

APPEAL #: 21-482

TAX TYPE: REAL PROPERTY AND PERSONAL PROPERTY

TAX YEAR: 2021

DATE SIGNED: 7/3/2024

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 21-482</p> <p>Parcel No: ##### and Personal Property Account #####</p> <p>Tax Type: Property Tax Exemption</p> <p>Tax Year: 2021</p> <p>Judge: Halverson</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, CITY-1, Utah 84134.

Presiding:

John L. Valentine, Commission Chair
Shannon Halverson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney at Law
PETITIONER'S REP-2, Attorney at Law
PETITIONER'S REP-3, Paralegal
PETITIONER'S REP-4, CEO, PROPERTY OWNER (PROPERTY OWNER)

PETITIONER'S REP-5, M.D., Medical Director, PROPERTY OWNER, Witness
PETITIONER'S REP-6, Chief Compliance Officer, PROPERTY OWNER
PETITIONER'S REP-7, Chief Corporate Affairs Officer, PROPERTY OWNER
PETITIONER'S REP-8, HR Director, PROPERTY OWNER
PETITIONER'S REP-9, MD, Medical Director, COUNTY-1 Health Department, Witness
PETITIONER'S REP-10, WHNP AGNP, Health Care Provider, PROPERTY OWNER, Witness
PETITIONER'S REP-11, Former Resident, COUNTY-1, Witness

For Respondent: RESPONDENT'S REP-1, Deputy County Attorney, COUNTY-1
RESPONDENT'S REP-2, Deputy County Attorney, COUNTY-1
RESPONDENT'S REP-3, Deputy County Attorney, COUNTY-1
RESPONDENT'S REP-4, Tax Relief Program Coordinator, COUNTY-1
RESPONDENT'S REP-5, Tax Relief Program Coordinator, COUNTY-1
RESPONDENT'S REP-6, COUNTY-1 Attorney's Office
RESPONDENT'S REP-7, MCHES, MPA, Executive Director / Local Health Officer, COUNTY-1 Health Department, Witness
RESPONDENT'S REP - 8, Executive Director, ORGANIZATION-1 Utah, Witness
RESPONDENT'S REP - 9, ORGANIZATION-1 Utah, Witness

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 29, 2022 and December 13, 2023, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The Petitioner (“Property Owner”) is appealing the Respondent’s (“County’s”) denial of an exclusive use property tax exemption for the subject parcel of real property and the personal property associated with the subject personal property account (in this decision both the real property and personal property at issue will be referred to as the “subject property”) owned by the Property Owner for the 2021 tax year.

2. On DATE, the Property Owner filed an Annual Statement for Continued Property Exemption with COUNTY-1, which was denied by the COUNTY-1 Board of Equalization. The County’s denial was based on the COUNTY-1 Board of Equalization’s determination that the

property did not meet the requirements of being used for charitable purposes or that the property was not used exclusively for a charitable purpose.¹

3. The Property Owner timely filed an appeal of the County’s denial to the Utah State Tax Commission.²

4. The subject property is a health center and associated personal property that is located at ADDRESS-1. The subject property is owned by PROPERTY OWNER (“Property Owner”). The Property Owner is a nonprofit federal charitable tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code (codified at 26 U.S.C. §501(c)(3)). It is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act of the Utah Code. The County did not dispute that the Property Owner meets the definition of a nonprofit entity as that term is defined in Utah Code Ann. §59-2-1101.

5. The Property Owner’s representative submitted the Property Owner’s Federal Form 990 Return of Organization Exempt from Income Tax for the fiscal year ending DATE.³ This federal filing indicated that, of its \$\$\$\$ in total revenue, reported on line 12 of the form, \$\$\$\$ came from contributions and grants⁴. Part VII of the Federal Form 990 further indicated that \$\$\$\$ came from government grants and \$\$\$\$ (%%%) from contributions, gifts and non government grants.⁵ On Schedule C of that form, where a 501(c)(3) organization is required to disclose political campaign and lobbying activities, the Property Owner reported that it spent a total of \$\$\$\$ as a grant to another organization for lobbying purposes.⁶

6. The Property Owner’s Annual Statement included a description of its services, which stated the following regarding the use of the subject property:⁷

The LOCATION-1 has been promoting responsible behavior and providing patients a full range of professional, personalized health care services for women and men regardless of race, religion, or ability to pay since DATE. PROPERTY OWNER is the only statewide agency providing subsidized, confidential family planning services including contraception, STI testing and treatment, HPV testing and vaccinations, cancer screenings including pap smears and breast and testicular exams, and pregnancy testing and counseling.

¹ Petitioner’s Exhibit P-E.

² Petitioner’s Exhibit P-C.

³ Petitioner’s Exhibit P-D.

⁴ *Id.*

⁵ *Id.*

⁶ Petitioner’s Exhibit P-D.

⁷ Petitioner’s Exhibit P-A, PDF pg. 4.

7. The Property Owner’s Annual Statement also included the following statement regarding why the Property Owner’s health care services provide a benefit to the COUNTY-1 community:⁸

The LOCATION-1 moved into [its] current location on ADDRESS-1 in DATE. With approximately ##### sq.ft., the LOCATION-1 served ##### individuals during 2020.

During 2020, PROPERTY OWNER provided \$\$\$\$ (approximately \$\$\$\$ per patient) in financial assistance with another \$\$\$\$ written off to bad debt as PROPERTY OWNER does not send patients to collections. This translates to approximately %%% of the annual revenue generated by the LOCATION-1 was given as a charitable benefit to the patients. PROPERTY OWNER’s sliding fee discount is based on the current Federal Poverty Guidelines and the patients (sic) self-reported annual income and family size. PROPERTY OWNER does not require proof of income to qualify. See the attached Statement of Activities for the LOCATION-1.

Furthermore, PROPERTY OWNER and the LOCATION-1 has partnered with the PROJECT-1 and the PROJECT-2 whereby qualified patients are provided contraception counseling and education followed by the contraception of their choice at no cost to them for two years. Qualified patients include individuals who are uninsured with a household income (sic) %%%-% Federal Poverty Level. Patients that are eligible for Medicaid (including those who choose not to enroll) are not eligible for the PROJECT-1, however those patients are provided education about Utah’s Medicaid program and are contacted by PROJECT-2 to assist with Medicaid enrollment.

This partnership further expands the benefit PROPERTY OWNER provides the community of COUNTY-1.

8. The Property Owner provided the following information regarding the need for the Health Center’s services specifically in COUNTY-1:⁹

COUNTY-1 is the ##### most populated county in Utah with an estimated ##### residents as of 2018. According to the U.S. Census Bureau . . . %%% of the population lives below the poverty level.

COUNTY-1 also houses several colleges, a major university, and several technical schools. This presents a large population of students between the ages of 19-24, the age range that most frequently accesses low-cost family planning services. The COUNTY-1 Health Department only provides minimal hours of exam time for patients needing reproductive health care and refers many patients to PROPERTY OWNER.

9. PETITIONER’S REP-4, President and CEO of PROPERTY OWNER (“PROPERTY OWNER”), provided testimony on behalf of the Property Owner. She stated that

⁸ Petitioner’s Exhibit P-A, PDF pgs. 4-5.

⁹ Petitioner’s Exhibit P-C, PDF pg. 2.

the Property Owner is an entity that provides health care, education, and advocacy. She stated that the Property Owner is formed as a nonprofit entity and is registered with the State of Utah as a nonprofit entity. She indicated that the Property Owner's federal income tax status is a 501(c)(3) entity. She stated that the Property Owner has been operating in COUNTY-1 since DATE but originally did not own its own facility. She indicated that the Property Owner built a building in DATE, which is located at ADDRESS-1. She stated that the Property Owner operates its clinic in this building and indicated that the property is used exclusively for health care and family planning services. She stated that there are no other commercial uses of the building. She indicated that it is her understanding that the subject property has received a property tax exemption every year since the Property Owner built the building and operated its clinic in the building. She stated that the 2021 tax year was the first time that the subject property was denied tax exempt status.

10. PETITIONER'S REP-4 testified that the Property Owner provides the following services at the subject property: family planning and reproductive health services, including testing for sexually transmitted infections and treatment for positive results of that testing; HIV testing; pregnancy testing; annual health exams, including pap smears and diagnosis of cervical cancers; breast exams; providing care to men for sexually transmitted infections; conducting sperm counts for fertility testing; conducting basic lab work for women who desire to become pregnant; and many other health services. She testified that no abortion services are provided in COUNTY-1.

11. PETITIONER'S REP-4 testified that there are no private shareholders or other individuals who benefit from net earnings or donations made to the Property Owner.¹⁰ She testified that all funds received are used in development of the Property Owner's mission and that the Property Owner is granted and operates in accordance with federal tax-exempt status under 501(c)(3) of the Internal Revenue Code.¹¹ She testified that the Property Owner does not receive any dividend or other financial benefit available to a private interest. She stated that, upon dissolution of the Property Owner, no individual or company would receive the entity's assets.

12. PETITIONER'S REP-4 testified that the health care services provided by the Property Owner are subsidized. She indicated that the Property Owner has a sliding fee scale based on income and household size. She stated that the Property Owner does not require proof of income and only requests that patients self report their income. She stated that the Property Owner offers discounted services up to %%% of the cost of the service. She indicated that if

¹⁰ Petitioner's Exhibit P-A, PDF pg. 4.

¹¹ *Id.*

a patient does not pay for the services, the Property Owner does not send the patient to collections but writes off the nonpayment as a bad debt.¹²

13. PETITIONER'S REP-4 testified that the financial assistance provided to individuals in COUNTY-1 totaled \$\$\$\$ in 2020, which translates to approximately %%% of the total annual operating revenue generated by the Property Owner at the LOCATION-1.¹³

14. PETITIONER'S REP-4 testified that the Property Owner also provides education and conducts classes in the community for teens, women, and men regarding healthy sexual relationships, maintaining healthy boundaries, and consent. She testified that the Property Owner has a partnership with the PROJECT-1, which provides qualified patients with contraception counseling and education and the contraception of their choice at no cost for two years.¹⁴ She testified that, during the COVID-19 pandemic, the Property Owner's operations at the LOCATION-1 did not close. She indicated that the Property Owner continued to see patients at 100% of their service level and no employees were terminated or furloughed during that time.¹⁵

15. PETITIONER'S REP-4 testified that in 2019 the Property Owner served ##### clients and %%% of those clients were women and %%% were men.¹⁶ She testified that %%% of the patients were uninsured and only %%% of the patients had insurance.¹⁷ She indicated that the clients averaged at %%% of the federal poverty level.¹⁸ She indicated that the Property Owner provided ##### gonorrhea/chlamydia tests, ##### HIV tests, and ##### syphilis tests.¹⁹ She stated that the Property Owner provided ##### treatments for positive test results.²⁰ She stated that the Property Owner provided ##### breast and testicular exams, ##### pap smears, and ##### HPV vaccines.²¹ She indicated that the Property Owner provided ##### pregnancy testing and information services and ##### cycles of birth control.²² She indicated that the majority of the patients seen at the LOCATION-1 are between the ages of 20 and 29. She indicated that there are two universities within the area whose students come to see the providers at the subject property's location. She noted that the Property Owner never turns away patients and allows same day visits for any service. She indicated that the Property Owner has extended

¹² *Id.*

¹³ *Id.*

¹⁴ Petitioner's Exhibit P-A, PDF pg. 5.

