

No. 23-2246

In the
United States Court of Appeals for the Eighth Circuit

MAYO CLINIC, A MINNESOTA CORPORATION, ON ITS OWN BEHALF AND AS
SUCCESSOR IN INTEREST TO MAYO FOUNDATION,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,

Defendant-Appellant.

On Appeal from the United States District Court for the District of Minnesota
Civ. No. 16-cv-03113; Hon. Eric. C. Tostrud

RESPONSE BRIEF FOR PLAINTIFF-APPELLEE MAYO CLINIC

Mark P. Rotatori
Nicole C. Henning
Jason Z. Zhou
JONES DAY
110 North Wacker Drive, Suite 4800
Chicago, IL 60606
Tel: (312) 782-3939
Fax: (312) 782-8585
mprotatori@jonesday.com
nhenning@jonesday.com
jzhou@jonesday.com

Erin Sindberg Porter
90 South 7th Street, Suite 4950
Minneapolis, MN 55402
Tel: (612) 217-8800
Fax: (844) 345-3178
esindbergporter@jonesday.com

Counsel for Plaintiff-Appellee Mayo Clinic

SUMMARY OF THE CASE

Plaintiff-Appellee Mayo Clinic (“Mayo”) operates five world-renowned graduate medical schools that operate hand-in-glove with its world-class medical facilities. This appeal concerns Mayo’s eligibility for a tax exemption available to educational organizations under Internal Revenue Code section 514(c)(9)(C)(i). In the prior appeal in this dispute, this Court held that to be eligible, Mayo must be organized “exclusively” for educational purposes as that term is used in the relevant regulations, meaning: (i) education must be Mayo’s “primary purpose,” and (ii) Mayo must have no “substantial” and “noneducational” functions. *Mayo Clinic v. United States*, 997 F.3d 789, 800–02 (8th Cir. 2021). Following a week-long bench trial, the District Court issued a nearly hundred-page order explaining in detail why the evidence at trial established that Mayo, with its uniquely integrated educational and health-care functions, met that test. The District Court found that Mayo did not have any substantial “noneducational” functions, as patient care, while substantial, was not “noneducational” at Mayo, and concluded that Mayo’s “primary purpose” was education because education is Mayo’s substantial, most important, and principal purpose. The District Court’s judgment should be affirmed.

Mayo agrees with Appellant that in light of the complex factual record, oral argument could benefit the Panel. Given that the Court has already provided a legal framework for this dispute, Mayo suggests 15 minutes of oral argument per side.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Mayo Clinic is a not-for-profit corporation. It does not have a parent company and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE ISSUES

Issue 1: Was the District Court correct to conclude that Mayo has no substantial noneducational purpose because patient care, while substantial, is not noneducational at Mayo?

Most Apposite Authorities

Mayo Clinic v. United States, 997 F.3d 789 (8th Cir. 2021)

Dumaine Farms v. Comm’r, 73 T.C. 650 (1980)

26 C.F.R. § 1.501(c)(3)-1(d)(3)(ii)

26 U.S.C. § 170

Issue 2: Was the District Court correct to conclude that Mayo’s primary purpose was education because “primary,” in this context, means “substantial”? If not, was there evidence to support the District Court’s finding that Mayo’s “most important” and “principal” purpose is education?

Most Apposite Authorities

Bd. of Governors of Fed. Rsrv. Sys. v. Agnew, 329 U.S. 441 (1947)

In re Kellogg Brown & Root, Inc., 756 F.3d 754 (D.C. Cir. 2014)

Mayo Clinic v. United States, 997 F.3d 789 (8th Cir. 2021)

26 C.F.R. § 1.501(c)(3)-1(d)(3)(ii)

STATEMENT OF THE CASE

Plaintiff-Appellee Mayo Clinic (“Mayo”) brought this lawsuit against Defendant-Appellant United States of America (the “Government”) to obtain tax refunds totaling \$11,501,621 for tax years 2003, 2005-2007, and 2010-2012 (the “Refund Years”). (App. 145, R.Doc. 331, at 1.) The basis for the refund request is that Mayo—a nationwide leader in medical education—is an “educational organization” under section 170(b)(1)(A)(ii) of the Internal Revenue Code (“IRC”), and thus its income from debt-financed property is excluded from unrelated business income tax (“UBIT”) under IRC section 514(c)(9)(C).

I. THE 2020 APPEAL

In its prior appeal in this matter, the Government argued that the District Court erred in granting summary judgment to Mayo because Mayo undisputedly has a substantial health-care function, and thus could not possibly be an “educational organization” qualifying for the UBIT exemption. The Government conceded that Mayo met certain of the statute’s requirements (*i.e.*, that Mayo maintain a regular faculty and curriculum and have a regularly enrolled body of pupils in attendance, *see* 26 U.S.C. §170(b)(1)(A)(ii)). Dkt. 19-3189 (8th Cir.), Entry ID: 4872507 (Brief of the Appellant) at 35-36. Yet, it argued that Mayo could not be an “educational organization” because its “primary” function was healthcare, and healthcare was not “merely incidental” to education. *Id.* at 35-36. It further argued that Mayo did not

meet the requirements of a related Treasury Regulation requiring educational activities at exempt organizations primarily take the form of “formal instruction.” (*Id.* at 38) (citing Treas. Reg. §1.170A-9(c)(1)).

This Court reversed the District Court’s grant of summary judgment for Mayo and remanded for further factfinding. *Mayo Clinic v. United States*, 997 F.3d 789, 802 (8th Cir. 2021). The Court started from the premise that, to qualify for the UBIT exception, Mayo must be “organized and operated exclusively” for educational purposes, but clarified that the term “exclusively” has a specialized, “non-literal construction” in this context. *Id.* at 800-01. The Court stated that the “[p]roper frame of reference” for defining an exclusively educational organization under 170(b)(1)(A)(ii) is “[t]he current regulations interpreting the term ‘organized and operated exclusively’ in IRC § 501(c)(3),” *i.e.*, Treasury Regulations §§ 1.501(c)(3)-1(a) and (d)(3)(i)-(ii). *Id.* at 800. Those regulations use organizations such as zoos, museums, and symphonies as examples of “exclusively” educational organizations. *See* 26 C.F.R. § 1.501(d)(3)(ii).

The Court agreed with Mayo that the Treasury Department’s regulation requiring “formal instruction” went beyond the statute, and invalidated that portion of the regulation. *Mayo*, 997 F.3d at 800. The Court clarified that Mayo need only satisfy a two-part test to qualify as exclusively educational: it must (i) have a “primary” purpose of education and (ii) have no substantial, noneducational

purposes (*i.e.*, its noneducational activities must be “merely incidental” to its educational purposes). *Id.* at 800-02. The Court noted: “[t]hat some of [Mayo’s] educational purposes and functions also fall within other charitable categories—and vice versa—would not disqualify it from being an educational organization.” *Id.* at 802. Thus, the proper inquiry is whether any exclusively *non-educational* purpose at Mayo is substantial. *Id.*

After setting forth this guidance, this Court found the record inadequate to permit resolution as a matter of law. After commenting that “Mayo’s status as an academic medical center means that its medical and educational purposes—and the operations supporting those functions—are inextricably intertwined,” this Court remanded to the District Court to try to “[s]eparat[e] out the wheat from the chaff—the educational from the noneducational[.]” *Id.* (citing *United States v. Mayo Found. for Med. Educ. & Research*, 282 F. Supp. 2d 997, 1000-05, 1013-15 (D. Minn. 2003)). The Court left to the District Court to determine whether “primary” purpose requires education to be Mayo’s “most important” purpose, as the Government claimed, or a “substantial” purpose, as Mayo argued. *Id.* The Court left “these difficult and fact-intensive issues of fact and law to the district court on remand.” *Id.*

II. THE DISTRICT COURT’S FINDINGS ON REMAND

On remand, the District Court conducted a week-long bench trial involving hundreds of admitted exhibits and the testimony of four witnesses. (App. 146, R.Doc. 331, at 2.) Sifting through and parsing this evidence, the District Court, in an extensive, well-reasoned, 98-page opinion, found that Mayo met the requirements for an exclusively educational organization that qualifies for the UBIT exemption. (App. 241, R.Doc. 331, at 97.)

A. The District Court’s Factual Findings Regarding Mayo’s Educational Purpose

Over dozens of pages of detailed factfinding regarding the role of education at Mayo, the District Court concluded that Mayo is, and historically has been, an organization focused on educating the next generation of healthcare providers. The District Court found unpersuasive the Government’s arguments that Mayo was nothing more than a health-care institution dressing up its health-care mission as an educational one. Mayo highlights a few key findings here.

First, the District Court exhaustively analyzed Mayo’s organizational and governance documents, which demonstrate education’s central role at Mayo since its founding in 1863.

- “Education has been an integral part of the Mayo Clinic mission from its earliest days. Mayo’s founders shared the conviction that the highest quality patient care is best achieved in an environment of academic inquiry and continuous learning.” (App. 147, R.Doc. 331, at 3.)

- In 1919, “the Mayo Brothers executed a Deed of Gift [to Mayo] ... [t]he purpose of [which] was to facilitate education and research The purpose of the Deed of Gift would become the purpose of [Mayo] throughout the Refund Years. The Deed of Gift placed two conditions on the gift to [Mayo]. First, if [Mayo] ... was unable to fulfill the purpose of the gift, it could transfer the gift ‘to a Medical School or to a University or College maintaining one.’ Second, the Deed of Gift ... required reversion of the gift to the Mayo Brothers ... if the purposes of the gift were not fulfilled.... [The] gift [has] never been transferred to a medical school, university, or college and [has] never reverted to the Mayo Brothers.” (App. 150, R.Doc. 331, at 6) (internal citations omitted).
- “[T]he ... educational mission and purposes of Mayo Clinic [are] set forth in its Articles of Incorporation and Bylaws.” (App. 164, R.Doc. 331, at 20.)

