also Tex. Atty. Gen. Op. No JC-220, at 7 (2000).

(3) Hospital District implied powers must be indispensable to their express powers.

In light of these express constitutional powers, Texas Attorneys General have strictly construed the implied powers of a hospital districts to encompass only those powers that are indispensable, and not just convenient or helpful, to serving its primary purpose of providing health care for the poor. For example, in Tex. Atty. Gen. Op. No. JM-258, at 3 (1984), the Attorney General "conclude[d] that the Titus County Hospital District derives from the constitution and enabling statutes no express or implied power to lease on any terms a portion of its hospital property for use as private offices for private physicians." The opinion noted that "a special purpose district 'may exercise only powers expressly delegated it by the Legislature or exist by clear and unquestioned implication," citing, Tri-City Fresh Water Supply Dist. v. Mann. See also Tex. Atty. Gen. Op. No. JC-220 (2000), at 2.

(4) Hospital Districts have no authority to fund activities that are not clearly medical care.

Texas Attorney General opinions consistently have rejected attempts to fund public health and other community services, however valuable and needed, because they do not constitute "medical and hospital care." In 1973, the Texas Attorney General rejected Tarrant County's attempt to use hospital district funds for its health department: "A hospital district… may engage only in those activities specifically authorized by the Constitution and may not, *by contract or otherwise, assume to render services which are not among those ordinarily rendered by a hospital* such as the regulatory inspection of restaurants, meat, milk, sewage, and water." Tex. Atty. Gen. Op. No. JH-31 (1973), at 4 (emphasis added).

Similarly, in Tex. Atty. Gen. Letter Op. No. 95-088 (1995), the Texas Attorney General held that the Lubbock Hospital District could not fund a medical examiner's office because it did not provide medical or hospital care. Relying on Tri-City Fresh Water Supply District v. Mann, the opinion pointed out: "The Texas Supreme Court has stated that such implied powers are those that are *'indispensable* to . . . the accomplishment of the purpose' for which the district is created and that '[p]owers which are not expressed and which are merely convenient or useful' may not be exercised by the district.'" Id. at 2 (emphasis added). The Attorney General found the hospital district had no implied power to fund the medical examiner's office because "[w]hile the office of the county medical examiner would seem to share in this responsibility [public health], we conclude that such office does not provide medical or hospital care for the residents of the county." Id. at 3. "The salary and expenses of the medical examiner's office *are not authorized medical and hospital expenses which can be funded by a county hospital district*." Id. at 4 (emphasis added). See also Tex. Atty. Gen. Op. No. M-256 (1968) (a hospital district lacks authority to expend its funds for building and operating a "crime lab"); Tex. Atty. Gen. Op. No. WW-1170 (1961) (hospital district cannot not fund a public health nurse for rural county schools to educate students on communicable diseases). In summary, a hospital district may "by contract or otherwise, assume to render services" only "that are ordinarily rendered by a hospital"—i.e., medical care as ordinarily understood. Tex. Atty. Gen. Op. No. JH-31 (1973), at 4.

Nor have Attorneys General allowed hospital districts to spend their funds on goodwill, community relations or other ancillary activities. In Atty. Gen. Op. No. DM-29 (1991), the Attorney General held that the Dallas Hospital District had no authority to pay membership dues to various local chambers of commerce, a non-profit organization promoting economic development, or an association that publicizes and promotes local health care facilities: "No

provision of chapter 281 may reasonably be construed to authorize the board to expend funds for membership in such private organizations as you have described, nor do we think that any such authorization can properly be inferred therefrom." Id. at 3-4.

VI. STATUTORY CONSTRUCTION: THE PLAIN MEANING OF WORDS IS DETERMINATIVE WHEN THE TEXT IS CLEAR.

A. Principles of statutory construction.

Statutory construction is a question of law for the court. Brazos Elec. Power Coop., Inc. v. State Comm'n on Envtl. Quality, 576 S.W.3d 374, 384 (Tex. 2019). Texas Courts' objective in statutory construction is "to give effect to the enacting body's intent." Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W. 3d 154, 164 (Tex. 2016). Courts ascertain intent by beginning with the plain and ordinary meaning of the statute's words "because the best indicator of what the Legislature intended is what it enacted." Brazos Elec. Power Coop., 576 S.W.3d at 384, citing, Sw. Royalties v. Hegar, 500 S.W.3d 400, 404 (Tex. 2016). Courts also look at any definitions provided in the statute. Houston Belt & Terminal Ry. Co., 487 S.W.3d at 164.

"When clear, the text is determinative of the enacting body's intent unless the plain meaning produces an absurd result." Id. at 165. The law presumes that the Legislature chose the text "with care and that every word or phrase was used with a purpose in mind." Brazos Elec. Power Coop., 576 S.W.3d at 384, citing, Tex. Lottery Comm'n v. First State Bank of DeQueen, 325 S.W.3d 628, 635 (Tex. 2010). See also City of San Antonio v. City of Boerne, 111 S.W.3d 22, 29 (Tex. 2002). Courts "read the statute as a whole and interpret it to give effect to every part." City of San Antonio v. City of Boerne, 111 S.W.3d at 25. Moreover, "[s]tatutory terms should be interpreted consistently in every part of an act." Brazos Elec. Power Coop., 576 S.W.3d at 384.

B. The Texas Supreme has held that a governmental entity's interpretation of a law is entitled to no deference when it conflicts with the text's plain meaning.

While an agency's interpretation of a statute is due "serious consideration," "deferring to

an agency's construction is appropriate only when the statutory language is ambiguous. Otherwise, agency deference has no place." Id. at 384 (internal citations omitted). See also TracFone Wireless, Inc. v. Comm'n on State Emergency Commc'ns, 397 S.W.3d 173, 182 (Tex. 2013).

The Supreme Court case of Houston Belt & Terminal Ry., 487 S.W.3d at 165, is directly on point. It 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 maintained that the law "implies a broad grant of authority and discretion, citing dictionary definitions of 'administration' and 'ministerial.'" Id. 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.

The Texas Supreme Court rejected the city's argument, holding 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 began by noting that "[h]ere, 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. . . .* Accordingly, we conclude that while Krueger may have some authority with respect to determining which properties are benefitted, he does not

have authority to make that determination in a way that conflicts with other provisions of the ordinance, including its definition and usage of 'benefitted property.'" Id. at 167 (emphasis added).

In Brazos Electric Power Cooperative, the Texas Supreme Court held an agency's discretion to interpret a statute did not extend to interpretations that conflict with the plain meaning of the statutory definitions. 576 S.W.3d at 384. The Legislature established a tax exemption for pollution control property, including a partial tax exemption for property that produces goods and services as well as has pollution control equipment. Id. at 384-86. The "statute generally grants the Executive Director broad discretion to make these determinations" as to the amount of the partial tax exemption, but they did not have authority to determine, contrary to the plain meaning of statutory definitions, that property with partial pollution control equipment would receive no tax exemption. Id. at 385. "There appears to be no dispute that some portion of a HRSG's value is attributable to its production capacity; thus, the Executive Director's discretion is limited to making a use determination that is greater than 0% and less than 100%." Id. at 386.

In City of San Antonio v. City of Boerne, the Texas Supreme Court rejected an attempt to expand the counties' broad power to control their roads to include the non-essential power to ask a city to annex the roads. 111 S.W. 3d. at 31-32. The City of Boerne pointed to statutory language that gave the Kendall and Comal Count Commissioners "general control" over county roads; based on this broad power, the city contended "that the Legislature authorized a commissioners court to voluntarily petition a city to include a county road within its extraterritorial jurisdiction." Id. at 28. The Supreme Court rejected the county's implied power to petition for annexation because it was not indispensable to the legislative purpose of granting counties "general control" over roads in order "to protect the public interest in transportation." Id. at 31-32. "A commissioners court's actions are thus sanctioned under section 81.028 [the "general control" language] only if related

to its duty to protect the public's interest in transportation. Unless the power to petition for annexation is necessary for a commissioners court to carry out that function, we will not imply that it has such power. *Here, the power to petition for inclusion in a city's extraterritorial jurisdiction is neither expressly conferred nor necessarily implied to enable a commissioners court to perform its delegated duty to provide safe roads for public travel*." Id. at 30 (emphasis added) (internal citations omitted).

In the instant case, Chapter 61 specifically defines the medical care services that hospital districts can provide. Although Central Health has discretion to determine which of these medical care services to provide patients, it does not have authority to redefine the statutory definition of medical care services beyond its plain meaning and clear definitions.

VII. FAILURE TO HAVE BASIC FINANCIAL CONTROLS IN GOVERNMENTAL CONTRACTS VIOLATES AS A MATTER OF LAW THE ANTI-GIFT PROVISIONS IN ARTICLE III¸ SECTION 52 OF THE TEXAS CONSTITUTION.

Article III, Section 52 of the Texas Constitution prohibits governmental entities from providing public funds as a gift to private parties.[6] Texas Municipal League Intergovtl. Risk Pool v. Texas Workers' Compensation Comm'n, 74 S.W.3d 377 (Tex. 2002). The Texas Supreme Court applies a three-part test to determine if a governmental entity complies with this constitutional prohibition against public gifts to private parties. The Court's test states that the governmental entity "must: (1) ensure that the statute's predominant purpose is to accomplish a public purpose,

[6] Article III, 52(a) states: "Except as otherwise provided by this section, *the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision* of the State to lend its credit or *to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever*, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State." (emphasis added).

not to benefit private parties; (2) *retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment*; and (3) ensure that the political subdivision receives a return benefit." Id. at 384 (emphasis added).

The issue most relevant to this case involves the second prong: the public control, or lack thereof, maintained over public funds "to ensure that its public purpose is accomplished and to protect the public's investment." Id. At a 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 their constitutional and statutory purposes. Id.

In the recently released 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 their authorized purpose. The Court began by noting that "[l]ong before the Texas Municipal League decision, when determining the constitutionality of any provision authorizing use of public funds committed in furtherance of some public purpose, *courts have considered whether the governmental entity properly supervised and controlled the enterprise*. See Gillham v. City of Dallas, 207 S.W.2d 978, 983 (Tex. Civ. App.—Dallas 1948, writ ref'd n.r.e.)." Id. at 179 (emphasis added). "[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).

Looking at the parties' agreements, 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). Similarly, in Key v. Commissioners Court of Marion County, 727 S.W.2d 667, 669 (Tex. App.—Texarkana 1987, no pet.) (per curiam), the Court of Appeals found that the county violated Article III, Section 52(a) when it transferred a county project and funds to a non-profit entity and failed to retain public control.

THE FACTS

VIII. THE INDISPUTABLE FACTS AS TO DELL MEDICAL SCHOOL'S EXPENDITURES OF CENTRAL HEALTH FUNDS.

The brief discusses the undisputable facts in three sections below: 1) Central Health has handed over tens of millions of its dollars to DMS that have been spent on expenditures that are not medical care as defined by the plain meaning of the words and Texas Health & Safety Code, Chapter 61; 2) Central Health has funded the $35 million annual payments to DMS both directly and indirectly through commingling its funds with its non-profit the CCC; and 3) Central Health has funded directly other organizations' activities that are not medical care, such as economic development, chambers of commerce, and non-medical social service programs. In short, there is no genuine issue of material fact regarding the evidence that underlies plaintiff's legal contentions of illegal, *ultra vires* expenditures of Central Health funds.

Finally, we note that we are not asking the Court to determine that each of these multitude of expenditures is not medical care; we are asking the Court to hold that there is no genuine issue of material fact that in general DMS has expended a substantial amount of Central Health funds on non-medical care, and then to enjoin Central Health going forward from funding DMS's and others' non-medical services. Because plaintiffs are seeking only an injunction for future, illegal Central Health funding, and not past damages, determining the precise amount of past illegal expenditures is not necessary.

A. DMS undeniably spent tens of millions of the $35 million annual payments on expenses that are not medical care.

The evidence is undeniable that DMS spent tens of millions from the $35 million annual payments on education, research, and general medical school administration unrelated to medical care. Many different types of evidence from DMS-- accounting, budgeting and personnel records as well as depositions—conclusively prove this fact. *DMS essentially admits this fact by classifying in its official financial records the vast majority of these expenditures as for education, research, and general administration— and not for medical care.*

> (1) DMS's own financial records classify 90% of its expenditures of the $35 million annual payments from FY2014- FY2021 as education, research, public service or general administration expenses and only 10% as clinical or clinical administration.

DMS documents show it was officially required by the UT System to classify all of its expenditures, including those from the $35 million payments, by both mission (purpose of the expenditure)[7] as well as national standard higher education functional budget classification codes. These records demonstrate that DMS classified 90% of its expenditures from the $35 million annual payments as serving the functions of education (and related administration), research (and related administration), public service (and related administration), or administration expenses (unrelated to specific missions, hereafter "general administration"). It classified only 10% of these expenditures as clinical or related clinical administration.

The chart below, based on DMS's records, shows from FY2014-FY 2021 that DMS classified only 10.06% of its expenditures from the $35 million annual payments as clinical or clinical administration:

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[7] The plain meaning of "mission" is "a preestablished and often self-imposed objective or purpose." Merriam Webster Legal Dictionary (online at https://www.merriam-webster.com/dictionary/mission#legalDictionary).

Mission	Amounts	Percentages
Administration	($171,468,316)	**73.30%**
Clinical	($8,937,791)	**3.82%**
Clinical Administration	($14,592,569)	**6.24%**
Education	($21,231,746)	**9.08%**
Education Administration	$59,869	**-0.03%**
Public Service	($6,659,993)	**2.85%**
Public Service Administration	($586,530)	**0.25%**
Research	($6,392,984)	**2.73%**
Research Administration	($4,120,753)	**1.76%**
Total	**($233,930,813)**	**100.00%**

Exhibit 10, Affidavit of Dr. William Spiesman, exhibit 1 thereto, tab 1 (highlighting for emphasis).

Dr. William Spiesman explains in his attached affidavit how he used a basic Excel process to derive the figures in the mission summary chart above. Exhibit 10, Affidavit of Dr. Spiesman, pp. 2-6. Dr. Spiesman is a professional research scientist with thirty years of experience using Microsoft Excel and other database software to make very complicated scientific calculations. He relied upon only DMS-provided databases and used a basic, reliable Excel process to combine them. Id., pp. 1-3, 6-7.

He employed Microsoft Excel to simply combine two Excel databases provided by DMS, using the common factor (DMS's unique budget group number) in the two databases. These DMS databases are: 1) the "CCC Account List"; and 2) the "FY2021 CCC Summarized: Tab 7 (Pivot by Domain)." Id., pp. 2-4, exhibits 3 and 4 thereto. See also Exhibit 3, Depo. of Morris, exhibits 4 and 8 thereto.

The "CCC Account List" is a list of every DMS budget group category funded by the $35 million annual payments. Exhibit 3, Depo. of Morris pp. 13, 15, 17, and exhibit 4 thereto. Each

budget group category contains its own nine-digit number, title, source of funds, and assigned mission (among much other data). Id. See also Exhibit 10, Affidavit of Dr. Spiesman, exhibit 3 thereto. So, for budget group account number 19-5500-00 (Rows, 5-12, Column A), the budget title is listed as "Department of Medicine- Designated Funds" (Column H), fund name as "Central Health" (Column R), and the assigned mission as "Administration" (Column O). Exhibit 10, Affidavit of Dr. Spiesman, p. 3 and exhibit 3 thereto.

The "FY 2021 CCC Summarized: Tab 7 (Pivot by Domain)" Excel sheet contains for each budget group account number the amount of CH funds expended by year and in aggregate from FY2014-FY2021. Id. exhibit 4 thereto. See also Exhibit 3, Morris Depo. exhibit 8 thereto. So, for budget group number 19-5500-00, Tab 7 shows that the total amount of CH funds spent by DMS on the "Department of Medicine-Designated Funds" was $8,791,517. Exhibit 10, Spiesman Affidavit, p. 4 and exhibit 4 thereto. Dr. Spiesman, using Excel to combine the databases with their common factor of the budget group category number, shows in his chart that on budget group account number 19-5500-00, the Department of Medicine spent $8,791,517 in CH funds on the assigned mission administration. Id. and attached affidavit Ex. 1, Tab 2. Replicating this step for all CCC Account List budget group account numbers and Tab 7's corresponding total expenditures, Dr. Spiesman derived the figures on Exhibit 1, Tab 2. Id., pp. 4-6, exhibit 1 thereto, tab 2. He then used Excel to simply group the budget group account numbers by mission and finally summed the total expenditures for each mission category. Id., p.5. The result is the above mission summary chart, which is Exhibit 1, Tab 1.

Former DMS Chief Financial and Administrative Officer, Dwain Morris, agreed that this methodology is correct and would "tie the transaction entries [with amounts] to the Missions." Exhibit 3, Depo. Of Morris, pp. 113-114. Morris explained in detail the DMS mission categories

in his deposition of March 2023. He testified that DMS created the mission categories and that he did not know of any written definitions. Exhibit 3, Depo. of Morris, pp. 34-39. He further testified that DMS personnel essentially used the plain and ordinary meaning of these mission terms. Id., pp. 39-44. Morris himself plainly defined clinical, education, research and public service missions: "But generally speaking, clinical would be around the provision of care for patients. Education would be activities aligned with the education of students… research would be activities based towards research activities, so discovery process… Public service would be more generally, not necessarily focused on an individual patient or group of patients but more the general public and activities focused around, you know, service to that -- to· that public -- to the public entity." Id., pp. 40-41. Like Mr. Morris's understanding of clinical, the dictionary meaning is diagnosis and treatment of patients.[8]

He distinguished in plain, ordinary terms between the missions clinical and clinical administration: "if you look at clinical, it would be towards people who are providing care to the individual patient or group of patients. And the [clinical] administration would be individuals or activities that go to support the provision of care to those patients but may not be directly interacting with a patient." Id., p. 41-42. He defined education administration and research administration equally straightforwardly as "support" for these particular missions. Id., p. 42

In summary, based on DMS's own financial records and assignment of missions, *at most 10% of the expenditures from the $35 million annual payments could have been spent on medical care of the poor*—and likely much less. Ten percent is the maximum possible percentage of

[8] Merriam Webster Legal Dictionary defines "clinical" as "of, relating to, or conducted in or as if in a clinic: such as a) involving direct observation of the patient (clinical diagnosis); b) based on or characterized by observable and diagnosable symptoms (clinical treatment, clinical tuberculosis)." (https://www.merriam-webster.com/dictionary/clinical)

medical care because Central Health and DMS never have provided specific information as to how much, if any, of these expenditures actually were spent on Central Health eligible patients (the resident poor), *despite repeated discovery requests and deposition questions*. Exhibit 21, Defendants' Objections and Responses to Plaintiff's Interrogatories, Request for Production, and Requests for Admissions (Feb. 7, 2018), pp. 7-8 (Interrogatory No. 7 Answer); pp. 18-19 (Request for Production No. 2 Response); p. 23 (Request for Production No. 11 Response); Exhibit 1, Deposition of Dr Young (March 2023), pp. 38, 104, 121, 138; Exhibit 3, Deposition of Morris, p. 138.