¹⁵ *Id.*

¹⁶ Petitioner's Exhibit P-C, PDF pg. 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

hours into the evenings until 7 p.m. or 7:30 p.m. and occasionally on Saturdays. She also indicated that the Property Owner has Spanish speaking employees at the LOCATION-1.

16. PETITIONER'S REP-4 testified that during the period of time at issue in this appeal, the Property Owner did not receive GRANT-1 federal funding but still provided reduced, subsidized, and free services.²³ She indicated that the dollar value of the Property Owner's financial contribution is more than the amount of property tax that would be paid on the subject property.

17. PETITIONER'S REP-4 provided testimony that the Property Owner's GRANT-1 funding ceased on DATE and recommenced in DATE. She stated that during the time that the GRANT-1 funding ceased, the same services were provided to all of the patients in LOCATION-1 on a sliding scale fee basis. She stated that the Property Owner did implement a suggested \$\$\$\$ donation for office visits but indicated that if the patient did not pay that donation the Property Owner still saw the patient and would not pursue collection of that donation.

18. PETITIONER'S REP-4 stated she believes the review of an information module regarding abortion procedures at least 72 hours before an abortion procedure in accordance with state law should not be considered an abortion service. She stated that it is state mandated scripting that they are required to give to a patient who asks about obtaining an abortion, regardless of where the abortion procedure may or may not be performed. She stated that a patient must certify that she viewed the information module. She stated that the Property Owner is simply providing the information that is required by the state for a woman who is interested in potentially having an abortion. She indicated that the module can be viewed from a patient's home in any location in Utah. She stated that they do not show the module at the LOCATION-1. She stated that there are no abortion classes held on site at the LOCATION-1. She stated that the module was not prepared by the Property Owner but is a module that was prepared by the State and is administered on a state website. She stated that the 72 hour consent can be done via telehealth and is often done via telehealth. She stated that the 72 hour consent can be conducted by one of the Property Owner's providers in CITY-1 to a resident of COUNTY-1. She indicated that if a patient comes in with a positive pregnancy test and wants information about abortion, the Property Owner's providers provide the patient with a link to the State's website with the

²³ The Commission notes that GRANT-1 funding is a reference to federal funding provided through the GRANT-1, which is authorized by GRANT-1 of the Public Health Service Act. *See* 42 U.S.C Sec. 300 through 300a-6. The GRANT-1 is administered by the U.S. Department of Health and Human Services' Office of Population Affairs. GRANT-1 Family Planning clinics receive funding from the GRANT-1 to provide individuals with comprehensive family planning and preventative health services.

information module. She stated that it is up to the patient to seek out the information module on the State's website and review that information.

19. PETITIONER'S REP-4 testified that the Property Owner is listed as a resource on the Community Assistance Programs page of the COUNTY-1 Department of Health website.²⁴ She also indicated that there is a link to the state's information module on abortions on the COUNTY-1 Health Department website.²⁵ She stated that the state's information module on abortions is state mandated information and even the County is required to provide this information module to individuals.

20. PETITIONER'S REP-4 testified that there is no formal setting where individuals could watch the state's abortion information module at the Property Owner's LOCATION-1. She stated that the module is viewed at the individual's home. She stated that an individual will generally take a screenshot on the individual's telephone providing verification that the module was completed.

21. The Property Owner's submissions included a resource referral page titled "COUNTY-1 Community Health Resources" published by the United Way.²⁶ PETITIONER'S REP-4 noted that the Property Owner is listed as a resource in the document for the purposes of providing "a full range of professional, confidential reproductive health care services for the community regardless of age, gender or income. Services include birth control, STD testing, pap tests, pregnancy testing and more. . ."²⁷ The referral page indicated that it was last revised in June 2019.²⁸

22. The Property Owner's representative submitted the PROPERTY OWNER 2020 annual fiscal report, which is the Property Owner's annual fiscal report that is made publicly available and published on the Property Owner's website and discloses the Property Owner's health care and demographic information, the Property Owner's education, public affairs, and development programs, and the Property Owner's fiscal year 2020 revenue and expenses.²⁹

23. The Property Owner's representative submitted an article titled "Cost-Savings from the Provision of Specific Contraceptive Methods in 2009" written by Diane Green Foster, PhD, Maria Antonia Biggs, PhD, Jan Malvin, PhD, Mary Bradsberry, BS, Philip Darney, MD, MSc, and Claire D. Brindis, DrPH, that was published by Elsevier Inc. in the Women's Health Issues Journal in May of 2013, which studied specific contraceptive methods and found that

²⁴See REDACTED URL (last visited March 5, 2024).

²⁵ Petitioner's Exhibit P-S, PDF pg. 2.

²⁶ Petitioner's Exhibit P-H.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Petitioner's Exhibit P-I.

contraceptive provision generates significant public sector cost-savings by preventing health care and social service expenditures on unintended pregnancies.³⁰

24. The Property Owner’s representatives submitted an article titled “Number of Oral Contraceptive Pill Packages Dispensed and Subsequent Unintended Pregnancies” by Diana Greene Foster, PhD, Denis Hulett, Mary Bradsberry, Philip Darney, MD, MSc, and Michael Policar, MD, MPH, that was published by the American College of Obstetricians and Gynecologists in March of 2011.³¹ The article reviewed a study conducted to determine how the number of oral contraceptive pill packages dispensed relates to subsequent pregnancies and abortions and concluded that making oral contraceptives more accessible may reduce the incidence of unintended pregnancy and abortion.³²

25. The Property Owner’s representative submitted an article titled “The Social and Economic Benefits of Women’s Ability to Determine Whether and When to Have Children,” written by Adam Sonfield, Kinsey Hasstedt, Megan L. Kavanaugh, and Ragnar Anderson that was published by the Guttmacher Institute in March of 2013.³³ The report reviewed the social and economic benefits of women’s ability to use reliable contraception to plan whether and when to have children and concluded that there is a good deal of evidence that the ability to plan whether and when to have children, and the use of contraception as a driver of such planning, has numerous important social and economic benefits for U.S. women and their families.³⁴

26. The Property Owner’s representative submitted an article titled “Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program,” written by Jennifer J. Frost, Adam Sonfield, Mia R. Zolna, and Lawrence B. Finer of the Guttmacher Institute published by The Milbank Quarterly in 2014.³⁵ The article sought to estimate the direct national-level and state-level health benefits that accrued from providing contraceptives, tests for the human immunodeficiency virus (HIV) and other sexually transmitted infections (STIs), Pap tests and tests for human papillomavirus (HPV), and HPV vaccinations at publicly supported family planning settings in 2010 and estimate the public costs savings attributable to those services.³⁶ The article concluded that the investment resulted in net government savings of \$13.6 billion in 2010, or \$7.09 for every public dollar spent.³⁷

³⁰ Petitioner’s Exhibit P-J.

³¹ Petitioner’s Exhibit P-K.

³² *Id.*

³³ Petitioner’s Exhibit P-L.

³⁴ *Id.* at 29.

³⁵ Petitioner’s Exhibit P-M.

³⁶ *Id.* at 667-668.

³⁷ *Id.*

27. The Property Owner’s representative submitted a document titled “Family Planning Services” published by the Utah Department of Health and Human Services in January of 2023.³⁸ PETITIONER’S REP-4 indicated that this document was used by the Utah Department of Health and Human Services to apply for federal GRANT-1 funding. She testified that the Utah Department of Health did not receive the requested federal GRANT-1 funding, and the Property Owner is the only recipient of federal GRANT-1 funding in the state.

28. The Property Owner’s representative submitted a document titled “Expanding Coverage for Family Planning Services” published by the UNIVERSITY-1, which provided details regarding expanding coverage for family planning services within the state of Utah.³⁹ PETITIONER’S REP-4 testified that this document was used by the UNIVERSITY-1 in attempting to obtain federal GRANT-1 funding. She indicated that it is her understanding that the UNIVERSITY-1 and the Department of Health also made efforts to lobby the Utah Legislature regarding funding for family planning services. She indicated that those lobbying efforts were not successful and indicated that the document published by the UNIVERSITY-1 was a part of that lobbying effort. She stated that she was not part of that lobbying effort.

29. The Property Owner’s representative submitted a link to the Property Owner’s website for the LOCATION-1.⁴⁰ The website included information regarding the services provided, a link to schedule appointments online, information on the availability of interpreters, information on insurance and payments, information regarding the clinic hours, and walk-in information.⁴¹

30. The Property Owner’s representative submitted a copy of the Baby Your Baby website that was accessed on DATE.⁴² PETITIONER’S REP-4 indicated that this is a government website and noted that the Property Owner is listed as a resource under birth control and family planning and is also listed as a resource under pregnancy and family planning.⁴³

31. The Property Owner’s representative submitted a copy of the Cancer Screening page of the COUNTY-1 Health Department website that was accessed on DATE.⁴⁴ PETITIONER’S REP-4 noted that the website indicates that the COUNTY-1 Health Department clinic hours are from TIME. to TIME. and on the first Wednesday of each month the clinic opens at TIME. She noted that there are no clinic hours after TIME or on Saturdays. She stated that the

³⁸ Petitioner’s Exhibit P-N.

³⁹ Petitioner’s Exhibit P-O.

⁴⁰ Petitioner’s Exhibit P-G.

⁴¹ *Id.*

⁴² Petitioner’s Exhibit P-Q.

