IN THE SUPREME COURT OF MISSOURI

No. SC99185

STEPHANIE DOYLE, ***et al.,***

Intervenors/Appellants,

vs.

JENNIFER TIDBALL, *et al.,*

Defendants/Respondents.

Appeal from the Circuit Court of Cole County, Missouri
Nineteenth Judicial Court
Cause No. 21AC-CC00186

The Honorable Jon E. Beetem

BRIEF OF INTERVENORS/APPELLANTS

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Statement Of Jurisdiction

This case challenges the defendants/respondents' (the "State") failure to implement Medicaid expansion as mandated by the voters of Missouri through their initiative amendment of the Missouri Constitution ("Amendment 2"). Plaintiffs/appellants ("Plaintiffs") and intervenors/appellants ("Intervenors") sought declaratory relief that Amendment 2 obligated the defendants to expand Medicaid to those individuals declared eligible by the amendment, effective July 1, 2021. The Circuit Court of Cole County, Honorable Jon E. Beetem presiding, denied Intervenors' motion to intervene on June 15, 2021 and tried Plaintiffs' case on June 21, 2021. The trial court entered judgment on June 23, 2021.

In reaching its judgment the circuit court ruled: "Amendment 2 indirectly requires the appropriation of revenues not created by the initiative and is therefore unconstitutional under Article III, section 51 . . . ." The trial court's judgment and the appeal before this Court necessarily involve "the validity of a . . . provision of the constitution of this state", vesting this Court with exclusive appellate jurisdiction. Mo. Const. Art. V, Sec. 3.

Statement Of Facts

On August 4, 2020, Missouri voters amended the Missouri Constitution by enacting Article IV, Section 36(c), otherwise known as Amendment 2. *Mo. Const. Art. IV, Sec. 36(c); Legal File Doc. 17, P. 3, ¶ 26 (cite hereafter "L.F. 17:3:26"); Appendix, P. A9 (cite hereafter "App. A9").* Section 36(c)(1) of the amendment mandates the expansion of Medicaid, as of July 1, 2021, to qualifying Missouri residents between the ages of 19 and 65 with incomes falling below the prescribed federal threshold. It states in pertinent part:

> Notwithstanding any provision of law to the contrary, beginning July 1, 2021, individuals nineteen years of age or older and under sixty-five years of age who qualify for [Medicaid] and who have income at or below one hundred thirty-three percent of the federal poverty level plus five percent of the applicable family size . . . shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package.

Mo. Const. Art. IV, Sec. 36(c)(1); App. A9.

To effect the expansion, Amendment 2 specifies the actions to be taken by the State of Missouri:

A. Section 36(c)(3) provides that "[n]o later than March 1, 2021, the Department of Social Services and the MO HealthNet Division shall submit all state plan amendments necessary to implement this section to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services"; and

B. Section 36(c)(4) further provides that "[t]he Department of Social Services and the MO HealthNet Division shall take all actions necessary to maximize federal financial participation in funding medical assistance pursuant to this section".

Mo. Const. Art. IV, Sec. 36(c)(3, 4); App. A9.

To ensure the expansion's implementation and to protect it from interference by the State's elected and appointed officials, the amendment specifically prohibits the erection of hurdles or barriers that might thwart its mandated coverage of Missouri's qualifying residents. Section 36(c)(5) provides:

> No greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices shall be imposed on persons eligible for MO HealthNet services pursuant to this section than on any other population eligible for medical assistance.

Mo. Const. Art. IV, Sec. 36(c)(5); App. A9.