The District Court likewise found Mayo’s operations reflect the significance Mayo placed on education. The District Court credited that “[b]etween 2003 and 2012, the Mayo Clinic College of Medicine and Science ... comprised five schools ... [which] were legally housed in the parent entity ... due to the importance Mayo placed on education and ... the system-wide nature of education at Mayo.” (App. 167-68, R.Doc. 331, at 23-24.) The District Court also addressed a number of “[f]actors that show the importance placed on education at Mayo,” (App. 172, R.Doc. 331, at 28), including:

- The Quality of Mayo’s Schools: The District Court found that “Mayo’s schools were high-quality,” as evidenced by the fact that (i) “Mayo was most likely the best in the country” with respect to the duration of its school’s accreditation periods and the lack of citations received during accreditation, (ii) “[d]uring the Refund Years, for a number ... specialty programs, Mayo had the highest first-time board certification rate in the country,” and (iii) “[d]uring the Refund Years, Mayo both had a high volume of patients and a large population of patients with complex or rare diseases,” which are

essential to “the quality of medical education programs.” (App. 172-73, R.Doc. 331, at 28-29.)

- The Growth of Mayo’s Schools: The District Court found that “Mayo’s schools grew significantly from 1969 through the refund years.” (App. 174-76, R.Doc. 331, at 30-32.)
- Mayo’s Willingness to Invest Its Schools: The District Court found that “Mayo invested substantially in the growth of its schools during the Refund Years,” as evidenced by the fact that (i) Mayo exceeded the cap on the “number of residents and fellows for which [it] could receive reimbursement” from the government, (ii) Mayo spent “about \$5 million per year” to “fly in up to fifty congenital heart disease patients from Mongolia every year” so that its cardiovascular surgery fellows could treat the requisite “number of patients with congenital heart disease before taking their board examinations,” and (iii) Mayo spent “about \$2 million per year” to provide genetic counseling internships to students at the University of Minnesota. (App. 176-77, R.Doc. 331, at 32-33.)
- Reputation of Mayo’s Schools: The District Court found that Mayo’s schools are world-renowned, as evidenced by the fact that (i) “Mayo is recognized as one of the best academic medical centers in the world,” (ii) “Mayo’s Medical School is consistently ranked in the top twenty in the country,” (iii) “during the Refund Years, Mayo had more individuals serving in leadership roles in graduate medical education and related certifying bodies than any other academic medical center in the country,” (iv) “Mayo attracts students from all over the world,” (v) “[a]s of 2007, over 84 countries have had a Mayo graduate serve as minister of health,” and (vi) “Mayo conducts almost 5% of all clinical trials in America, and almost 2% of all clinical trials in the world.” (App. 177-78, R.Doc. 331, at 33-34.)
- Mayo’s Institutional Expectations Regarding Education: The District Court found Mayo’s high institutional expectations regarding support of education to be evidenced by the fact that “Mayo expects its physicians to participate in education” and “to obtain academic rank,” (App. 180, R.Doc. 331, at 36), and that Mayo’s physicians are not paid based on patients treated, (App. 196, R.Doc. 331, at 52).

The District Court also found it telling that Mayo invested significantly in research and education. The District Court highlighted that “[i]n each of the Refund

Years, Mayo spent far more than 3.5% of the fair market value of its endowment on education,”¹ including, under the “typical way to calculate an endowment,” more than 29.7% in each Refund Year, (App. 184-86, R.Doc. 331, at 40-42).

Finally, the District Court found evidence that Mayo prioritizes education above its other functions, and that those other functions serve educational purposes. The District Court observed that the “facilities at Mayo are predominantly used for educational purposes,” (App. 225, R.Doc. 331, at 81), that “[d]uring each of the Refund Years, Mayo’s research and education missions operated at a significant net financial loss,” (App. 182, R.Doc. 331, at 38), that “Mayo’s net income from its clinical practice did not cover [these] losses,” (App. 182-83, R.Doc. 331, at 38-39), that “Mayo could provide clinical care much more efficiently without residents and trainees,” (App. 177, R.Doc. 331, at 33), and that, nevertheless, “the medical treatment and research at Mayo nearly always serves an educational purpose—even when involving students renders healthcare more expensive.” (App. 225, R.Doc. 331, at 81.)

B. The District Court’s Legal Conclusion That Primary, In This Context, Means Substantial

This Court “left open the legal question of whether to interpret the term

¹ See 26 C.F.R. § 1.170A-9(d)(2)(v)(B) (defining an organization as “primarily” a research organization if it spends more than 3.5% of its endowment for research purposes).

‘primary’ to mean ‘a substantial purpose’ of the organization or the ‘most important purpose’ of the organization. *Mayo*, 997 F.3d at 802.” (App. 219, R.Doc. 331, at 75.) The District Court found primary to mean substantial, and set forth several reasons supporting its interpretation. *First*, the District Court noted that the Supreme Court, in *Bd. of Governors of Fed. Rsrv. Sys. v. Agnew*, 329 U.S. 441, 449 (1947), had previously interpreted “primarily” to mean “substantially.” (*Id.*)

Second, the District Court found that the Treasury Regulations this Court previously identified as the “proper frame of reference” for defining an educational organization under 170(b)(1)(A)(ii), “strongly suggest that ‘primary’ means ‘substantial.’” (App. 220, R.Doc. 331, at 76.)

Third, the District Court explained how its interpretation was supported by more recent cases, such as *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014) and *Dumaine Farms v. Comm’r*, 73 T.C. 650 (1980). Specifically, the District Court relied on the “core reasoning” in *Kellogg*, which addressed the impracticality of ascribing a single, principal purpose to human activities motivated by multiple overlapping purposes. (App. 221, R.Doc. 331, at 77.) The District Court likewise relied on *Dumaine Farms*, which “did not conduct a searching inquiry into whether farming or conservation was a more important purpose at Dumaine Farms” and instead analyzed “whether each substantial activity ... [was] directed towards

the accomplishment of one or more exempt purposes.” (App. 222, R.Doc. 331, at 78).

Fourth, the District Court found that the “legislative and judicial history [this Court] cited better support the conclusion that ‘primary’ means ‘substantial.’” (*Id.*) The District Court explained that this history “does not imply a rigid and precise weighing of which purpose an organization serves most, which purpose is second in hierarchy, [etc., but] a roomier standard designed to suss out whether an organization’s substantial function is [educational].” (App. 223, R.Doc. 331, at 79.)

Fifth, the District Court explained that defining primary to mean substantial “makes better sense when one considers that the next part of the test for [exclusivity] ... is whether the organization has another substantial function that [is non-charitable].” (*Id.*) Thus, the District Court reasoned, “[t]here is no need to determine in step one ... whether some other purpose outweighs the charitable purpose Any [] substantial, non-charitable activity will mean that an organization is not ‘exclusively’ charitable whether or not the substantial purpose is more or less important than the charitable purpose.” (*Id.*)

Sixth, the District Court found the Government’s citation to *Malat v. Riddell*, 383 U.S. 569 (1966) (per curiam), to argue that primary should mean “most important” or “principal,” was “not useful here,” because *Malat* involved a “binary

legislative regime.” (App. 224, R.Doc. 331, at 80.) By contrast, the “issue here is not binary; it is considerably more nuanced.” (*Id.*)

Finally, the District Court found that even “[i]f ‘primary’ meant ‘most important,’ [it] would still find [as fact] that Mayo’s most important or principal purpose is education, for the same facts and reasons that led [it] to conclude that education is Mayo’s substantial purpose.” (App. 229, R.Doc. 331, at 85, n.5.)

C. The District Court’s Factual Finding That Patient Care Is Not “Noneducational” At Mayo

The District Court next considered the second portion of this Court’s test—that Mayo have no substantial, noneducational purposes.

The District Court found that Mayo has no substantial, noneducational purpose because patient care, while “certainly substantial, [] is not noneducational at Mayo.” (App. 233, R.Doc. 331, at 89.) As the District Court explained, “at trial, the evidence did not identify a ‘substantial’ clinical practice function at Mayo that did not further the goal of providing training and education to the students at its colleges.” (App. 234, R.Doc. 331, at 90.) Thus, unlike other organizations, which may integrate education and patient care in limited ways, the District Court found that Mayo fully integrates patient care and education in all aspects of its organization, and “join[ed] every court to have reviewed the issue in finding [] Mayo’s educational functions [to be] inextricably intertwined with its other functions.” (App. 228, R.Doc. 331, at 84.)

In reaching this conclusion, the District Court highlighted the abundance of evidence reflecting the complete integration of education and patient care at Mayo. First, the District Court noted that integration was memorialized in Mayo's organizational and governance documents:

- “During the Refund Years, the Bylaws of the Mayo parent entity contained a historical Preamble ... intended to show that the purpose of the organization is the integration of education, research, and clinical practice.” (App. 162, R.Doc. 331, at 18.)
- “During the Refund Years, Mayo had a Mission Statement ... [that] set forth the purpose of Mayo.... Although the initial phrase ... changed during the Refund Years, the integration of education, research, and clinical practice never changed. That portion of the Mission Statement was, is, and will likely always be the purpose of Mayo.” (App. 166, R.Doc. 331, at 22.)

The District Court further found that Mayo lived up to these ideals in practice. For instance, the District Court highlighted that “[t]he primary responsibility of [Mayo's] President/CEO was to ... ensur[e] that Mayo met the needs of its patients every day through integrating clinical practice, education, and research” and to “keep[] the integration of Mayo's three-part mission front of mind during every initiative and ... decision.” (App. 164, R.Doc. 331, at 20.) “This meant that every initiative, old or new, was reviewed to determine if it effectively integrated education, research, and clinical practice.” (App. 165, R.Doc. 331, at 21.)