> (2) DMS also has used national standard higher education budget classifications to categorize 90% of the expenditures from the $35 million annual payments as non-medical care functions.

In addition to using internally its mission assignments, DMS also classifies for external purposes its expenditures by national standard functional classification codes. Exhibit 3, Depo. of Morris, pp. 35, 50, 57. The UT-System requires all its institutions, including DMS, to classify the function of every expenditure by the national standards of the National Association of College and University Business Officers ("NACUBO"). Exhibit 17, UT-System FY2024 Operating Budget Summaries (August 2023), pp. 4, 7, 13, 29. See also Exhibit 3, Deposition of Morris, exhibit 10 thereto. Because NACUBO standardized functional classification codes are used by higher education institutions across the country, they have precise definitions, which are spelled out in lengthy manuals and numerous memos. Exhibit 17, UT-System FY2024 Operating Budget Summaries, pp. 7-8; Exhibit 3, Deposition of Morris, pp. 48, 50-53, exhibit 10 thereto; NACUBO Financial Accounting and Reporting Manual for Higher Education (FARM) (https://efarm.nacubo.org/event-data/section/nacubo/nacubo_13). NACUBO categorizes medical care and medical care administration functions as "Hospital," and the other higher education functions as "Academic Support," "Research," "Public Service," "Institutional Support," and other

codes. Based on NACUBO Codes, DMS assigned these amounts and percentages to its expenditures from the $35 million annual payments:

See Exhibit 10, Affidavit of Dr William Spiesman, exhibit 2 thereto.

NACUBO Codes	**Amounts**	**Percentages**
Institutional Support	($171,468,316)	73.30%
Hospital	($23,530,360)	10.06%
Academic Support	$59,869	-0.03%
Instruction/Scholarship & Educ.	($21,231,746)	9.08%
Public Service	($7,246,523)	3.10%
Research	($10,513,737)	4.49%

For his attached NACUBO Code Summary Chart (exhibit 2 to affidavit), Dr. Spiesman combined the data in Exhibit 1, Tab 1 with the data in the DMS-provided NACUBO and Mission Mapping Chart. Exhibit 10, Affidavit of Dr Spiesman, pp. 6-7, exhibit 5 thereto. This Mapping Chart shows the NACUBO codes that correspond to DMS's assigned missions. Id. For example, the DMS missions "clinical" and "clinical administration" correspond to the single NACUBO Code "Hospital." Id., exhibit 5 thereto. Dr. Spiesman then used Excel to substitute NACUBO Codes for the corresponding assigned missions in Exhibit 1, Tab 1, creating Chart 2 above. Exhibit 10, Affidavit of Dr. Spiesman, pp. 6-7 and exhibit 2 thereto. Chart 2 shows the total amount of these funds spent by NACUBO standard functional budget codes.

It is noteworthy that DMS assigned the same percentage of funds (10.06%) to the

NACUBO Code "Hospital"[9] as it assigned to its missions clinical and clinical administration. It assigned also to the NACUBO Code "Institutional Support" the same percentage (73.3%) as it assigned to the mission general administration.

The Official UT-Systems FY2024 Operating Budget Summaries provide short descriptions of the NACUBO functional codes. Exhibit 17, UT System Operating Budget Summaries FY 2024, pp. 7-8. It explains that "functional classifications" "indicate why an expense was incurred rather than what was purchased. Functional classification definitions are set by the National Association of College and University Business Officers." Id, p. 7. It defines, for example, NACUBO Code "hospitals and clinics," as "[e]xpenditures of U. T. health-related institutions with teaching hospital affiliations for *costs associated with providing patient care and operating the entity (i.e., labs, pharmacies, personnel salaries, etc*.)." Id. at 8 (emphasis added). NACUBO's "Hospital Code" comports with the plain meaning of the function of hospital and clinics: to provide patient care. Similarly, applicable DMS NACUBO Codes that relate to research, education, public service and general administration comport with common usage.[10]

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[9] The NACUBO Hospital classification also includes, in addition to hospital care, medical care at clinics and other locations. Exhibit 17, UT-System FY 2024 Operating Budget Summaries, pp. 8, 29.

[10] "INSTRUCTION AND ACADEMIC SUPPORT – Expenditures for salaries, wages, and all other costs related to those engaged in the teaching function including operating costs of instructional departments. This would include the salaries of faculty, teaching assistants, lecturers, and teaching equipment. Library materials and related salaries are also included."

"RESEARCH – Expenditures for salaries and wages and other costs associated with the support of research conducted by faculty members."

"PUBLIC SERVICE – Expenditures for activities providing noninstructional services beneficial to individuals and groups external to the institution (e.g., conferences, institutes such as the Institute for Texan Cultures, general advisory services, reference bureaus, radio, and television)."

"INSTITUTIONAL SUPPORT – Expenditures for central executive-level activities concerned with management and long range planning for the entire institution, such as the governing board, planning and programming, and legal services; fiscal operations, including the investment office; administrative data processing; space management; employee personnel and records; logistical activities that provide procurement, storerooms, printing, and

In short, DMS's financial documents prove conclusively that DMS spent only 10% ($23,530,360 out of $233,930,813) of its expenditures from the $35 million annual payments "for costs associated with providing patient care and operating the entity (i.e., labs, pharmacies, personnel salaries, etc.)." DMS undeniably spent the remainder on the other NACUBO functional classifications—which do not include medical care or related administrative expenses, including Instruction/Scholarship & Education ($21,231,746), Public Service ($7,246,523), Research ($10,513,737), and Institutional Support ($171,468,316). Exhibit 10, Affidavit of Spiesman, exhibit 2 thereto. Notably, the Institutional Support classification includes only general medical school costs, such as general administration, operations, maintenance, and plant expenses, because administrative expenses related to medical care are included separately in the NACUBO "Hospital Code" (as well as in the DMS clinical administration mission).[11]

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transportation services to the institution; support services to faculty and staff that are not operated as auxiliary enterprises; and activities concerned with community and alumni relations, including development and fund raising."

"STUDENT SERVICES – Expenditures for offices of admissions and of the registrar and activities with the primary purpose of contributing to students' emotional and physical well-being and intellectual, cultural, and social development outside the context of the formal instruction program."

"OPERATION AND MAINTENANCE OF PLANT – Expenditures of current operating funds for the operation and maintenance of the physical plant. This includes all expenditures for operations established to provide services and maintenance related to grounds and facilities…."

"SCHOLARSHIPS AND FELLOWSHIPS – Expenditures for scholarships and fellowships in the form of grants to students resulting from selection by the institution or from an entitlement program. Amounts reported are net of the effects of tuition discounting." Exhibit 17, UT-System FY2024 Operating Budget Summaries, p.8.

[11] Similarly, the NACUBO classifications related to DMS's research, public service, and education functions also include the administrative expenses related to those specific functions. Exhibit 17, UT-System FY2024 Operating Budget Summaries, pp. 8. Thus, the NACUBO Code "Institutional Support" makes clear that it corresponds to the DMS mission for general, unassigned administrative expenses for the entire school: "Expenditures for central executive-level activities concerned with management and long range planning for the entire institution, such as the governing board, planning and programming, and legal services; fiscal operations, including the investment office; administrative data processing; space management; employee personnel and records; logistical activities that provide procurement, storerooms, printing, and transportation services to the institution; support services to faculty and staff that are not operated as auxiliary enterprises; and activities concerned with community and alumni relations, including development and fund raising." Id.

(3) DMS's official budgets for FY2022-FY2024 show it spent millions on non-medical care from the $35 million annual payments during this period as well.

After fiscal year 2021, we need to look at the UT-Austin officially approved operating budgets for DMS's expenditures because DMS refused to produce the CCC Summarized Data: Tab 7 for subsequent fiscal years (The CCC Summarized Data: Tab 7 in Excel made it simple to aggregate Central Health-funded budget category totals by mission and NACUBO Code for FY2014-2019).

Nonetheless, hard copies of the FY 2022 and FY2023 official UT-Austin operating budgets show undisputedly that DMS has continued to spend millions of the $35 million annual payments on expenditures that DMS classified as other than clinical care or clinical administration. Exhibit 15, UT-Austin FY2023 Budget, pp. G-36 – G-43; Exhibit 14, UT-Austin FY2022 Budget, pp. G-35 – G-42. These DMS budgets categorize their expenditures by the same nine-digit budget group account numbers and budget titles as used in the CCC Account List (and as described above). By identifying the budget group account numbers in both documents, we can determine the amounts spent in the DMS budget categories and their assigned missions.

Turning to the DMS FY2023 budget, it first should be noted that all the "Dell Medical School-Central Health District Funding: 19-5600-22" revenue is classified as "administration." Exhibit 15, UT-Austin FY 2023 Budget, G-37; Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto (CCC Account List (Rows 82-90, Columns B, H, O). DMS assigned the mission general administration to twelve DMS budget expenditure categories funded by the $35 million annual payments, totaling $6,761,670.[12] Similarly, DMS's assigned the following non-clinical missions

[12] "Design Institute- CH Funding" $200,000: "Administration" (Exhibit 15, UT-Austin FY 2023 Budget, G-37: Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto: CCC Account List, Rows 91-98 (Cols. B, H, O)); "Communications- CH

to these budget categories funded by the $35 million payments: Education Mission ("Medical Education, "Student Affairs," and "Ungrad. Med. Ed"), totaling $2,050,000[13]; Public Service ("Strategy and Partnership" and "PH [Public Health] Community Engagement"), totaling $1,610,000.[14] (Note that the DMS official budget section, cited above, is not nearly as comprehensive as the CCC FY 2021 Summarized Data and may not include all expenditures from the $35 million).

The DMS FY2022 Budget contains many of the same budget group categories assigned education, public service, and general administration missions as in the DMS FY2023 budget. Exhibit 14, UT-Austin FY2022 Budget, G35- G-42.[15] The totals for these same budget categories

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Funding" $800,000: "Administration" (Id. at G-37; CCC Account List, Rows 138-145 (Cols. B, H, O)); "Value in Health and Care CH" $200,000: "Administration" (Id., G-38; CCC Account List, Rows 266-272 (Cols. B, H, O)); "Facilities CH Funding" $361,670: "Administration" (Id., G-38; CCC Account List, Rows 334-343 (Cols. B, H, O)); "Technology CH Funding": "Administration" $1,500,000 (Id., G-38; CCC Account List, Rows 352-355, 357 (Cols. B, H, O)); "Human Resources CH" $950,000: "Administration" (Id., G-39; CCC Account List, Rows 465-473 (Cols. B, H, O)); "Finance CH" $800,000: "Administration" (Id., G-39; CCC Account List, Rows 543-550 (Cols. B, H, O)); "IT Clinical Apps CCC" $800,000: "Administration"; (Id., G-40; CCC Account List, Rows 551-558 (Cols. B, H, O)); "IT Data Analytics CH" $150,000: "Administration" (Id., G-40; CCC Account List, Rows 559-566 (Cols. B, H, O)); "IT Education CH" $200,000: "Administration" (Id., G-40; CCC Account List, Rows 567-574 (Cols. B, H, O)); "IT Ops CH" $800,000: "Administration" (Id., G-40; CCC Account List, Rows 583-590 (Cols. B, H, O)).

[13] "Medical Education" $400,000: "Education" (Exhibit 15, UT-Austin FY2023 Budget, G37; Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto: CCC Account List: Rows 124-130 (Cols. B, H, O)); "Student Affairs": "Education" $50,000 (Id, at G-38; CCC Account List: Rows 206-212 (Cols. B, H, O)); "Ungrad. Med. Ed.": Education $1,600,000 (Id, at G-38; CCC Account List: Rows 221-227 (Cols. B, H, O)).

[14] "Strategy and Partnerships" $500,000: "Public Service" (Exhibit 15, UT-Austin FY2023 Budget, G-37; Exhibit 10, Affidavit of Spiesman, exhibit 3 thereto: CCC Account List: Rows 154-161 (Cols. B, H, O)); "Public Health Community Engagement" $1,100,000: "Public Service" (Id. at G-40; CCC Account List: Rows 786-790 (Cols. B, H, O)).

[15] The budget categories in the FY2022 Budget that are also in the FY 2023 budget and have the same assigned missions are:

1) Education: "Medical Education" $900,000: "Education" (Exhibit 14, UT-Austin FY2022 Budget, at G-36; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List: Rows 124-130 (Cols. B, H, O)); "Student Affairs": "Education" $900,000 (Id, at G-36; CCC Account List: Rows 206-212 (Cols. B, H, O)); "Ungrad. Med. Ed.": Education $900,000 (Id, at G-37; CCC Account List: Rows 221-227 (Cols. B, H, O)). The total amount for education is $2,700,000.

2) Public Service: "Strategy and Partnerships" $1,100,000: "Public Service" (Exhibit 15, UT-Austin FY2022 Budget, G-36; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto:CCC Account List: Rows 154-161 (Cols. B, H, O)); "Public

in FY2022 by DMS assigned mission are: $2,700,000 for Education, $1, 600,000 million for Public Service, and $9,200,000 for General Administration. See footnote 15 for the totals' details. The FY2022 DMS Budget also contains budget category expenditures funded by the $35 million that were not made in FY2023, such as the general administration budget categories "Business Affairs" and "Development" [fundraising] and research budget categories "Research" and "Professional Education."[16] These total an additional $5,000,000.

Just as the budget categories funded by the $35 million annual payment change from year to year, the amounts in each category vary widely and inexplicably. For example, in FY2023 DMS spent $50,000 on "Student Affairs" and nothing on "Business Affairs," but in FY2022 DMS spent $900,000 and $1.7 million respectively from the $35 million payments on these categories. Exhibit 15, UT-Austin FY 2023 Budget, G-38; Exhibit 14, UT- Austin FY2022 Budget, G-36. Similarly, the budget amounts in Fiscal Year 2022 for Strategy and Partnerships ($1,100,0000) and Public

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Health Community Engagement" $500,000: "Public Service" (Id. at G-40; CCC Account List: Rows 786-790 (Cols. B, H, O)). The total amount for public service is $1,600,000.

3) General Administration: "Design Institute- CH Funding" $200,000: "Administration" (Exhibit 14, UT-Austin FY 2022 Budget, at G-35: Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List, Rows 91-98 (Cols. B, H, O)); "Communications- CH Funding" $800,000: "Administration" (Id. at G-36; CCC Account List, Rows 138-145 (Cols. B, H, O)); "Value in Health and Care CH" $200,000: "Administration" (Id., G-37; CCC Account List, Rows 266-272 (Cols. B, H, O)); "Facilities CH Funding" $1,400,000: "Administration" (Id., G-37; CCC Account List, Rows 334-343 (Cols. B, H, O)); "Technology CH Funding": "Administration" $2,200,000 (Id., G-37; CCC Account List, Rows 352-355, 357 (Cols. B, H, O)); "Human Resources CH" $950,000: "Administration" (Id., G-38; CCC Account List, Rows 465-473 (Cols. B, H, O)); "Finance CH" $1,100,000: "Administration" (Id., G-38; CCC Account List, Rows 543-550 (Cols. B, H, O)); "IT Clinical Apps CCC" $800,000: "Administration"; (Id., G-39; CCC Account List, Rows 551-558 (Cols. B, H, O)); "IT Data Analytics CH" $150,000: "Administration" (Id., G-39; CCC Account List, Rows 559-566 (Cols. B, H, O)); "IT Education CH" $200,000: "Administration" (Id., G-39; CCC Account List, Rows 567-574 (Cols. B, H, O)); "IT Ops CH" $1,200,000: "Administration" (Id., G-39; CCC Account List, Rows 583-590 (Cols. B, H, O)). The total amount for general administration is $9,200,000.

[16] FY2022 DMS budget categories not funded in the FY2023 DMS Budget are: "Business Affairs" $1,700,000: "Administration" (Exhibit 14, UT-Austin FY 2022 Budget, G-36; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List: Rows 131-136; "Development" $500,000: "Administration" (Id.; CCC Account List, Rows 146-153 (Cols. B, H, O)); "Research" $1,400,000: "Research Administration" (Id.; CCC Account List, Rows 162-167(Cols. B, H, O)); "Professional Education" $1,400,000: "Research" (Id., G-37; CCC Account List, Rows 213-220 Cols. B, H, O)). The total is $5,000,000.

Health Community Engagement ($500,000), simply flipped in Fiscal Year 2023. Exhibit 14, UT-Austin FY 2022 Budget, G-36, G-40; Exhibit 15, UT-Austin FY 2023 Budget, G-37, G-40.

