IN THE SUPREME COURT OF MISSOURI

No. SC99185

STEPHANIE DOYLE, et al., APPELLANTS

VS.

JENNIFER TIDBALL, et al., RESPONDENTS

Appeal from the Circuit Court of Cole County
The Honorable Jon E. Beetem, Judge

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

The Circuit Court's Judgment declared Article IV, Section 36(c) unconstitutional pursuant to Article III, Section 51. A5. This Court has exclusive appellate jurisdiction, because this is a case "involving the validity…of a…provision of the constitution of this state." Mo. Const. art. III, § 3.

INTRODUCTION

The people of Missouri have reserved for themselves the power to amend the Constitution. Mo. Const. art. III, § 49. They did it in 2020—bypassing the General Assembly to change the requirements for coverage under the State's Medicaid program. That substantive law change did not mandate the General Assembly make an appropriation. Nor can the General Assembly, by appropriation, change that substantive law, because the law makes a clear distinction between substantive, non-appropriations laws, and the appropriations laws that fund state government.

The Circuit Court purported to invalidate the law for which a majority of Missourians voted. That was error. The Circuit Court ignored the distinction between substantive laws and appropriations, *sua sponte* reconsidered an on-point Court of Appeals decision, refused to adjudicate the question in front of it, and instead took the unprecedented step to hold a provision of the Constitution unconstitutional.

At issue is Article IV, Section 36(c). It changes the substantive law about who is eligible to receive Medicaid through Missouri's "MO HealthNet" program. Although this change was unpopular with the General Assembly, the legislature made the choice this past legislative session to provide funding for MO HealthNet. Appropriately, the General Assembly's appropriation drew no distinctions as to eligible population groups. Yet, despite an

appropriation and despite Plaintiffs' stipulated eligibility, the State Defendants refuse to enroll them in the program.

The Circuit Court should have considered the issues presented, rather than take up a constitutional question not advanced by the parties. *See Smith v. City of St. Louis,* 395 S.W.3d 20, 24 (Mo. banc 2013); *Callier v. Dir. of Rev.,* 78 S.W.2d 639, 641 (Mo. banc 1989). Nevertheless, the Court in *Cady v Ashcroft,* 606 S.W.3d 659 (Mo. App. 2020), was correct when it found Article IV, Section 36(c) (at the time Amendment 2) does not require the General Assembly to appropriate and therefore did not violate Article III, Section 51. The Circuit Court rejected that holding out of hand—without a record any different than what was in front of the Court of Appeals—and decided Article IV, Section 36(c) *does* appropriate. Rather than abide by the longstanding obligation of Courts to harmonize constitutional provisions, the Circuit Court rushed to find conflict where none exists.

Once the Circuit Court's first error is corrected, the Circuit Court acknowledged that Plaintiffs are correct about the original issue. Article IV, Section 36(c) provides Plaintiffs "shall" be eligible to enroll in the MO HealthNet program on July 1, 2021. But the State refuses to enroll Plaintiffs and individuals like them on July 1 because, the State claims, there is no appropriation authority in House Bills 10 and 11 to implement Article IV, Section 36(c). That interpretation of the appropriations bills is wrong. The plain language of those bills makes clear that there are appropriations to

for the State's Medicaid program, including all groups of eligible individuals.

And this Court should reject the State's interpretation, which the Circuit Court called "semantic and legal gymnastics." Appendix Judgment at 2. Under the State's logic, the General Assembly silently chose not to appropriate funds for the eligibility category established by Article IV, Section 36(c). But, according to *Planned Parenthood v. Department of Social Services,* 602 S.W.3d 201 (Mo. banc 2020), it is impermissible to do what the State claims to have done—use an appropriations measure to amend a substantive law. The General Assembly may choose to fund the MO HealthNet program robustly, partially, or not at all, but it may not use appropriations bills to change the substantive laws governing eligibility.

STATEMENT OF FACTS

Each year the legislature passes a budget for the upcoming fiscal year. *See e.g.*, A10-A115. That budget includes funding for the Medicaid program, known in Missouri as MO HealthNet. *See Id.* The General Assembly grants state agencies appropriation authority to provide health care to the eligibility groups authorized by state law. *Id.* This year, the MO HealthNet program includes a new eligibility group voted on by the people of Missouri at the August 2020 election. D17:P3, ¶ ¶ 26, 28; D18.

I. At the August 2020 election, Missouri voters expanded the MO HealthNet program.

States have the option of adding an eligibility category to their Medicaid programs—adults aged 19 to under 65 years of age with incomes up to 138% of the federal poverty level. D34:P2. Before 2020, most states had already included that eligibility category, enticed by the enhanced federal funds provided for that group. *Id.* The federal government funds 90% of the cost of covering this group while most other groups are funded at a significantly lower rate – approximately 65% in Missouri. D17:P2, ¶ 29. However, the Missouri legislature was reluctant to add this coverage category. As a result, voters were given the opportunity to vote to add this eligibility category to the MO HealthNet program at the August 2020 election. D17: P2, ¶ 26; D18. But, first, the amendment faced legal challenges from opponents who claimed the Amendment violated the prohibition on appropriating through an initiative petition.