The District Court was likewise persuaded by the testimony of Mayo's expert, Chip Hurley, who “relied on a study performed by the national consulting firm ECG to assess the level of integration at Mayo.” (App. 196, R.Doc. 331, at 52.) The study

“identified five criteria by which it measured integration.” (*Id.*) Under the study, an academic medical center was considered “more integrated if it satisfied just two of the five criteria.” (App. 196, R.Doc. 331, at 52.) The District Court observed that “Mr. Hurley applied the five criteria to Mayo and determined that Mayo met all five criteria. In other words, Mayo is fully integrated according to the ECG Study’s criteria.” (*Id.*)

Thus, “education perfuses [Mayo’s patient care and research] purposes everywhere they occur,” (App. 230, R.Doc. 331, at 86), and “is at the heart of what Mayo does every day.” (App. 225, R.Doc. 331, at 81.) “Students at [Mayo’s] Schools are taught in classrooms and ‘basically anywhere that there’s patient care,’ [including] the patient’s bedside, outpatient clinics, operating rooms, clinical wards, or even in the hallway[, and t]hus, education occurs almost everywhere at Mayo.” (App. 168, R.Doc. 331, at 24.) Indeed, “[i]t would be unusual for a student from any of Mayo’s Schools not to be involved in the care of a Mayo patient,” (App. 195, R.Doc. 331, at 51), and “extraordinarily rare not to have a student involved in a research study.” (App. 181, R.Doc. 331, at 37.)

And, even in those rare cases where a student may not be directly involved in the care of a patient, the District Court found that the care nevertheless serves Mayo’s educational ends. The District Court credited testimony that “[a] large diverse patient population brings with it meaningful numbers of patients who have

complex and rare medical diseases” and that such a “population is necessary to Mayo’s education and research missions.” (App. 194, R.Doc. 331, at 50.) Thus, “medical treatment and research at Mayo nearly always serves an educational purpose.” (App. 225, R.Doc. 331, at 81.)

Finally, the District Court also reviewed Mayo’s less significant functions at its subsidiaries, and found that they likewise supported Mayo’s educational ends. Specifically, the District Court found:

- that “Mayo Insurance Company, Ltd. supports Mayo’s educational purpose by providing malpractice coverage for all residents, fellows, and other students.” (App. 189, R.Doc. 331, at 45.)
- that the entity providing Mayo’s laboratory testing services supports Mayo’s educational purposes both directly, through the involvement of “residents or other medical technician students” in testing, and indirectly, by “help[ing] Mayo locate and attract patients with complex specialty and subspecialty conditions, which is necessary for its educational programs.” (App. 189-90, R.Doc. 331, at 45-46.)
- that “Gold Cross Entities,” which contain “three Mayo ambulance services,” provide clinical training opportunities to Mayo’s prehospital medicine and pediatric residents and fellows and Mayo’s emergency medical technician students. (App. 190-91, R.Doc. 331, at 46-47.)
- that “Charter House, a Mayo continuing care retirement center” provides clinical training to Mayo’s geriatric medicine residents and fellows. (App. 191, R.Doc. 331, at 47.)
- that Mayo Clinic Health System supports Mayo’s educational mission by enlarging Mayo’s patient population and catchment area. The District Court highlighted testimony that “[a] large catchment area ... allows Mayo to train more students on routine medical procedures,” and “enhances Mayo’s ability to train students in rare and complex diseases.” (App. 191-93, R.Doc. 331, at

47-49.) The District Court likewise noted that “65% of MCHS hospital sites had dedicated residency programs during the Refund Years,” that residents were staffed at “emergency rooms at MCHS hospitals” to become “competent in emergency medicine,” and that “residents would [] accompany Mayo’s physician specialists and subspecialists when they visited the smaller MCHS sites.” (App. 193-94, R.Doc. 331, at 49-50.)

Thus, “the [trial] evidence did not identify a ‘substantial’ clinical practice function at Mayo that did not further the goal of providing training and education to the students at its colleges,” compelling the conclusion that Mayo has no substantial noneducational purpose. (App. 233-34, R.Doc. 331, at 89-90.)

SUMMARY OF THE ARGUMENT

Mayo qualifies as an exclusively educational organization under IRC section 170(b)(1)(A)(ii), and by extension, the UBIT exemption. Under this Court’s test for educational exclusivity, Mayo must (i) have a “primary” purpose of education and (ii) have no substantial, noneducational purposes or functions. *Mayo*, 997 F.3d at 800-02.

On remand, the District Court found as fact that patient care is fully integrated with education, and thus not “noneducational” at Mayo, and that education is Mayo’s substantial, most important, and principal purpose. Those facts must be accepted unless clearly erroneous, *i.e.*, not “plausible in light of the record viewed in its entirety.” *Amadeo v. Zant*, 486 U.S. 214, 223 (1988) (citations omitted). The Government has not attempted to make such a showing, and could not if it tried.

Relying on a misstatement of the rule from *Better Business Bureau*, the Government attempts to sidestep these factual findings by inventing a new legal standard: that in an “exclusively” educational organization, educational purpose must be divorced from all other purposes. The Government argues healthcare cannot, as a matter of law, be “educational,” and having a substantial patient care function precludes educational exclusivity.

That interpretation is plainly inconsistent with this Court’s remand of the prior appeal for further factfinding, as this Court was perfectly capable of determining on the record of that appeal (or judicial notice) that a substantial amount of patient care occurs at Mayo, one of the nation’s flagship medical institutions. The Government’s interpretation likewise contradicts this Court’s guidance regarding substantial, noneducational purpose: “That some of [Mayo’s] educational purposes and functions also fall within other charitable categories—and vice versa—would not disqualify it from being an educational organization, but ‘the presence of a single non-educational purpose, if substantial in nature, will destroy the [UBIT] exemption regardless of the number or importance of truly educational purposes.’” *Mayo*, 997 F.3d at 802 (quoting *Better Business Bureau*, 326 U.S. 279, 283 (1945)).

Under that guidance, the task of the District Court was to determine whether any of Mayo’s substantial functions were noneducational (*i.e.*, unrelated to education). The District Court followed that guidance in finding Mayo to have no

substantial, noneducational purpose, and “join[ed] every court to have reviewed the issue in finding [] Mayo’s educational functions [to be] inextricably intertwined with its other functions.” (App. 228, R.Doc. 331, at 84.) In other words, there is no “‘substantial’ clinical practice function at Mayo that [does] not further the goal of providing training and education to the students at its colleges.” (App. 233, R.Doc. 331, at 89.) Accordingly, Mayo has no substantial, noneducational purpose because patient care, while “certainly substantial, [] is not noneducational at Mayo.” (App. 233-34, R.Doc. 331, at 89-90.) That finding should not be disturbed. *See Living Faith, Inc. v. Comm’r*, 950 F.2d 365, 371 (7th Cir. 1991) (“Whether an activity has a substantial nonexempt purpose is a question of fact ... [that] cannot be disturbed on appeal unless clearly erroneous.”) (citations omitted).

The District Court likewise found that Mayo’s primary purpose is education. In reaching this conclusion, the District Court first determined that “primary” means “substantial” in this context. (App. 219-224, R.Doc. 331, at 75-80.) It then found that Mayo had a substantial purpose of education, as reflected by “Mayo’s finances,” “day-to-day operations,” “articles of incorporation, [] bylaws, and [] governance documents,” and the fact that “Mayo was founded with the purpose of providing quality medical education” and “has consistently maintained its educational purpose over time.” (App. 224-25, R.Doc. 331, at 80-81). Thus, “[f]rom the highest levels

of its corporate governance to its daily operations, education is at the heart of what Mayo does every day.” (App. 225, R.Doc. 331, at 81) (citations omitted).

Though the District Court premised its finding of primary educational purpose on interpreting “primary” to mean “substantial,” it nevertheless found that even “[i]f ‘primary’ meant ‘most important,’ [it] would still find that Mayo’s most important or principal purpose is education, for the same facts and reasons that led [it] to conclude that education is Mayo’s substantial purpose.” (App. 229, R.Doc. 331, at 85, n.5.) Thus, this Court need not reach the question of whether “primary” means “substantial” or “principal,” the sole issue of law in this appeal. And, even if this Court were inclined to reach that issue, it should still affirm, as the District Court correctly articulated several reasons why, in context, the word “primary” must mean “substantial.”

This Court should affirm the District Court’s thoughtful, thorough, and correct findings in Mayo’s favor.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT MAYO HAS NO SUBSTANTIAL AND NONEDUCATIONAL PURPOSE BECAUSE PATIENT CARE, WHILE SUBSTANTIAL, IS NOT NON-EDUCATIONAL AT MAYO

The Court can reject the Government’s position solely because it contradicts the Court’s analysis in the prior *Mayo* appeal. But the arguments also fail on their

own merits, resulting in facially absurd consequences and conflicting with the relevant authority.

A. The District Court Followed This Court’s Directives

This Court held that to qualify for the UBIT exception, Mayo must be “organized and operated exclusively for ... educational purposes.” *Mayo*, 997 F.3d at 802. The Court clarified that “educational” purpose is not limited to “formal instruction,” and should instead reflect the “broad view of a tax-exempt educational purpose” as established by a “century of judicial decisions” and carried forward by the “current regulations interpreting the term ‘organized and operated exclusively’ in IRC § 501(c)(3),” which are Treasury Regulation § 1.501(c)(3)-1(a) and -1(d)(3)(i)–(ii). *Id.* at 800. Those regulations define educational as “relat[ing] to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.” 26 C.F.R. § 1.501(c)(3). They identify, as examples of educational organizations, museums, symphonies, and zoos. *Id.* at § 1.501.1(d)(3)(i)-(ii).

After grounding the inquiry within this “proper frame of reference,” this Court set forth the test for educational exclusivity: Mayo must (i) have a “primary” purpose of education and (ii) have no substantial, noneducational purposes or functions. *Mayo*, 997 F.3d at 800-02. Thus, “[a]ny purpose—including health care

or patient care—will not render Mayo ineligible ... unless it is [both] (1) substantial and (2) noneducational.” (App. 233, R.Doc. 331, at 89.)