For Fiscal Year 2024, the official UT-Austin Operating Budget again shows that DMS has spent the $35 million annual payments on DMS budget categories assigned to non-clinical missions. However, the FY2024 budget presents the information differently than in prior year budgets; it is much shorter and uses a seven-digit "unit code" number with the budget category title, rather than the nine-digit budget group account number. Exhibit 16, UT FY2024 Operating Budget, G-10 – G-12. The "unit code' corresponds to specific departments as a whole, rather than different components of department activities such as with the budget group account code. Exhibit 10, Spiesman Affidavit, exhibit 3 thereto (CCC Account List, Columns E, F)). See also Exhibit 3, Deposition of Morris, exhibit 5 thereto. The mission for many of these FY2024 DMS budget categories still can be determined because each unit code number (department) is assigned one or more specific missions. Id., CCC Account List, Columns E, O. We list the amounts for only the budget categories with assigned unit codes that do not include assigned clinical or clinical administration missions: Diagnostic Medicine ($889,943), Neurosurgery ($6,820,764), Facilities ($1,022, 078), DMS-Development ($65,000), Health Disparities ($90,293), Medical Education ($5,783, 514), Neurology ($14, 493,018); and "DMPH-PI-Shokar [Dell Medical Population Health Dept.] ($85,683).[17] The total of non-clinical expenditures, which is an undercount because

[17] "Diagnostic Medicine" 0051-000: Administration, Research, Research Administration, Education (Exhibit 16, UT FY2024 Operating Budget, at G-10; Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List, Rows 327-333, 686-700 (Columns D, E, O); "Neurosurgery" 0053-000: (Id. at G-10; CCC Account List, Rows 449-456 (Columns D, E, O); "Facilities" 0060-110: Administration (Id. at G-11; CCC Account List, Rows 334-344 (Columns D, E, O); "DMS-Development" 0060-300: Administration (Id. at G-11; CCC Account List, Rows 146-153(Columns D, E, O); "Health Disparities" 0060-700: Research (Id. at G-10; CCC Account List, Rows 228-235 (Columns D, E, O); "Medical Education" 0061-000: Education, Education Administration (Id. at G-11; CCC Account List, Rows 124-130, 1115-1119 (Columns D, E, O); "Neurology" 0063-000: Administration (Id. at G-11; CCC Account List, Rows

the budget uses unit codes, is $29,250, 293.

(4) DMS has officially classified and treated the $35 million annual payments as a gift of unrestricted funds, for which it owes no services to Central Health.

UT-Austin's official budget documents reveal that it considers the $35 million annual payments as funds for which it owes Central Health nothing in return (i.e., a gift). In UT-System's Official FY 2024 Operating Budget Summaries, p. 28, the UT System classifies the $35 million payment in the budget category, "State/Local Sponsored Programs- Nonoperating." Exhibit 17, UT-System FY2024 Operating Budget Summaries (August 2023). The UT-System defines this category as "[f]unding received from state or local governments *for which no exchange of goods or services is perceived to have occurred*. This typically includes Texas Research Incentive Program awards from the State of Texas and *funding for the U. T. Austin Medical School provided by the local health care district*." Id., p. 8 (emphasis added). The $35 million annual payments are the only state or local funds placed by UT-Austin in this unrestricted revenue category. Id., p.28.

In contrast, the UT-System classifies *restricted* state and local governmental funds as state or local "operating: sponsored programs." These funds are defined as "amounts *received for services performed on grants, contracts, and agreements* from these entities for current operations." Id., p. 7. 28 (emphasis added). In short, for these restricted state and local government funds—unlike the $35 million annual payments to DMS—commensurate value in services is expected in return. Id., pp. 7, 28. Legally, the $35 million payments funds should have been classified and treated as restricted government revenue because they may be spent only on legally authorized hospital district purposes. Brief, *supra,* section V.B.

113-118 (Columns D, E, O); "DMPH-PI-Shokar" 0066-24: Education Administration (Id. at G-12; CCC Account List, Rows 1105-1109 (Columns D, E, O).

Depositions also demonstrate that DMS personnel used the $35 million payments as basically a slush fund to fill whatever medical school budget gaps existed—regardless of—the legal restrictions on hospital district funds. Dwain Morris, former DMS head of finance, testified that DMS allocated these funds simply to fill medical school budget gaps and not based on any other basis. Exhibit 3, Depo. of Morris, pp. 88-89, 96-102. He further testified that DMS could and did spend the funds on any expenses that related to DMS operations, regardless of whether they related to medical care. Id. at 175-176.

In addition. Dr. Amy Young, DMS Vice Dean of Professional Practice, confirmed there was no DMS budget allocation methodology other than using the $35 million payments to plug DMS budget shortfalls. Exhibit 1, Depo. of Young, pp. 9, 29-30,33-35,148. See also Exhibit 6, Deposition of Mike Geeslin (May 2023), pp. 192-194.

In conclusion, DMS classified and treated the $35 million annual payments as a gift for which they owed no services. Accordingly, it allocated these funds based on the school's operational budget needs and without regard to whether they complied with the restrictions embodied in Texas law.

> (5) CH justifies DMS's uses of the $35 million annual payments based on their affiliation agreement, but its definition of "permitted investments" purports to allow many expenditures other than for medical care.

Both Central Health and DMS rely on their affiliation agreement-- rather than Texas' constitution and statutes—as DMS's authorization to spend the $35 million annual payments on non-medical care. DMS's former finance head testified that its decisions on how to spend these funds were based on "the definition of permitted… investments" in the Affiliation Agreement. Exhibit 3, Deposition of Morris, p. 173. See also pp. 85-86, 96, 169-172, 174-176. Central Health's Chief Financial Officer Jeff Knodel confirmed that Central Health knew and agreed that DMS could spend these funds based on the affiliation agreement's definition of "permitted investments."

Exhibit 5, Deposition of Jeff Knodel (November 2018), 20, 59-61, 69-79. Similarly, Central Health's former President and DMS's Chief Clinical Officer both testified that DMS made its funding decisions based on the affiliation agreement's definition of "permitted investments." Exhibit 6, Depo. of Mike Geeslin, pp. 106-113; Exhibit 1, Depo. of Dr. Amy Young, p. 63.

The affiliation agreement's definition of "permitted investment" is written so broadly as to encompass, in DMS's "discretion," any and all operations or activities of the medical school, whether its "on-going operations," "administration infrastructure," or "other related activities and functions. In pertinent part, "permitted investments"

> include the provision of *direct operating support to UT* that will be used by UT *in its discretion to facilitate and enhance* the (i) development, accreditation, and *on-going operation of the UT Austin Dell Medical School and its administrative infrastructure*, (ii) recruitment, retention, and work of the UT Austin Dell Medical School Faculty, Residents, Medical Students, researchers, administrators, staff, and other clinicians, and (iii) *other related activities and functions as described in the Recitals to this Agreement*.

Exhibit 3, Deposition of Morris, exhibit 14 thereto: Affiliation Agreement, Section 1, p. 9.

By incorporating in the last clause four pages of amorphous "recitals" into the definition of permitted "other related activities and functions," the agreement provides essentially little if any restrictions on DMS's use of these funds. Id., pp. 2-6. The recitals reference undergraduate medical education (pp. 3-4, last clause); continuing professional education (p. 3, bullet 4; p.14, section 4.2.3); general academic research (p. 3, bullets 5-7); p. 4, clause 2); administration (p. 9, section 4.6); academic programs (p. 3, bullet 1); general population health studies (p. 3, bullet 7; p. 15, section 4.2.9); commercialization of innovation and research (p 3, bullet 6); funding for the development of the medical school (p. 5, clause 5); and care of paying patients (p. 2, clause 3). Id.

Central Health and DMS officials interpret "permitted investments" as broadly as it is written, as purportedly permitting the medical school to spend the $35 million annual payments on any DMS activity. When asked "is there anything that is part of Dell Medical School's overall

operations that would not fit within the permitted investments," DMS's head of finance answered, "I don't believe there is." Exhibit 3, Depo. of Morris, p. 175. He also could not think of any instance when DMS declined to use these funds for any purpose. Id., pp. 175-176. Other DMS and Central Health officers testified similarly regarding the incredibly broad scope of "permitted investments"[18] None of the above contractually "permitted" DMS expenditures constitute "hospital and medical care," as commonly understood. Tex. Const. Art IX, § 4. Texas Health & Safety Code, Sec. 61.028, 61.0285.

The permitted uses of Central Health's public funds must comply with state law, and if not, the affiliation agreement's definition of permitted investments cannot contractually authorize what the Legislature has not. Brief, *supra,* section V.D. The fact that the funds were used for "permitted investments" as defined by an agreement of the parties is irrelevant to whether the funds were used for legally authorized purposes, which they were not.

(6) A detailed look at select DMS departments also proves that the $35 million payments were spent on education, research, and general administration.

We chose a few DMS departments to depose their directors as to their activities and those of their employees who were paid fully or nearly so by the $35 million annual payments. These departments spent millions of these funds on activities that DMS classified as missions other than clinical care or clinical administration. The department employees' work had nothing to do with clinical care or clinical administration, yet they were paid fully or almost fully from the $35 million

[18] DMS's Chief Clinical Officer testified that "permitted investments" authorizes the $35 million payments to be used for "administration of an academic department [that] is responsible for the tripartite mission, research, education and clinical care." Exhibit 1, Depo. of Dr. Amy Young, p. 63. Likewise, the hospital district's former President testifies that "permitted investments" allows DMS to use the funds for "non-clinical medical education," "ongoing operations for medical education unrelated to indigent medical care," "administrative infrastructure for non-clinical medical research," and DMS communication and development departments because "what they're doing is part of the overall health care system." Exhibit 6, Depo. of Geeslin, pp. 108-113.

payments.

Communications Department. John Daigre, Executive Director of Communications and External Affairs for DMS, testified that the Communications Department's function was "to communicate and advance the mission of the medical school," including for all of its departments. Exhibit 7, Depo. of John Daigre (November 2018), pp. 9, 14. His job description, which he describes as accurate, indicates that he oversees all of DMS's marketing, branding, press releases, media relations, promotion of school events, the website, social media, and graphics. Id., pp. 9-18, Ex. 2. The $35 million annual payment funded at the time of his deposition 100 % of his salary and that of approximately six other departments employees. Id., pp. 31-36. He admitted none of his employees provided health care and much of their communications work was related to promoting the school's research and teaching. Id. at 9, 37, 41.

DMS's official documents show between Fiscal Year 2014-2021 that the $35 million payments funded $3,822,947.33 of the Communications Department, of which DMS assigned 100% to the mission general administration. Exhibit 10 (Spiesman Affidavit), exhibit 4 thereto: CCC FY21 Summarize Data, Tab 7: Pivot By Domain, Rows 12-13, 46-47 (Columns A, I); Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List Rows 138-144 (Communications:19-5600-33), Columns B, G, O). The FY2022 and FY2023 Budgets shows that the Communications Department received $800,000 each of these year for general administration. Brief, *supra,* VIII.A(3).

Business Affairs Department. Dwain Morris testified about the operations of the Business Affairs Department, which he oversaw. Exhibit 2, Deposition of Dwain Morris (November 2018), pp. 5, 8 and exhibit 8 thereto. His job responsibilities for the Business Affairs Department, which served the entire medical school, included overseeing "the financial transactions that occur in the

organization, reporting, oversight approvals, going through the administrative process for the different functions of the -- the school." Id., p. 10. He testified to the titles, responsibilities, and salary amounts of his department's employees that were paid fully (or nearly so) from the $35 million payments. Those employees included, among others: himself; Adrianne Basurto (administrative assistant), Raquel Epstein (marketing manager), Amanda Janecek (Sr. HR coordinator), Joseph Ramirez (Sr. administrator associate), and Susan Scheffler (associate director of finance). Id., pp. 20-27.

From Fiscal Years 2014-2021, the Business Affairs Department spent $10,522,837.13 from the $35 million annual payments, all of which were assigned the mission administration. Exhibit 10 (Spiesman Affidavit), exhibit 4 thereto: CCC FY2021 Summarized Data, Tab 7: Pivot by Domain, Rows 5-6, 42-43 (Columns A, I); Exhibit 10 (Spiesman Affidavit), exhibit 3 thereto: CCC Account List (Business Affairs:19-5600-32, Rows 131-137 (Columns B, G, O). In FY 2022. $1,700,000 was spent on the Business Affairs Department and again was classified as administration. Brief, *supra*, VIII.A(3).

Design Institute for Health. Stacey Chang, Executive Director of the Design Institute for Health, testified about the activities and funding of his department. The Design Institute teaches and researches "redesigning…almost every aspect of the health care system," from the overall system, fee methodology, medical products, technology, information systems, and social determinants of health. Exhibit 8, Deposition of Stacey Chang, pp. 20, 25-34 and exhibit 6 thereto (Design Institute's webpage self-description).

It employs approximately 15 people. Id., p. 66. The employees' salary information reveals those employees that were paid completely (or almost completely) from the $35 million payments. These employees include Stacey Chang (Executive Director), Katherine Jones (Director of

Strategies and Missions), Jose Colucci (Director of R&D), Jeff Steinberg (Director of Operations), and Charu Junejar (Director of Business and Behavior Design). Id., pp. 9-10, 58-60, 69-70.[19] Mr. Chang admitted that "[n]one of the employees of the Design Institute are medical professionals, so we don't provide direct medical care… ." Id., p. 71.

DMS financial records show from Fiscal Years 2014-2021 that the Design Institute spent $6,015,033.50 of these funds, of which $5,791,156.82 was assigned the mission administration. Exhibit 3, Morris Depo, exhibit 8 thereto: CCC FY21 Summarized Data, Tab 7: Pivot by Domain, Rows 29-34, Columns A, I); Exhibit 3, Morris Depo, exhibit 4 thereto: CCC Account List, Rows 92-98 (Columns B, D, O). For both FY 2023 and FY 2022, $200,000 was spent on the Design Institute on administration. Brief, *supra*, VIII.A(3).

Departments of Diagnostic Medicine and Women's Health. Dr. Amy Young testified about the functions of these two departments. Dr. Young wears many important hats for DMS: Vice Dean of Professional Practice, Chief Clinical Officer at UT Health Austin, Interim Director of the Dept. of Diagnostic Medicine, Distinguished Professor of Women's Health, and formerly Director of the Women's Health Department. Exhibit 1, Depo. of Dr. Amy Young (March 2023), pp.7-8. In her capacity as a department director, she has played an important role in assigning missions to the expenditures of the Departments of Diagnostic Medicine and Women's Health. Id., pp. 18-22, 54, 57-58. She testified that she agreed with DMS's assignment of 100% of the expenditures by the Department of Diagnostic Medicine from the $35 million payments to research and administration expenditures. Id., p. 58 (referring to CCC Account List, Rows 199-205, 327-

[19] The evidentiary support related to the information for each Design Institute employee listed above is as follows: Stacy Chang (Exhibit 8, Depo, of Stacy Chang, pp. 19, 68, exhibit 5 thereto); Katherine Jones (Id., pp. 9, 16, 48, 59, 69); Jose Colucci (Id., pp. 9, 10, 24, 28, 58-59); Jeff Steinberg (Id., pp. 59-70); Charu Juneja (Id., pp.59-69)

333 (Columns B, G, O)). She also agreed with the mission assignments of $17.5 million in expenditures for the Department of Women's Health, which classified $16.5 million in expenditures as general administration and only $604,000 as clinical administration. Id., pp. 59-60 (referring to CCC FY21 Summarized Data, Tab 7, Rows 191, 192, 196 (Columns A and I); CCC Account List, Women's Health Department: Administration Mission (Account No. 19-5500-02, Rows 18-25 (Columns B, G, O); Mission (Account No. 19-5602-80 (Rows 866-870) (Columns B, G, O)). In the FY 2024, Diagnostic Medicine receives $889,943. She also testified as Chief Clinical Officer that there were no records of the amount or type of medical care provided the poor by DMS department personnel whose salaries were assigned in full or in part to the clinical and clinical administration mission. Id., pp. 66-67, 81-82, 126-127, 130-131, 134, 138, 141, 144.

Some background information may be helpful to explain why there are no records of medical care to uncovered poor residents having been provided by DMS personnel funded by the $35 million annual payments. There are two basic categories of CH-eligible low-income patients. One category is the 70,000 or so low-income residents who have Central Health's Medical Assistance Program (MAP) coverage. Exhibit 6, Depo. of Mike Geeslin, pp. 21, 171-172. MAP is Central Health's health coverage program for uninsured Travis County residents with incomes at or below 200% of the federal poverty level. Id. The second category is eligible low-income county residents but who are *not* covered by MAP. Id., pp. 173-176. Approximately 91,000 Travis County low-income residents fit the latter category: they are eligible for MAP coverage but do not receive it, at least in part because of an alleged lack of Central Health funds. Id.

For the 71,000 low-income residents with MAP coverage, Central Health and UT Health Austin (DMS's discrete provider group) have a separate specialty services agreement to provide medical care. Exhibit 3, Deposition. of Morris, exhibit 12 thereto. This specialty services

agreement provides MAP patients with health coverage in only very limited areas of care: musculoskeletal, women's health, and related imaging services since 2018, and since the middle of 2023, also ophthalmologic, podiatric, long COVID, and advanced imagery services. Exhibit 1. Depo. of Dr. Young, pp. 89, 122-123; Exhibit 3, Deposition of Morris, exhibit 12 thereto: Specialty Services Agreement (October 2019), pp. 22-55. DMS does not provide medical care to MAP patients with any other illnesses, whether cancer, heart, diabetes, auto-immune, or other illnesses not listed in the specialty services care agreement.

There is a crucial catch: for these specialty medical care services, Central Health pays DMS *additional millions* (on top of the $35 million annual payments) to treat its MAP patients. Exhibit 1, Depo. of Dr. Young, pp. 124. UT Health Austin (UTHA) collects and enters data for these MAP patients as it does with all its insured patients. It asks, and keeps in its electronic medical data system, whether patients have MAP coverage. Id., p. 101-102, 120. As a result, UTHA provides Central Health typical aggregated patient data, such as the number of MAP patients served, number of patient visits, and their diagnosis and treatment codes. Id., pp. 104-105. Plaintiffs have no dispute with Central Health fairly paying UT Health Austin for specialty medical care services for low-income residents because it helps Central Health fulfill its legally required responsibility under Texas law. This dispute is over the fact that most if not all of the $35 million annual payments does not provide medical care to poor residents.

In contrast, from the $35 million annual payments, DMS pays some of the salaries of clinical and clinical administration personnel but has *no record of treating any of the 91,000 eligible low-income residents without MAP coverage.* Id. at pp. 38, 101-102, 120-121, 138. This is because DMS does not ask, and, therefore its electronic data system does not keep, data on the income level of patients. Id. As a result, DMS has no documentation that its personnel provided

any medical care from the $35 million annual payments to CH eligible patients without MAP coverage. Id. There are no records of the number, if any, of these CH-eligible patients treated by DMS, the number of their patient visits, their diagnoses, or the particular medical services they received. Id. *In summary, DMS has no specific records that its employees who were paid for from the $35 million annual payments provided any medical care to the 91,000 eligible county residents without MAP coverage.*[20]

(7) DMS Personnel and Salary Summary Records.