⁴³ *Id.*

⁴⁴ Petitioner’s Exhibit P-R.

free mammogram and pap smear women's cancer screenings are designed to serve women between the ages of 40-74.⁴⁵ She stated that the Property Owner's LOCATION-1 provides free mammogram and pap smear services to women under the age of 40 and over the age of 74 when they meet the sliding fee scale. She also noted that the website indicates that the COUNTY-1 Health Department's women's cancer screening program provides clinical breast exams, mammogram vouchers, pelvic exams, and pap smears. She stated that the Property Owner's LOCATION-1 provides the following additional services to individuals of all ages for free on a sliding scale basis: referrals for mammograms, all types of cervical cancer screenings, and testicular cancer screenings for men.

32. The Property Owner's representative submitted a copy of the Family Planning and Birth Control page of the COUNTY-1 Health Department website that was accessed on DATE, which includes information regarding family planning that is provided by COUNTY-1.⁴⁶ The website indicates that the clinic hours are from TIME to TIME and on the first Wednesday of each month the clinic opens at TIME, and the options for birth control identified on the website included birth control oral pills, NuvaRing (vaginal ring), Depo Provera injection, and condoms.⁴⁷ The website indicates that family planning and birth control services are available for women 18 years and older.⁴⁸ PETITIONER'S REP-4 provided testimony that the Property Owner provides birth control services beyond the services provided by the County, which include intrauterine devices (IUDs), implants, transdermal patches, and two different types of birth control pills. She indicated that the birth control services are provided to individuals of all ages and are provided on a sliding scale fee or free basis. She also noted that there is a link on the COUNTY-1 website for additional family planning resources, which links to a Utah Department of Health and Human Services web page that lists different abortion procedures and provides information about abortions.⁴⁹

33. The Property Owner's representative submitted a copy of the Aid Resources: Available Assistance and Support Resources page of the COUNTY-1 Health District - Utah Department of Health Services website that was accessed on DATE.⁵⁰ PETITIONER'S REP-4 noted that the Property Owner is listed as a resource on that website.⁵¹

⁴⁵ Petitioner's Exhibit P-R.

⁴⁶ Petitioner's Exhibit P-S.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Petitioner's Exhibit P-V.

⁵¹ *Id.*

34. PETITIONER'S REP-4 testified that the Property Owner does not provide prenatal care but does provide referrals for prenatal care. She also stated that the Property Owner conducts fertility testing but does not provide fertility treatments. She indicated that the Property Owner may provide hormone replacement therapy for women who are menopausal. She indicated that vasectomies are not provided in COUNTY-1 but indicated that the Property Owner does refer individuals for that service to one of the Property Owner's other locations. She indicated that no abortion procedures are provided in COUNTY-1 but indicated that the Property Owner does provide referrals for abortion services. She indicated that the Property Owner does provide clients with the information to comply with the Utah informed consent law requirements to obtain an abortion.⁵² She indicated that typically all of the information that is required to be shared with the patient to fulfill the requirements of the State's informed consent law is provided from the clinician to the patient. She indicated that an individual who received an abortion in another location could seek post-abortive care at the LOCATION-1 but indicated that there are no standard procedures for post-abortive care because abortion procedures are not performed at the LOCATION-1. She indicated that the Property Owner provides helpline referrals to pre- and post-abortion patients.

35. PETITIONER'S REP-5, MD, Chief Medical Officer of PROPERTY OWNER, provided testimony on behalf of the Property Owner. She stated that the State of Utah only has one federal GRANT-1 funding recipient, which is the Property Owner. She indicated that there are specific requirements for funding recipients to provide family planning services. She noted that family planning services have a very specific definition. She stated that family planning services are for nonpregnant people and include comprehensive contraceptive care which covers all available methods without coercion. She indicated that family planning services include counseling, infertility assessments and referrals, preconception care, sexually transmitted infection testing and treatment, and other preventative health measures that could impact a person's fertility, such as cervical cancer screening or vaccination. She stated that because the Property Owner is a recipient of GRANT-1 funding, that funding provides a benefit to the citizens of COUNTY-1 by allowing the Property Owner to provide services on a sliding scale fee basis. She stated that the Property Owner never turns people away based on insurance status regardless of whether they are uninsured, underinsured, or the Property Owner does not accept the patient's insurance. She indicated that these individuals can still receive health care services as a self-pay patient that qualifies for the sliding scale fee structure based on income and the federal GRANT-1

⁵² The Commission notes that the reference to Utah's informed consent law is a reference to the provisions of Utah Code Ann. §76-7-305, which requires an individual to review an information module regarding abortion procedures at least 72 hours before the abortion procedure.

funding helps to offset the costs of providing those services. She acknowledged that on DATE, the Property Owner officially withdrew from the GRANT-1 program and that was the first time since the beginning of the program that there were no family planning GRANT-1 providers in Utah.⁵³ She indicated that, although the GRANT-1 funding was discontinued, the Property Owner was still providing subsidized and almost free patient care to the citizens of COUNTY-1 during that time period. PETITIONER'S REP-4 provided testimony that the Property Owner's GRANT-1 funding was reinstated in DATE.

36. PETITIONER'S REP-5 testified that she is the COLLEGE-1 Section Chair and has OBGYN colleagues throughout the state. She stated that her OBGYN colleagues provide the same services as the Property Owner but indicated that they are all in private practice or affiliated with a hospital. She indicated that, in those circumstances, there is always a request for insurance. She noted that those colleagues do take some self-pay patients but the self-pay packages are not comparable to the costs for the services provided by the Property Owner and are never free. She stated that the Property Owner can offer the services at a discounted price based on the federal GRANT-1 funding. She indicated that her OBGYN colleagues will often refer patients to the Property Owner because the Property Owner provides those services on a cost effective basis.

37. PETITIONER'S REP-5 testified that it is her understanding that the COUNTY-1 Health Department has a much more limited capacity both from the provider standpoint as well as the services provided. She stated that the COUNTY-1 Health Department has been tasked with addressing infectious diseases, including sexually transmitted diseases. She stated that their bandwidth of providers is limited, and, partly because of the COVID-19 pandemic, there has been a drastic increase in sexually transmitted infections and patients needing treatment and follow-up care. She indicated that, in the past, the health departments have treated positive cases of syphilis. However, she stated that there has been a substantial increase in the number of positive cases and the health departments have started referring individuals back to the Property Owner because there is a supply shortage of penicillin, which is the recommended CDC treatment used to treat syphilis. She stated that over the past several months the health departments have been referring patients back to the Property Owner for a second line treatment, which is doxycycline, because there is a supply shortage for penicillin, there is an extra treatment cost that the health departments cannot discount, and the bandwidth of providers at the health departments is limited and prevents patients from being treated in a timely fashion.

38. PETITIONER'S REP-5 testified that the Property Owner lost GRANT-1 funding for a period of time. She stated that, with the Property Owner's loss of GRANT-1 funding, there

⁵³ Petitioner's Exhibit P-C, PDF pg.1.

was a large gap in the ability of patients being able to access all of the services that the GRANT-1 funding had previously funded. She stated that she is also an Associate Professor of OBGYN at the UNIVERSITY-1 in the CENTER-1, which is a research and policy center within the University. She stated that there was a concern that some of the most vulnerable patients would be unable to get care based on the Property Owner's loss of GRANT-1 funding. She indicated that she was involved in researching patient access issues and also was involved in a process to determine if other health care providers could step into the role of applying for GRANT-1 funding and providing comprehensive family planning services. She stated that she was involved in supporting the Utah State Department of Health in applying for federal GRANT-1 funding. She stated that the Utah State Department of Health ultimately did not receive any GRANT-1 funding because there are limitations in state law on the Utah State Department of Health's ability to provide contraceptive services to minors and those limitations precluded the Utah State Department of Health from receiving federal GRANT-1 funds. The Property Owner's representative submitted an email from PERSON-1 with the Utah State Department of Health thanking individuals for supporting the Utah State Department of Health in writing the grant and noting the reasons stated above regarding why the Utah State Department of Health did not ultimately receive GRANT-1 funding.⁵⁴ She noted that the Property Owner provides sexual reproductive health care to minors under the age of 18.

39. PETITIONER'S REP-5 stated that it is her understanding that the CENTER-2 is a federally qualified health center, which requires patients to become registered with the health center to conduct a financial assessment before seeing a primary provider for intake. She indicated that CENTER-2 does have some sliding scale fee options but does not have same day availability to take care of patients. She stated that the Property Owner does not require a financial assessment, has same day availability, and sees walk-in patients. She stated that all of the Property Owner's providers are skilled in providing all of the services the Property Owner provides to walk-in patients. She stated that providers at federally qualified health centers may have significant wait times for patients to be seen.

40. PETITIONER'S REP-5 stated that if a patient comes into the Property Owner's LOCATION-1 asking for information about what to do with a positive pregnancy test, the patient is provided with standardized education information that includes all options related to pregnancy. She indicated that this information includes the option to continue the pregnancy, adoption, or abortion. She stated that all of the information is provided in a nonjudgmental way based on the patient's preferences and what they are asking for. She stated that they provide referral services

⁵⁴ Petitioner's Exhibit P-U.

for all of those options. She stated that no procedure consent forms for abortions are signed at the LOCATION-1 because procedure consent forms are signed by the patient on the day and at the location where the procedure is performed. She indicated that there are medication abortions, surgical abortions, induction abortions, and other abortion types. She stated that medically if she is performing a procedure on a patient she obtains informed consent for the procedure at the time and location of the procedure.

41. PETITIONER'S REP-5 testified that patients are provided options counseling at the Property Owner's LOCATION-1. However, she stated that they do not sign a specific abortion consent. She stated that the medication abortion consent or the surgical or procedural abortion consent is done on the day and at the time of the procedure. She stated that legal consents surrounding state requirements may be done in other settings but that is not a procedural consent that is specific to the abortion. She stated that the 72 hour waiting period informed consents that are mandated by the state may be signed at the Property Owner's LOCATION-1. She stated that those consent forms can be signed in a patient's home via telehealth. She stated that any pregnant patient that visits any clinic owned by the Property Owner in Utah is provided options counseling and provided referrals for any of the options available, including continuing the pregnancy, adoption, or abortion.

42. PETITIONER'S REP-9, MD, Medical Director, COUNTY-1 Health Department, testified on behalf of the Property Owner. He stated that he was employed as the former Executive Director of the COUNTY-1 Health Department for ##### years. He indicated that he also served as the Executive Director of the Utah Department of Health for ##### years. He stated that he is presently employed as the medical director for the COUNTY-1 Health Department. He stated that the Property Owner is required to report positive cases of reportable communicable diseases to the local and/or state health department. He stated that they are required to report all the sexually transmitted infections identified in their clinic. He indicated that the Property Owner has a large number of patients who test positive for sexually transmitted infections. He stated that hundreds of different physicians and hospitals report on reportable communicable diseases but noted that the Property Owner reports several every week. He indicated that the Property Owner provides treatment for sexually transmitted infections. He stated that the COUNTY-1 Health Department follows up with case investigations and contact investigations regarding a possible spread of the infections.