The task of the District Court then, was to “determine[] whether Mayo has any substantial and noneducational (*i.e.*, unrelated to ‘the instruction or training of an individual for purposes of improving or developing his capabilities[]’...) activities.” (App. 212, R.Doc. 331, at 68.) This meant examining Mayo’s integrated patient care activities to identify any truly unrelated to Mayo’s educational mission (*i.e.*, separating the “educational wheat from the noneducational chaff”). *Mayo*, 997 F.3d at 802.

The District Court correctly found that Mayo had no substantial, noneducational purpose, because patient care and research, while substantial, are not noneducational at Mayo. (App. 229-41, R.Doc. 331, at 85-97.) In reaching that conclusion, the District Court thoroughly reviewed and laid out the trial evidence demonstrating that “education is at the heart of what Mayo does every day” (App. 225; R.Doc. 331, at 81), that “health care, like Mayo’s other functions, also serves educational functions” (App. 228-29, R.Doc. 331, at 84-85), and that “educational functions are intertwined with every other Mayo function” (App. 229; R.Doc. 331, at 85). *See supra*, Statement of the Case, Section II.C. Thus, the District Court found no “‘substantial’ clinical practice function at Mayo that [does] not further the goal of providing training and education to the students at its colleges.” (App. 233,

R.Doc. 331, at 89.) Accordingly, Mayo has no substantial, noneducational purpose because patient care, while “certainly substantial, [] is not noneducational at Mayo.” (App. 233-34, R.Doc. 331, at 89-90.) These factual findings are correct (or at minimum, not clear error) and warrant affirmance in this case. *See Amadeo*, 486 U.S. at 223.

B. The Government’s Position Contradicts This Court’s Decision

The purported legal errors the Government identifies in the District Court’s opinion were neither legal conclusions nor error. The Government’s position is also inconsistent with the governing regulations and this Court’s framework in several respects, detailed below.

1. The Government’s Position Is Inconsistent With The Framework Set Forth In The Prior *Mayo* Appeal

This Court was explicit: “That some of [Mayo’s] educational purposes and functions also fall within other charitable categories—and vice versa—would not disqualify it from being an educational organization, but ‘the presence of a single non-educational purpose, if substantial in nature, will destroy the [UBIT] exemption regardless of the number or importance of truly educational purposes.’” *Mayo*, 997 F.3d at 802.

This framework distinguishes between an educational purpose or function that also furthers some other charitable purpose (*i.e.*, a *hybrid* purpose or function) and a *noneducational* purpose or function. A *hybrid* purpose or function (one that serves

education *and* some other charitable purpose) will not disqualify an organization from being exclusively educational, only a *noneducational* purpose or function (one unrelated to education) will. Thus, “the relevant inquiry is not whether a particular activity has some purpose *in addition* to education, but whether a particular function has *no* educational purpose *and* is a substantial part of Mayo’s organizational purpose.” (App. 232, R.Doc. 331, at 88) (emphasis in original). Accordingly, a substantial purpose or function will not render Mayo ineligible unless that purpose or function is “unrelated to” education. (*See* App. 212, R.Doc. 331, at 68.)

The Government’s argument that Mayo’s substantial patient care function disqualifies Mayo from the UBIT exception is irreconcilable with this Court’s framework. According to the Government, the two clauses of the sentence do not juxtapose a hybrid purpose with a noneducational one, but an insubstantial purpose with a substantial one. The Government thus ignores the concept of integration and reads that sentence as: “That some of [Mayo’s] educational purposes and functions also fall within other charitable categories—and vice versa—would not disqualify it from being an educational organization [unless those educational purposes and functions that fall within other charitable categories are substantial].” *See, e.g.,* Appellant Br. at 33.

The Government attempts to support its reading with this Court’s statement that “[s]eparating out the wheat from the chaff—the educational from the

noneducational—while difficult, is not impossible.” *Mayo*, 997 F.3d at 802. But this Court also acknowledged that “Mayo’s status as an academic medical center means that its medical and educational purposes—and the operations supporting those functions—are inextricably intertwined.” *Id.* If, as the Government suggests, a substantial, integrated function were sufficient to defeat eligibility, Mayo’s status as an academic medical center would have resolved this matter. And, as the District Court observed, “if [this Court] wanted to foreclose Mayo’s integration-based arguments, it almost certainly would have said just that—plainly and directly,” (App. 231; R.Doc. 331, at 8), particularly given that the Government unsuccessfully raised *this exact argument* at summary judgment and again on appeal in 2021.

Moreover, this Court supported its wheat/chaff guidance by citing Judge Kyle’s conclusions that certain Mayo organizations qualified as a “school, college, or university” for purposes of FICA tax. *See id.* (citing *Mayo Found.*, 282 F. Supp. 2d at 1000-05, 1013-15). In that opinion, Judge Kyle evaluated evidence much like the evidence presented to Judge Tostrud below, and found that Mayo had “presented objective evidence” that the Mayo entities at issue were a “school.” *Mayo Found.*, 282 F. Supp. 2d at 1014. Thus, far from undermining the Court’s analysis, that guidance confirms that the District Court considered the proper kinds of evidence in reaching its conclusion.

2. The Government's Position Is Inconsistent With The Regulations This Court Held Are The "Proper Frame Of Reference"

The Government's argument that the District Court erred by "concluding that Mayo is an 'educational organization' despite its substantial patient-care purpose" (Appellant Br. at 2) also contradicts the Treasury Regulations this Court held were the "[p]roper frame of reference" for determining whether Mayo is exclusively educational—Treasury Regulations §§ 1.501(c)(3)-1(a) and (d)(3)(i)-(ii). *Mayo*, 997 F.3d at 800. Crucially, Section 1.501(d)(3)(i)-(ii) gives multiple examples of exempt educational organizations, including "[m]useums, zoos, planetariums, symphony orchestras, and other similar organizations." 26 C.F.R. § 1.501(d)(3)(i)-(ii).

The Government's interpretation of "educational organization"—requiring that an organization have no substantial purposes or functions "other than" education (even ones related to and, indeed, intertwined with education)²—cannot be reconciled with these regulatory examples. It is, after all, difficult to imagine that any zoo in the country would not have, as a substantial purpose, the prevention of cruelty to animals, or that any symphony would not have, as a substantial purpose, art and entertainment. Nevertheless, these organizations remain "exclusively

² See, e.g., Appellant Br. at 38 ("[H]aving 'other purposes' precludes qualification where (as here) those purposes are 'substantial.'"); see also *infra*, Argument, Section II.A.

educational” under the Treasury Regulations because education drives their activities, even if those activities are also driven by other purposes.

The Government’s suggestion, in a footnote, that “museums and like organizations only qualify as ‘exclusively’ educational organizations if ... their noneducational purposes ... [are] merely ‘insubstantial,’” only serves to highlight the absurdity of its position. Appellant Br. at 66, n.13. Surely the sort of zoos that 501(c)(3) is intended to protect are the sort that care (substantially) about animal welfare. *See, e.g.,* About Us, Minnesota Zoo, <https://mnzoo.org/us/> (“[T]he Minnesota Zoo opened in 1978 with a mission ... to save wildlife.”) Likewise, a symphony that does not care (substantially) about artistic excellence or entertainment will not be a going concern for long. Under the Government’s interpretation, it is of no moment that these other substantial purposes are inextricably intertwined with the organizations’ educational missions. The mere fact that they are purposes “other than” education is sufficient to render them “noneducational,” defeating the organization’s eligibility. That is inconsistent with the regulations that form the “proper frame of reference” for the exemption at issue here.

3. The Government’s Position Is Inconsistent With This Court’s Holding that “Educational Purpose” Is Not Limited To “Formal Instruction”

Though the Government never says it out loud, the implication of its argument is that the only true “educational” purpose is the formal instruction of pupils. After all, activities and functions that provide education in non-classroom settings (*e.g.*, clinical practice at Mayo, legal clinics at law schools), necessarily introduce purposes “other than” education (*e.g.*, patient care, client service). Under the Government’s position, such hybrid functions are “noneducational” and defeat eligibility if substantial. That position is at odds with this Court’s analysis, which made clear that “educational purpose” is not limited to “formal instruction,” and invalidated Treas. Reg. § 1.170A-9(c)(i) for adding “unreasonable conditions to the statutory requirement[s].” *Mayo*, 997 F.3d at 799.

That ‘primary’ purpose or function and ‘merely incidental’ have an important role to play ... does not establish the validity of the restrictive requirement that the ‘primary function’ be ‘the presentation of formal instruction.’ A century of judicial decisions ... establish that a tax exempt ‘educational purpose’ includes, for example, non-profit educational magazines, and a museum dedicated to educating the public. The [] Treasury Regulation defining educational organization ... reflected this broader definition ... [and t]he current regulations ... carry forward this broad view of a tax-exempt educational purpose.

Id. at 800 (internal citations omitted). The Government’s position—which treats functions like patient care at Mayo as “noneducational” notwithstanding that patient care is inextricably intertwined with Mayo’s educational ends—would

impermissibly reimpose the “formal instruction” requirement this Court already rejected.

4. The Government’s Position Is Inconsistent With This Court’s Decision To Remand The Prior Appeal

Perhaps the clearest indication the Government’s position is inconsistent with the prior *Mayo* appeal is this Court’s decision to remand:

Mayo’s status as an academic medical center means that its medical and educational purposes—and the operations supporting those functions—are inextricably intertwined. Separating out the wheat from the chaff—the educational from the noneducational—while difficult, is not impossible. *Cf. Mayo Found.*, 282 F. Supp. 2d at 1000-05, 1013-15.... In these circumstances, we leave these difficult and fact-intensive issues of fact and law to the district court on remand.