DMS produced summary personnel data for its employees whose salaries have been funded in full or in part from the $35 million annual payments. For many of these personnel, their titles and assigned academic, research, and administrative departments indicate that they are not involved in providing medical care. Exhibit 3, Deposition of Morris, exhibit 8 thereto: CCC FY2021 Summarized Data, Tab 3 (Pivot by Title) (Columns K, L, M) and Tab 6 (FY21 Personnel & Salary) (Columns C, D, E, F). These include numerous administrative, clerical and management position titles for non-clinical departments, such as Undergraduate Medical Education, Research, Communications, Development, and Business Affairs. Id. An in-depth look at DMS's personnel and salary summary chart for FY2021 shows that many of its personnel have nothing to do with medical care. Id., CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary. This data also reveals the arbitrariness (the lack of any methodology) of the allocation of DMS personnel salaries to these funds. Exhibit 1, Depo. of Dr. Young, pp. 39,49, 52, 69, 148.

[20] Nor does DMS have any methodology for or records relating to its allocation of clinical infrastructure expenditures to the $35 million payments. Exhibit 1, Depo. of Dr. Young, pp. 69, 77-78. For example, these funds paid $201,642.00 for DMS's clinical malpractice insurance in FY2021, but there are no records of DMS providing any medical care for CH-eligible patients without MAP (Exhibit 3, Morris Depo, exhibit 8 thereto: CCC FY21 Summarized Data, Tab 4, Row 23 (Columns A, J, H). Brief, supra, VIII.A(6).

A few representative examples of DMS department personnel who worked in education, research or non-medical care administration and who had their salaries funded in full (or nearly so) by the $35 million annual payments:

Name	Title	Dept	CH $/Total Salary
Abrams, S.	Sr. Academic Pr. Coordinator	Medical Ed.	52,856.77/60,147.36
Bair, S.	Sr. Grants & Contracts Specialist	Research	68,672.66/69,500.00
Bosking, D.	UME Curriculum Mgr.	Medical Ed.	75,000.00/75,000.00
Hackett, B.	Sr. Business Analyst	Finance	66,083.36/71,500.00
Harrison, T.	Sr. Academic Pr. Coordinator	Medical Ed.	59,986.17/59,986.20
Holder, K.	HR Coordinator	Human Res.	57,088.32/58,000.00
Johnson, A.	Mgr. Media Relations	Communications	63,750.11/80,000.00

Exhibit 3, Depo. of Morris, exhibit 8 thereto: CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary (Rows 4, 32, 52, 204, 218, 255)

Furthermore. DMS's allocation of funds to UT Health Austin's clinical personnel's salaries also is arbitrary since DMS has no records showing it treated CH-eligible patients without MAP coverage. CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary; Brief, *supra*, VIII.A(6). A few examples:

Name	Title	Dept	CH $/Total Salary
Aarras, L	Clinical App. Specialist	IT Clinical Apps	57,783.00/57,783.00
Brown, M.	Patient Access Dir.	UTHA	117,434.24/134,000.00
Epstein, R.	Asst. Dir. Health Market/Branding	Clinical Marketing	104,009.04/104,009.00
Fladland, D.	Health Info. Man. Specialist	UTHA	41,415.09/ 41,717.50
Garza-Telles, P.	Credentialing Coordinator	UTHA	49,260.08/63,240.00

Exhibit 3, exhibit 8 thereto: CCC FY2021 Summarized Data, Tab 6: FY21 Personnel by Exp. & Salary (Rows 25, 65, 105, 168, 183).

(8) DMS illegally provided services to statutorily ineligible persons.

In his deposition, Central Health's former president testified that Central Health had authority to fund services (without payment) for person's ineligible by residency or income under Chapter 61's requirements. Exhibit 6, Depo. of Geeslin, pp. 80, 91-92, 96. He testified that he did not think DMS was out of compliance with the law to use CH funds to "provide unreimbursed services to non-residents of Travis County." Id., p. 96. He believed that unreimbursed expenditures on non-residents were permissible because "these resources are dedicated to establishing a high-functioning health care system." Id., pp. 80, 85, 90. He further testified that Central Health had "discretion" to fund unreimbursed medical care for patients above 200% of the poverty level at DMS and third-party clinics. Id., pp. 20-21, 26, 73, 77-78, 95. Central Health also admitted these facts in Exhibit 21, Defendants Objections and Response to Plaintiffs Requests for Admission (February 8, 2018), pp. 41-42 (Requests for Admissions Nos. 15 and 16).

B. The evidence is indisputable that Central Heath has funded tens of millions of the $35 million annual payments to DMS for the non-medical care expenditures above.

(1) Central Health has funded the $35 million annual payments in two ways.

First, it has funded $57 million to DMS directly out of its public funds since 2022 (and not indirectly as in the past through the CCC with commingled funds, as explained below). In Fiscal Year 2023, Central Health made a $22 million payment directly to DMS. Exhibit 11, Central Health Approved FY2023 Budget Book, p. 24; Exhibit 12, Central Health's Preliminary Monthly Financial Statement (September 2023), p.11. These Central Health payments were made directly to DMS, and will be made directly in the future, because of the winding down of the CCC and the ceasing of Federal Medicaid DSRIP funds: "Now that DSRIP funding has ended, Central Health will begin to make this annual payment. Because some funds remain in the CCC from the final DSRIP payment, Central Health budgeted $22 million in FY 2023 for the remaining portion of the

affiliation agreement. Beginning in FY 2024, Central Health will budget for the full cost of the affiliation agreement." Exhibit 11, Central Health Approved FY2023 Budget Book, p. 24, 48. See also Exhibit 13, Central Health Approved FY2024 Budget, Attachment B.

(2) Central Health funded DMS before 2022 through commingled CCC funds.

Between FY2014 and FY2019, Central Health funded $137.3 million of DMS's $35 million annual payments by sending these public funds through its non-profit the CCC. Exhibit 24, Joint Stipulation. Central Health transferred annually its statutorily restricted funds to the CCC, which then commingled these funds with Seton and Federal Medicaid DSRIP funds in an unsegregated account. From this account, the CCC then transferred the $35 million annual payments to DMS (hereafter "CH commingled funds").

Central Health transferred the following "membership payment" amounts to the CCC by fiscal year: FY2014: $15.6 Million; FY 2015: $13.9 million; FY2016: $24.6 million; FY 2017: $24.6 million; FY 2018 $23.2 million; and FY 2019 $35.4 million (totaling $137.3 million). Id., p. 1 (Stip. No. 7). These Central Health funds then went into CCC's one unsegregated account, where they were commingled with Seton and DSRIP funds: "All the funds transferred from CH's Account to the CCC for membership payments, as specified in stipulation no. 7 above, flowed into one, unsegregated CCC financial account." Id., p. 2 (Stip. No. 8). From this one account with commingled funds, CCC transferred the $35 million annual payments to DMS. Id., p. 2 (Stipulation No. 13).

From FY2020- FY2023, Central Health and Seton made no payments into CCC's unsegregated account because of a falling out between them, but federal DSRIP revenue continued in this period. Exhibit 18, CCC FY2020 Financial Statements and Audits, pp. 4, 11; Exhibit 19, CCC FY2021 Financial Statements and Audits, pp. 4, 11; Exhibit 6, Depo. of Geeslin, p. 135. CCC continued to make the $35 annual million payment through FY2022 from its one unsegregated

account with CH commingled funds. Since Central Health controlled, financially staffed, and its President was chair of the CCC, it clearly knew about and approved the commingling of its funds by the CCC. Exhibit 6, Depo of Geeslin, pp 29-33.

In summary, Central Health has sent directly from its own funds $57 million to DMS, tens of millions of which were spent on non-medical care expenses. In the future, Central Health will continue to fund the $35 million annual payments to DMS directly from its own funds because the CCC no longer functions and federal DSRIP funds have ended.

As for the $137.3 million in CH commingled funds transferred to the CCC, the law presumes, as explained below, that all of CCC's $35 million annual payments were Central Health funds because of Central Health and CCC's improper commingling of restricted public funds with other funds.

IX. CENTRAL HEALTH UNDENIABLY HAS FUNDED HUNDREDS OF THOUSANDS OF DOLLARS FOR ECONOMIC DEVELOPMENT, NON-PROFIT SPONSORSHIPS, AND SOCIAL SERVICE PROGRAMS THAT ARE NOT MEDICAL CARE.

A. Central Health directly funds downtown economic development programs.

Stephanie McDonald, chief of staff for Central Health, testified that Central Health has funded directly, and participated actively, in promoting an "Innovation District" for economic development in a large swath of downtown Austin (from MLK to Lady Bird Lake, I-35 to Trinity). Exhibit 4, Depo. of Stephanie McDonald (February 2019), pp. 6, 9, 18-19. See also Exhibit 6, Depo. of Geeslin, pp. 202. She testified that Central Health was a founding member of the non-profit Capitol City Innovation ("CCI") and provide it with $250,000 in seed capital. Exhibit 4, Depo. of Stephanie McDonald, pp. 11, 13, 30. She also stated that she served as Central Health's representative on the initial three-member board. Id, p. 11.

She testified that "[t]he mission of Capital City Innovation is to provide for and support

the creation, growth and sustainability of an Innovation Zone that enhances Austin's unique cultural, community and economic assets." Id, p. 19. She explained that CCI "was meant to establish businesses and enterprising startups to become part of the health ecosystem that's developing around the Dell Medical School." Id., pp. 18-19. She also agreed that CCI was similar to a chamber of commerce but focused on promoting health innovation, workforce development, and redevelopment in the entire innovation zone. Id., p. 26-29, 34, 41, 49-50. See also Exhibit 27, Central Health Innovation Zone Documents, CH Doc. Nos. 9964-9997. She also noted that CCI used Central Health's funds to provide real estate and market analysis for the entire innovation zone and not just its properties. Exhibit 4, Deposition of Stephanie McDonald, p. 43. See also Exhibit 28, Central Health Innovation Zone Documents, CH Doc. Nos. 10774-10776. Needless to say, economic development of an innovation district is not generally understood as medical care for the poor.

B. Central Health has spent tens of thousands of dollars on sponsoring non-profit organizations that provide no medical care.

Central Health has funded local chambers of commerce (such as the Austin Chamber, Greater Austin Hispanic Chamber, and Greater Austin Black Chamber) and a long list of local non-profit organizations (such as the Austin Area Research Organization, Housing Works, the Austin Area Urban League, and the Sustainable Food Center). These are fine organizations but either do not provide medical care or received charitable gifts for no health care services. Exhibit 26, Sponsorships and Charitable Contributions CH Doc. Nos. 4568- 4614, 4673, 4703, 4777-4778, 4809, 4837, 4990, 4906, 5023, 5051, 9647-9654, 9664-9668, 9670-9672, 9678-9682, 9695-9696, 9756, 9758. It has sponsored golf tournaments for charities and backpacks for students. Exhibit 26, CH Doc. No. 4592-4593, 4597. It has spent thousands of dollars to have a breakfast and presence at SXSW, as well as for employee attendance badges. Exhibit 26, Sponsorships and

Charitable Contributions CH Docs. 4760-4762, 4764-4767, 4770-4771, 4784-4785. We know of no medical care provided at SXSW or of attendance by any poor people. Central Health is a government entity with a specific mission, not an all-purpose charity.

C. Central Health directly funds workforce development for trainees that were not, and did not become, their employees.

Central Health's former President Mike Geeslin testified that it has funded general job training for medical technician students not working for it (or intending to) and was considering doing it again in the future. Exhibit 6, Depo. of Mike Geeslin, pp. 202-203; Exhibit 29, Job Training Documents, CH Doc Nos. 11467-11492 (see, in particular, the program description at CH Doc. No. 11492). Central Health may hire and pay to train its own medical technicians, but it has no authority to provide job training for the community as a whole. Such training is not indispensable to its mission, however beneficial it may be to the public.

D. Expansive, future-planned non-medical social service programs.

Former President Geeslin acknowledged at his deposition in May 2023 that Central Health has "action plans" for "funding non-medical initiatives and collaborating with partners focused on improving social determinates of health, like ·housing and transportation." Exhibit 6, Depo of Geeslin, p. 203, and exhibit 13 thereto. As part of its "health equity plan," Central Health intends to spend tens of millions of dollars on social determinants of health, which are factors other than medical care—such as poverty, racism, housing etc.-- that can impact health. Id., pp. 198, 203-206. While these Central Health direct expenditures undoubtedly would be for good purposes, they are not medical care for the poor and are beyond Central Health's lawful authority.

APPLYING THE LAW TO THE FACTS

X. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT CENTRAL HEALTH'S FUNDS HAVE BEEN SPENT ILLEGALLY

As demonstrated above, the material facts are indisputable: Central Health has spent

millions of public funds on expenditures that are not medical care services as understood by the plain meaning of the term and as defined by Chapter 61. There are three, separate undisputed categories of non-medical care expenditures: 1) the $57 million in direct expenditures from Central Health to DMS; 2) the $137 million in statutorily restricted Central Health funds, which were commingled with other CCC funds, and then transferred as part of the $35 million annual payment to DMS; and 3) hundreds of thousands of dollars in direct expenditures to an innovation district, workforce development, chambers of commerce and non-profit organizations, and social service programs not related to medical care.

The only issue in this case is one of law: are these Central Health-funded expenditures unauthorized, illegal expenditures under the Texas Constitution and statutes?

A. As a matter of law, the plain meaning of medical care and the statutory definitions do not include non-medical care activities.

While Central Health has authority to administer the hospital district (Tex. Health & Safety Code § 281.047),[21] it has no authority to interpret the constitution and statutes contrary to their plain meaning and definitions. Brief, *supra,* section VI. The terms hospital and medical care, as well as hospital purpose, are not defined in Article IX, Section 4. Therefore, we turn first to Merriam-Webster's Law Dictionary for common definitions of these terms:

• "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."

[21] Tex. Health & Safety Code, Sec. 281.047: "The board shall manage, control, and administer the hospital or hospital system of the district."

• "hospital: an institution where the sick or injured are given medical or surgical care." https://www.merriam-webster.com/dictionary/mission#legalDictionary.

The plain meaning of medical care is to provide treatment or to attend to the physical and mental health care needs of a patient. Medical care involves *treatment of a patient*; it does not include education of medical students, general medical research by faculty, or other activities that do not involve treating a patient (and related clinical administrative support). The plain meaning of hospital—a licensed institution where the sick or injured are given medical or surgical care—does not include a medical school (apart from any separate clinical services for patients). Central Health's interpretation of these constitutional and statutory terms conflicts with their plain meaning. Its non-medical care expenditures are illegal and *ultra vires*. Brief, *supra*, sections V and VI.

Central Health's interpretation also is contrary to Chapter 61's definitions, which specify the basic and optional "health care services" hospital districts may provide. 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. As discussed above, Sections 61.028 and 61.0285 delineate the particular health care services that hospital districts may provide and these comport with the ordinary understanding of these terms. Brief, *supra*, section IV.C. Chapter 61's definition of health care services includes only "medically necessary services;" it does not include medical education, research, or other medical school activities that do not constitute "medically necessary services" for *treating patients*.

B. As a matter of law, Central Health is a special purpose district for providing medical care and has no express or implied power to fund non-medical care services.

(1) No express power.

There is no express power for a hospital district to spend funds except on providing medical care to patients, particularly the county's poor. Brief, *supra*, Section V.B. Nowhere in Texas law is a hospital district "clearly and unmistakably" provided express authority to fund education, research, general operations of a medical school, or programs to address the social determinants of health. Brief, *supra*, Section V.B.

(2) No indispensable implied power.

A hospital district is a special purpose district with the limited purpose of providing medical care, particular to the poor. It has only those implied powers indispensable to its express purpose to provide such care. It does not clearly and without reasonable doubt have the implied power to fund a medical school's non-clinical functions. While valuable, these medical school functions are not indispensable for providing hospital and medical care to patients: not funding a medical school does not render a hospital district's power to provide health care to the poor of no worth ("nugatory"). Since the vast majority of Texas hospital districts provide medical care without a medical school in their county, a medical school clearly is not indispensable to a hospital district's express purpose. (The UT-System has seven medical schools and Texas has sixteen in total; there are 142 hospital districts in Texas). Exhibit 17, UT-System FY 2024 Operating Budget Summaries, pp. ii (Table of Contents), pp. 14-17, 49, 68, 72, 76, 80, 84); List of Texas Medical Schools (Tex. Medical Association Website) (https://www.texmed.org/Texas_Medical_Schools_and_Hospitals.aspx); Texas Comptroller, Rates and Levies of Special District (https://comptroller.texas.gov/taxes/property-tax/rates/index.php). Clearly, a hospital district is able to provide medical care services without funding the massive education, research, and other academic functions of a medical school.