Defendant/respondent Jennifer Tidball is the Acting Director of the Missouri Department of Social Services. *L.F. 17:2:19-20.* Defendant/respondent Kirk Matthews is the Acting Director of the MO Healthnet Division. *L.F. 17:3:22-23.* These people ("Defendants") are responsible under for the administration of the Medicaid program in Missouri and the implementation and maximization of Missouri's Medicaid expansion as required by Section 36(c). *L.F. 17:2:19-20; 17:3:22-23.*

From January 5 through April 6, 2021 the Missouri Department of Social Services filed state plan amendments with the federal government and initiated germane changes to Missouri's State Code of Regulations in order to implement Medicaid expansion. *L.F.*

17:11-12:91-99, 103-104. On May 13, 2021, Defendants notified the federal government of the State's withdrawal of the previously submitted plan amendments. *L.F. 17:12:100, 103-104.* The State also reversed course on the pending regulation changes. *L.F. 17:12:101-104.* As a result of this about-face, the State will not enroll anyone claiming Medicaid eligibility under Amendment 2, nor will the State provide benefits or cost reimbursements pursuant thereto. *L.F. 17:12-13:106-108.*

On May 20, 2021 Plaintiffs Doyle, Hille, and Stultz filed suit in the Circuit Court of Cole County, the Honorable Jon E. Beetem presiding. *L.F. 1:1.* Plaintiffs sought declaratory and injunctive relief, asserting that Amendment 2 obligated the defendants to expand Medicaid to those individuals declared eligible by the amendment, effective July 1, 2021. *L.F. 2:16-17.*

On June 4, 2021 Intervenors Barber and Chaney moved to intervene of right. *L.F. 7:1-2.* After initially seeking similar relief under both 42 U.S.C. § 1983 and Missouri law, *L.F. 8:1-13,* Intervenors amended their petition to see only declaratory and injunctive relief under state law, *L.F. 50, 51:1-6.*

Intervenor Barber is an employed 26-year-old resident of St. Louis County who would qualify for coverage under the expanded Medicaid program after December 31, 2021. *L.F. 15:1-2:2-6.* Chaney is an employed 43-year-old resident of City of St. Louis who would be eligible for the expanded Medicaid program on July 1, 2021. *L.F. 16:1:2-6.* Both Intervenors intend to enroll in the Medicaid program under Amendment 2's eligibility standards if the expansion is implemented. *L.F. 15:2:6; L.F. 16:1:6.*

Judge Beetem denied Intervenors' motion on June 15, 2021. *L.F. 59*; *App. A1*. The court tried Plaintiffs' case on June 21, 2021 and entered its final judgment denying relief on June 23, 2021. *L.F. 63; App. A2*.

Points Relied On

I. The trial court erred in denying Intervenors' motion to intervene, because Intervenors conclusively established the requirements for intervention of right in that:

(a) they have a proven interest in Medicaid expansion;

(b) their ability to protect that interest has been impaired and impeded by not being allowed to be heard in the instant case; and

(c) the Plaintiffs are not adequately representing the Intervenors' interest, because they have not advanced, and are not advancing, the Intervenors' arguments.

Allred v. Carnahan, 372 S.W.3d 477, 481 (Mo. App. 2012).

II. The trial court erred in entering judgment for the State, because Amendment 2 does not require a funding appropriation and does not violate Article III, Section 51 of the Missouri Constitution, in that the Amendment mandates the expansion, but not the funding, of the Medicaid program, and leaves to the Missouri General Assembly the question of funding the expanded program.

State ex rel. Card v. Kaufman, 517 S.W.2d 78 (Mo. 1974)

Boeving v. Kander, 496 S.W.3d 498 (Mo. banc 2016)

Kansas City *et al.* v. McGee *et al.*, 269 S.W.2d 662 (Mo. 1954)

Argument

I. The trial court erred in denying Intervenors' motion to intervene, because Intervenors conclusively established the requirements for intervention of right in that:

(a) they have a proven interest in Medicaid expansion;

(b) their ability to protect that interest has been impaired and impeded by not being allowed to be heard in the instant case; and

(c) the Plaintiffs are not adequately representing the Intervenors' interest, because they have not advanced, and are not advancing, the Intervenors' arguments.