Mayo, 997 F.3d at 802. If, as the Government argues, Mayo does “not qualify as an educational organization” merely because “providing medical care to patients was one of Mayo’s ‘substantial’ purposes,” (Appellant Br. at 31), this Court would not have remanded the case. It is hardly contentious that a substantial purpose of Mayo is to provide medical care to its patients. *See Mayo*, 997 F.3d at 802 (acknowledging that Mayo is an “academic medical center”); *Mayo Found.*, 282 F. Supp. at 1014 (referencing the “breadth and quality of patient care pursued at” Mayo); *Mayo Found. v. Comm’r*, 236 N.W.2d 767, 770 (Minn. 1975). Indeed, that point was apparent from the summary judgment record this Court held was insufficient to support judgment as a matter of law. *See* Dkt. 19-3189 (8th Cir.), Entry ID: 4872507 (Brief of the Appellant) at 13 (Government brief referencing Mayo’s “very large

medical organization” including “numerous hospitals, medical clinics, and research centers throughout the country.”)). If a substantial patient care purpose alone were sufficient to defeat Mayo’s claim, this Court would have simply resolved Mayo’s eligibility as a matter of law. It certainly would not have remanded for trial on what it deemed “difficult and fact-intensive issues.” *Mayo*, 997 F.3d at 802.

II. THE GOVERNMENT’S POSITION IS NOT SUPPORTED BY *BETTER BUSINESS BUREAU*

The Government’s argument on appeal rests on an untenable interpretation of “noneducational purpose,” which it claims is supported by the Supreme Court’s analysis in *Better Business Bureau*. Specifically, the Government assumes a “noneducational” purpose means any purpose “other than” education, even if that purpose is related to or intertwined with an organization’s educational ends. *See, e.g.*, Appellant Br. at 38 (“Having ‘other purposes’ precludes qualification where (as here) those purposes are ‘substantial.’”). The District Court correctly rejected this interpretation in finding “noneducational” to mean “unrelated to” education. (App. 212; R.Doc. 331, at 68.) It then correctly applied that definition to Mayo’s fully integrated patient care and educational functions to find that patient care, while substantial, is not noneducational at Mayo. (App. 233; R.Doc. 331, at 89.)

The Government’s misreading of *Better Business Bureau* does not justify setting aside the District Court’s well-reasoned findings.

A. The Government Misstates *Better Business Bureau's* Test For Educational Exclusivity

The crux of the Government's argument on appeal is that because the District Court found Mayo to have a substantial patient care function, it was precluded by *Better Business Bureau* from finding Mayo to be an exclusively educational organization. *See, e.g.*, Appellant Br. at 38 (arguing that the "District Court failed to follow [*Better Business Bureau's*] binding precedent" because "[h]aving 'other purposes' precludes qualification where (as here) those purposes are 'substantial'").

Better Business Bureau says no such thing. In that case, the Better Business Bureau, an organization devoted to rooting out deceptive business practices, argued that it was "operated exclusively for ... educational purposes" and need not pay social security taxes on its employees' earnings. *See Better Business Bureau*, 326 U.S. at 283. The Supreme Court rejected the organization's claim that its "activities are directed toward the education of ... the general public," noting that a "commercial hue permeat[es]" the organization, and that its "activities are largely animated by this commercial purpose." *Id.* at 283-84. As such, "an important if not the primary pursuit of the petitioner's organization is to promote not only an ethical but also a profitable business community." *Id.* at 283. Because "the presence of a single non-educational purpose, if substantial in nature, will destroy the [social security tax] exemption regardless of the number or importance of truly educational purposes," the Court held that Better Business Bureau did not qualify. *Id.*

Critically, *Better Business Bureau* held that having a *noneducational* purpose, if substantial, would disqualify an entity from being an exclusively educational organization, not that having *any* purpose “other than” education would do so. The District Court correctly articulated that standard in holding that “any purpose—including health care or patient care—will not render Mayo ineligible for the UBIT refund unless it is (1) substantial and (2) noneducational.” (App. 233; R.Doc. 331, at 89.) Applying that standard, the District Court correctly interpreted “noneducational” to mean “unrelated to” education, (App. 212; R.Doc. 331, at 68), consistent with the term’s ordinary meaning.³ It then found as fact that Mayo ensures all of its activities further an educational purpose by, *inter alia*, reviewing “every initiative, old or new, [] to determine if it effectively integrate[s] education, research, and clinical practice.” (App. 234, R.Doc. 331, at 90.) Thus, “the evidence [at trial] did not identify a ‘substantial’ clinical practice function at Mayo that did not further the goal of providing training and education to the students at its colleges.” (App. 164-65, R.Doc. 331, at 20-21.)

³ See, e.g., Merriam-Webster.com Dictionary (defining noneducational), <https://www.merriam-webster.com/dictionary/noneducational> (last visited September 11, 2023) (“not relating to or concerned with the process of educating or the field of education”); Cambridge English Dictionary (defining non-educational), <https://dictionary.cambridge.org/us/dictionary/english/non-educational> (last visited September 11, 2023) (“not providing or relating to education”).

Unable to dispute that factual finding, the Government tries to rewrite the legal standard. Though the words “other purpose,” “another purpose,” or “purpose other than education,” appear nowhere in the *Better Business Bureau* test, the Government repeatedly substitutes those terms for the operative term the Supreme Court actually used—“noneducational purpose.” *See, e.g.,* Appellant’s Br. at i (“[E]ducation must be Mayo’s ‘primary purpose’ and its *other purposes* cannot be ‘substantial’”) (emphasis added); 37 (“[An activity will] ‘destroy[]’ qualification as an educational organization if it also serve[s] another purpose.”) (emphasis in original); 40 (“[I]f Mayo is organized and operated for a [substantial] purpose ‘*other than education* ... then Mayo is disqualified from being an ‘educational organization.’”) (emphasis added). The Government does not offer any support for its revision of the standard or even acknowledge that it has done so. It just assumes, without argument, support, or justification, that if truly educational functions happen to serve other purposes, those functions are “noneducational,” and, if substantial, preclude an organization offering them from being “exclusively” educational.

Having misstated the *Better Business Bureau* standard, the Government then argues the District Court misapplied it. *See, e.g.,* Appellant Br. at 31 (“The court’s ... determination is based on the legally erroneous assumption that, if an activity like patient care served dual purposes—one qualifying (educational) and one nonqualifying (medical)—the nonqualifying purpose could not destroy the

qualification, even if (as here) it is substantial.”). But the Government’s position is based on a false premise: that because *Better Business Bureau* found a dual-purpose organization (one organized for both educational and noneducational, commercial purposes) to be disqualified from educational exclusivity, the District Court was required to find a hybrid purpose (one serving both educational and other ends) to be a noneducational purpose.

Tellingly, none of the Government’s cases support the false dichotomy the Government presses here. *See, e.g., Better Business Bureau*, 326 U.S. 279 (involving an unquestionably noneducational, commercial purpose); *Living Faith*, 950 F.2d 365 (same). In fact, those cases do not reach the question of noneducational purpose at all. They do not define what it means for a purpose to qualify as noneducational, address whether such noneducational purposes may encompass integrated or dual-purpose functions (such as patient care at Mayo), or require a purpose, to avoid the label of noneducational, be exclusively educational. Those cases leave open the question of whether patient care is, in fact, noneducational at Mayo, a question the District Court’s factual findings resolve in Mayo’s favor.

B. The Government’s Reliance On Cases Concerning Tax-Exempt Status Under 501(c)(3) Is Misplaced

The Government also relies on cases that apply the *Better Business Bureau* test to determine whether an organization is charitable under Rule 501(c)(3), and thus tax-exempt. *See, e.g.,* Appellant Br. at 35-36 (citing *Senior Citizens Stores, Inc.*

v. United States, 602 F.2d 711 (5th Cir. 1979)); 39-44 (citing *Living Faith*, 950 F.2d 365; *Redlands Surgical Servs. v. Comm’r*, 113 T.C. 47 (1999); *Christian Manner Int’l Inc. v. Comm’r of Internal Revenue*, 71 T.C. 661 (1979); *St. David’s Health Care Sys. v. United States*, 349 F.3d 232 (5th Cir. 2003)); 51-55 (citing *Fed’n Pharmacy Servs., Inc. v. Comm’r*, 625 F.2d 804, 805 (8th Cir. 1980), *Ohio Teamsters Educ. & Safety Training Tr. Fund v. Comm’r*, 692 F.2d 432 (6th Cir. 1982), *Hutchinson Baseball Enterprises, Inc. v. Comm’r of Internal Revenue*, 73 T.C. 144 (1979)). Those cases are factually and conceptually distinguishable. In those cases, if the organization was not exclusively charitable (*i.e.*, if it had a substantial, noncharitable purpose), the organization would not qualify as a charitable, tax-exempt organization at all. The question in those cases was thus binary—the entity was either a charitable organization or it wasn’t.

By contrast, the question of educational purpose is not binary. Mayo could fall under any number of charitable umbrellas, and more than one at the same time. In this context, it does not make sense for intertwined purposes like patient care and education to defeat Mayo’s educational status, as an organization *can* be both educational and medical (*e.g.*, medical schools).

This distinction is critical to understanding the *Better Business Bureau*-progeny cases the Government relies on. The courts in those cases found commercial purposes extinguished status as a charitable organization. *See, e.g.*,

Living Faith, 950 F.2d at 373 (“[W]hen [an organization] conducts a business with an apparently *commercial character* as its primary activity, ‘that fact weighs heavily against exemption.’”) (emphasis added); *Redlands*, 113 T.C. at 78 (1999) (“[P]etitioner has ... ceded effective control of ... activities to for-profit parties ... and therefore is not operated exclusively for charitable purposes.”); *St. David’s Health*, 349 F.3d at 238 (same). The circumstances here do not require such an all-or-nothing determination, and the Court should reject Government’s uncritical application of cases concerning 501(c)(3)’s exemption to the circumstances here.