Central Health has authority to establish a hospital system of multiple hospitals and health

clinics, whether private or public, because these health care institutions serve to provide medical care of patients. Brief, *supra,* Sections IV and V. The medical school, however, is not a licensed hospital; it is an "institution of higher education" with full accreditation from the Liaison Committee for Medical Education and the Accreditation Council for Graduate Medical Education. ("ACGME"). Exhibit 3, Deposition of Dwain Morris, exhibit 12 thereto: UT Health Austin Specialty Services Agreement, p. 1), and exhibit 14 thereto: Affiliation Agreement, Section 4.1, p 14. Seton, not DMS. *owns the hospital and Central Health funds Seton separately to provide hospital care for the poor*.[22]

The medical school has established a separate entity, apart from its education, research and other academic functions, to provide medical care: UT Health Austin, a licensed clinical practice group. Exhibit 3, Deposition of Dwain Morris, exhibit 12 thereto: UT Health Specialty Agreement, Section 2.1, pp. 4-5. UT Health Austin provides DMS's clinical care to patients. Exhibit 1, Depo. of Dr Young, pp. 27, 86-87. It is UT Health Austin that is "responsible for ensuring that all facilities, equipment, and staff are qualified ["permitted" and "licensed"] to provide the [medical care] services." Exhibit 3, Deposition of Dwain Morris, exhibit 12 thereto: UT Health Specialty Agreement, Section 2.1, pp. 4-5. While CH has discretion to contract with licensed medical care

[22] Central Health has contracted through an Omnibus Healthcare Services Agreement with Seton to provide "health care services" though Seton's *licensed* non-profit hospital and clinic system for Central Health eligible patients. Exhibit 22, Master Agreement Between Seton and CH, Attachment C (Central Health-Seton Omnibus Healthcare Services Agreement (June 1, 2013)). Seton is required to provide these healthcare services through licensed medical facilities, including a "licensed hospital facility, outpatient primary care or specialty care clinic or other healthcare facility…" Id., Attachment C, Section 2.4, p. 6 ("Seton Sponsored Facility"), p. 8 ("Licensure and Certification"). Health care services are defined by a specified list of medically necessary services. Id., Attachment C, Sections 1.1, p.5 ("MAP Healthcare Services"); Id, Attachment C, Annex C. Attachment C, Annex C contains a long list of covered medical care services, which again comport within an ordinary understanding of this term. Id. MAP low-income and residence procedures are set out in Exhibit 22, Attachment C, Annex B.

providers of its choosing, such as UT Health Austin, it does not have authority to fund education, research, or other activities that do not constitute licensed medical care (and related administrative support).

Nor is DMS indispensable for providing medical residents at Seton's teaching hospital. Before DMS began in 2016, Brackenridge Municipal Hospital received its medical residents from UT Southwestern in Dallas and UT Galveston medical schools. Exhibit 1, Depo. of Dr. Young, pp. 109-112, 117-118. Moreover, Seton owns the teaching hospital and pays for its residents, not DMS or Central Health. Id, pp. 91,109, 111; Exhibit 22, Master Agreement Between Seton and Central Health (June 2013), Sections 4.8, p. 25

In summary, establishing and operating a local medical school is not indispensable to Central Health performing its express duty to provide medical and hospital care to Travis County's poor. Central Health's express power to administer a hospital district does not provide it implied authority beyond reasonable doubt to fund the non-medical care services of an institution of higher education.

Moreover, the diversion of Central Health funds to the medical school undermines Central Health's absolute duty to provide medical care for the county's poor, because large sums are siphoned away from their medical care to fund education, research and medical school administration. This massive diversion of funds prevents Central Health from covering and providing care to a significant number of the 91,000 eligible low-income county residents who do not have MAP coverage. It substantially decreases the amount of medical and hospital treatment that Travis County's poor can receive.

(3) As a matter of law, the CH-DMS affiliation agreement cannot authorize illegal expenditures.

The DMS affiliation agreement cannot authorize by contract the expenditure of Central

Health funds beyond its constitutional and statutory authority to provide medical care. Brief, *supra*, Section V.D. While Central Health has discretion to determine whom it hires to provide medical care, it cannot contract to fund services beyond its legal authority by defining medical care contrary to its plain meaning and statutory definitions.

(4) As a matter of law, Central Health's lack of basic financial controls in the affiliation agreement violates Article III¸ Section 52 of the Texas Constitution.

Central Health's failure to provide basic financial controls over DMS's expenditures of its public funds violates as a matter of law Article III, Sec. 52 of the Texas Constitution. The affiliation agreement violates the second prong of Texas Municipal League because it lacks the necessary financial controls to ensure public funds are spent for their intended public purpose and in compliance with state law restrictions. Brief, *supra*, Sections III and IV.

The affiliation agreement's lack of financial control provisions is clear and unambiguous. 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). The affiliation agreement fails to contain standard payor-provider financial controls to monitor and account for DMS uses of Central Health's $35 million annual 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. Jason Brocks, Health Plan Network Provider Agreement Essentials (Lexis-Nexis Practical Guidance Journal: Healthcare Practice Special Edition, April 2019), hereinafter "Brocks."[23] Key financial control provisions in payor-provider agreements are

[23] https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/health-plan-network-provider-agreement-essentials#.

"compensation, billing, and payment" and "maintenance of records."[24] Id.

The affiliation agreement has none of these provisions. It does not provide even the most basic financial controls to ensure public funds are being spent on authorized constitutional and statutory purposes. Exhibit 3, Deposition of Morris, exhibit 14 thereto. The affiliation agreement purports to allow DMS in its "discretion" to fund any operations and administration of the medical school. Brief, *supra*, Section VIII.A(5). It contains no list of required medical services DMS must provide and no payment methodology. Brief, *supra*, Section VIII.A(5). The Agreement precludes Central Health from inspecting or auditing DMS's records to ensure funds were spent as required by law, and it does not require DMS to comply with the law's income and residence requirements. Brief, *supra*, Section VIII.A(5). Nor does it authorize Central Health to seek reimbursement for coordinated benefits or recoup improper payments (if, for example, another payor, such as Medicaid, pays DMS for the same medical services). Exhibit 3, Deposition of Morris, exhibit 14 thereto: Affiliation Agreement, pp. i-ii; Exhibit 6, Depo. of Geeslin, pp. 132-133.

Standard payor financial control provisions are well known to Central Health, for it uses them in its other payor-provider agreements. Both its specialty services agreement with

[24] "Compensation, billing, and payment" provisions "[i]nclude "compensation amounts," "[r]equire providers to accept the agreed-upon payment amounts from the health plan as payment in full for all services," "[d]efine clean claims with reference to applicable state insurance laws," "[d]escribe healthcare claims submission and provider billing processes", [and] "[c]learly set out any recoupment rights." Id. Maintenance of records provisions "[r]equire providers to create and maintain patient (member) medical records in a manner that meets the standard of care for their profession," "[r]equire providers to keep medical records for at least 10 years," and "[p]rovide health plans with the right to access medical records and other books and records relevant to the provider's participation in the plan." Brocks, *supra*.

UT Health Austin[25] and its Omnibus Health Services Agreement with Seton[26] have some version of these obvious, standard provisions for financial control and accountability. As the Court of Appeals held in Corsicana Indus. Found., Inc., 685 S.W.3d at 185, as a matter of law there are not "any provisions in the Agreements that constitute an element of oversight by Appellees to ensure the public purposes are met." It is also noteworthy that DMS classified the $35 million payments as a gift and treated it as a slush fund to be used for any budget-gap purpose-- and not just for restricted statutory purposes. Brief, *supra*, Section VIII.A(4).

(5) As a matter of law, Central Health has funded millions in DMS's and other entities' expenditures that do not constitute medical care.

It is beyond dispute that Central Health has funded directly $74 million to DMS for millions in expenditures that are not health care. Brief, *supra*, Section VIII.B(1).

Furthermore, Central health has funded an additional $137.3 million that it knowingly commingled with unrestricted CCC Funds, which then were transferred to DMS. Brief, *supra*, Section VIII.B(2). All of CCC's 35 million annual payments with CH commingled funds are presumed as a matter to all be restricted or illegal funds. If Central Health funds can be traced to a commingled account, Texas law shifts the burden to the party that commingles these funds to show

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[25] Exhibit 23, the Specialty Services Agreement with UT Health Austin ("UTHA") (October 2019) has all the standard control 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).

[26] Central Health and Seton's Omnibus Health Care Services Agreement (June 1, 2013)(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). Exhibit 3, Depo of Morris, exhibit 12 thereto.

they are not all restricted or illegal. Wilz v. Flournoy, 228 S.W.3d 674, 676 (Tex. 2007) (per curiam). "A party seeking to impose a constructive trust has the initial burden of tracing funds to the specific property sought to be recovered." Id. See also Meyers v. Baylor Univ., 6 S.W.2d 393, 394-95 (Tex. Civ. App.—Dallas 1928, writ ref'd); "[T]he beneficiary may follow the trust property and claim every part of the blended property which the trustee *cannot identify as his own*." Id., citing, Eaton v. Husted, 172 S.W.2d 493, 498 (Tex. 1943)) (emphasis in original). The Court further explained that "[o]nce that tracing burden is met, 'the entire. . . . property will be treated as subject to the [constructive] trust, except in so far as the trustee may be able to distinguish and separate that which is his own.'" Id., quoting, Eaton, 172 S.W.2d at 498-99.

This legal principle also applies to commingling of governmental and private funds. In Transformative Learning Sys. v. Tex. Educ. Agency, 572 S.W.3d 281, 288 (Tex. App.—Austin 2018, no pet.), the Austin Court of Appeals upheld a TEA order that treated commingled state and private funds as all state funds, and then on that basis revoked a school's charter. In other cases, the Austin Court of Appeals has held that an individual was personally liable for mixing a corporation's sales taxes with other funds. State v. Mink, 990 S.W.2d 779, 782-783 (Tex. App.—Austin 1999, pet. denied); Davis v. Texas, 904 S.W.2d 946, 948, 955 (Tex. App.—Austin 1995, no writ).

By knowingly commingling Central Health's funds in the CCC, Central Health has failed to comply with basic statutory financial controls to ensure its funds are spent in accordance with state law restrictions. Hospital districts are subject to the state recordkeeping requirements in "Subtitle C, Title 6, Local Government Code" Texas Health and Safety Code, Section 281.073. This subtitle includes Chapters 201-205 of the Tex. Local Gov. Code. Chapter 203 applies the recordkeeping requirements for county officials to hospital districts. Tex. Loc. Gov't Code, Secs.

203.001, 203.021. Section 203.21(3) mandates that hospital districts shall "facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and *designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government.*" Texas Local Gov. Code, Section 203.021(3) (emphasis added).

Central Health, by allowing its nonprofit the CCC to commingle its statutorily restricted funds with other funds, failed to maintain "adequate and proper documentation" of CCC's "functions, policies, decisions, procedures and essential transactions" related to its uses of Central Health's funds. Id. Without these documents, Central Health l*acks "the information necessary to protect the legal and financial rights of the local government, the state, and persons affected* by the activities of the local government." Id. (emphasis added). In summary, the evidence is indisputable that Central Health tax dollars were transfer into CCC's unsegregated account, where they were commingled with other funds, and then transferred to DMS. Central Health's $137 million to the CCC is presumed to have all been transferred to DMS.[27]

[27] Central Health's recordkeeping requirements for CCC and DMS's expenditures also violate Government Accounting Standards Board (GASB) directives, which Central Health comports to comply with. Ex. 17, Central Health Preliminary Monthly Financial Statements (Sept. 2023), pdf p.9. GASB Standard No. 34 requires governmental entities to have sufficient financial controls to ensure its funds are being spent in compliance with state law: "The [GASB] Board also emphasized the usefulness of the governmental fund structure and the use of fund accounting as a control mechanism and a means of reporting compliance with legal and other restrictions on the use of financial resources . . . ." Exhibit 25, Governmental Accounting Standards Board, Statement Number 34 of the Governmental Accounting Standards Board: Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments (June 1999), p. 80. It is essential, GASB commentary explains that "[a]t a minimum, governments should provide information 'to assist in evaluating whether the government was operated within the legal constraints imposed by the citizenry.'" Id. at 77 (citation omitted).

CONCLUSION

Central Health undeniably has expended millions in public funds on non-medical care services. As a matter of law, these expenditures exceed its constitutional and statutory authority to provide medical care, particularly to the poor. Funding medical education and research, economic development, and other non-medical care services are not indispensable to Central Health's express authority to provide medical care. Its affiliation agreement cannot provide Central Health authority to fund activities that are contrary to state law. Central Health's affiliation agreement also violates Article III, Section 52 because as a matter of law it lacks even rudimentary financial controls to ensure public funds are spent in compliance with their statutory public purpose.

PRAYER

For these reasons, Plaintiffs ask the Court:

1. To grant this motion for final summary judgment, and to enter a declaratory judgement that as a matter of law Defendants have acted *ultra vires* by spending substantial public funds illegally without financial controls on non-medical care or other unauthorized services;
2. To enjoin the Defendants from taking any action or expend any public funds on activities that do not constitute medical care services to eligible recipients as defined by the Texas Constitution, Article IX, Section 4 and Chapter 61 of the Texas Health & Safety Code.
3. To enjoin Defendants from expending any public funds without complying with the financial controls and accountability required under Article III, Section 52 of the Texas Constitution and Texas Health & Safety Code Chapter 281; and
4. To grant Plaintiffs reasonable and necessary attorney's fees and expenses, court costs,

post-judgment interest, and such other relief, in law or equity, to which they are entitled.

Respectfully submitted,

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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 18th day of April 2024, to:

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TABLE OF EXHIBITS

Exhibit	Description
A.	Manuel Quinto-Pozos Affidavit
1.	Young depo transcript and exhibits
2.	Morris 2018 depo transcript and exhibits
3.	Morris 2023 depo transcript and exhibits
4.	McDonald depo transcript and exhibits
5.	Knodel depo transcript and exhibits
6.	Geeslin depo transcript and exhibits
7.	Daigre depo transcript and exhibits
8.	Chang depo transcript and exhibits
9.	Brian Davis declaration with exhibits
10.	Spiesman affidavit and exhibits
11.	FY23 Approved Budget Book Final
12.	CH Preliminary Financials September 2023
13.	CH FY24 Budget Attachment B
14.	UT FY22 Budget
15.	UT FY23 Budget
16.	UT FY24 Budget
17.	FY24 Operating Budget Summaries
18.	CCC FY2020 Financial Statements and Audits
19.	CCC FY2021 Financial Statements and Audits
20.	Central Health Audit Report FY2022
21.	Defs Objs Rsps to Plaintiffs Rogs RFPs and RFAs
22.	SCH Master Agreement with Exhibits
23.	CCC Agreement for Specialty Services
24.	Stipulation Fully Executed
25.	GASB Standard No. 34
26.	CH 4568-9758 (excerpts)
27.	CH009964-9997
28.	CH10774-10776
29.	CH011467-11492

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

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

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

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

INTRODUCTION

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

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

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

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

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

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

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

LEGAL AND FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 61 of the Texas Health & Safety Code also addresses hospital districts. It provides that a hospital district "shall endeavor to provide the basic health care services a county is required to provide under section 61.028, together with any other services required under the Texas Constitution and the statute creating the district." TEX. HEALTH & SAFETY CODE § 61.055. The basic health care services listed in section 61.028 include: (1) primary and preventative services designed to meet the needs of the community including: (A) immunizations; (B) medical screening services; and (C) annual physical examinations; (2) impatient and outpatient hospital services; (3) rural health clinics; (4) laboratory and X-ray services; (5) family planning services; (6) physician services; (7) payment for not more than three prescription drugs a month; and (8) skilled nursing facility services, regardless of the patient's age." *Id.* § 61.028. Neither section 61.028 nor section 61.055 (nor any other section of chapter 61) contains a list of the exclusive services a hospital district is permitted to provide or prohibits services beyond those listed. *Id.* §§ 61.028, 61.055.

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

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

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

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

Id. ¶ 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Central Health's 2024 Budget.

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

ARGUMENTS AND AUTHORITIES

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

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

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

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

II. Governmental Immunity Bars Plaintiffs' Claims.

A. Defendants Enjoy Governmental Immunity from Plaintiffs' Claims.

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

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

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

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

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

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

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

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

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

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

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

1. Central Health's President and CEO Is Acting Within His Legal Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Plaintiffs' Claims Impermissibly Seek Retrospective Relief.

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

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

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

III. Plaintiffs Lack Standing.

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

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

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

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

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

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

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

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

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

CONCLUSION AND PRAYER

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

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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

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

PLAINTIFFS' THIRD AMENDED PETITION

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

I.

The key issue in this case is whether defendants are violating the Texas Constitution, Article-IX, §4, and Texas statutes, Texas Health & Safety Code, ch. 61 and 281, by expending property taxpayer funds on items other than healthcare services for poor residents of Travis County. The issue in this case is *not* whether it would be good public policy to have a medical school in Austin; that is an issue for the Texas Legislature. The issue in this litigation is whether a hospital district, which is a constitutionally authorized local governmental entity with very limited powers, may spend property tax dollars on items that are allowed under state law. This suit is necessary because defendants are not complying with Texas law and are expending funds on items unrelated to Central Health's constitutional and statutory authorization of providing health care to the poor residents of Travis County. To clarify beyond any dispute what we pled previously, the suit does not seek retroactive relief or damages; it seeks only: 1) a declaratory judgement that defendants have acted ultra vires and that they legally cannot spend public funds on illegal, ultra vires activities in the future; and 2) and an

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

II.

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

III.

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

IV.

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

V.

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

Defendant*, Dr. Patrick Lee,* the current Central Health President and C.E.O., is sued in his official capacity only. Pursuant to TEX. R. CIV. P. 37, Dr. Patrick Lee in his official capacity only has been substituted for the prior President and C.E.O. of Central Health, Defendant Mike Geeslin, who recently stepped down. Former Defendant Geeslin, whom Defendant Lee substitutes, was served and answered in this case.

Defendants may be referred to, collectively, as "Central Health."

VI.

Venue is proper in Travis County, Texas.

FACTS

VII.

Central Health plays a crucial role in Travis County in ensuring health care services for the poor, who are disproportionately people of color. Texas is last in the country in the percentage of its population with health care coverage. Texas is just one of a handful of states that have not enacted Medicaid expansion. As a result, Central Health plays a critical role in providing healthcare for the approximately 200,000 poor residents in Travis County without health coverage.

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

It is well-documented that a lack of health coverage results in people having worse health and shorter life spans: "Studies demonstrate that a lack of insurance commonly results in poorer health status, and that once an individual gains insurance, he or she experiences improvements in health outcomes, resulting in cost-savings for the state." TEXAS ALLIANCE FOR HEALTH CARE, THE IMPACT OF UNINSURANCE ON TEXAS' ECONOMY (January 14, 2019), pp. 5-6.