A. Standard and Scope of Review; Preservation of Claimed Error.

Intervenors have an absolute right to intervene under Rule 52.12(a) if they establish: (1) an interest relating to the subject of this action, (2) that their ability to protect that interest is impaired or impeded, and (3) that the Plaintiffs were inadequately representing the Intervenors' interest. Allred v. Carnahan, 372 S.W.3d 477, 481 (Mo. App. 2012). When an applicant satisfies these elements, a motion to intervene may not be denied. *Id.*

Appellate review of the denial of a motion to intervene is governed by Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976). The judgment of the trial court will be affirmed unless there is no substantial evidence to support it, unless it is against the weight of the evidence, or unless it erroneously declares or applies the law. Allred, 372 S.W.3d at 482 (Mo. App. 2012). Motions to intervene of right typically involve only the application of law, but to the extent factual determinations are necessary, the appellate court views the evidence and all reasonable inferences drawn therefrom in the light most favorable to the prevailing party and must give due regard to the trial court's credibility determinations. Allred, 372 S.W.3d at 483.

The Intervenors have preserved their claimed error in the trial court's denial of intervention. They filed a motion, *L.F. 7,* a proposed petition establishing their interest in the case, *L.F. 51*, a memorandum supporting the motion, *L.F. 14*, and affidavits establishing their interest, which is eligibility under an expanded Medicaid program. *L.F. 14-15.* After an expedited hearing on June 13, 2021, the trial court denied their motion on June 14. *L.F. 59; App. A1*. The court tried the case on June 21 and decided the case on June 23. *L.F. 63; App. A2.* Intervenors filed their Notice of Appeal on June 24, 2021. *L.F. 69.* They have preserved their claimed error.

B. Intervenors Have An Interest In The Litigation.

As demonstrated by their motion, proposed petition, and affidavits, Intervenors Barber and Chaney have an acute interest in the Medicaid benefits to which they would be entitled under Medicaid expansion. Barber and Chaney are members of the "working-poor" who are in need of medical care. *L.F. 15:1:3-4; 16:1:3-4.* Chaney would be eligible for Medicaid coverage as of July 1, 2021; Barber would be eligible as of December 31, 2021. *L.F. 16:1:6; 15:1-2:5-6.* No party seriously challenged the intervenors eligibility under Medicaid expansion. While the Plaintiffs complained of a lack of proof, *L.F. 11:6,* Intervenors responded with their sworn affidavits, even though affidavits are not necessary[1]. The State did not object to the proposed intervention, and the trial court did not question Intervenors' interest in the litigation. *L.F. 59; App. A1*. In sum, the record on

[1] "There is no requirement for an evidentiary hearing, neither is there a requirement that either or both parties submit affidavits, depositions or sworn testimony." Allred v. Carnahan, 372 S.W.3d 477, 481-483 (Mo. App. 2012).

appeal indisputably establishes Intervenors' interest, and they have met the first requirement for intervention of right.

C. Intervenors Have Been Foreclosed From Protecting Their Interest.

Being excluded from the lawsuit necessarily has prevented the Intervenors from being able to effectively protect their interest. The expedited nature of these proceedings only exacerbates the inability of Intervenors to be heard on an effective and timely basis. While Intervenors have filed a separate lawsuit, the State has failed to agree to expedited consideration of that case and has not yet entered an appearance.[2] In the meantime, the trial court has adjudicated the Plaintiffs' claim without hearing the Intervenors, and this Court is almost certain to determine the issues presented by Medicaid expansion, which may well bind the Intervenors without affording them the opportunity to be heard. This is especially egregious given that the Plaintiffs have not advanced the Intervenors' arguments and do not seem inclined to do so (see Part D, below).

The question presented to the trial court and to this court is whether the Intervenors' "ability to protect [their] interest will be impaired or impeded as a practical matter" by the disposition of the action. Allred, 372 S.W.3d at 485. As a practical matter, both the trial court's disposition of Plaintiffs' claim, and this Court's potential disposition of its appeal, without Intervenors' participation necessarily impairs and impedes their ability to protect their interest. Again, the trial court did not question the practical impairment/impediment element, and Intervenors have met this requirement. *L.F. 59; App. A1*.