43. PETITIONER'S REP-9 provided testimony that the COUNTY-1 Health Department has very limited clinical service hours. He stated that the physicians on the COUNTY-1 Health Department's Board of Health have told the COUNTY-1 Health Department

that they should not be doing clinical services. He stated that they do very limited sexually transmitted infections clinics for three hours a week and a similar, very limited birth control/family planning clinic. He stated that the fee the COUNTY-1 Health Department charges for sexually transmitted infection screenings is a voluntary fee. He stated that they charge a fee for contraceptives that they issue. He stated that the COUNTY-1 Health Department, by a policy adopted by the COUNTY-1 Commission several years ago, prohibits the County from mentioning the Property Owner or giving any referrals to the Property Owner. He stated that they are very aware that the citizens of COUNTY-1 go to the Property Owner for services. He stated that they do not refer or mention the Property Owner but receive the required reports from the Property Owner. He stated that he is unaware of any links from the COUNTY-1 Health Department's website to the Property Owner but acknowledged that those links may have existed in the past. He stated that he is under strict guidance from the Board of Health to not expand their clinical services because they want the provision of those services left up to the private providers and clinics. He stated that if they were to expand their clinical services to full-time hours, it would require a huge investment of personnel and space and the COUNTY-1 Health Department could not take on an additional ##### patients a year without an investment of major resources. He stated that, in a recent Board of Health meeting, his budget was adopted and required a \$\$\$\$ reduction from their requested budget. He stated that it would be virtually impossible to take on additional patients due to budget constraints.

44. PETITIONER'S REP-9 provided testimony that the services provided by the Property Owner are important public health services that the public should have access to. He indicated that hundreds of providers do STI screenings, provide contraception, and conduct cervical cancer screenings but stated that the Property Owner does a significant number of STI identifications. He stated that the Property Owner reported %%% of the total gonorrhea and chlamydia infections in the County over the past year, which represents a significant portion of the population. He indicated that it is an important public health service.

45. PETITIONER'S REP-9 stated that the policies for the county health departments are set by the local governments and county commissioners. He stated that the COUNTY-1 Health Department complies with the directive from the county commission to not mention the Property Owner or provide any referrals to the Property Owner as a resource. He stated that the COUNTY-1 Health Department will provide referrals to providers other than the Property Owner to patients for any services that the COUNTY-1 Health Department is unable to provide.

46. PETITIONER'S REP-10, WHNP AGNP, provided testimony on behalf of the Property Owner. She stated that she is employed as a clinician for the Property Owner and has

been for ##### years. She stated she has provided services to one patient in her recent memory at the Property Owner's LOCATION-1 that was referred from the COUNTY-1 Health Department. She indicated that generally county health departments will refer patients to the Property Owner for syphilis or chlamydia treatment or testing. She indicated that she will receive a referral from a county health department approximately once a week. She stated that there has been an %%% nation-wide increase in syphilis cases that has caused a nationwide shortage in penicillin. She stated that traditionally those cases would be treated by the county health department but obtaining that treatment has become more difficult so county health departments, and some providers, have started informing patients that they can go to the Property Owner for treatment. She stated that the Property Owner is unable to treat patients with penicillin but is able to treat patients with alternative options. She stated that the Property Owner reports the reportable cases of STIs to the county health departments. She testified that the Property Owner reports positive cases of syphilis to the appropriate county health department but is not currently sending patients with positive test results for syphilis to the county health departments for treatment because they do not have the penicillin to treat the patients, they do not have clinic hours to provide the patients treatment soon after diagnosis, and they require the patients to pay for the treatment. PETITIONER'S REP-10 indicated that the penicillin shortage has occurred within at least the past two or possibly more years.

47. PETITIONER'S REP-10 testified that colleges, other clinics, and other emergency rooms will often refer patients to the Property Owner as well. She indicated that the main three reasons that providers will refer patients to the Property Owner is based on cost, availability, or the provision of services that the provider does not provide. She stated that both UNIVERSITY-2 and UNIVERSITY-3 will refer individuals to the Property Owner for services. She stated that the number one reason individuals are referred to the Property Owner is for intrauterine devices (IUDs). She stated that students will visit their student health centers and are unable to get an IUD at the student health center, so they are referred to the Property Owner. She indicated that, on average, the Property Owner does between ##### to ##### IUDs a day and indicated that approximately one third of those patients are students from the universities. She indicated that all patient information is private, including for minors, and all HIPAA requirements are complied with regarding confidentiality.

48. PETITIONER'S REP-10 testified that the CENTER-2 services differ from the Property Owner's services because the sliding scale fee is different so the cost of services will be different. She stated that the services provided will be different. She stated that, to her knowledge,

CENTER-2 does not provide any free services and is not primarily focused on STI screenings and family planning services.

49. PETITIONER'S REP-11, former COUNTY-1 resident, provided testimony on behalf of the Property Owner. He testified that he was a resident of COUNTY-1 from DATE to DATE. He stated that he attended UNIVERSITY-2 but subsequently attended and graduated from UNIVERSITY-3. He stated that he began volunteering for the Property Owner in DATE and worked for the Property Owner as a student organizer in DATE. He indicated that he was the president of a group sponsored by the Property Owner at LOCATION-1 from DATE until DATE. He stated that he is not aware of any other health clinics in COUNTY-1 that provide free family planning and STI screening services. He stated that he received services from the Property Owner in COUNTY-1 between DATE and DATE. He stated that when he received services from the Property Owner it was a very open and welcoming environment and he felt comfortable discussing his experiences and important medical information. He stated that the services provided by the Property Owner were very important to him because he did not have health insurance and was able to access care oftentimes at no cost. He stated that he did see other providers but indicated that he felt judged and did not receive adequate or accurate information regarding STI testing or treatment. He indicated that the providers working for the Property Owner were able to discuss sexual matters in a very mature manner and were able to identify the STI screenings that he needed. He stated that he feels that the Property Owner provides a significant benefit to the citizens of COUNTY-1 because they provide access to important reproductive and sexual health care services at low or no cost. He indicated that he feels this care is an important and invaluable resource.

50. RESPONDENT'S REP-7, MCHES, MPA, Executive Director/Local Health Officer, COUNTY-1 Health Department, provided testimony on behalf of the County. He stated that he has been serving in the Executive Director role since DATE. He stated that it is the policy of the COUNTY-1 Health Department to only refer individuals to another agency if they do not provide that particular service and if it is a service that is provided by an organization that provides an exclusive service that is not offered by other agencies. He stated that the COUNTY-1 Health Department does not pick and choose or play favorites in providing referrals. He stated that the COUNTY-1 Health Department does not provide any referrals to the Property Owner.

51. The County's representatives submitted a document titled "REDACTED ARTICLE" that was last updated in DATE.⁵⁵ RESPONDENT'S REP-7 noted that this document is a list of organizations that provide medical services for low-income or underinsured

⁵⁵ Respondent's Exhibit R-1, PDF pgs. 70-71.

individuals. He noted that the document includes the COUNTY-1 Health Department, Volunteer Care Clinic, CENTER-2, and CENTER-3. He stated that this is a list that was prepared by the COUNTY-1 Health Department's Nursing Division and is provided to clients. He stated that this document is a list that they have had for several years and is in substantially the same form as it has been for the last ##### years. He noted that the Property Owner is not listed on this document as a resource.

52. The County's representatives submitted a document that is a list of community resources maintained by the Utah Women, Infants, & Children (WIC) program, which was last updated in DATE.⁵⁶ RESPONDENT'S REP-7 testified that this is the community resource document that the WIC program maintains and provides for the WIC clients that they have. He stated that the COUNTY-1 Health Department also shares this document throughout the COUNTY-1 Health Department for clients because it is a general list of community resources. He stated that this is a document that has been provided for 10 years or more and is updated periodically by the WIC Division of the COUNTY-1 Health Department. He noted that the Property Owner is not listed on this document as a community resource.

53. RESPONDENT'S REP-7 testified that doctors' offices, CENTER-2, and the COUNTY-1 Health Department all provide cancer screenings. He stated that, based on his knowledge, the COUNTY-1 Health Department has not turned any patients away for cancer screenings unless it is for a type of cancer screening that the COUNTY-1 Health Department does not provide. He stated that the providers of preventative care in COUNTY-1 include the COUNTY-1 Health Department, private practitioners, CENTER-2, and other local providers. He stated that those providers provide services to low-income and underinsured individuals. He stated that the providers in COUNTY-1 that provide contraception and family planning education services include CENTER-2 and private practitioners. He stated that the COUNTY-1 Health Department, CENTER-2, and private practitioners all provide STI testing and treatment. He stated that the COUNTY-1 Health Department does not provide education or services about sexual responsibility but indicated that CENTER-2 and private practitioners provide that service. He stated that fertility treatments are provided by local private care practitioners. He stated that adoption referral services are provided by a variety of providers within the County. He stated that the COUNTY-1 Health Department has a number of programs for providing prenatal care and for expecting parents, including Baby Your Baby and Welcome Baby, which provide information and education. He stated that the COUNTY-1 Health Department has home visitation nurses who provide free home visits both before and after a baby is born. He stated that private practitioners

⁵⁶ Respondent's Exhibit R-2, PDF pgs. 68-69.

also provide prenatal care services, and CENTER-2 also has a team that provides prenatal services. He stated that he believes that all of the providers mentioned continue to meet the needs of COUNTY-1. He stated that he is unaware of the COUNTY-1 Health Department ever turning away a patient for services that they provide.

54. RESPONDENT'S REP-7 testified that the policy that the COUNTY-1 Health Department does not refer patients to the Property Owner has been in effect since at least DATE and indicated that he believes that it was in place prior to that time but was unsure of when it took effect. He stated that the policy is that the COUNTY-1 Health Department only refers individuals to agencies that provide exclusive services to the public that the COUNTY-1 Health Department does not provide. He stated that if there are multiple agencies that are providing the same service, the COUNTY-1 Health Department hands out the resource lists because they do not play favorites in providing referrals. He stated that the COUNTY-1 Health Department's policy is to not refer clients to the Property Owner. He acknowledged that the Property Owner provides cancer screening on a sliding scale fee or free basis. He indicated that the COUNTY-1 Health Department provides cancer screenings for free and generally provides that service for individuals ages 40 to 74. He acknowledged that those services are not provided to individuals under the age of 18 and are offered based on limited hours. He acknowledged that it is in the best interest of public health to have multiple, different providers available to the citizens of COUNTY-1.