C. The Cases Applying *Better Business Bureau’s* Test for Educational Exclusivity Support *Mayo*

If anything, the *Better Business Bureau*-progeny cases support *Mayo* and the District Court’s position, not the Government’s. For instance, in *Living Faith*, the Seventh Circuit found “the fact that an organization’s primary activity may constitute a trade or business does not ... disqualify it ... provided the trade or business *furtheres or accomplishes an exempt purpose*.” 950 F.2d at 370 (emphasis added). As the Seventh Circuit emphasized, “an organization may be exempt ... even if it operates a trade or business as a *substantial* part of its activities.” *Id.* at 371, n.7 (emphasis added); *see also Redlands*, 113 T.C. at 72 (“[E]ngag[ing] in a trade or business is not conclusive of a substantial nonexempt purpose ... provided the activity furthers or accomplishes an exempt purpose.”). Thus, *Living Faith* and

Redlands support the District Court and Mayo’s understanding that an activity or function is not noneducational if it furthers the purpose of education.

Indeed, in concluding that Living Faith was ineligible for tax-exempt status, the Seventh Circuit distinguished Living Faith from another organization, Golden Rule, which the Tax Court previously found to be tax-exempt in *Golden Rule Church Association v. Commissioner*, 41 T.C. 719 (1964):

We find the scenario in Golden Rule distinguishable from the present case. [U]nlike Living Faith, which conducts the primary activity of operating two restaurants and health food stores, the organization in Golden Rule operated a variety of small businesses, the very purpose of which was to illustrate to the public that the ‘golden rule’ can be applied to one’s daily business activities.

Living Faith, 950 F.2d at 375. The key feature of Golden Rule that led to its tax-exempt status was that its business and educational purposes were intertwined. Because “the very purpose” of its business was to educate the public concerning the applicability of the “golden rule,” those substantial business functions, within the context of Golden Rule’s organization, were not “noneducational.”

This framework—which looks at whether an organization has substantial functions “unrelated to” (and not merely “other than”) an exempt purpose—was likewise adopted in *Dumaine Farms*:

[R]espondent claims that in addition to any exempt purposes, petitioner is also organized to operate a farm, which constitutes a prohibited, nonexempt commercial purpose.... Petitioner’s articles provide: ‘The purpose of the farm shall be to improve the quality of farming by (operating) in such manner as to demonstrate that farming can be

profitable while maintaining sound, ecological principles and native wildlife.’... Petitioner’s articles expressly limit its agricultural activities to those which preserve the ecology and maintain local wildlife.... We therefore hold petitioner is not organized for the nonexempt commercial purpose of farming.

73 T.C. at 661–62. As *Dumaine Farms* illustrates, an organization can be organized for a purpose “other than” education (such as improving farming, preserving ecology, and maintaining wildlife) so long as that purpose is not noneducational (*i.e.*, unrelated to education) within the context of the organization’s operation, activities, and mission.

The Government cannot explain how the court in *Dumaine Farms* could have concluded the farm was an educational organization under the Government’s standard that an educational organization must have no substantial activities, functions, or purposes other than education. Farming and the improvement of farming practices are activities, functions, and purposes “other than” education, and were clearly substantial at *Dumaine Farms*. The Tax Court nevertheless concluded that, while the purpose of improving farming practices, within the context of a commercial farm, may very well be a noneducational purpose that defeats exclusivity, that same purpose, in the context of an organization like *Dumaine Farms*, was not noneducational. So too, with Mayo’s patient care functions.

The Government’s attempt to make binary the non-binary also plays out in its statutory interpretation. For example, in this case, as in the last appeal, the

Government argues that because “teaching hospitals” are mentioned in Section 170(b)(1)(A)(iii), Section 170(b)(1)(A)(ii) necessarily does not include them. *See* Appellant Br. at 43-44; Dkt. 19-3189 (8th Cir.), Entry ID: 4872507 (Brief of the Appellant) at 34, 36-47. That argument should again be rejected. An organization may satisfy multiple subsections of §170(b)(1)(A), qualifying as both an educational organization and an academic medical center. *See, e.g.*, Treas. Reg. § 1.509(a)-6 (“X is an organization which is described in section 170(b)(1)(A)(vi), but could also meet the description of section 170(b)(1)(A)(viii).”); IRS G.C.M. 39508, 1986 WL 372946, at *13 (May 28, 1986) (stating an entity “could be seen as described in section 170(b)(1)(A)(ii) and section 170(b)(1)(A)(v)”); Rev. Rul. 78-95, 1978-1 C.B. 71, 1978 WL 42293 (1978) (concluding an organization qualified under subsections (i) and (vi)); Rev. Rul. 76-416, 1976-2 C.B. 57, 1976 WL 36646 (1976) (concluding an organization qualified under subsections (iii) and (vi)).

D. The Government’s Position Would Create Facially Absurd Results

Even setting aside the infirmities above, the Government’s position should be rejected because, if carried to its logical conclusion, it would eviscerate the category of exclusively educational organizations. The Government’s interpretation would exclude not only the Treasury Department’s own regulatory examples of exclusively educational organizations, *see supra*, Argument, Section I.B.2, but effectively all educational institutions.

For example, the Government’s interpretation, taken to its logical conclusion, would disqualify any school where student athletics and extracurricular activities were considered a substantial part of student life, because those activities have purposes other than education. Under that definition, precious few colleges and universities in the United States would be “educational” under Section 170(b)(1)(A)(ii). That result defies common sense.

As another example, the Government’s position would disqualify professional schools that include a clinical component to their education. Law schools that offer legal clinics would be disqualified for serving an impermissible client-service purpose. Journalism schools that feature student-run newspapers self-financed through advertising would be disqualified for serving an impermissible commercial purpose. And, of course, medical schools like Mayo would be disqualified for serving an impermissible patient care purpose.

Under the Government’s interpretation, such organizations only qualify as exclusively educational if, in undertaking those clinical activities, those “other than” educational purposes are insubstantial.⁴ *See, e.g.*, Appellant Br. at 37. This results in the absurd conclusion that these schools can maintain educational exclusivity so long as they do not care substantially about the clients they serve, the truth or

⁴ Indeed, according to the Government, an activity or function can be “noneducational” even if its predominant purpose is education, so long as it has any substantial purpose other than education.

accuracy of the information reported, or the quality of patient care provided. That, of course, misses the entire point of these programs, which is to teach the value of things like client service, patient care, and accuracy in reporting in real-world settings.

III. THE DISTRICT COURT CORRECTLY CONCLUDED THAT MAYO'S PRIMARY PURPOSE IS EDUCATION

To qualify as exclusively educational, Mayo's primary purpose must also be educational. In finding Mayo's primary purpose to be educational, the District Court correctly determined that primary, in this context, means substantial. (App. 219-229, R.Doc. 331, at 75-85). It then correctly concluded that education is a substantial purpose of Mayo. (*Id.*) The District Court further found that even if primary means "most important" or "principal," it would still "find that Mayo's most important or principal purpose is education, for the same facts and reasons that led [it] to conclude that education is Mayo's substantial purpose." (App. 229, R.Doc. 331 at 85.) Such findings of fact "may [be] set aside ... only if ... 'clearly erroneous.'" *Amadeo*, 486 U.S. at 223 (citations omitted).

On appeal, the Government argues the District Court "erred as a matter of law in interpreting the term 'primary' to mean merely 'substantial.'" Appellant Br. at 47-48. But the Government largely advances the same arguments the District Court already rejected below, without due consideration for the District Court's well-founded reasons for rejecting them. More importantly, the Government fails to

meaningfully grapple with the District Court’s factual finding that even if primary means “most important” or “principal,” Mayo’s meets that standard too. (App. 229, R.Doc. 331 at 85.) Either way, the District Court’s finding that Mayo’s primary purpose is education should be affirmed.

A. The District Court Did Not Clearly Err In Finding Mayo’s Most Important And Principal Purpose Is Education

The Government argues that “primary” should mean “most important” or “principal.” (Appellant Br. at 47-70.) Mayo disagrees, but the issue is largely academic. The District Court concluded, as fact, that “Mayo’s most important or principal purpose is education.” (App. 229, R.Doc. 331, at 85, n.5). If that conclusion “is plausible in light of the record viewed in its entirety, [this Court] may not reverse [] even [if] convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.” *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573–74 (1985). It may only reverse if the finding was “clearly erroneous.” *Amadeo*, 486 U.S. at 223.

The Government has not come close to showing clear error.⁵ The Government first argues that “none of the court’s findings evidence that education was more

⁵ In a transparent attempt to minimize its burden on appeal, the Government describes the District Court’s finding that Mayo’s most important purpose is education as an “alternative legal conclusion.” Appellant Br. at 70. But whether Mayo’s most important purpose was education is necessarily a factual inquiry—as evidenced by (1) the District Court’s reliance on “the same *facts* ... that led [it] to conclude that education is Mayo’s substantial purpose” (App. 229, R.Doc. 331, at

important than patient care at Mayo.” Appellant Br. at 71. To the contrary, the District Court found that “Mayo could provide clinical care much more efficiently without residents and trainees,” (App. 177, R.Doc. 331, at 33), that “Mayo spent more on research and education th[an] it made from patient care,” (App. 183, R.Doc. 331, at 39), and that “medical treatment and research at Mayo nearly always serve an educational purpose—even when involving students renders health care more expensive.” (App. 225, R.Doc. 331, at 81.) These facts demonstrate that Mayo prioritized education even though it made patient care more expensive and difficult.

The District Court also highlighted a number of facts which suggest that education was Mayo’s principal purpose. For instance, the District Court observed that Mayo’s bylaws “contained a historical Preamble to put ‘front and center’ Mayo’s educational purposes and values,” (App. 162; R.Doc. 331, at 18), that “education is at the heart of what Mayo does every day,” (App. 225; R.Doc. 331, at 81), and that the “facilities at Mayo are predominantly used for educational purposes.” (App. 225; R.Doc. 331, at 81.) Thus, the District Court reasonably concluded that Mayo’s principal purpose was education.