[2] Intervenors filed Barber *et al.* v. Tindall *et al.*, Cause No. 21AC-CC00235, in the Cole County Circuit Court on June 17, 2021.

D. Plaintiffs Have Not Represented Intervenors' Interest.

"The final element for intervention as of right requires the [Intervenors] to show that the existing parties are inadequately representing the applicant's interest." Allred, 372 S.W.3d at 486. Inadequate representation may be established by demonstrating a "divergence of interests between the proposed intervenor and the party"; another factor is "how effective the representation will be in light of . . . the trial strategy of the party which would preclude the party from presenting the claims . . . of the proposed intervenor. Allred, 372 S.W.3d at 486-487.

Intervenors obviously concede that they seek the same primary result as Plaintiffs in this case, but their respective petitions, and the memoranda filed by the Plaintiffs in the trial court, demonstrate a divergence in strategy by which Intervenors' perspective has been minimized, even ignored.

Plaintiffs argued before the trial court that Amendment 2 mandated Medicaid expansion and that, because the General Assembly has already appropriated funds for Medicaid, no further appropriation is necessary. *L.F. 2:13:85-86.* Plaintiffs thus avoided the question of whether Amendment 2 violates the "appropriation by initiative" prohibition found in Article III, Section 51 of the Missouri Constitution.

While Intervenors agree with Plaintiffs that the Medicaid program has already been funded, Intervenors believe—as did the trial court—that the "appropriation by initiative" question lies at the heart of this case. Intervenors argue that Amendment 2 does not force an appropriation on the General Assembly; rather it mandates Medicaid coverage, without any discretion granted to the State's administrative officials and while leaving to the

General Assembly the question of whether Medicaid will continue to be funded in the future. *L.F. 51:6.* See Point II, below.

While this presents the General Assembly with a harsh choice—to either fund Medicaid as expanded or face the possible termination of the program in its entirety—that choice remains the legislature's prerogative. Amendment 2 may well create the future need for additional funds, but it does not dictate that the legislature answer that need by making future appropriations. See Point II, below.

Plaintiffs did not address this argument in the trial court, and there is no guaranty that they will do so in this Court.

E. The Trial Court Erred In Denying Intervention.

The trial court offered two reasons for denying intervention. First, that the Intervenors' interests would be adequately represented by the Plaintiffs. *L.F. 59; App. A1.* As demonstrated above, this is incorrect. Indeed, had the trial court permitted intervention, Intervenors' perspective may well have informed the trial court's ultimate conclusion that Amendment 2 violated Article III, Section 51.

Second, the trial court found that "the delays inherent in adding another party will prejudice the original parties". *L.F. 59; App. A1.* But potential delays are not part of the test for determining intervention of right. See Allred, 372 S.W.3d at 481. Neither did the trial court expound on this perceived prejudice. The State did not object to intervention, and it only requested a few additional days before trial to prepare a defense to the Intervenors' petition. And while there is a presumptive date of July 1 for the implementation of expansion, the likelihood of appeal rendered that date impossible to

meet in any event, as is demonstrated by the briefing schedule in this Court as proposed by the parties. From the perspective of trial, a delay of an additional one or two weeks would functionally prejudice no one.

For all these reasons Intervenors submit that the trial court misapplied the law. They have met the requirements of Rule 52.12(a) and are entitled to intervene as a matter of law.

II. The trial court erred in entering judgment for the State, because Amendment 2 does not require a funding appropriation and does not violate Article III, Section 51 of the Missouri Constitution, in that the Amendment mandates the expansion, but not the funding, of the Medicaid program, and leaves to the Missouri legislature the question of funding the expanded program.

A. Standard of Review; Preservation of Claimed Error

Because the case below was submitted on stipulated facts, the only question is whether the trial court made the proper legal conclusion. A reviewing court is primarily concerned with the correctness of the result; the trial court's judgment will be affirmed if it is correct on any ground supported by the record, regardless of whether the trial court relied on that ground. Cady, et al., v. Ashcroft, et al., 606 S.W.3d 659, 665 (Mo. App. 2020) (citations and quotations omitted).