Central Health is a hospital district organized under Article IX, §4 of the Texas Constitution for the purpose of (in the words of the Constitution) "providing medical and hospital care to needy inhabitants of [Travis] county." Once Travis County voters established Central Health, it "assume[d] full responsibility for providing medical and hospital care" from the County government. Tex Const. Art. IX, §4. A hospital district organized under Art. IX, §4, may levy a property tax for only this purpose on residents within its district, which the plaintiffs are. Correspondingly, a hospital district

organized under Art. IX, §4, may legally expend taxpayer funds for only the specific purpose enumerated in the constitution and the statutes governing such districts, particularly Texas Health & Safety Code chapters 61 and 281.[1]

Central Health's authorized legal purpose is "medical and hospital care" for poor residents of the county. Tex. Const Art. IX, § 4. Following the constitution, Section 281.002 of the Texas Health and Safety Code states that Central Health may expend funds only for "a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district," which in this case would be indigent and needy persons residing within Travis County. The plain meaning of medical and hospital care is professional treatment of the physical and mental health needs of a patient. Under Chapter 61 of the Texas Health & Safety Code, the "Indigent Health Care and Treatment Act," the Legislature specifies the "basic health care services" that Central Health may provide and the "eligible residents" it may serve without pay. The term "basic healthcare services" for hospital districts is defined in Texas Health and Safety Code section 61.028(a) as the following medical services:

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

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

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

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

Moreover, Central Health may provide medical and hospital care for free only for poor residents of the county[2]. Chapter 61 defines "eligible resident" as "a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital or hospital district in whose jurisdiction the person resides." Tex. Health & Safety Code §61.002(3). Central Health, as a hospital district, may not legally expend funds on any goods or services that are not specifically authorized as "healthcare services" for "eligible residents," and/or other legal requirements, under the Texas Constitution or by statute.

VIII.

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

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

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

IX.

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

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

require Central Health to maintain sufficient financial controls to show that public funds are being spent on constitutionally and statutorily authorized purposes. Central Health has failed to do this under the Affiliation Agreement by not requiring basic payor-provider protections, such as specifying the specific healthcare services to be provided, the payment methodology, the right to audit and inspect health care records, and the right of reimbursement for duplicate or erroneous payments. Nor did Travis County voters have the legal authority to allow Central Health and the Medical School to spend Central Health funds outside the constitution's and statute's requirements. Central Health's property tax dollars can fund "consistent with Central Health's mission" health care services for poor residents that are provided by a medical school clinical entity. But these tax dollars cannot fund expenditures that do not constitute medical care for the poor and directly related administration, such as general medical school administration and operations, medical education, medical research, community and social services, and unreimbursed medical care for patients able to pay or non-county residents. All the Central Health expenditures above are ultra vires and illegal.

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

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

expenditures, include but are not limited to, workforce development, economic development (the Innovation District and others), general community support (school backpacks, dues to the Chamber of Commerce and other organizations, and non-health care sponsorships), public health, social determinants of health programs that do not constitute, under Texas law, health care to the poor, and public relations, including television, radio and social media ads, that are not aimed at providing the poor healthcare information but currying favor with elected officials or the general public.

CAUSES OF ACTION

X.

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

XI.

Defendants have violated Article III, §52 by failing to maintain sufficient financial controls in its Affiliation Agreement to ensure that its funds have been spent by the Medical School in compliance with state law' and that the funds are not treated a gift of public dollars, as specified above.

XII.

Independently, and/or in addition to all that has been pleaded above, the expenditure of funds outside the legally enumerated purposes in Art. IX, §4, definitional requirements and restrictions in Chapters 281 and 61 of the Texas Health and Safety Code, and the strictures of Art III, §52 is an *ultra vires* act. While Central Health has limited discretion on how it provides direct medical and hospital care for the poor in Travis County, it is prescribed by these constitutional and statutory provisions to use that discretion to provide direct medical and hospital care to the poor residing in Travis County. It has no discretion to supersede state law by using property taxpayer funds for medical education,

medical research, health care for paying patients, public health (as defined by Texas Health and Safety Code section 121.002(1)), economic development, workforce development, general community benefits, social determinants of health programs that are not healthcare or not limited to poor residents, or any other expenditure that does not constitute the delivery of direct health care services (including its administration) to poor Travis County residents. Defendants have no authority to violate Texas legal provisions and fund items not constituting health care services for poor county residents. As such, plaintiffs are entitled to relief against defendant Lee, in his official capacity, prohibiting the illegal expenditure of funds by Central Health as set forth herein.

RELIEF SOUGHT

XII.

Plaintiffs seek a declaratory judgment, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, declaring that that defendants may expend funds only: (1) on items related to the furnishing of unreimbursed medical aid and/or hospital care to indigent and financially needy persons residing in Travis County; (2) on constitutionally and statutorily authorized purposes such as those enumerated in Chapter 61 of the Texas Health and Safety Code; and (3) with sufficient financial controls to ensure that public funds are spent in compliance with Article III, §52 and state law. Plaintiffs further seek declaratory relief that defendants have been expending funds on illegal items and purposes as set out above.

XIII.

Independently, and/or in addition to all that has been pleaded above, plaintiffs seek a temporary and/or permanent injunction enjoining defendants from expending funds: (1) on any item not related to the furnishing of unreimbursed medical aid and hospital care to indigent and financially needy persons residing in Travis County; (2) on any purpose or item not statutorily authorized, such as any expenditure not expressly authorized in Chapter 61 of the Texas Health and Safety Code; and

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

XIV.

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

XV.

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

XVI.

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

XVII.

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

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully pray that, upon final trial hereof, plaintiffs be accorded declaratory and injunctive relief as stated herein, as well as reasonable and necessary attorney's fees and expenses, court costs, post-judgment interest, and/or all such other and further relief, at law or in equity, to which plaintiffs may show themselves justly entitled. Should the court fid that there is a pleading defect or deficiency of any kind, we respectfully request a reasonable opportunity to replead.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein on this the 22nd day of April 2024, to:

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

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

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.[1]

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

[1] 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 itsel*f." 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 t*o 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.[2]

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 corporatio*n, 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.

[2] "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).[3] 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

[3] 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").[4] 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.[5] It overlooks that the constitution authorizes hospital districts to establish only "a hospital or hospital system" and levy taxes only for "hospital purposes."[6] Bexar

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[4] "[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).

[5] 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.

[6] 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).[7]

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).[8]

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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[7] "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.

[8] 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.[9] 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.

[9] 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 vire*s. 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.[10] 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

[10] "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.[11]

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

[11] 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).[12] 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

[12] 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).[13]

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

[13] 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.[14] 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

[14] 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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Attorneys for Defendants

/s/ Manuel Quinto-Pozos
Manuel Quinto-Pozos

TABLE OF EXHIBITS

Exhibit	Description
-	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

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

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

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 345th 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 . 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 30th day of April, 2024.

Fred I. Lewis

Texas Administrative Code

TITLE 26	HEALTH AND HUMAN SERVICES
PART 1	HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 363	COUNTY INDIGENT HEALTH CARE PROGRAM
SUBCHAPTER C	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.

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

By: Watson S.B. No. 821

A BILL TO BE ENTITLED

AN ACT

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

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

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

(d) 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, may make a capital or other financial contribution to:

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

(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.

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

Plaintiffs' Response, Exhibit 2

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

ATCHLEY & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

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.

	Fiscal Year	Date of Report
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
	$	6,337,213

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.

Atchley & Associates, LLP

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.

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.

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

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

PID 292856 | 5100 SPRUCE CV

GENERAL INFO

ACCOUNT

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

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

LOCATION

Address: 5100 SPRUCE CV, TX 78744

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

PROTEST

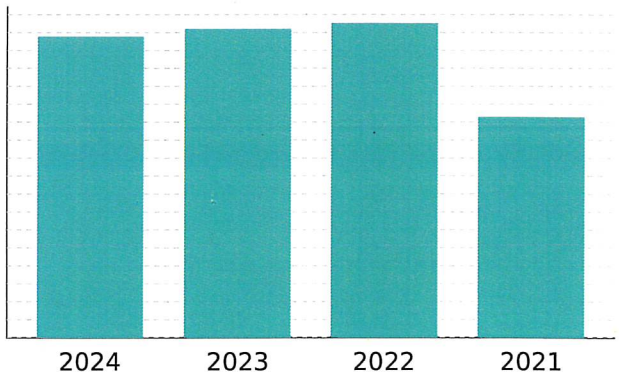
Protest Status:
Informal Date:
Formal Date:

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
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.

Electronic Payment Options

- Pay taxes and print bills at www.traviscountytax.org.
- Payments made via credit card or electronic check are subject to an additional fee.
- Visit www.traviscountytax.org for details.
- Pay by telephone at 1-888-286-9242

eCheck VISA MasterCard AMERICAN EXPRESS DISCOVER PayPal CREDIT PayPal

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	107,270	215,661	0.100692	217.15	X /
ACC (TRAVIS)	80,000	242,931	0.098600	212.64	

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

INT 273 750

9 ACCOUNT NUMBER	
03-1702-0101-0000	
10 DUE DATE	**11 TOTAL DUE**
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

12 BILLING NO.	13 DUE DATE	14 TOTAL DUE
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.

15 AMOUNT ENCLOSED

16 4,174.96 ← 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 or by phone at 1-888-286-9242

eCheck VISA MasterCard AMERICAN EXPRESS DISCOVER PayPal CREDIT PayPal

NEW MAILING ADDRESS?
Update your mailing address electronically at 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, 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
2023	IAU	322,931	215,661	0.859500	1,853.61	-22.31 %
	CAT	322,931	215,661	0.445800	961.42	-5.36 %
	TCO	322,931	215,661	0.304655	657.02	-5.96 %
	THD	322,931	215,661	0.100692	217.15	0.23 %
	ACT	322,931	242,931	0.098600	212.64	-1.87 %
Total					3,901.84	-13.94 %
2022	IAU	317,060	252,060	0.996600	2,385.90	30.08 %
	CAT	317,060	219,542	0.462700	1,013.82	21.84 %
	TCO	317,060	219,542	0.318239	698.67	26.86 %
	THD	317,060	219,542	0.098684	216.65	25.73 %
	ACT	317,060	237,060	0.098700	216.69	34.17 %
Total					4,533.73	27.62 %
2021	IAU	242,767	192,767	1.061700	1,834.17	17.29 %
	CAT	242,767	154,114	0.541000	833.76	26.17 %
	TCO	242,767	154,114	0.357365	550.75	18.77 %
	THD	242,767	154,114	0.111814	172.32	26.12 %
	ACT	242,767	154,114	0.104800	161.51	23.24 %
Total					3,552.51	20.18 %
2020	IAU	204,462	154,462	1.102700	1,563.83	-1.51 %
	CAT	204,462	123,868	0.533500	660.84	20.40 %
	TCO	204,462	123,868	0.374359	463.71	1.37 %
	THD	204,462	123,868	0.110306	136.63	4.48 %
	ACT	204,462	123,868	0.105800	131.05	0.85 %
Total					2,956.06	3.55 %
2019	IAU	197,135	147,135	1.122000	1,587.73	1.63 %
	CAT	197,135	123,868	0.443100	548.86	8.92 %
	TCO	197,135	123,868	0.369293	457.44	12.84 %
	THD	197,135	123,868	0.105373	130.77	8.59 %
	ACT	197,135	123,868	0.104900	129.94	8.33 %
Total					2,854.74	5.27 %
2018	IAU	181,058	131,058	1.192000	1,562.21	
	CAT	181,058	114,452	0.440300	503.93	
	TCO	181,058	114,452	0.354200	405.39	
	THD	181,058	114,452	0.105221	120.43	
	ACT	181,058	114,452	0.104800	119.95	
Total					2,711.91	

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
IAU	322,931	181,058	215,661	131,058	0.859500	1.192000	1,853.61	1,562.21
CAT	322,931	181,058	215,661	114,452	0.445800	0.440300	961.42	503.93
TCO	322,931	181,058	215,661	114,452	0.304655	0.354200	657.02	405.39
THD	322,931	181,058	215,661	114,452	0.100692	0.105221	217.15	120.43
ACT	322,931	181,058	242,931	114,452	0.098600	0.104800	212.64	119.95
Total							3,901.84	2,711.91

Five Year % of Change

Appraised Value	Tax Value	Tax Rate	Tax Imposed
78.36 %	64.55 %	-27.89 %	18.65 %
78.36 %	88.43 %	1.25 %	90.78 %
78.36 %	88.43 %	-13.99 %	62.07 %
78.36 %	88.43 %	-4.30 %	80.31 %
78.36 %	112.26 %	-5.92 %	77.27 %
			43.88 %

Taxing Unit Code and Description:

AUSTIN ISD
CITY OF AUSTIN (TRAV)
TRAVIS COUNTY
TRAVIS CENTRAL HEALTH
ACC (TRAVIS)

SCHOOL DISTRICT M&O/DEBT RATE INFORMATION

TAXING UNIT	2023 M&O	2023 DEBT	2022 M&O	2022 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** 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 HABLA ESPAÑOL.**

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

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

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 345th 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 1st day of May, 2024.

Richard Franklin, III

PID 530002 | 3906 SOJOURNER ST

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

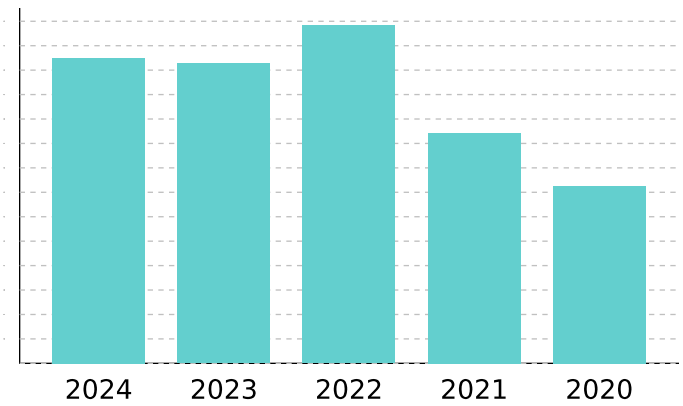
Protest Status:
Informal Date:
Formal Date:

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

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

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
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.

Electronic Payment Options

- Pay taxes and print bills at www.traviscountytax.org.
- Payments made via credit card or electronic check are subject to an additional fee.
- Visit www.traviscountytax.org for details.
- Pay by telephone at 1-888-286-9242

eCheck VISA MasterCard AMERICAN EXPRESS DISCOVER PayPal CREDIT PayPal

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
TRAVIS COUNTY	172,243	68,974	0.304655	210.13
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

6 BILLING NO. 719088

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

9 ACCOUNT NUMBER: 03-0452-1012-0000

10 DUE DATE	11 TOTAL DUE
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

12 BILLING NO.	13 DUE DATE	14 TOTAL DUE
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 or by phone at 1-888-286-9242

eCheck VISA MasterCard AMERICAN EXPRESS DISCOVER PayPal CREDIT PayPal

NEW MAILING ADDRESS?
Update your mailing address electronically at www.traviscountytax.org

2023 719088 00001413888 8

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 $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

Disclamer: 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
2023	TCO	241,217	68,974	0.304655	210.13	0.92 %
	IDV	241,217	131,217	1.002800	1,066.07	-46.04 %
	THD	241,217	68,974	0.100692	69.45	7.56 %
	E04	241,217	132,974	0.040000	53.19	-23.20 %
	ACT	241,217	161,217	0.098600	15.04	0.00 %
Total					1,413.88	-39.39 %
2022	TCO	219,288	65,430	0.318239	208.22	-2.05 %
	IDV	219,288	169,288	1.184600	1,975.52	0.00 %
	THD	219,288	65,430	0.098684	64.57	-2.92 %
	E04	219,288	115,430	0.060000	69.26	-56.57 %
	ACT	219,288	139,288	0.098700	15.04	0.00 %
Total					2,332.61	-3.97 %
2021	TCO	199,353	59,482	0.357365	212.57	-60.84 %
	IDV	199,353	164,353	1.202000	1,975.52	0.60 %
	THD	199,353	59,482	0.111814	66.51	-58.41 %
	E04	199,353	199,353	0.080000	159.48	-11.74 %
	ACT	199,353	14,353	0.104800	15.04	-91.93 %
Total					2,429.12	-19.93 %
2020	TCO	181,230	144,984	0.374359	542.76	-18.90 %
	IDV	181,230	156,230	1.257000	1,963.81	-17.28 %
	THD	181,230	144,984	0.110306	159.93	-16.41 %
	E04	181,230	181,230	0.099700	180.69	-0.30 %
	ACT	181,230	176,230	0.105800	186.45	-1.93 %
Total					3,033.64	-15.87 %
2019	TCO	181,230	181,230	0.369293	669.27	4.05 %
	IDV	181,230	181,230	1.310000	2,374.11	-5.95 %
	THD	181,230	181,230	0.105573	191.33	0.13 %
	E04	181,230	181,230	0.100000	181.23	-0.20 %
	ACT	181,230	181,230	0.104900	190.11	-0.11 %
Total					3,606.05	-3.33 %
2018	TCO	181,598	181,598	0.354200	643.22	
	IDV	181,598	181,598	1.390000	2,524.21	
	THD	181,598	181,598	0.105221	191.08	
	E04	181,598	181,598	0.100000	181.60	
	ACT	181,598	181,598	0.104800	190.31	
Total					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
TCO	241,217	181,598	68,974	181,598	0.304655	0.354200	210.13	643.22
IDV	241,217	181,598	131,217	181,598	1.002800	1.390000	1,066.07	2,524.21
THD	241,217	181,598	68,974	181,598	0.100692	0.105221	69.45	191.08
E04	241,217	181,598	132,974	181,598	0.040000	0.100000	53.19	181.60
ACT	241,217	181,598	161,217	181,598	0.098600	0.104800	15.04	190.31
Total							1,413.88	3,730.42

Five Year % of Change			
Appraised Value	Tax Value	Tax Rate	Tax Imposed
32.83 %	-62.02 %	-13.99 %	-67.33 %
32.83 %	-27.74 %	-27.86 %	-57.77 %
32.83 %	-62.02 %	-4.30 %	-63.65 %
32.83 %	-26.78 %	-60.00 %	-70.71 %
32.83 %	-11.22 %	-5.92 %	-92.10 %
			-62.10 %

Taxing Unit Code and Description:

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

SCHOOL DISTRICT M&O/DEBT RATE INFORMATION

TAXING UNIT	2023 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** 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 HABLA 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
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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

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

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

DEFENDANTS' SUMMARY JUDGMENT RESPONSE

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Pages

Cases

Texas Constitution & Statutes

Rules

Defendants Travis County Healthcare District d/b/a Central Health and Dr. Patrick Lee, Central Health's President and Chief Executive Officer ("CEO"), in his official capacity, file this response to the motion for final summary judgment brought by Plaintiffs Rebecca Birch, Richard Franklin, III, and Ester Govea (jointly, "Plaintiffs") and respectfully show the Court as follows:

INTRODUCTION

Central Health was created in 2004 to provide access to and coordinate high-quality health care for low-income residents of Travis County. Central Health and its partners provide a broad array of health care services including adult and pediatric primary and preventative health, women's health services, immunizations, cancer screenings, urgent care, hospital services, dental services, behavioral health services, pharmacy services, specialty care, physical therapy, hospice and palliative care, skilled nursing, home health, and durable medical equipment to low-income residents at approximately 190 locations in Travis County. Central Health is always working to increase the volume and type of health care services it funds and to improve health outcomes for the patients it serves, assessing the needs of its patients, and identifying and implementing strategies and partnerships to meet those needs. A fundamental and necessary prerequisite to Central Health's ability to deliver health care services to low-income residents is development of the infrastructure, partnerships, community ties, and other components that make possible Central Health's successful delivery of those services to its low-income residents.