A. Amendment 2 faced a pre-election challenge in *Cady v. Ashcroft*.

Two taxpayers, Jeremy Cady and Ryan Johnson, challenged the Secretary of State's decision to certify the MO HealthNet eligibility change (also known as Amendment 2) for a vote of the people. *See Cady v. Ashcroft,* 605 S.W.3d 659 (Mo. App. 2020). The Circuit Court of Cole County "found in favor of the Secretary of State and Intervenor defendants." *Id.* Cady and Johnson appealed contending, among other claims, that "the circuit court erred in holding that the Proposed Measure did not facially violate the prohibition against appropriation by initiative found in article III, section 51 of the Missouri Constitution." *Id.* at 667.

The Court of Appeals affirmed the circuit court's judgment.

> The Proposed Measure does not direct or restrict the General Assembly's ability to change the amount of appropriation for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs. This interpretation harmonizes the provisions of the Proposed Measure and article III, section 51 of the state Constitution, rather than creating an "irreconcilable conflict."

Id. at 668-69 (citation omitted).

B. Voters approved Amendment 2.

Voters approved the amendment, and Article IV, Section 36(c) was added to the Missouri Constitution. D17:P2, ¶ 26. Therefore, a new category of individuals will become eligible to enroll in Missouri's Medicaid program on July 1, 2021.

> [B]eginning July 1, 2021, individuals nineteen years of age or older and under sixty-five years of age who qualify for MO HealthNet services under 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) and as set forth in 42 C.F.R. 435.119, 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 as determined under 42 U.S.C. Section 1396a(e)(14) and as set forth in 42 C.F.R. 435.603, shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package.

Mo. Const. art. IV, Section 36(c).

The Amendment also required DSS to maximize federal funds. *Id.* This directive required "draw down" of the 90/10 federal match associated with the new eligibility category. Subsequent to adoption of Article IV, Section 36(c), Congress passed and the President signed, the American Rescue Plan, which provided additional federal matching funds for states like Missouri that added this new eligibility category. D34. Missouri is estimated to receive an additional $1.2 billion for the remainder of its Medicaid program if it implements Article IV, Section 36(c). *Id.* at P3.

II. The State refuses to enroll Stephanie Doyle, Melinda Hille, and Autumn Stultz in the MO HealthNet program on July 1.

Stephanie Doyle, Melinda Hille, and Autumn Stultz ("Plaintiffs") are three of the thousands of Missourians who are not currently eligible to enroll in the MO HealthNet program, but will be

eligible on July 1 pursuant to Article IV, § 36(c). D17:P1, ¶ 1-16. However, the State will not permit individuals like these three low-income Missourians to enroll in the MO HealthNet program. D17, P12-13, ¶ 106-108. The State claims that, because there is not a separate appropriation line for the new eligibility category within the MO HealthNet program, it cannot implement Article IV, Section 36(c)'s mandate to enroll individuals. D49.

Consistent with its refusal to enroll individuals like Plaintiffs in the MO HealthNet program, the State sent a letter requesting to withdraw the State Plan Amendments it had submitted to the United States Department of Health and Human Services. D55. In that letter, Respondent Tidball wrote that "DSS lacks the authority to proceed with implementing Article IV, § 36(c) of the Missouri Constitution at this time." D17:P12, ¶ 105.

III. Plaintiffs challenge the State's refusal to enroll them in the MO HealthNet program.

Upon the State's announcement that it was withdrawing the State Plan Amendments and not enrolling newly eligible individuals in the MO HealthNet program beginning July 1, Plaintiffs filed a timely petition for declaratory and injunctive relief in the Circuit Court of Cole County. D2. Plaintiffs are eligible to enroll in the MO HealthNet program on July 1 if the State implements Article IV, Section 36(c) and have standing to bring their claims. D17:P1-2, ¶ 1-16. The State did not dispute that the issues are ripe because the State will refuse to enroll Doyle, Hille, and Stultz in the MO

HealthNet program. D17:P12-13, ¶ 106-108; *See* D9. A bench trial was held on stipulated facts and exhibits. D63.

The Circuit Court concluded, *sua sponte*, that Article IV, Section 36(c) violates the prohibition found in Article III, Section 51 against appropriation via an initiative petition, an argument that the State did not make. A1-A6. This appeal followed.

POINTS RELIED ON

1. The trial court erred in granting judgment in favor of Defendants, declaring a provision of the constitution unconstitutional, because Article IV, § 36(c) does not violate Article III, § 51, in that Article IV, § 36(c) does not divest the General Assembly of its discretion over appropriations and does not purport to appropriate state funds.

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

Cady v. Ashcroft, 606 S.W.3d 659 (Mo. App. 2020)

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2. The trial court erred in granting judgment in favor of Defendants because Article IV, § 36(c) guarantees Plaintiffs the right to participate in MO HealthNet and the Fiscal Year 2021 appropriations bills permit Defendants to expend state funds to cover MO HealthNet benefits for Plaintiffs, in that the plain text of the appropriations bills permit Defendants to cover MO HealthNet benefits for Plaintiffs.