55. RESPONDENT'S REP-7 stated that, to his knowledge, there is not a link to the Property Owner's website on the COUNTY-1 Health Department website. He acknowledged that the Property Owner is listed as a resource in CITY-2 on the Utah Department of Health and Human Services website but noted that the website is not a COUNTY-1 Health Department website.

56. RESPONDENT'S REP - 8, Executive Director, ORGANIZATION-1 Utah, provided testimony on behalf of the County. She stated that she often works with individuals who have had interactions with the Property Owner. She indicated that her organization conducts mobile clinic outreach programs that park outside of the Property Owner's location in COUNTY-2. She indicated that many of the women who they work with through that outreach program are residents of COUNTY-1 and indicated that women who are residents of COUNTY-1 are the second highest population of women receiving abortions in the state of Utah. She stated that some of these women who are COUNTY-1 residents that they work with have dealt with mental illness, abuse, addiction, and rape. She stated that some of these women have no personal support base and are being pushed into the decision to have an abortion. She stated that she has

worked with women who are dealing with marital affairs issues, citizenship issues, and high risk pregnancies, and they also see teen mothers and other difficult circumstances.

57. RESPONDENT'S REP - 8 testified that she has conducted investigational research to determine whether the Property Owner is following current law. She stated that she has conducted investigations to determine whether they provide all the services they claim to provide and also conducted investigations as to what services the Property Owner is promoting to Utah children and whether those services fall outside of Utah's general community standards. She indicated that she has conducted investigations on the Property Owner's educational efforts. She stated that she investigates how the Property Owner's programs negatively affect the citizens of Utah. She stated that these investigations are conducted through telephone calls, internet searches, and actual attendance at some of the classes provided by the Property Owner. She stated that her organization was alerted through legislative testimony to some possible compliance problems with the state's informed consent law. She stated that her organization had multiple women go into the Property Owner's locations, including the CITY-2 location, and take the informed consent class to audit the level of compliance to the statute. She stated that each of the Property Owner's locations was found to be reading the same information off of a printed card and stated that the information was found to be severely lacking in several important areas of the law. She stated that there were two distinct requirements that they brought to the attention of legislators. She stated that the first was the requirement to inform women of the fetal development of their baby. She stated that this requirement was not being done by the Property Owner. She stated that the second requirement that was lacking was the way that the Property Owner's providers would tell women how the abortion procedure would end the life of their baby and asserted it was very vague.

58. RESPONDENT'S REP - 8 testified that one of the COUNTY-1 Commissioners contacted her organization and requested that they make some phone calls to determine whether the Property Owner's charitable plan information was accurate. She stated that she personally made the majority of the telephone calls to find out if the services listed on the Property Owner's charity plan were actually being provided at the Property Owner's LOCATION-1. She stated that her organization's investigational research looked into whether the services listed on the Property Owner's website were actually being provided. She stated that based on her research, she found that the Property Owner lists certain services on their general website and if you select the link for the Property Owner's website for the LOCATION-1, it has completely different types of services listed. She asserted that there are a lot of services listed on the LOCATION-1 website that are not being performed at that location.

59. RESPONDENT'S REP - 8 testified that the website indicates that the Property Owner provides hormone replacement therapy and stated that she has called the Property Owner's LOCATION-1 and has been denied that service. She stated that the website lists infertility education and menopause and midlife testing and treatment and stated that she has called regarding infertility education and menopause and midlife testing and treatment and has been unable to get those services. She stated that she has called to obtain routine physicals and has been unable to obtain that service. She stated that she has called regarding a routine physical for a child and has been told that they do not provide that service.

60. RESPONDENT'S REP - 8 testified that the website lists vasectomies and routine physicals for men as services provided by the Property Owner. She stated that she has called the Property Owner regarding both of those services and was told that they were not provided. She stated that she made calls within the last week and made calls prior to the Board of Equalization hearing. She stated that she has made telephone calls prior to each hearing date and when a county commissioner originally requested that she conduct the investigative research. She stated that she made the telephone calls. She stated that she called regarding diabetes screening, thyroid screening, and cholesterol screening. She stated that she was referred to a full service health clinic in COUNTY-1. She stated that has been the standard answer when she calls regarding the more standard health services.

61. RESPONDENT'S REP - 8 testified that based on her investigations she determined that the services listed on the Property Owner's overall website, not the LOCATION-1 website, are the services that are provided by the Property Owner. She stated that the individual clinic websites list more expansive service offerings. She stated that she determined that the Property Owner does provide STI testing and treatment, contraception and pregnancy testing, and pelvic and cervical exams at the LOCATION-1 representing the subject property. She stated that the services listed on the Property Owner's general website are accurate but are not as expansive as listed on the website for the LOCATION-1. She stated that her organization has had people attend the informed consent classes at the LOCATION-1.

62. RESPONDENT'S REP - 8 acknowledged that she is not a health care provider and has not performed a cancer screening for any individual. She acknowledged that she is not affiliated with the County in any way. She stated that her investigation consisted of her and other individuals within her organization making telephone calls to the Property Owner's LOCATION-1 asking if they could get certain services. She stated that she made one of the telephone calls on the day prior to the Formal Hearing date and a few days prior. She did not provide dates for any other telephone calls that were made. She stated that her investigations were

based on the Property Owner's website and the telephone calls made asking for services and were not based on any other research or publications. She stated that she systematically goes through the list of services on the Property Owner's website and calls to see if those services are provided at the LOCATION-1. She stated that she has recordings of those telephone calls but acknowledged that those recordings or a log of the telephone calls were not submitted as evidence in this appeal. She acknowledged that, other than her telephone calls, she has no personal knowledge about what services patients have received at the Property Owner's LOCATION-1.

63. RESPONDENT'S REP - 9, Volunteer, ORGANIZATION-1 Utah, provided testimony on behalf of the County. She testified that she volunteered for ORGANIZATION-1 Utah because when she was ##### she had an abortion at a facility owned by the Property Owner that she immediately regretted. She stated that she was motivated to help other women facing unplanned pregnancies because the abortion was damaging to her mental health, her life, and her spirituality. She stated that in DATE she was living in CITY-3, Utah and started volunteering for ORGANIZATION-1 Utah. She stated that she started out as a sidewalk advocate handing out resources providing information regarding fetal development and alternative choices. She stated that she then moved on to be a women's support team member that provides support to other women both before and after a pregnancy. She stated that she currently runs ORGANIZATION - 2, which is a subgroup of ORGANIZATION-1 Utah that provides support to women who have had an abortion. She stated that she has worked with some women who received an abortion who were from CITY-2 and were referred to CITY-1 from the LOCATION-1 center. She stated that she has gone through an eight week healing course with these women and indicated that she observed that these women experienced significant trauma post abortion. She stated that she has conducted her eight week healing course with eight different groups in Utah that have approximately one to four women in each group. She indicated that she has also worked with women on an individual basis. She stated that the women present with various degrees of damage and trauma because of their abortion procedures. She stated that she and other women have sought out therapy in COUNTY-1 after receiving an abortion procedure. She stated that she experienced panic attacks and depression several years after her abortion procedure. She stated that some of the women she has worked with are suicidal and have used self harm, while others deal with anxiety and depression. She indicated that she did not receive post-abortive therapy services from the Property Owner. She indicated that she obtained telehealth therapy through local providers in COUNTY-1 to deal with her panic attacks and depression. She stated that the woman she worked with who had suicidal ideation obtained therapy services in COUNTY-2.

64. The County submitted a pre-hearing brief and asserted in that brief that abortion related activities have a detrimental impact on and a cost to the community. The County cited a U.S. Department of Transportation study that values each human life at greater than \$\$\$\$ per person.⁵⁷ The County's brief indicated that, in 2018, ##### lives from COUNTY-1 were terminated through abortion and cited a publication from the Utah Department of Health to support that assertion.⁵⁸ The County's brief asserted that the loss of ##### people in COUNTY-1 equates to \$\$\$\$ lost in property tax revenue in one year and the cumulative loss of property tax revenue over a ten-year period is \$\$\$\$.⁵⁹ The County's pre-hearing brief cited a Fox News article published on DATE, which found the median home price for a home in COUNTY-1 was \$\$\$\$⁶⁰ and noted that COUNTY-1 has a property tax rate for county services of ##### with a %%% residential exemption to support its calculations regarding the loss of property tax revenue.⁶¹

65. The County's pre-hearing brief also noted that the Property Owner has acknowledged that it gave money to ORGANIZATION-3 for political activity and asserted that they do so every year. The County submitted the Property Owner's 2018 Form 990, which reported grants that totaled \$\$\$\$ were made to other organizations for lobbying activities.⁶²

66. The County's pre-hearing brief asserted that the Property Owner's non-charitable activities disqualify it from exempt status because those non-charitable activities are more than de minimis and, thus, disqualify the Property Owner from tax exempt status under Utah Code Ann. §59-2-1101(7). The County cited abortion support, counseling, and referral, and legislative lobbying as examples of the Property Owner's non-charitable activities. The County acknowledged that abortions are not performed in COUNTY-1 but argued that the Property Owner is a statewide organization that does perform abortions and refers and recommends abortions in COUNTY-1 and the financial resources and tax benefits would support the non-charitable activities of the organization.⁶³

67. The County's representatives submitted a number of website posts and articles to support their assertion that women who underwent an abortion experienced mental health problems that include depression, anxiety, suicidal ideation, alcohol dependence, and illicit drug dependence and also that abortion had significant mental health impacts on men.⁶⁴

⁵⁷ Respondent's Exhibit R-4, pg. 7.

⁵⁸ Respondent's Exhibit R-4, pg. 7.

⁵⁹ Respondent's Exhibit R-4, pgs. 7-8.

⁶⁰ *Id.*

⁶¹ Respondent's Exhibit R-4, pg. 7-8.

⁶² Respondent's Exhibit R-4, pg. 8.

⁶³ *Id.*

⁶⁴ See Respondent's Exhibit R-3, PDF pgs. 8-47.

68. The Property Owner's representatives submitted a number of documents or articles to rebut the County's assertions and information regarding the impacts of an abortion on an individual's mental health.⁶⁵

69. PETITIONER'S REP-1 argued that there is a statutory framework and case law interpreting that statutory framework for determining whether a property is used for a charitable purpose. She noted that, in 2021, the Utah Legislature amended the charitable purpose language in the Utah Code to reflect the principles found in existing Utah case law. She argued that there is very little factual dispute between the parties but argued that the primary issue in this appeal is the interpretation of the applicable statutory provisions.