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

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

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

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

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

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

LEGAL AND FACTUAL BACKGROUND

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

Central Health is a hospital district created by the voters of Travis County pursuant to article IX, section 9[1] of the Texas Constitution and Chapter 281 of the Texas Health & Safety Code. As such, it is charged with providing medical and hospital care for Travis County's needy inhabitants. TEX. CONST. ART. IX, § 9.

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

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

[1] Plaintiffs incorrectly allege that Central Health was created pursuant to article IX, section 4 of the Texas Constitution. *See* Plaintiffs' Second Amended Petition ("2d Amend. Pet.") at 3. However, article IX, section 9, rather than section 4, is applicable to Central Health. Article IX, section 4 authorizes the creation of hospital districts in counties over 190,000 in population and in Galveston County. *See* TEX. CONST. ART. IX, § 4. Section 9, however, was later adopted as an all-purpose provision to allow the creation of hospital districts in all Texas counties. TEX. CONST. ART. IX, § 9. Section 9 therefore superseded section 4 with respect to hospital districts that were created after its passage in 1962, which includes Central Health. Nonetheless, sections 4 and 9 grant hospital districts similar powers and obligations, such that the analysis in this motion would not change if section 4 was applied rather than section 9.

Chapter 281 of the Texas Health & Safety Code governs the creation and administration of hospital districts in counties having at least 190,000 residents. TEX. HEALTH & SAFETY CODE, chap. 281. It provides that a hospital district has the authority to "to furnish medical aid and hospital care to indigent and needy persons residing in the district." TEX. HEALTH & SAFETY CODE § 281.002. Chapter 281 further provides that hospital districts may broadly take action to fulfill their purpose to furnish such care to indigent and needy persons and makes clear that permissible uses of district resources include the direct furnishment of care, as well as additional services that contribute to the furnishment of such care. *See, e.g.*, *id.* § 281.047 (granting board general powers to "manage, control, and administer the hospital or hospital system of the district"); *id.* § 281.048 (granting board power to "adopt rules governing the operation of the hospital or hospital system"); *id.* § 281.043 (permitting the district to assume outstanding contract obligations incurred before the creation of the district for the "construction, support, maintenance, or operation of hospital facilities and the provision of health care services or hospital care . . . ."); *id.* § 281.050(a) (permitting the board, with approval of the commissioners court, to "construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital, building, or other facility or to provide a service required by the district.").

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

Chapter 281 also permits a hospital district to "create a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services

for the district." TEX. HEALTH & SAFETY CODE § 281.0565(b). A district may then make capital or financial contributions to the charitable organization, and the charitable organization may "contract, collaborate, or enter into a joint venture or other agreement with a public or private entity." *Id.* § 281.0565(d).

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

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

Chapter 61 of the Texas Health & Safety Code also addresses hospital districts. It provides that a hospital district "shall endeavor to provide the basic health care services a county is required to provide under section 61.028, together with any other services required under the Texas Constitution and the statute creating the district." TEX. HEALTH & SAFETY CODE § 61.055. The basic health care services listed in section 61.028 include: "(1) primary and preventative services designed to meet the needs of the community including: (A) immunizations; (B)

medical screening services; and (C) annual physical examinations; (2) impatient and outpatient hospital services; (3) rural health clinics; (4) laboratory and X-ray services; (5) family planning services; (6) physician services; (7) payment for not more than three prescription drugs a month; and (8) skilled nursing facility services, regardless of the patient's age." *Id.* § 61.028(a). Section 61.028(b) expressly provides that "additional health care services" beyond those listed in section 61.028(a) may be provided. *Id.* § 61.028(b).

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

Neither section 61.028 nor section 61.0285 (nor any other section of chapter 61) contains a list of the exclusive services a hospital district is permitted to provide or prohibits services

beyond those listed. *Id.* §§ 61.028, 61.0285; *see also id.* § 61.055 (expressly contemplating that in addition to endeavoring to provide the services listed in section 61.028, hospital districts shall endeavor to provide "any other services required under the Texas Constitution and the statute creating the district."). To the contrary, their express terms contemplate that hospital districts and counties may provide additional health care services. *Id.*

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

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

- served 152,453 people—a 4% increase over 2021;
- provided 51,318 uninsured Travis County residents health coverage through Central Health's Medical Access Program ("MAP");
- provided 68,739 Travis County residents coverage through MAP Basic, a program that covers essential primary care and prescription services for low-income residents who earn too much to qualify for MAP;
- increased its provider network by 12%, adding twenty-four new providers to the network including opioid treatment, primary care, and specialty providers;

- funded 532,644 primary care visits through this expanded provider network;
- moved from a temporary clinic in eastern Travis County to a more permanent clinic at Del Valle and began construction on a new facility to house Del Valle clinical services;
- provided clinical services at Hornsby Bend and began construction on a new facility to house the Hornsby Bend clinical services (this new facility is now open);
- worked towards opening a permanent clinic at Colony Park and a multi-specialty clinic at Rosewood Zaragosa and providing clinical services at the Hancock Center, all of which create more access points for care; and
- worked to expand services for podiatry (a major concern for people living with diabetes), dialysis, substance use disorder treatment, and medical respite care to allow people a stable place to heal and restore health.

Id. ¶ 5.

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

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

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

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

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

In furtherance of that partnership, Central Health and the Seton Healthcare Family formed the 501(c)(3) organization the Community Care Collaborative ("CCC"), in large part to participate as a provider in 1115 Waiver Delivery System Reform Incentive Payment ("DSRIP") program projects to improve and enhance health care service delivery for low-income patient populations in Travis County. *Id.* ¶ 9.

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

Medical Center Brackenridge hospital facility. *See id.*

Under the Affiliation Agreement, UT receives a $35 million annual payment, which can be used only for "Permitted Investments" (the "Permitted Investment Payment"). *Id.* § 3.1, 4.7. The CCC has the primary obligation to make the annual Permitted Investment Payment to UT. If the CCC defaults, in whole or in part, in the timely payment to UT of the Permitted Investment Payment or is dissolved or otherwise ceases to exist or operate, Central Health has secondary responsibility for the annual Permitted Investment Payment. *Id.* §§ 3.1; 3.2.

From 2014 through 2022, the Permitted Investment Payments under the Affiliation Agreement were wholly made by the CCC—not Central Health.[2] Knodel Decl. ¶ 12. In 2023, the CCC did not have funds to make the full Permitted Investment Payment, so the CCC paid

[2] While in years past Central Health made a member payment to the CCC, that member payment accounted for only a portion of the CCC's funding. *See* Joint Agreed Stipulation ¶¶ 7-8, attached hereto as Exhibit B. For example, in 2017, Central Health made a $24,615,508 member payment to the CCC, and the CCC received $26,000,000 from Ascension Seton and $62,692,721 from the Texas Health and Human Services Commission for the successful achievement of 1115 Delivery System Reform Incentive Payment projects ("DSRIP). *Id.* ¶¶ 7-8. In 2018, Central Health made a $23,200,000 member payment to the CCC, and the CCC received $36,266,490 from Ascension Seton and $59,153,831 from DSRIP. *Id.* Similarly, in 2019 Central Health made a member payment of $35,348,600, and the CCC received $21,266,490 from Ascension Seton and $75,365,262 from DSRIP. *Id.* Central Health has not made a member payment to the CCC since 2019, and the CCC received $60,414,314 and $59,363,558 from DSRIP in 2020 and 2021, respectively. *Id.* Thus, it is not possible to say that the CCC used Central Health funds to make the Permitted Investment Payments to UT during the 2014 to 2022 time period. The cases Plaintiffs cite in support of their commingling argument, *see* Mot. at 61-62, arise in very different contexts and do not change this conclusion. *See, e.g.*, *Wilz v. Flournoy*, 228 S.W.3d 674, 676-77 (Tex. 2007) (per curiam) (affirming imposition of a constructive trust on a farm where funds to purchase the farm might have belonged to incapacitated son and defendants invoked the Fifth Amendment when asked about the source of funds used to purchase the farm); *Meyers v. Baylor Univ. in Waco*, 6 S.W.2d 393, 395 (Tex. Civ. App.—Dallas 1928, writ refused) (affirming imposition of constructive trust on property purchased from an account holding embezzled funds); *State v. Mink*, 990 S.W.2d 779, 783-84 (Tex. App.—Austin 1999, pet. denied) (holding corporate officer individually liable for depositing tax money into the corporation's bank account such that corporation failed and refused to pay the full amount due to the state); *Davis v. Texas*, 904 S.W.2d 946, 948, 953-54 (Tex. App.—Austin 1995, no writ) (holding corporation's president and director liable where he collected sales tax, commingled tax receipts in corporation's operating account, and failed to remit tax to the state).

$12,570,000 and Central Health paid $22,430,000. *Id.* ¶ 13. Central Health has budgeted to make the full Permitted Investment Payment in 2024. *Id*. ¶ 14. More specifically, Central Health's 2024 budget allots $295,246,806 for health care delivery, $28,647,030 for administration, and $35,000,000 for the Permitted Investment Payment under the Affiliation Agreement. *Id*. ¶ 14. This budget was approved by both the Central Health Board of Managers and the Travis County Commissioners Court in September 2023. *Id.*

The Affiliation Agreement defines Permitted Investments as follows:

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

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

- to develop methods to increase the efficiency of health care delivery and to reduce cost;
- to develop and implement strategies to improve and maintain the health of the population;

- to recruit faculty who will further develop and implement programs to educate primary care physicians, including expanded educational experiences in ambulatory sites, including clinics; and

- to recruit faculty who can provide the highest quality of "cutting edge" clinical care for the residents of Travis County.

Id.

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

- develop, own, and operate the UT Dell Medical School, *id.* § 4.1;

- assist in serving low-income communities by offering to train residents and medical students in community-based settings, *id.* § 4.2.1;

- assist in developing appropriate levels of clinical services at nonprofit medical clinics in Travis County that provide services to the safety-net population, *id.* §§ 4.2.2, 1;

- promote effective and efficient medical practice by training professionals to work together in multi-disciplinary teams, *id.* § 4.2.3;

- assist with DSRIP projects under the existing Medicaid 1115 Waiver Program, *id.* § 4.2.4;

- provide medical care with a focus on preventative health care and the multitude of factors that impact health outcomes, *id.* § 4.2.5;

- recruit, train, and educate medical students, *id.* § 4.2.6;

- generate and utilize data to educate physicians and patients on methods to achieve better health outcomes and reduce disparities in Travis County, *id.* § 4.2.7;

- endeavor to promote training that promotes biomedical sciences with other disciplines, *id.* § 4.2.8;

- engage in clinical research to improve the quality of care in the community, *id.* § 4.2.9;

- make available appropriate members of its faculty and residents to provide clinical services at clinics and other facilities acting as providers of the integrated delivery system, *id.* § 4.3;

- assist in providing comprehensive education and training in women's health services to UT Dell Medical School residents and medical students, *id.* § 4.4; and

- make available faculty and residents to provide part of the physician services component of the i) MAP Healthcare Services and Charity Care Healthcare Services, as those terms are defined in the Affiliation Agreement, in comparable specialties and scope as are provided as of the effective date of the Affiliation Agreement by UTSW faculty and residents under the Omnibus Agreement through or in conjunction with that certain UTSW and Seton Affiliation Agreement effective as of November 30, 2009; and ii) women's or other health services that Seton cannot provide because of the Ethical Religious Directives for Catholic Health Care Services, *id.* § 4.9.[3]

Plaintiffs' summary judgment motion also wholly ignores that Central Health's relationship with the UT Dell Medical School pursuant to the Affiliation Agreement significantly benefits Central Health's patient population. *See* Knodel Decl. ¶ 7; Declaration of Jonathan Morgan ("Morgan Decl.") ¶ 3, attached hereto as Exhibit D; Declaration of John Daigre ("Daigre Decl.") ¶¶ 5-7, attached hereto as Exhibit E; Declaration of Ryan Johnson ("Johnson Decl.") ¶ 4, attached hereto as Exhibit F. The UT Dell Medical School, in partnership with Central Health, has increased and improved the health care provided to low-income residents of Travis County, including as follows:

- Serving MAP patients at UT Health Austin specialty clinics, including women's health and musculoskeletal, with 8,917 unique patients—approximately 36% of all unique patients—using MAP, Medicaid, or Medicare during the 2022-2023 academic year, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;

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

- Eliminating the 12-month wait for MAP patients to see a specialist for orthopedic care, and establishing measures to improve patient-reported outcomes, Morgan Decl. ¶ 3;

- Designing better pre-natal and postpartum care for low-income women and their babies, Morgan Decl. ¶ 3;

- Entering into a new Master Service Agreement covering ophthalmology, reproductive care not available from Ascension Seton, surgeries by Central Health employed podiatrists, long COVID, and advanced imaging, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;

- Entering into a Professional Services Agreement with Central Health to assist Central Health expand delivery of medical and health care services at its own facilities in Travis County, including through the co-recruitment of physicians and the provision of other professional services focused on collaboratively advancing comprehensive care in areas including gastroenterology, pulmonology, neurology, and nephrology, Johnson Decl. ¶ 4; Morgan Decl. ¶ 3;

- Initiating and conducting lung, breast, and colon cancer screening projects in collaboration with CommUnityCare and other safety-net providers, Morgan Decl. ¶ 3;

- Actively working to expand access to eye care by hiring Dr. Jane Edmond and three other faculty, doubling the community faculty roster to forty-five, establishing the Mitchel & Shannon Wong Eye Institute, and starting an ophthalmology residency program that accepts 3 residents a year, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;

- Leading a collaborative integrated care program for people experiencing homelessness with CommUnityCare and Integral Care, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3;

- Engaging in research projects targeting stress reductions in low-income people with COPD, understanding barriers to organ transplants in Central Texas, the value of PrEP for HIV prevention in Central Texas, suicide prevention for young adults in Texas, the impact of telehealth visits in avoiding urgent care for pregnancy among the under-served, culturally-tailored preventative care for individuals with risk factors for kidney disease, and a culturally-tailored, scalable asthma intervention for high-risk children, Daigre Decl. ¶ 5; Morgan Decl. ¶ 3.

Additionally, the UT Dell Medical School has attracted more than 440 new doctors to Austin since 2014, and approximately 260 faculty members employed by UT Dell Medical School—approximately 81%—work full or part time in the community with a range of clinical partners, including CommUnityCare Health Centers, Ascension Seton, and Integral Care. Daigre

Decl. ¶ 6; Morgan Decl. ¶ 3. The UT Dell Medical School faculty provide approximately 395,000 hours of care annually through these partners in addition to the care provided at UT Health Austin. Daigre Decl. ¶ 6. Faculty-provided specialty care includes internal medicine, cardiology, gastroenterology, neurology, and psychiatry, all areas of need identified in Central Health's Equity-Focused Service Delivery Strategic Plan. *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Morris similarly testified in part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The UT Dell Medical School reports annually to the Central Health Board of Managers outlining how the UT Dell Medical School is supporting Central Health's mission. Knodel Decl. ¶ 18; Daigre Decl. ¶ 4 and Exs. 1-8. The UT Dell Medical School anticipates making a similar report in 2024. Daigre Decl. ¶ 7. The UT Dell Medical School also shares information with Central Health regarding its efforts to improve and enhance health care delivery for low-income residents of Travis County and the contributions made by the Permitted Investments through its participation in the Joint Affiliation Committee ("JAC") as provided for in the Affiliation

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

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

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

In addition to the controls in the Affiliation Agreement, Central Health hired Atchley & Associates to perform the Agreed Upon Procedures for the fiscal years 2014-2023 to determine UT's compliance with the Affiliation Agreement, including whether the UT Dell Medical School's costs and expenditures comply with the Affiliation Agreement's definition of "Permitted Investment." Knodel Decl. ¶ 15; Declaration of Jeremy Myers, CPA ("Myers Decl.") ¶ 3 and Exs. 1-4, attached hereto as Exhibit G. Atchley & Associates has prepared and delivered to Central Health an Independent Accountants' Report in connection with the Agreed Upon Procedures for fiscal years 2014-2022, and with one minor exception in 2017, no discrepancies were noted. Knodel Decl. ¶ 16; Myers Decl. ¶¶ 4-6 and Exs. 1-4. The fiscal year 2023 Agreed Upon Procedures are currently being scheduled, and Atchley & Associates will provide a related Independent Accountants' Report to Central Health when they are completed. Knodel Decl. ¶ 17; Myers Decl. ¶ 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENTS AND AUTHORITIES

I. Applicable Summary Judgment Standard.

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

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

Governmental immunity protects political subdivisions of the state and their officers and employees acting within their official capacity from suit, including suits seeking to control state action, unless immunity from suit is waived. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 369-76 (Tex. 2009); *City of Round Rock v. Whiteaker*, 241 S.W.3d 609, 626 (Tex. App.—Austin 2007, pet. denied) (citing *City of Galveston v. State*, 217 S.W.3d 466, 467-68 (Tex. 2007)).