The Intervenors must be deemed to have preserved their claimed error through the trial court's denial of intervention. Because of that denial, Intervenors were unable to present their arguments to the trial court, and they respectfully request that this Court now permit their arguments to be heard. The gravity of the case and its expedited consideration justify the requested indulgence.

B. Amendment 2 Does Not Mandate An Appropriation And Does Not Violate Article III, Section 51.

The trial court erred in construing Amendment 2 as requiring a funding appropriation from the legislature. In doing so the trial court failed to appreciate the authority of Missouri's voters to change Medicaid policy, the fact that they did so, and that the policy change does not, either on its face or in its application, force the General Assembly to appropriate funds.

1. The People Have The Right To Effect Change.

The Missouri Constitution ensures the sovereignty of Missouri's citizens in matters of governing. Its Bill of Rights provides not only "[t]hat all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole", it also extends this authority to Missouri's citizens:

> . . . [T]he people of this state have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States.

Mo. Const. Art. I, Secs. 1 and 3. This authority extends to the initiative: "The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly . . . ." *Mo. Const. Art. III, Sec. 49.*

This Court has recognized the awesome power of the people of Missouri to adopt and to change their governing structure:

> [T]he people themselves are the source of all governmental power. Their will is supreme. They spell out in their constitution what form their government

> shall take and what powers it shall have. Hence, when the people of the State of Missouri write or amend their constitution, they may insert therein any provision they desire, subject only to the limitation that it must not violate restrictions which the people have imposed on themselves and on the states by provisions which they have written into the federal constitution.

State ex rel. St. Louis Fire Fighters Ass'n v. Stemmler, 479 S.W.2d 456, 458 (Mo. banc 1972).

These words are not the mere regurgitation of patriotic pablum instilled in our collective psyches; they are a real description of our liberty and freedom to design the governmental structure under which we wish to live. Out of respect for this sovereign authority, constitutional amendments effected by the initiative process should be construed liberally to realize the people's will.

2. The People Have Effected Medicaid Expansion.

Amendment 2 has expanded Medicaid in Missouri. It mandates:

- That beginning July 1, 2021, the individuals who meet its prescribed qualifications "shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package":
- That by March 1, 2021, the state agencies administering Medicaid "shall submit all state plan amendments necessary to implement" expansion to the federal government; and
- That all people eligible for Medicaid, both pre- and post-expansion, be treated equally: "No greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices shall be

> imposed on persons eligible for MO HealthNet services pursuant to this section than on any other population eligible for medical assistance."

Mo. Const. Art. IV, Secs. 36(c)(1, 3, 5).

This is a policy directive. With its approval by the electorate, Amendment 2 declares that Missouri's Medicaid program shall be open to newly-eligible people like Intervenors and Plaintiffs. It is self-executing, because it does not rely on legislation from the General Assembly to come into effect:

> Indeed, the clause under discussion merely expresses a status which will instantly result from the election required to be held. Statutory language would be impotent to add aught to the Constitution's expression of this resulting status, and so the clause is self-executing. It is a provision complete in itself, and needs no legislation to put it in force.

State ex inf. Norman v. Ellis, 28 S.W.2d 363, 366 (Mo. banc1930) (declaring the Missouri Constitution's anti-nepotism clause self-enforcing.)

Moreover, in adopting Amendment 2 the people (a) provided specific direction to State officials concerning the steps needed to be taken for its implementation, and (b) prohibited any subsequent discrimination between pre- and post-expansion populations in the administration of Medicaid as expanded. *Mo. Const. Art. IV, Secs. 36(c)(3, 5).* This prescience reinforces the amendment's self-executing nature, "because some of the very state officials affected by it should not be depended on to put it in force". *Id.* As noted in the Norman case, "[n]o doubt that idea was prominent in the minds of the voters who adopted it." *Id.*

By adopting Amendment 2, Missouri voters have changed Medicaid policy in Missouri; they have expanded Medicaid coverage to the working poor effective July 1, 2021.