70. PETITIONER'S REP-1 stated that the relevant statute at issue in this appeal is Utah Code Ann. §59-2-1101. She stated that this statute provides that any property can qualify for a property tax exemption if the property is owned by a nonprofit entity, which she stated is not in dispute in this appeal. She noted that the Property Owner is organized under the federal tax code as a 501(c)(3) entity and indicated that the Property Owner files its tax returns annually as a 501(c)(3) entity. She noted that the Property Owner's Articles of Incorporation and all other filings with the state are consistent with the Utah Revised Nonprofit Act. She stated that it is operating under its bylaws and its stated mission to provide education and health care to individuals in need in the areas of family planning, cancer screening, sexually transmitted diseases, and other services on a subsidized or no cost basis. She stated that there is no dispute that the Property Owner meets the definition of nonprofit entity as that term is defined in Utah Code Ann. §59-2-1101(1)(g).

71. PETITIONER'S REP-1 argued that the services provided at the subject property are exclusively for a charitable purpose. She stated that the subject property has been owned by the Property Owner since 2000, the Property Owner has been operating in COUNTY-1 since DATE, and the Property Owner has been offering health and family planning services statewide at multiple locations since DATE. She indicated that the Property Owner now has ##### locations in Utah where it provides services and every location has received property tax exempt status, except for when the COUNTY-1 Board of Equalization denied the Property Owner's application for exemption for the 2021 tax year.

72. PETITIONER'S REP-1 stated that the issue before the Commission is whether the subject property's provision of health services is a charitable purpose because it is a gift to the community as that term is defined in Utah Code Ann. §59-2-1101. She noted that Utah Code Ann. §59-2-1101(1)(a)(i) defines charitable purpose for a nonprofit hospital or a nursing home.

⁶⁵ See Petitioner's Exhibits P-X through P-GG.

However, she stated that the Property Owner is not asserting that the subject property is a hospital or a nursing home. Thus, she argued that the applicable provision is whether the subject property is being used for a charitable purpose under Utah Code Ann. §59-2-1101(1)(a)(ii), which states “[c]haritable purposes” means . . . for property other than property described in Subsection (1)(a)(i), providing a gift to the community.” She noted that “gift to the community” is defined in Utah Code Ann. §59-2-1101(1)(e). She argued that there is no discussion in Subsection 59-2-1101(1)(e) about local standards or community standards, county preference, or county desires. She argued that there is no discretion, as asserted by COUNTY-1, to impose the County’s view of its own community values outside of the statutory test. She argued that any testimony provided by outside ORGANIZATION-1 advocacy organizations is irrelevant. She argued that the healthcare services the County does not like that are provided by the Property Owner elsewhere in the state has no bearing on the decision that the County Board of Equalization was required to make or the decision before the Commission in this appeal. She argued that the County is bound by the provisions in the Utah Code and not by their own judgment of what constitutes a gift to the community.

73. PETITIONER'S REP-1 stated that “gift to the community” as defined in Utah Code Ann. §59-1-1101(1)(e) is a two-pronged test. She argued that the subject property satisfies both prongs of the two prong test, even though the statutory language includes an “or,” so both prongs do not need to be satisfied. She stated that the first prong is whether a property lessens a government burden, or, under the second prong, whether the property meets a five part test.

74. PETITIONER'S REP-1 argued that the services provided at the subject property lessen a government burden. She argued that this assertion is supported by the fact that over ##### individuals in COUNTY-1 receive that gift annually. She argued that several studies have found that, for every dollar spent on the kinds of services provided at the subject property, the benefits to society are \$\$\$\$\$. Additionally, she stated that the COUNTY-1 Health Department has historically referred patients to the subject property for cancer screenings, sexually transmitted infection treatments, and family planning and contraceptive services because the COUNTY-1 Health Department has not been able to handle the exams. She argued that the services provided at the subject property have lessened the COUNTY-1 Health Department’s burden. She stated that the Property Owner serves anywhere from ##### to ##### patients per year. She noted that the Property Owner serves those patients that PETITIONER'S REP-9 testified the COUNTY-1 Health Department cannot serve based on their limited clinic hours of three hours a week for STI testing. She argued that the Property Owner’s provision of STI testing and treatment services is a lessening of a government burden. She also noted that PETITIONER'S REP-9 testified that there

is no question that the health care services provided by the Property Owner are a benefit to COUNTY-1.

75. PETITIONER'S REP-1 stated that the requirements of the second prong of the gift to community standard is a five part test. She stated that the factors of the five part test are: (1) the provision of a significant service to others without immediate expectation of material reward; (2) the use of the property is supported to a material degree by donations and gifts including volunteer services; (3) the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree; (4) the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objectives of the nonprofit entity that owns the property; and (5) any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property.

76. PETITIONER'S REP-1 argued that the Property Owner meets every element of the second test. She argued that the Property Owner provides a significant service to others without immediate expectation of material reward. She noted that the Property Owner provided over \$\$\$\$ of services to COUNTY-1 residents in the 2020 tax year prior to the tax year at issue. She noted that the second factor is that the use of the property is supported to a material degree by donations and gifts including volunteer services. She noted that %%% of the services provided by the Property Owner are subsidized or free. She noted that almost \$\$\$\$ was written off as uncollectible in 2020. She noted that the Property Owner never sends a patient to collections if the amounts for services received are not paid. She noted that the value of the services provided by the Property Owner for free far exceeds the value of the property tax exemption, which is approximately \$\$\$\$ per year. She stated that the third factor is that the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree. She argued that patients come to the Property Owner and are never turned away. She stated that they receive services and pay for those services on a sliding scale fee basis. She noted that a patient is not required to verify his or her income by showing a W-2 or demonstrating need. She stated that a patient only has to self report their income and the applicable sliding scale fee is determined based on the patient's self reported income. She indicated that the fourth factor is that the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objective of the nonprofit entity that owns the property. She argued that there is no question that the Property Owner meets that

standard because the beneficiaries of the charitable activity receive the charitable services at the Property Owner's clinic in LOCATION-1. She stated that the final factor is that any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property. She asserted that there are no commercial activities at the Property Owner's LOCATION-1 and the sole purpose of the LOCATION-1 is to provide health care services. She argued that the evidence and testimony demonstrates that the subject property satisfies both tests under a strict construction of the relevant statutory provisions.

77. RESPONDENT'S REP-1, the County's representative, stated that the County's position is that the services provided by the Property Owner are a disservice, rather than a service, and compound governmental burdens rather than easing governmental burdens. He stated that, after extensive deliberation and review of charitable proposals and alternative service offerings and based on the fact that the COUNTY-1 Health Department provides similar services, the COUNTY-1 Board of Equalization determined that the Property Owner's charitable plan did not meet the statutory requirements to be eligible for the preferential tax treatment. He stated that the Board of Equalization unanimously determined that the Property Owner's charitable plan was not in the best interest of COUNTY-1 and was not providing a gift to the community, was not lessening a governmental burden, and was providing a disservice rather than a significant service to the community. He stated that the Property Owner was obligated to show that the Property Owner's property and activities were used for a charitable purpose by demonstrating that those activities lessened a governmental burden or provided a significant service and met the other applicable factors of the second prong of the gift to the community test described in Utah Code Ann. §59-2-1101.

78. RESPONDENT'S REP-1 stated that Utah Code Ann. §59-2-1101 provides that a party is required to provide a gift to the community. He stated that the gift has to be the lessening of a governmental burden or the provision of a significant service, with five specific additional requirements that have to be met. He stated that the County is not disputing all five factors but is absolutely disputing that the Property Owner provides a gift to the community. He stated that the County is also disputing whether the Property Owner actually provides all the services that they claim to provide in their proposed charitable plan.

79. RESPONDENT'S REP-1 stated that the COUNTY-1 Board of Equalization determined that the Property Owner did not meet its burden of showing that it provides a gift to the community. He stated that the County is in general agreement that the statutory framework requires a gift to the community and it requires a charitable plan. He also noted that Utah Code Ann. §59-2-1101(8) grants the county legislative body rulemaking authority to effectuate the

exemption. He stated that the County has issued public statements on its website that indicate that having a 501(c)(3) does not guarantee that a taxpayer will be considered charitable for a specific proposal in COUNTY-1. He noted that websites of other counties in Utah include similar language. He also noted that the COUNTY-1 website states that the Board of Equalization will determine whether an applicant is eligible for charitable preferential tax treatment. He stated that language is mirrored on other county websites as well. He stated that it is the standard practice that the local board of equalization makes the determination. He argued that there is nobody better positioned to make the determination as to what is considered a gift to the community than the local government. He cited *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) and noted that, in that case, the City of Pleasant Grove was allowed to accept a gift monument of the Ten Commandments, while simultaneously rejecting a gift monument of the Seven Aphorisms of Summum. The County argued that, although the case was specifically about monuments and the establishment clause of the United States Constitution, it reinforces the policy that governments can engage in speech by accepting and rejecting certain gifts, recognizes the reality that some gifts have an agenda, and that the local government should make the decisions on what it considers a gift.

80. RESPONDENT'S REP-1 argued that a significant number of studies discuss the negative impacts of abortion. He noted that a study published by the Utah Department of Transportation values every human life at over \$\$\$\$\$.⁶⁶ He also noted that there are several studies that discuss the mental health consequences that individuals endure after receiving an abortion. He acknowledged that the Property Owner asserts that it does not provide abortion services in COUNTY-1. However, he asserted that the whole purpose of their services in COUNTY-1 is to hold the informed consent classes that are required by statute, so that those individuals can obtain an abortion in COUNTY-2. He also asserted that the Property Owner does not provide all the services that it claims to provide in its charitable plan. The County's representative argued that a County can reject a gift and is best positioned to make a determination as to whether a service is providing a gift to the community. He argued that the County does not view the services provided by the Property Owner as a gift because they have seen more harm than benefits to individuals from the services provided by the Property Owner.