The Government ignores all of this and argues, based on a handful of cherrypicked examples from the District Court’s voluminous findings, that the

85, n.5 (emphasis added)), and (2) the Government’s reliance on testimony and other factual evidence in arguing for an alternative conclusion (Appellant Br. at 70-71).

District Court “could just as easily [have] concluded that medical care (or research) is Mayo’s most important function or purpose.” Appellant Br. at 70-71. But even if the Government’s examples could support an alternative conclusion (which Mayo disputes), that is not sufficient reason to disturb the District Court’s factual findings on appeal. *See Anderson*, 470 U.S. at 573–74 (“Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.”). The Government must do more than gesture at evidence that may give rise to an alternative finding; it must demonstrate that the District Court’s finding was not permissible in light of the record evidence.

In any event, the Government’s examples do not support an alternative conclusion. For instance, the Government points to “the testimony of Mayo’s [former] CEO that none of its ‘three mission activities’ – patient care, education and research – was ‘more important than the other.’” Appellant Br. at 70-71. Thus, the Government argues, “[i]f two thirds of an organization’s activities and purposes are in furtherance of something other than education, [it cannot be] said that education is the singular function of the organization.” *Id.* at 50-51; *see also id.* at 71-72 (“At most ... it was not possible to determine which of Mayo’s purposes ranked first.”). But that argument assumes research does not qualify as an educational purpose—an assumption that cannot be reconciled with the District Court’s undisputed factual finding that research, at Mayo, is educational because it involves and trains students

in research. *See, e.g.*, (App. 225, R.Doc. 331, at 81) (“[The] research at Mayo nearly always serves an educational purpose.”); (App. 238, R.Doc. 331, at 94) (“[R]esearch is a critical part of the education [at] Mayo[.]”).

Moreover, even if no students were involved, the assumption that research does not qualify as education is refuted by the clear terms of Treasury Regulation § 1.501(c)(3)-1. *See* 26 C.F.R. § 1.501(c)(3)-1(b) (“The term educational, as used in section 501(c)(3)” includes “[t]he instruction of the public on subjects useful to the individual and beneficial to the community.”). Mayo’s research, which is published in its “Mayo Clinic Proceedings” and “distributed without cost to doctors, libraries, and institutions,” is thus clearly educational, even though it involves the education of the broader public, not only Mayo’s students. (App. 152, R.Doc. 331, at 8). Indeed, this Court previously held that a “tax exempt ‘educational purpose’ includes ... non-profit educational magazines.” *Mayo*, 997 F.3d at 800. Thus, if anything, the equal importance of Mayo’s three core missions only further establishes that education predominates as at least “two thirds of [the] organization’s activities and purposes are in furtherance of ... education.” Appellant Br. at 50-51.⁶

⁶ In arguing that research and patient care defeat Mayo’s primary educational purpose, the Government assumes that no function other than education can be educational. That assumption is inconsistent with relevant case law. *See St. Luke’s Hosp. of Kansas City v. United States*, 494 F. Supp. 85, 90 (W.D. Mo. 1980). To qualify as exclusively educational, Mayo’s primary purpose need only be “educational,” not education. *Mayo*, 997 F.3d at 789.

The two other examples on which the Government relies are similarly lacking. The Government argues somehow that statements that Mayo seeks to “provide the best care to every patient” and that Mayo’s “focus is on treating patients” mean that patient care, not education, is Mayo’s *raison d’etre*. Appellant Br. at 71. But refusing to compromise on patient care is not mutually exclusive with educating students. Likewise, the District Court expressly rejected the Government’s reliance on Mayo executives’ testimony. (App. 233-34, R.Doc. 331, at 89-90) (“[G]iving these statements legal significance would require attributing meaning to the statements divorced from their context.”). That the Government “would have weighed the evidence differently” is not a reason to disturb the District Court’s factual finding. *Anderson*, 470 U.S. at 565.

Because the Government did not demonstrate the District Court clearly erred in finding Mayo’s “most important” purpose to be education, the District Court’s conclusion that Mayo’s primary purpose is education should be affirmed regardless of the Court’s interpretation of “primary.”

B. The District Court Correctly Concluded That Primary Means Substantial

Even the Government does not dispute that Mayo has substantial educational purpose. Thus, if “primary” means “substantial,” the District Court’s judgment could be affirmed for that reason as well.

1. The District Court Properly Relied On *Agnew* In Interpreting Primary To Mean Substantial

In interpreting “primary” to mean “substantial,” the District Court properly relied on *Agnew*, 329 U.S. 441. In *Agnew*, the Supreme Court considered whether an entity was “primarily engaged in the issue, flotation, underwriting, public sale, or distribution ... of ... securities.” *Id.* at 443. A review of the entity’s income during the years in question reflected that the entity’s principal business was a brokerage business, and that its underwriting business did not exceed 50 percent of its total business. *Id.* at 445.

The Court, reversing the Court of Appeals below, concluded that the firm was “primarily engaged” in underwriting despite underwriting comprising less than 50% of its business. The Court first rejected the argument that, when applied to a single subject, primary means first, chief, or principal. *Id.* at 446. The Court found that “[a]n activity or function may be ‘primary’ ... if it is substantial,” and emphasized that “[o]n the facts in this record[,] we would find it hard to say that underwriting was not one primary activity of the firm and brokerage another.” *Id.* The Court observed that a contrary interpretation would lead to the untenable conclusion that the firm was not primarily engaged in either underwriting or brokerage, despite specializing in both and doing a substantial amount of each. *Id.*

The Court’s rationale in finding primary to mean substantial applies equally to the facts here. Indeed, given the District Court’s factual findings that “education

is at the heart of what Mayo does every day” (App. 225; R.Doc. 331, at 81), it “would [be] hard to say that [education] was not one primary [purpose] of [Mayo] and [patient care] another.” *See Agnew*, 329 U.S. at 446. Likewise, the Government’s argument that “Mayo’s three activities are ‘equal with none being more important...’” (Appellant Br. at 71), also supports interpreting primary as substantial. If it is “not used in th[at] sense ... then [Mayo] is not ‘primarily engaged’ in [education, research, or patient care] though it specializes in [all three] and does a substantial amount of each.” *Agnew*, 329 U.S. at 446.

The Government attempts to distinguish *Agnew* as based on “facts unique to the banking industry” and the Banking Act of 1933. Appellant Br. at 63. According to the Government, the statute at issue in *Agnew* “applied the term ‘primarily’ to multiple activities, prohibiting persons ‘primarily engaged in the issue, flotation, underwriting, public sale, or distribution ... of ... securities’ from simultaneously serving at an affiliated bank.” *Id.* Thus, the Government explains, “persons who engage in underwriting ‘also engage’ in the other listed activities, performing ‘a substantial amount of each.’” *Id.* at 64.

That analysis overlooks the Court’s central motivation of avoiding an untenable conclusion irreconcilable with the facts in the record. *See Agnew*, 329 U.S. at 446 (“These are the essential facts found by the Board.... On the[se] facts ... we would find it hard to say that underwriting was not one primary activity of the

firm.”). Moreover, the Court never found that firms who engage in underwriting also engage in “the other *listed* activities.” *Id.* (emphasis added). It found that “firms which do underwriting also engage in numerous *other* activities,” not unlike educational organizations, which often engage in activities other than education (e.g., athletics, clinics, theater). *Agnew*, 329 U.S. at 447 (emphasis added). Nor did the Court find that the firm in *Agnew* engaged in a substantial amount of more than one listed activity. Instead, it found that the firm engaged in a substantial amount of both underwriting and brokerage, only one of which (underwriting) is a listed activity. *See Sec. Indus. Ass’n v. Bd. of Governors of Fed. Rsrv. Sys.*, 716 F.2d 92, 97 (2d Cir. 1983) (“It [] seems clear that the [Agnew] Court read § 32 to exclude brokerage.”).

The Government next argues that *Agnew* is distinguishable because “the Banking Act addressed ‘several types of underwriting firms’ including ‘those “primarily engaged” in underwriting’ and [] ‘those “engaged principally” in underwriting.’” Appellant Br. at 64. According to the Government, *Agnew* relied on this distinction between *primarily* and *principally* in the Banking Act, and the absence of such distinction here weighs in favor of finding primary to mean principal.

That argument, if accepted, defeats the Government’s position, not Mayo’s. Notably, Treasury Regulation § 1.170A-9, the same regulation that defines an

educational organization as having a “primary function” of education, defines other organizations through their “principal purpose or function.” *Compare* 26 C.F.R. § 1.170A-9(c) (“An educational organization is described in section 170(b)(1)(A)(ii) if its *primary* function”) (emphasis added), *with* 26 C.F.R. § 1.170A-9(d) (“An organization ... is described in section 170(b)(1)(A)(iii) if ... [i]ts *principal* purpose or function is”) (emphasis added). Under the Government’s logic, then, “[g]iven that [the Department] intended to draw a ‘distinction’ between [*primary* and *principal*], [this] Court [should] refuse[] to ‘obliterate’ that intent ‘by reading “primar[y]” to mean “principal[.]”” Appellant Br. at 64.

In a final attempt to distinguish *Agnew*, the Government argues that “*Agnew* did not involve long-standing regulations that make clear that primary means predominant,” and that, “[f]or over 60 years, Treasury regulations have provided that a §170(b)(1)(A)(ii) educational organization ‘does not include organizations engaged in both educational and non-educational activities unless the latter are merely incidental to’ the ‘educational activities.’” Appellant Br. at 66. According to the Government, this “regulatory ‘merely incidental’ limitation forecloses interpreting ‘primary’ to mean merely ‘substantial.’” *Id.* at 66-67.