3. Amendment 2 Does Not Require An Appropriation.

Despite this policy change, and despite the clear directives of Amendment 2, State officials, specifically Defendants Tidball and Matthews, decided to stop Medicaid expansion in its tracks. Tidball and Matthews determined that their agencies lacked the funding necessary to provide coverage to the expanded Medicaid population. *L.F. 17:12:100-104; L.F. 33.* As a result, they decided to withdraw the plans that had been previously filed with the federal government for expansion implementation. *Id*. In its judgment the trial court effectively affirmed this withdrawal by declaring Amendment 2 in violation of the constitution's prohibition against "appropriation by initiative", Mo. Const. Art. III, Sec. 51; *L.F. 63:5-6; App. A6-7.* But Amendment 2 does not require an appropriation, on its face or as applied.

a. Amendment 2 Does Not Appropriate On Its Face.

As the trial court recognized (*L.F. 63:2-3; App. A3-4*), Cady, 606 S.W.3d 659, answers the question of whether the amendment is facially violative of the "appropriation by initiative" prohibition. In Cady the Eastern District found no "irreconcilable conflict" between Amendment 2 and Article III, Section 51, largely because of what the amendment didn't say. Since it did not include any language expressly mandating an appropriation or providing any direction to the legislature to do so, the court found that the amendment did not facially violate the constitution. Cady, 606 S.W.3d at 668-669.

b. Amendment 2 Does Not Appropriate In Its Application.

The trial court then relied on City of Kansas City v. Chastain, 420 S.W.3d 550, 555-556 (Mo. banc 2014) for the proposition that Article III, Section 51 also prohibits appropriation by initiative "through practical necessity". *L.F. 63:3-4; App. A4-5*. But Chastain has no direct bearing here, first because the initiative in that case did not appropriate any funds, either expressly or through practical necessity. Instead it sought to impose new taxes without imposing any funding obligation whatsoever on the city. *Id.* Because there was no required appropriation, the initiative was held not to violate Article III, Section 51. *Id.* The Chastain court's reference to appropriation "through practical necessity", respectfully, is non-binding dicta.

Yet even in considering Chastain's "practical necessity" standard, the trial court failed to try to harmonize Amendment 2 with Article III, Section 51, which it is obligated to do. State ex. inf. Martin v. City of Independence, 518 S.W.2d 63, 66 (Mo. banc 1974) ("[I]n determining meaning of a constitutional provision due regard will be given to its primary objects and all related provisions should be construed as a whole and where necessary to bring conflicts, if any, into harmony.") See Committee For A Healthy Future, Inc. v. Carnahan, 201 S.W.3d 503, 510 (Mo. banc 2006) (If possible, proposed initiative must be reconciled with Article III, Section 51).

Instead of attempting reconciliation of the two provisions, the trial court made the common sense observation that adding new claimants to the Medicaid program will result in increased costs to the State. Because of these additional costs, the trial court concluded that implementation of Medicaid expansion would necessarily force future legislative

appropriations. *L.F. 63:4-5; App. A5-6.* But this conclusion erroneously assumes that the legislature has no discretion other than to fund the expanded program.

The concept of legislative discretion is critical in determining whether an initiative effects an illegal appropriation, as demonstrated by State ex rel. Card v. Kaufman, 517 S.W.2d 78 (Mo. 1974). In Card, an initiative petition proposed a charter amendment to require University City fire department employees to be paid not less than the employees of the St. Louis fire department. The proposal was challenged as violating Article III, Section 51. This Court acknowledged that while the initiative did not direct a specific monetary appropriation, it would nonetheless strip the city council, the manager, and finance director of their discretion and control over the city's finances. "The proposed amendment has the same effect as if it read that the sums necessary to carry out its provisions stand appropriated." Card, 517 S.W.2d at 80.