81. PETITIONER'S REP-1 acknowledged that the County has been granted authority in Utah Code Ann. §59-2-1101(8) to adopt rules or ordinances to effectuate the exemption but argued that the County does not have the authority to expand or change the statutory definitions. She argued that the rulemaking authority is for procedural purposes in applying for an exemption

⁶⁶ Respondent's Exhibit R-4, pg. 7.

or deferral. She argued that Subsection 59-2-1101(8) does not provide the authority for the County to adopt rules or ordinances to change the definition of a gift to the community. She noted that the County submitted their existing ordinances and noted that the ordinances address the procedural requirements for applying for an exemption and there is nothing in the ordinances that suggests that they modified the standards for determining whether a charitable purpose provides a gift to the community.⁶⁷

82. RESPONDENT'S REP-1 argued that there is no limitation to procedural matters in the provisions of Utah Code Ann. §59-2-1101(8). He stated that Utah Code Ann. §59-2-1101(8) grants the County rulemaking authority. He stated that the County submitted the ordinances that were enacted by the County.⁶⁸ He noted that, in the County's post-hearing brief, there is a reference to the County's website material and other information published by the County that makes clear that the County Board of Equalization makes the determination on applications for tax exempt status.⁶⁹ He argued that the County is in the best position to determine what is a gift to COUNTY-1. He argued that the County looks at the costs and burdens to government and looks at whether something is actually lessening a government burden and whether the charitable purpose is a service or a disservice. He stated that, in this appeal, the County Board of Equalization unanimously determined that the Property Owner's charitable purpose was a disservice. He stated that the County exercised its rulemaking authority both in effectuating some procedural ordinances but also by articulating standards on their website and with their application materials that make it clear that the County Board of Equalization is the determinant of the requests and applications for tax exempt status.

83. RESPONDENT'S REP-1 acknowledged that there may be some benefits provided by the Property Owner to isolated individuals. He argued that is still not the test as to whether an entity should receive preferential tax treatment. He noted that Utah Constitution, Art. XIII, Sec. 2 requires that property taxes be uniform and equal. He stated that taxes have to be fair and if an applicant does not qualify for preferential tax treatment they do not receive the exemption. He argued that the COUNTY-1 Commissioners consider broader factors in determining whether activities are a gift to the community and whether there are more negative impacts than the benefits created by the activities. He argued that the County Board of Equalization considers whether there are other external factors or harms that are so significant that the services are not actually a benefit to the community. He stated that is what the Board of Equalization found with respect to the Property Owner. He stated that the County's witnesses

⁶⁷ Respondent's Exhibit R-5, PDF pgs. 66-67.

⁶⁸ *Id.*

⁶⁹ Respondent's Exhibit R-5, PDF pg. 63.

testified and the County presented studies that the harms caused by the Property Owner's services may result in suicidal ideation, depression, anxiety, and other mental health harms that are often borne by individuals as costs subsequent to an abortion procedure or other services offered by the Property Owner. He stated that after an analysis and extensive review, the County Board of Equalization determined that the services provided by the Property Owner were a disservice to the community and resulted in a compounding of governmental burdens rather than a lessening of governmental burdens. He argued that the real question before the Commission is whether the County Board of Equalization erred in making that determination. He argued that under all of the statutory standards, the Property Owner's application failed under a factual review based on the submitted charitable proposal.

84. PETITIONER'S REP-1 concluded by arguing that the County has not provided any quantifiable evidence of a compounding governmental burden that was created by the Property Owner in COUNTY-1. She noted that PETITIONER'S REP-9 testified that the County could not absorb the ##### patients who received STI testing and/or treatment services from the Property Owner. She argued that the Property Owner is filling a need within the Community and noted that PETITIONER'S REP-9 testified that the COUNTY-1 Department of Health board members instructed them not to expand STI screening clinic hours. She argued that there is no question that the Property Owner met and exceeded the standard for providing a gift of the community. She argued that the Board of Equalization erred and made a political decision that was not a decision based on any factor of the Utah law. She argued that there is no question that the Property Owner provides charitable services in COUNTY-1, the Board of Equalization decision should be overturned, and the Property Owner should be allowed the property tax exemption for the 2021 tax year.

APPLICABLE LAW

Utah Code Ann. §59-2-103(2)⁷⁰ provides for the assessment of property, as follows:

(2) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

Article XIII, Section 3 of the Utah Constitution exempts certain property from tax, as set forth below in relevant part:

- (1) The following are exempt from property tax . . .
 - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes

⁷⁰ This decision refers to the version of the Utah Code that became effective as of January 1, 2021 and is applicable in this appeal for the 2021 tax year. Substantial revisions were made to Utah Code Ann. §59-2-1101 effective as of January 1, 2021.

Utah Code Ann. §59-2-1101 provides that certain properties are exempt from property tax as follows, in pertinent part:

(3)(a) The following property is exempt from taxation...

- (iv) except as provided in Subsection (6) or (7), property owned by a nonprofit entity used exclusively for one or more of the following purposes:
 - (A) religious purposes;
 - (B) charitable purposes; or
 - (C) educational purposes;

....

(7) A property may not receive an exemption under Subsection (3)(a)(iv) if:

- (a) the property is used for a purpose that is not religious, charitable or educational; and
- (b) the use for a purpose that is not religious, charitable, or educational is more than de minimis.

(8) A county legislative body may adopt rules or ordinances to: (a) effectuate the exemption, deferrals, abatements, or other relief from taxation provided in this part, Part 18, Tax Deferral and Tax Abatement, or Part 19, Armed Forces Exemptions;

“Charitable purposes” is defined in Utah Code Ann. §59-2-1101(1) as follows:

(a) “Charitable purposes” means:

- (i) for property used as a nonprofit hospital or a nursing home, the standards outlined in *Howell v. County Board of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2d 880 (Utah 1994); and
- (ii) for property other than property described in Subsection (1)(a)(i), providing a gift to the community.

“Gift to the community” is defined in Utah Code Ann. §59-2-1101(1) as follows:

(e) “Gift to the community” means:

- (i) the lessening of a government burden; or
- (ii)(A) the provision of a significant service to others without immediate expectation of material reward;
- (B) the use of the property is supported to a material degree by donations and gifts including volunteer services;
- (C) the recipients of the charitable activities provided on the property are not required to pay for the assistance received, in whole or in part, except that if in part, to a material degree;
- (D) the beneficiaries of the charitable activities provided on the property are unrestricted or, if restricted, the restriction bears a reasonable relationship to the charitable objectives of the nonprofit entity that owns the property; and
- (E) any commercial activities provided on the property are subordinate or incidental to charitable activities provided on the property.

Guidance on what constitutes a “nonprofit entity” is provided in Utah Code Ann. §59-2-1101(1)(g) below:

- (i) “Nonprofit entity” means an entity:
 - (A) that is organized on a nonprofit basis, that dedicates the entity's property to the entity's nonprofit purpose, and that makes no dividend or other form of financial benefit available to a private interest;
 - (B) for which, upon dissolution, the entity’s assets are distributable only for exempt purposes under state law or to the government for a public purpose;
 - (C) that does not receive income from any source, including gifts, donations, or payments from recipients of products or services, that produces a profit to the entity in the sense that the income exceeds operating and long-term maintenance expenses; and
 - (D) for which none of the net earnings or donations made to the entity inure to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under Section 501(c)(3), Internal Revenue Code.
- (ii) “Nonprofit entity” includes an entity:
 - (A) if the entity is treated as a disregarded entity for federal income tax purposes, wholly owned by, and controlled under the direction of, a nonprofit entity; and
 - (B) for which none of the net earnings and profits of the entity inure to the benefit of any person other than a nonprofit entity.

Restrictions on a nonprofit entity that engages in political activity being eligible for an exclusive use property tax exemption are as found in Utah Code Ann. §59-2-1101(6):

- (6)(a) A property may not receive an exemption under Subsection (3)(a)(iv) if:
 - (i) the nonprofit entity that owns the property participates or intervenes in any political campaign on behalf of or in opposition to any candidate for public office, including the publishing or distribution of statements; or
 - (ii) a substantial part of the activities of the nonprofit entity that owns the property consists of carrying on propaganda or otherwise attempting to influence legislation, except as provided under Subsection 501(h), Internal Revenue Code.
- (b) Whether a nonprofit entity is engaged in an activity described in Subsection (6)(a) shall be determined using the standards described in Section 501, Internal Revenue Code.

The procedures for appealing a decision of the County Board of Equalization regarding an exemption are as follows in Utah Code Ann. §59-2-1102:

- (7) Any property owner dissatisfied with the decision of the county board of equalization regarding any reduction or exemption may appeal to the commission under Section 59-2-1006.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1), below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, or a tax

relief decision made under designated decision-making authority as described in Section 59-2-1101, may appeal that decision to the commission

In determining whether a property is entitled to an exemption, courts have strictly construed exemptions against the property owner. See *Board of Equalization of COUNTY-1 v. Intermountain Health Care, Inc. and Tax Comm'n of the State of Utah*, 709 P.2d 265 (Utah 1985), in which the Court stated that a “liberal construction of exemption provisions results in the loss of a major source of municipal revenue and places a greater burden on nonexempt taxpayers, thus, these provisions have generally been strictly construed.” See also the Utah Supreme Court’s decision in *Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of COUNTY-2*, 919 P.2d 556, 558 (1996) in which the Court noted that the “exemption provided in Article XIII, section 2(2)(c) is an exception to the general rule that all land is taxable. Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemptions. The burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption’s objectives (internal citations omitted).” See also *Butler v. State Tax Comm’n*, 367 P.2d 852, 854 (Utah 1962) in which the court found that a party claiming an exemption has the burden of proof and must demonstrate facts to support the application of the exemption.

CONCLUSIONS OF LAW

1. Utah Code Ann. §59-2-103 provides that all tangible property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, unless otherwise provided by law.
2. Utah law provides several exemptions from property tax including the exclusive use exemption at issue in this appeal. A property may qualify for the exclusive use exemption if the property is owned by a nonprofit entity and used exclusively for religious, charitable, or educational purposes. See Utah Constitution, Art. XIII, Sec. 3 and Utah Code Ann. §59-2-1101(3).
3. Utah Code Ann. §59-2-1101(1)(g) outlines the requirements to be considered a nonprofit entity. The Property Owner is a nonprofit federal charitable tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code (codified at 26 U.S.C. §501(c)(3)). It is incorporated under the Utah Revised Nonprofit Corporation Act and none of the net earnings or profits inure to the benefit of any person other than a nonprofit entity. The subject property is dedicated to the entity’s nonprofit purpose and there was no indication, nor was it argued or contested by the County, that the Property Owner made any dividend or other forms of financial benefit available to a private interest. As a nonprofit federal charitable tax-exempt entity under

Section 501(c)(3) of the Internal Revenue Code, none of the net earnings or donations made to the entity may inure to the benefit of private shareholders or other individuals. The County did not dispute that the subject property was owned by a nonprofit entity as that term is defined in Utah Code Ann. §59-2-1101(1)(g).