Immunity can only be waived by the Legislature and "depends entirely upon statute." *Galveston*, 217 S.W.3d at 469 (quotation omitted). Indeed, the Legislature has mandated that no statute should be found to waive immunity absent "clear and unambiguous language." TEX. GOV'T CODE § 311.034 ("[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language."). Where defendants have governmental immunity and immunity has not been waived, the court lacks subject matter jurisdiction. *Texas Dept. of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 225-26 (Tex. 2004).

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

the tax receipts are spent." *Id.* at 847. Because governmental immunity bars Plaintiffs' claims against Central Health, Plaintiffs are not entitled to summary judgment against Central Health.

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

Central Health's President and CEO is a governmental official acting in his official capacity and is therefore also entitled to governmental immunity based on Central Health's immunity from suit. *See Heinrich*, 284 S.W.3d at 380 (except for the limited *ultra vires* exception, "governmental immunity protects government officers sued in their official capacities to the extent that it protects their employers."); *Hall v. McRaven,* 508 S.W.3d 232, 238 (Tex. 2017) (absent a waiver of immunity, suit against a governmental official may proceed only in certain narrow instances if the official's actions are *ultra vires*). However, "in certain narrow circumstances, a suit against a state official can proceed . . . if the official's actions are *ultra vires*." *McRaven*, 508 S.W.3d at 238. As relevant here, an *ultra vires* action requires a plaintiff to prove "that the officer acted without legal authority." *Id.* (quotation omitted).

More specifically, an *ultra vires* claim based on actions taken without legal authority has two fundamental components: (1) authority giving the official some (but not absolute) discretion to act and (2) conduct outside of that authority. *McRaven,* 508 S.W.3d at 239. Plaintiffs have the burden to establish that Central Health's President and CEO's actions were "without reference to or in conflict with the constraints of the law authorizing [him] to act." *Chambers-Liberty Counties Navigation Dist. v. State*, 575 S.W.3d 339, 349 (Tex. 2019) (quotation omitted). "Where, as here, a governmental body has been delegated authority to make some sort of decision or determination, immunity jurisprudence has long emphasized a critical distinction between alleged acts of that body that are truly *ultra vires* of its decision-maker authority, and are therefore not shielded by immunity, and complaints that the body merely 'got it wrong' while

acting within this authority, which are shielded." *City of Austin v. Utility Assoc. Inc.*, 517 S.W.3d 300, 310 (Tex. App.—Austin 2017, pet. denied) (citation omitted). In addition, an *ultra vires* claim must seek prospective, rather than retrospective, relief. *Chambers-Liberty*, 575 S.W.3d at 348 ("Such *ultra vires* claims must be brought against government officials in their official capacity and may seek only prospective injunctive remedies.") (quotation omitted); *Texas Educ. Agency v. American YouthWorks, Inc.*, 496 S.W.3d 244, 256 (Tex. App.—Austin 2016), *aff'd sub nom., Honors Acad., Inc. v. Tex. Educ. Agency*, 555 S.W.3d 54 (Tex. 2018) ("Only some forms of prospective relief are allowed to remedy an ultra vires action; retrospective relief, whether monetary or otherwise, is barred.").

Independent from, but very similar to, the question of governmental immunity is the question of Plaintiffs' standing to bring this suit, a prerequisite to subject matter jurisdiction. *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). Generally, "a citizen lacks standing to bring a lawsuit challenging the lawfulness of governmental acts." *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 7 (Tex. 2011). This is because "[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review." *Osborne v. Keith*, 142 Tex. 262, 265 (1944). "Unless standing is conferred by statute, taxpayers must show as a rule that they have suffered a particularized injury distinct from that suffered by the general public in order to have standing to challenge a government action or assert a public right." *Bland Independent School Dist. v. Blue*, 34 S.W.3d 547, 555-56 (Tex. 2000).

There is only a narrow exception to this rule—a taxpayer has standing to sue to enjoin the illegal expenditure of public funds. *Osborne*, 142 Tex. at 264-65. A taxpayer may maintain an action solely to challenge proposed illegal expenditures; a taxpayer may not sue to recover funds

previously expended or challenge expenditures that are merely "unwise or indiscreet." *Id.* at 265. Moreover, a taxpayer may only assert claims to "restrain prospective governmental expenditures—money that has not yet been spent." *Texans Uniting for Reform and Freedom v. Saenz*, 319 S.W.3d 914, 920 (Tex. App.—Austin 2010, pet. denied). Once the money has been spent, a taxpayer no longer has standing to bring such claims. *Id.* To fit within this exception, a taxpayer must identify the purported illegal expenditure to be enjoined, prove that the governmental entity is actually spending money on a challenged activity, and establish that the challenged expenditure is illegal. *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2001). As explained below, Plaintiffs have not presented any evidence of actual prospective spending that is not within Central Health's constitutional and statutory authority. Thus, the Court does not have subject matter jurisdiction over Plaintiffs' claims against Central Health's President and CEO under either the *ultra vires* exception to governmental immunity or tax-payer standing doctrine. Plaintiffs' motion for summary judgment against Central Health's President and CEO must be denied for these reasons alone. But even if the Court were to determine it does have subject matter jurisdiction over Plaintiffs' claims against Central Health's President and CEO (and it does not), Plaintiffs are not entitled to summary judgment against Central Health's President and CEO because all the Central Health spending Plaintiffs challenge is within Central Health's constitutional and statutory authority as a matter of law.

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

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

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

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

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

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

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

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

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

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

As the Texas Supreme Court has recognized, the Legislature has broadly granted hospital districts the power to manage and administer the provision of care to indigent and needy residents within the district. *See Harris Cty. Hosp. Dist.*, 283 S.W.3d at 843 (describing authority granted to hospital districts under chapter 281 as showing that "the Legislature intended to invest districts with powers and authority necessary to conduct their business, subject in large part to approval of the county commissioners court"); *see also* Tex. Att'y Gen. Op. No. GA-0102, 2003 WL 22206220, *2, 4 (2003) ("chapter 281 states the Board's governing powers in broad terms" and "chapter 281 grants the Board broad powers of hospital governance, including the authority to promulgate rules and employ health professionals"). Central Health's decisions to create the CCC and enter into the Affiliation Agreement under which the Permitted Investment is made fall squarely within the authority granted to Central Health under and are fully authorized by the Texas Constitution and the Texas Health & Safety Code. *See* TEX. CONST. ART. IX, §§ 9, 9A; TEX. HEALTH & SAFETY CODE §§ 281.002, 281.0511, 281.0565, 285.091(a).[10]

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

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

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

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

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

In addition to the sections of Chapter 61 on which Plaintiffs rely, Chapter 281 of the Texas Health & Safety Code provides that hospital districts may broadly take action to fulfill their purpose to furnish such care to indigent and needy persons and makes clear that permissible uses of district resources include directly furnishing care, as well as additional services that contribute to the furnishing of such care. *See, e.g.*, *id.* § 281.047 (granting board general powers to "manage, control, and administer the hospital or hospital system of the district"); *id.* § 281.048 (granting board power to "adopt rules governing the operation of the hospital or hospital system"); *id.* § 281.043 (permitting the district to assume outstanding contract obligations incurred before the creation of the district for the "construction, support, maintenance, or operation of hospital facilities and the provision of health care services or hospital care . . . ."); *id.* § 281.050(a) (permitting the board, with approval of the commissioners court, to "construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital, building, or other facility or to provide a service required by the district.").

More specifically, section 281.0511 of the Texas Health & Safety Code expressly provides that a hospital district's board "may contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services." TEX. HEALTH & SAFETY CODE § 281.0511(b). Section 281.0565 expressly allows Central Health to create and make financial contributions to a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district and to create a charitable organization to "contract, collaborate, or enter into a joint venture or other agreement with a public or private entity." *Id.* § 281.0565(b), (d); *see also id.* § 285.091(a). It further expressly permits districts to make "capital or other financial contribution[s]" to such a charitable organization "to provide regional administration and delivery of health care services to or for the district." *Id.* § 281.0565(d). The Legislature's express grant of authority for Central Health to perform these functions through a charitable organization necessarily confirms that Central Health has the statutory authority to perform these functions directly as well.

Moreover, within the applicable constitutional and statutory confines, it is within Central Health's discretion to determine how to best provide medical and hospital care to Travis County's low-income residents. In so doing, Central Health may exercise all the powers expressly delegated to Central Health by the Texas Constitution and Legislature, as well as those that "exist by clear and unquestioned implication." *Jackson County Hosp. Dist. v. Jackson County Citizens for Continued Hosp. Care*, 669 S.W.2d 147, 154 (Tex. App.—Corpus Christi 1984, no writ) (citing *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940)). Implied powers are those that "are reasonably necessary to make effective the

powers expressly granted." *Tri-City*, 142 S.W.2d at 947. "In the construction of Constitutions, as well as of statutes, the powers necessary to the exercise of power clearly granted will be implied," and "[a] public grant for a public advantage should be liberally construed in an endeavor to accomplish the purpose of the grant." *First Nat'l Bank of Port Arthur v. City of Port Arthur et al.*, 35 S.W.2d 258, 263 (Tex. Civ. App.—Beaumont, 1931, no writ).

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

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

Indeed, multiple Texas Attorney Generals have issued opinions finding spending by hospital districts on activities not expressly listed in Chapters 61 or 281 to be within constitutional and statutory authority of the hospital districts, including:

- housing and managing a private imaging business in the district's hospital to obtain capacity the hospital district otherwise would not have and allowing the district to treat patients in a manner that would not be available absent the proposed arrangement, Tex. Att'y Gen. Op. No. GA-0546, 2007 WL 1413245 (2007);

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

- establishing a self-insurance fund to provide professional liability coverage to a physician group and its health care provider employees, where the physician group was "crucial to accomplishing" the hospital district's purpose, Tex. Att'y Gen. Op. No. GA-0188, 2004 WL 1091520, *4 (2004);

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

- constructing a building to lease to private physicians for the purpose of attracting and retaining physicians to practice in the hospital district, Tex. Att'y Gen. Op. No. LO-97-068, 1997 WL 419081 (1997); and

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

- constructing a building to lease to private physician to operate dialysis center, where the dialysis center would provide cost-effective dialysis services adjacent to the hospital, Tex. Att'y Gen. Op. No. DM-66, 1991 WL 527477 (1991).

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

Plaintiffs' argument that the Permitted Investments impermissibly include expenditures for education, research, and general administration misses the point. *See* Mot. at 26-49.[12] The Affiliation Agreement is not a typical fee-for-services contract, but rather an agreement designed to build the heath care infrastructure in Travis County, thereby expanding the health care services Central Health is able to fund and improving outcomes for the patients it serves. As highlighted by Dr. Young's, Mr. Morris's, and Mr. Chang's testimony, the various departments and functions of the UT Dell Medical School work together to expand the health care infrastructure in Travis County and serve its low-income population. *See supra* at 16-20. The Permitted Investment Payment has and will continue to improve Central Health's ability to deliver high-quality health care to low-income residents in Travis County. Indeed, Central Health's partnership with the UT Dell Medical School has already led to the launch of multiple specialty clinics serving MAP patients, an increased number of medical resident doctors providing services to low-income and uninsured patients, decreased wait times and improved health outcomes for low-income patients needing certain specialty care appointments, better pre-natal and postpartum care for low-income women and their babies, and improved cancer screening for people with low incomes. *See* Morgan Decl. ¶ 3; Daigre Decl. ¶¶ 5-7; Johnson Decl. ¶¶ 4-5; *supra* at 14-16. Plaintiffs' singular focus on the listed services contained in sections 61.028 and 61.0285, in addition to being inconsistent with the plain terms of the relevant statutory and constitutional authority, ignores the reality underlying the provision of health care services to the indigent. Central Health would not be able to provide the health care services

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

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

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

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

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

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

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

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

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

2. *The Permitted Investment Payments Do Not Violate Article III, Section 52(a) of the Texas Constitution*.

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

Here, Plaintiffs argue that the Affiliation Agreement's "lack of basic financial controls" violates article III, section 52 of the Texas Constitution. Mot. at 59. In so arguing, Plaintiffs

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

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

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

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

The Permitted Investment Payment also serves a legitimate public purpose. First, the predominant purpose of the Permitted Investment Payment is to accomplish a public purpose, not benefit private parties. The Affiliation Agreement expressly requires that the Permitted Investment Payment "shall be used by UT to fund Permitted Investments." Affiliation Agreement § 3.1; *see also* Knodel Decl. ¶ 11. As explained above, Permitted Investments are defined as:

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

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

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

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

dispute resolution procedures).

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

Central Health also hired Atchley & Associates to perform the Agreed Upon Procedures for the fiscal years 2014-2023 to determine UT's compliance with the Affiliation Agreement, including whether the UT Dell Medical School's costs and expenditures comply with the Affiliation Agreement's definition of "Permitted Investment." Knodel Decl. ¶ 15; Myers Decl. ¶ 3 and Ex. 1-4. Atchley & Associates has prepared and delivered to Central Health an Independent Accountants' Report in connection with the Agreed Upon Procedures for fiscal years 2014-2022, and with one minor exception in 2017, no discrepancies were noted. Knodel

Decl. ¶ 16; Myers Decl. ¶¶ 4, 6, Exs. 1-4. The fiscal year 2023 Agreed Upon Procedures are currently being scheduled, and Atchley & Associates will provide a related Independent Accountants' Report to Central Health when they are completed. Knodel Decl. ¶ 17; Myers Decl. ¶ 5. These annual Agreed Upon Procedures, the spending and JAC requirements, as well as the termination and dispute resolution provisions, of the Affiliation Agreement, and the UT Dell Medical School's regular reporting to the Central Health Board of Managers and collaboration with Central Health staff constitute sufficient financial controls to ensure that the Permitted Investment Payment is used for the outlined public purposes. *See Borgelt*, 684 S.W.3d at 835-38.

Third, Central Health receives a return benefit from the Permitted Investment Payment. Central Health receives the expertise, resources, and research of the UT Dell Medical School that Central Health needs to expand and support the human health care infrastructure in Travis County to increase access to and improve the quality of health care for the low-income residents of Travis County it serves. Knodel Decl. ¶ 7; Morgan Decl. ¶ 3; Daigre Decl. ¶ 5-7; Johnson Decl. ¶ 4; *supra* at 16-20 (quoting deposition testimony from Dr. Amy Young, Mr. Morris, and Mr. Chang). Central Health's partnership with the UT Dell Medical School is enabling Central Health to increase and improve the health care provided to low-income residents of Travis County in the multiple ways outlined above. *See id.*

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

health care more generally in Travis County through its support of the UT Dell Medical School.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION AND PRAYER

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2024 a true and correct copy of the foregoing document was served via electronic filing manager, in accordance with the Texas Rules of Civil Procedure to the following:

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

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

AMENDED ORDER ON DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, PLAINTIFFS' MOTION FOR FINAL SUMMARY JUDGMENT, AND PLAINTIFFS' UNOPPOSED REQUEST FOR A PERMISSIVE INTERLOCUTORY APPEAL

On May 9, 2024, the Court heard Defendants Travis County Healthcare District d/b/a Central Health ("Central Health") and Dr. Patrick Lee's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Amended Plea to the Jurisdiction ("Defendants' Motion to Dismiss") and Plaintiffs Rebecca Birch, Richard Franklin, III and Ester Govea's Motion for Final Summary Judgment ("Plaintiffs' Motion for Summary Judgment"). After considering the parties' respective briefing, the evidence, the pleadings on file, and the arguments of counsel, the Court finds that Defendants' Motion to Dismiss should be GRANTED in part and DENIED in part and Plaintiffs' Motion for Summary Judgment should be DENIED, as set forth herein.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is GRANTED with respect to Central Health and any retrospective relief against Dr. Patrick Lee in his official capacity, and those claims are DISMISSED with prejudice.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss is DENIED as to Dr. Patrick Lee in his official capacity in all other respects.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgement is DENIED in all respects.

On June 7, 2024, Plaintiffs filed a Request for a Permissive Interlocutory Appeal Under Tex. Prac. & Rem. Code, Sec. 51.014(d), of the Denial of their Motion for Summary Judgment (hereafter "Unopposed Request for a Permissive Interlocutory Appeal"). This Request is unopposed by Defendants. After considering the Unopposed Request for a Permissive Interlocutory Appeal, the Court GRANTS in full the Request, amend its Original Order, and recommends to the Court of Appeals that Plaintiffs be allowed to file an interlocutory appeal as specified below.

The Court FINDS that the requirements of Tex. Prac. & Civ. Remedies Code, Section 51.014(d) have been fully met in that (1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

The Court FURTHER FINDS that its Original Order, denying Plaintiff's Motion for Summary Judgement as to Defendant Lee's alleged *ultra vires* actions, contains a controlling question of law: whether as a matter of law Defendant Lee is exceeding his lawful authority on behalf of the hospital district Central Health under, inter alia, the Texas Constitution, Article IX, Sec. 4 and Texas Health & Safety Code, Chapters 61 and 281, by spending public funds on non-clinical medical education, non-clinical medical research, operations and administration of a medical school not directly related to clinical care of indigent residents of Travis County, and the other activities specified in Plaintiffs' Motion for Summary Judgment.

The Court FURTHER FINDS that there is substantial grounds for differences of opinion about this controlling question of law because the issue is novel, there are no cases directly on

point, and there is a fundamental disagreement between the parties as to how to interpret the numerous constitutional and statutory provisions in Chapter 61 and Chapter 281 of the Texas Health & Safety Code. In addition, the Court finds the controlling issue is of major public importance to taxpayers, the indigent, and hospital districts because it involves large sums of public expenditures.

The Court FURTHER FINDS an immediate appeal from this order will likely materially advance the ultimate termination of the litigation because a resolution of the controlling issue of constitutional and statutory construction as to Central Health's and its agents' lawful authority will essentially resolve this case and obviate the need for extensive additional discovery, numerous depositions, and a lengthy trial.

It is therefore FURTHER ORDERED that Plaintiffs' Request for a Permissive Interlocutory Appeal recommendation is GRANTED in full and this Court's Original Order of June 3, 2024 is amended as of this date.

It is FURTHER ORDERED that all proceedings in the trial court be stayed pending this permissive appeal being heard and decided.

SIGNED this _____ day of _____, 2024.

_____
HONORABLE JUDGE AMY CLARK MEACHUM

APPROVED AS TO FORM:

_____

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