But the regulations and cases on which the Government rely have never applied the “merely incidental” limitation to the definition of “primary.” To the contrary, “merely incidental” and “primary” reflect two separate requirements for

exclusivity. *See Mayo*, 997 F.3d at 800 (“[I]t is valid to interpret the statute as requiring that a qualifying organization’s primary purpose be ‘educational’ and that its *noneducational* activities be merely incidental to that primary purpose.”) (underline emphasis added). The Government suggests that because the second part of the definition requires any noneducational activities to be “merely incidental” to an organization’s educational purposes, the first part of the definition must likewise require that an organization’s other purposes be subordinate to its principal purpose of education. That, of course, would render the two parts redundant.

The Government makes a similar mistake when it argues that the term “primary”—because it is part of the definition of “exclusively”—cannot mean substantial because exclusively does not mean substantial. *See, e.g.,* Appellant Br. at 55 (“Inasmuch as ‘primary’ is part of the definition of ... ‘exclusively,’ it must be given a meaning that does justice to the term.”). That ignores “the next part of the [exclusivity] test,” which requires an organization to have no substantial noneducational purposes. (App. 223, R.Doc. 331, at 79.) If, as the Government suggests, primary must capture the meaning of exclusively all on its own, there would be no need to impose that second requirement.

2. The Other Cases Defining Primary Support The District Court’s Interpretation Of Primary As Substantial

The District Court also properly relied on *Kellogg*, 756 F.3d 754. *Kellogg* involved attorney-client privilege and “the ‘primary purpose’ test, which many

courts ... have used to resolve privilege disputes when attorney-client communications may have had both legal and business purposes.” *Id.* at 759. Then-judge Kavanaugh observed that “trying to find *the* one primary purpose for a communication motivated by two sometimes overlapping purposes ... can be an inherently impossible task.” *Id.* He reasoned that “[i]t is often not useful or even feasible to try to determine whether the purpose was A or B when the purpose was A and B.” *Id.* Thus, “[i]t is [] not correct for a court to presume that a communication can have only one primary purpose” or for the court “to try to find *the* one primary purpose in cases ... [with] multiple purposes.” *Id.* at 760.

In applying *Kellogg*, the District Court observed that “[t]hough the privilege issue ... is factually distinct, its core reasoning [is] apt.” (App. 221, R.Doc. 331, at 77.) The Government cannot dispute that reasoning, so it argues that *Kellogg* is inapposite because it does not concern a tax statute. Appellant Br. at 67. But *Kellogg’s* reasoning applies as much to the interpretation of “primary” in the tax exempt context as it does to any other evaluation of overlapping purposes.⁷ Thus, for instance, when a Mayo medical student performs a medical procedure on a

⁷ None of the cases relied upon by the Government that define primary as “principal” or “most important” involve the identification of a “principal” or “most important” purpose from multiple overlapping purposes. See, e.g., *Mayo Foundation for Medical Education & Research v. United States*, 562 U.S. 44 (2011); *Turnure v. Comm’r*, 9 B.T.A. 871, 874 (1927); *Stoeckel v. Comm’r*, 2 T.C. 975, 979 (1943).

patient, it is not “useful or even feasible to try to determine whether the purpose was [patient care] or [education] when the purpose was [patient care] and [education].” *Kellogg*, 756 F.3d at 759.

Finally, the Government’s reliance on *Malat*, 383 U.S. 569 (1966) (per curiam) is misplaced. The question in *Malat* was whether property was “held primarily for sale to customers in the ordinary course of business.” *Id.* at 571. As the Court explained, “[t]he purpose of the statutory provision ... is to differentiate between the ‘profits and losses arising from the everyday operation of a business’ on the one hand and ‘the realization of appreciation in value accrued over a substantial period of time’ on the other.” *Id.* at 572 (citations omitted).

As the District Court observed, “the statute at issue in *Malat* was simply to distinguish between either of two taxpayer circumstances,” and while “interpreting ‘primarily’ to mean ‘of first importance’ makes sense in that binary legislative regime[, t]he issue here is not binary.” (App. 224, R.Doc. 331, at 80.) Critically, here, an organization can be eligible under multiple subsections of 170(b)(1)(A), but in *Malat*, a specific sum of money could not be both “profits ... arising from the everyday operation of a business” and “the realization of appreciation in value accrued over a substantial period of time.” *Malat*, 383 U.S. at 572. The Government responds that “the issue here is binary [because] an organization is either educational or noneducational.” Appellant Br. at 65. But the Government misunderstands the

District Court’s holding, which focused on the binary nature of the *legislative regime*, not the binary nature of the *outcome* (which will be binary in most every case). The District Court was correct not to follow *Malat*.

3. The Relevant Regulatory Authority Supports The District Court’s Interpretation Of Primary As Substantial

The District Court’s interpretation of primary as substantial is likewise supported by the relevant regulations. As discussed above, those regulations distinguish between an organization’s primary and principal purpose, *supra* Argument, Section III.B.1, which “we should not obliterate by reading ‘primar[y]’ to mean ‘principal[.]’.” *Agnew*, 329 U.S. at 448.

Additionally, as the District Court explained, the regulations that form the “[p]roper frame of reference” for defining an educational organization—which provide, as examples, museums, zoos, and symphonies, *Mayo*, 997 F.3d at 800—are “incompatible with the notion that an ‘exclusively’ educational organization’s ‘primary’ or ‘most important’ purpose must be educational.” (App. 220, R.Doc. 331, 76.) The Government pays lip service to these regulatory examples, suggesting that the District Court “incorrectly assumes that such organizations do not have education as their ‘most important’ purpose because they can be entertaining” and that “the regulatory requirements make clear [that] museums and like organizations only qualify as ‘exclusively’ educational organizations if ... their noneducational purposes—including any ‘entertainment’ purpose—is merely ‘insubstantial.’”

Appellant Br. at 66, n.13. As far as the Government is concerned, the Department included these examples not to give practical guidance, but merely to suggest that if some hypothetical zoo were to care about education more than the welfare of its animals, that zoo may qualify as educational. To state such reasoning is to refute it. The Department did not chose fringe examples to illustrate what organizations are exclusively educational. Picking unusual examples that may only qualify in limited circumstances is not how the Department or IRS provides guidance; rather it provides real-life examples that define good facts for a favorable result and bad facts for an unfavorable result. *See, e.g.*, Rev. Rul. 69-545 (cited by the IRS in deciding over 660 determination or ruling requests or in technical advice); Rev. Rul. 98-15 (cited by the IRS in deciding over 50 determination or ruling requests or in technical advice).

The Government’s reliance on regulatory authority is likewise misplaced. The Government argues that “[t]he use of ‘its’ to modify ‘primary’” “indicates that education must be the singular primary function of the organization.” Appellant Br. at 50-51. But nothing about the word “its” remotely suggests that it can only refer to a singular function or purpose. Indeed, the regulation would be just as coherent if the word primary were replaced by the word substantial.

Likewise, the Government argues that “the limited nature of the exception provided in §514(c)(9)(C)(i) makes clear that Congress did not intend to except from

UBIT every organization that operates for a substantial, but not predominant, educational purpose.” Appellant Br. at 58. Specifically, the Government notes that “only one of the nine different types of tax-exempt organizations listed in §170(b)(1)(A) ... is deemed a qualified organization” and that the “exception does not extend to teaching hospitals or academic medical centers described in §170(b)(1)(A)(iii).” *Id.* Thus, the Government argues because Congress chose not to extend the UBIT exception to subsection (iii)’s “medical education” organizations, Congress must have intended to exclude such organizations from the scope of the exception entirely.

This argument rests on the faulty premise that an organization cannot qualify under multiple subsections of section 170(b)(1)(A). But it is well-recognized that organizations may satisfy multiple subsections of the statute. *See supra*, Argument, Section II.C. True, Congress apparently did not wish to extend the exception to *all* subsection (iii) entities, but that does not mean Congress intended to exclude those entities if they otherwise qualified under subsection (ii). For example, an entity whose “principal purpose or function” was providing “medical education” in a classroom setting would be expressly covered by subsection (iii), but also by subsection (ii)—even under the Government’s restrictive interpretation of that subsection.

CONCLUSION

For all of the foregoing reasons, the Court should affirm the District Court's judgment in favor of Mayo Clinic.

Dated: November 2, 2023

Respectfully submitted,

/s/ Nicole C. Henning

Nicole C. Henning

Counsel of Record

Mark P. Rotatori

Nicole C. Henning

Jason Z. Zhou

JONES DAY

110 North Wacker Drive, Suite 4800

Chicago, IL 60606

Tel: (312) 782-3939

Fax: (312) 782-8585

mprotatori@jonesday.com

nhenning@jonesday.com

jzhou@jonesday.com

Erin Sindberg Porter

JONES DAY

90 South 7th Street, Suite 4950

Minneapolis, MN 55402

Tel: (612) 217-8800

Fax: (844) 345-3178

esindbergporter@jonesday.com

*Counsel for Plaintiff-Appellee Mayo
Clinic*

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I hereby certify that: (1) this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because this brief contains 12,957 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and (2) this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in a 14-point Times New Roman font in the text and footnotes.

Dated: November 2, 2023

/s/ Nicole C. Henning
Nicole C. Henning

*Counsel for Plaintiff-Appellee Mayo
Clinic*

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Dated: November 2, 2023

/s/ Nicole C. Henning
Nicole C. Henning

*Counsel for Plaintiff-Appellee Mayo
Clinic*

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I hereby certify that, on November 2, 2023, I caused a true and correct copy of the foregoing brief to be electronically filed with the Clerk of the Court by using the appellate CM/ECF system, which will send notification of such filing to all registered users of the CM/ECF system.

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Francesca Ugolini
Judith A. Hagley
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044

/s/ Nicole C. Henning
Nicole C. Henning

*Counsel for Plaintiff-Appellee Mayo
Clinic*