4. Utah Code Ann. §59-2-1101(3)(a)(iv) provides that a property is exempt from taxation if the property owned by a nonprofit entity is used exclusively for charitable purposes. Thus, the Commission must determine whether the subject property was “used exclusively” and for “charitable purposes” for the 2021 tax year. Effective January 1, 2021, the Utah Legislature adopted a statutory definition of “charitable purposes,” which incorporates the “gift to the community” language. Utah Code Subsection 59-2-1101(1)(a)(ii) provides that for property, such as the subject property, that is not a nonprofit hospital or nursing home⁷¹, “charitable purposes” means “providing a gift to the community.” However, the Legislature further provided a statutory definition of what constitutes a “gift to the community.” Subsection 59-2-1101(1)(e) defines “gift to the community” to be: “(i) the lessening of a government burden; or” as an alternative, a five-part test described in Subsection (1)(e)(ii).

5. The Property Owner’s representative argued that the property qualifies for the exemption because it is “used exclusively” for “charitable purposes” based on the statutory provisions of Utah Code Ann. §59-2-1101(3)(a)(iv) and the applicable definitions of “charitable purposes” and “gift to the community” as those terms are defined in Utah Code Ann. §59-2-1101(1). However, the County argued that the Property Owner’s use of the property did not provide a “gift to the community” because the Property Owner’s charitable purposes did not lessen a governmental burden, instead it compounded governmental burdens, and provided a disservice to the community. In addition, the County argued that it should be the COUNTY-1 Board of Equalization, which is composed of the COUNTY-1 Commissioners, that should determine what constitutes a “gift to the community” in COUNTY-1 and not the State Tax Commission.

6. The Commission finds that the facts presented in this case demonstrate the Property Owner’s provision of family planning and reproductive health care services on a low cost or no cost basis lessens a governmental burden. The Property Owner provided family planning and/or reproductive health care services at the LOCATION-1 to ##### individuals

⁷¹ Although the Property Owner provided medical services at the subject property, the Property Owner conceded the subject property was not a “hospital” or “nursing home” so neither party argued that Subsection 59-2-1101(1)(a)(i) applied in this matter, and the applicable charitable purposes definition is the definition described in Subsection 59-2-1101(1)(a)(ii).

during 2020.⁷² The Property Owner provided \$\$\$\$ (approximately \$\$\$ per patient) in financial assistance with another \$\$\$\$ written off as bad debt during 2020 because the Property Owner does not send patients to collections.⁷³ Additionally, the Property Owner provided family planning and/or reproductive health care services to approximately ##### patients in 2019, %%% of whom were uninsured, and provided a significant number of STI tests and treatments, as well as cervical and breast cancer screenings, pregnancy testing and information services, and contraception.⁷⁴ Furthermore, the testimony and evidence presented in this appeal demonstrate that there was more need for cost effective reproductive health care services for patients of all ages than the COUNTY-1 Health Department did or could, in fact, provide. The Property Owner's status as a former and future recipient of GRANT-1 funding, which subsidizes the costs of the health care services provided and allows the Property Owner to provide such services at a lower subsidized rate, as well as the inability of other organizations to receive those funds, further demonstrates that the Property Owner's charitable purposes lessen a governmental burden and, therefore, provide a gift to the community. Based on these facts, it is clear that the subject property lessens a government burden and, thus, provides a "gift to the community" as that term is defined in Subsection 59-2-1101(1)(e)(i).

7. Under the statutory definition, "gift to the community" may be met under either Subsection (1)(e)(i) by lessening a government burden, or under Subsection (1)(e)(ii), which is the five part test. The Property Owner's representatives also asserted that the Property Owner's charitable purposes met the definition of providing a gift to the community under an analysis of the five part test described in Subsection (1)(e)(ii). The County did not provide an analysis as to whether the Property Owner's charitable purposes were a gift to the community under the five part test described in Subsection (1)(e)(ii). However, because the Commission finds that the subject property's charitable purposes provide a gift to the community under Subsection (1)(e)(i) by lessening a government burden, the Commission need not look to see if it also qualifies under Subsection (1)(e)(ii). Therefore, because the subject property provides a "gift to the community" based on the statutory definition under Subsection 59-2-1101(1)(e)(i), the Commission finds that the Property Owner meets the statutory definition of being used for "charitable purposes" as that term is defined under Subsection 59-2-1101(1)(a).

8. The County's representatives also asserted that the elected legislative body of COUNTY-1 should be the one to decide what lessens government burdens, serves the public interest, and constitutes a charitable gift within its jurisdiction. The County argued that the

⁷² Petitioner's Exhibit P-A, pg. 4.

⁷³ Petitioner's Exhibit P-A, pgs. 4, 6.

⁷⁴ Petitioner's Exhibit P-C, pg. 2.

County Board of Equalization's decision should be upheld based on issues of local control. However, there is no support in the statute or case law for the determination of qualification for this exemption to be subject to a local interpretation regarding the definition of "charitable purposes" and "gift to the community." The Utah Constitution, Art. XIII, Utah Code Ann. §59-2-103, and Utah Code Ann. §59-2-1101 set out the constitutional and statutory standards. Utah Constitution, Art. XIII, Sec. 2, and Utah Code Ann. §59-2-103 require that property taxes be uniform and equal. Furthermore, Utah Code Ann. §59-2-1101(1)(a) and (e) provide express definitions of "charitable purposes" and "gift to the community," which the Property Owner has met for the subject property. The Commission finds that expanding the analysis beyond the existing statute and case law to an application of local community standards for determining whether a property qualifies for exemption, would result in property not being subject to the statutory and constitutional requirement of uniformity in assessment. The Property Owner owns seven locations in Utah. All seven locations received a property tax exemption until the COUNTY-1 Board of Equalization denied the application for the subject property in 2021. If the application of a community standard is allowed, and absent other differences in property that could affect the eligibility for exemption, property could be taxed differently depending on the county in which the property is located, which is in violation of the Utah constitutional and statutory provisions that require property taxes to be uniformly and equally assessed.

9. In accordance with Utah Code Ann. §59-2-1101(3)(a)(iv), property is exempt if it is owned by a nonprofit entity and used exclusively for charitable purposes. As noted above, the subject property is owned by a nonprofit entity and, based on the statutory definitions, is used for charitable purposes, but the Commission must also consider if the property is "used exclusively" for those charitable purposes. A charitable use must be the exclusive use, not just the primary use, for a property to be eligible for the property tax exemption. See *Loyal Order of Moose, # 259 v. Cnty. Bd. of Equalization of Salt Lake Cnty.*, 657 P.2d 257 (Utah 1982). The County asserted that the Property Owner conducted non-charitable activities and asserted that those non-charitable activities disqualify the subject property from receiving a property tax exemption because those non-charitable activities are more than de minimis. The County cited abortion support, counseling, and referral, and legislative lobbying as examples of the Property Owner's non-charitable activities. The stated charitable purposes of the subject property are to provide patients in COUNTY-1 a full range of professional, personalized family planning and reproductive health care services regardless of ability to pay and the facts presented in this appeal demonstrate that those charitable services were being provided on a low or no cost basis. Furthermore, the Commission finds that in determining whether the subject property is "used

exclusively” for charitable purposes, it is appropriate to consider the use of the specific property that is the subject of the appeal, not the use of property that is owned by the Property Owner but is not the subject of the appeal. All of the activities conducted on the subject property are within the stated charitable purposes of the Property Owner and there are no non charitable activities conducted on the subject property. Only those properties which are subject to an appeal before us should be considered. The Commission finds that the subject property was used exclusively for its stated charitable purposes.

10. The Commission also needs to consider in this appeal whether the Property Owner’s property tax exemption is barred by Utah Code Ann. §59-2-1101(6), which indicates that a nonprofit entity may not receive the exemption if the entity intervenes in a political campaign on behalf of or in opposition to any candidate for public office, or if a substantial part of the activities of the nonprofit entity consists of carrying on propaganda or otherwise attempting to influence legislation, except as provided under Subsection 501(h) of the Internal Revenue Code. Pursuant to Subsection 59-2-1101(6)(b), “Whether a nonprofit entity is engaged in an activity described in Subsection (6)(a) shall be determined using the standards described in Section 501, Internal Revenue Code.” Section 501 provides that 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for elective public office. The Property Owner testified that it does not participate in or intervene in any political campaigns on behalf of, or in opposition to, candidates for political office and this was not refuted by the County.

11. In addition, Section 501 provides guidance on what constitutes making a substantial attempt to influence legislation or “lobbying.” Pursuant to Section 501 of the Internal Revenue Code, a Section 501(c)(3) organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation. However, organizations may involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner.⁷⁵ The Property Owner in this matter has represented that no substantial part of its activities are political or otherwise attempt to influence legislation.⁷⁶ In support of this claim, the Property Owner provided a copy of its Federal Form 990. The Property Owner claimed on Schedule C of Federal Form 990

⁷⁵ See <https://www.irs.gov/charities-non-profits/lobbying>.

⁷⁶ See Petitioner’s Exhibit P-GG, page 3.

the sum of \$\$\$\$ paid to another organization for lobbying in the fiscal year ending DATE. The Property Owner had also claimed on its Federal Form 990 \$\$\$\$ in exempt purpose expenditures for the fiscal year ending DATE. Under the Internal Revenue Code Section 501(h) expenditure test, the \$\$\$\$ expenditure for lobbying is far lower than the allowable percentage of lobbying to exempt purpose expenditures and would not preclude the Property Owner from qualifying for the exemption.⁷⁷

12. Based on the foregoing, the Commission finds that the Property Owner has sufficiently demonstrated that the subject property qualifies for an exemption from property tax based on the express statutory provisions of Utah Code Ann. §59-2-1101 because the subject property is a property that is owned by a nonprofit entity and is used exclusively for charitable purposes as that term is defined in Utah Code Ann. §59-2-1101.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that, for the 2021 tax year, the subject property is exempt from property tax. The COUNTY-1 Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this ____ day of ____, 2024.

⁷⁷ Under the Internal Revenue Code Sec. 501(h) expenditure test, the extent of an organization's lobbying activity will not jeopardize its tax-exempt status provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911. Under this test for an organization that incurs between \$1,500,000 and \$17,000,000 in expenditures towards its exempt purpose, which is the case with the Property Owner, the organization could expend up to \$\$\$\$ towards lobbying, plus %%% of the exempt purpose expenditures over \$\$\$\$ without exceeding the amount in Section 4911. See <https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test>. The \$\$\$\$ of expenditures is clearly under this limit.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.