This Court made a similar observation in Boeving v. Kander, 496 S.W.3d 498 (Mo. banc 2016), another case involving the pre-election review of a proposed constitutional amendment in the face of an "appropriation by initiative" challenge. In rejecting the claim, the Court observed that "[s]uccessful [pre-election] challenges have been limited almost exclusively to initiative petitions proposing local ordinances where the evident purpose and effect of the proposal was to impose a new obligation *leaving no discretion as to whether*

the local governments would or could pay this new obligation and no new source of revenue sufficient to do so." Boeving, 496 S.W.3d at 510 n. 6 (*emphasis added*).[3]

Here, the trial court concluded that Amendment 2, because of its anticipated additional costs, imposed a non-discretionary funding obligation on the General Assembly. Acknowledging that the legislature's failure to fund could lead to the termination of the Medicaid program (*L.F. 63:5; App. A6*), the court concluded that the resulting "multiple and serious consequences" would force the General Assembly to appropriate, consequently Amendment 2 violated Article III, Section 51. *Id.*

Intervenors Barber and Chaney respectfully suggest that the trial court usurped for itself the General Assembly's constitutional funding prerogative. Whether, how, and to what extent to fund Medicaid under Amendment 2 remains the legislature's choice. This reality was manifested very recently in the debate over renewing the Federal Reimbursement Allowance. Had the tax not been renewed, Missouri would have lost its ability to collect those revenues used for the State's portion of Medicaid reimbursement, which "would have jeopardized our state budget and health care coverage for pregnant women, poor children, and the disabled". *St. Louis Post-Dispatch, June 26, 2021.* Yet the General Assembly is the only governmental entity empowered to enact the FRA tax; no court would be allowed to declare the tax passed because of the dire consequences that would result if it was not renewed.

[3] See also Kansas City *et al.* v. McGee *et al.*, 269 S.W.2d 662, 666 (Mo. 1954) (proposed ordinance creating firefighters' pension plan held to violate Article III, Section 51 because it did not "leave any discretion to the City Council" but rather required the council's appropriation of funds as determined by the pension board of trustees).

The dispute over Amendment 2 is no different. The voters of Missouri have enacted a policy that expands Medicaid coverage. That policy expands coverage to a newly-eligible population, and it declares that all Medicaid-eligible individuals be treated equally. But the policy does not mandate legislative funding. The General Assembly retains the discretion not to appropriate any additional funds for the Medicaid program. Granted, this may result in the termination of the Medicaid program, but that choice rests with the General Assembly, not the trial court.

Conclusion

Recognizing that the General Assembly retains its constitutional prerogative over appropriations harmonizes Amendment 2 with the constitutional prohibition against "appropriation by initiative". That harmonization puts the resolution of any additional Amendment 2 costs squarely where it belongs—on the shoulders of those elected officials who are constitutionally responsible to determine what state programs get funded and to what extent. If the legislature refuses to appropriate sufficient funds to meet the State's expanded Medicaid obligations, then it is possible that Medicaid in Missouri will cease to exist. But it is not the function of the trial court to consider or weigh the anticipated consequences. That responsibility, along with the State's appropriations authority, belongs to the General Assembly.

The trial court erred in denying Intervenors' motion to intervene and in declaring Amendment 2 unconstitutional, and by so doing denying Plaintiffs' and Intervenors' requested relief. This Court should reverse the judgment of the trial court, grant the motion

to intervene, and order the State and its administrative officials to effect Medicaid expansion as contemplated by Amendment 2. The rest is up to the General Assembly.

Respectfully Submitted,

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Certificate of Compliance

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) and that the brief contains 5,186 words.

/s/ Paul Martin

Certificate of Service

The undersigned hereby certifies that on the 30th day of June, 2021 a true and accurate electronic copy of this Intervenor/Appellants' Brief was submitted to the Clerk of this Court for electronic service via Missouri Casenet pursuant to Rule 103.08.

/s/ Paul Martin