Planned Parenthood v. Dep't of Social Services, 602 S.W.3d 201 (Mo. banc 2020)

State ex rel. Hueller v. Thompson, 289 S.W. 338 (Mo. banc 1926)

United Pharmacal Co. of Mo.v. Mo. Bd. of Pharmacy, 208 S.W.3d 907 (Mo. banc 2006)

STANDARD OF REVIEW

The constitutionality of Article IV, Section 36(c) is a question of law that this Court reviews *de novo*. *See Trenton Farms RE, LLC v. Hickory Neighbors United, Inc.,* 603 S.W.3d 286, 289 (Mo. banc 2020). A constitutional provision "is presumed to be valid and will not be declared unconstitutional unless it clearly contravenes some constitutional provision." *Id.* It is the "person challenging the validity of the [constitutional provision who] has the burden of proving the act clearly and undoubtedly violates constitutional limitations." *Id.*

Similarly, questions of law in court-tried cases are reviewed *de novo*. *See Pearson v. Koster,* 367 S.W.3d 36, 43 (Mo. banc 2012). A review of a declaratory judgment is the same as in any other court-tried case. *See Guyer v. City of Kirkwood,* 38 S.W.3d 412, 413 (Mo. banc 2001). The decision below "should be affirmed unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Id.* (citation omitted).

BACKGROUND

To understand the issues in the case, some background on the MO HealthNet program and Missouri's budgeting process may be helpful.

A. The MO HealthNet program provides health care coverage to some of Missouri's neediest residents.

The State's participation in Medicaid is completely voluntary. *Gee v. Dep't of Soc. Servs., Fam. Support Div.*, 207 S.W.3d 715, 717-18 (Mo. App. 2006). Medicaid is "a cooperative program under which the federal government reimburses state governments for a portion of the costs of providing medical assistance to low income recipients." *Vaughn v. Mo. Dep't of Soc. Servs.*, 323 S.W.3d 44, 47 (Mo. App. 2010) (quotations omitted). Missouri's version of Medicaid is called MO HealthNet. § 208.001, RSMo ("In Missouri, the medical assistance program on behalf of needy persons . . . shall be known as 'MO HealthNet.'").

The Missouri Department of Social Services ("DSS") is the single state agency charged with administering the MO HealthNet program. D17:P2, ¶ 18. Within DSS, the Family Support Division and the MO HealthNet Division are primarily responsible for administering the program. D17:P3, ¶ ¶ 21, 23. FSD determines eligibility while MHD maintains the rest of the administrative responsibility for the program. *Id.*

B. The General Assembly appropriates funds for the state budget, including for the MO HealthNet program.

It is the prerogative of the General Assembly to write and approve the State's budget. *See Rebman v. Parson,* 576 S.W.3d 605, 609 (Mo. banc 2019) ("To facilitate its constitutional prerogative, the general assembly is vested with both the authority and the responsibility to raise revenue and allocate funds from the treasury to pay the State's expenses.").

The Constitution requires that "[a]ll revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law." Mo. Const. art. III, § 36. Nor may funds ever "be withdrawn from the state treasury except . . . in accordance with an appropriation made by law." Mo. Const. art. IV, § 29.

An appropriation is "a legislative body's . . . act of setting aside a sum of money for a specific purpose." *Black's Law Dictionary* at 123 (10th ed. 2014). Consistent with this definition, Article IV, Section 23 requires appropriations bills to distinctly appropriate a specified amount of funds for a specified purpose. Mo. Const. art. IV, § 23. In other words, an appropriation consists of two parts: an amount of money and a purpose for that money. Until such appropriation is made, there are simply no funds available for a government agency's use. *See City of Jefferson v. Mo. Dep't of Nat.*

Resources, 916 S.W.2d 794, 796 (Mo. banc 1996); *Fort Zumwalt Sch. Dist. v. State,* 896 S.W.2d 918, 922 (Mo. banc 1995).

Unlike general legislation, appropriations bills "may embrace the various subjects and accounts for which moneys are appropriated." Mo. Const. art. III, § 23. But appropriation bills may not contain any other legislation besides appropriations. *See State ex rel. Hueller v. Thompson,* 289 S.W.338, 340 (Mo. banc 1926) ("An appropriation bill is just what the terminology imports, and no more. Its sole purpose is to set asides moneys for specified purposes, and the lawmaker is not directed to expect or to look for anything else in an appropriation bill except appropriations."). An appropriations bill that also includes substantive legislation "necessarily runs afoul of the multiple subject prohibition in article III, section 23 of the Missouri Constitution." *Planned Parenthood v Dep't of Soc. Servs.,* 602 S.W.3d 201, 211 (Mo. banc 2020).

C. House Bills 10 and 11 (2021) provide funding for the MO HealthNet program.

As part of the appropriations process each year, the General Assembly provides funding for the MO HealthNet program. A10-A115. The legislature appropriates funds for the Department of Social Services in House Bill 11 or 2011 (the numbers change depending on the session of the general assembly). A57-A115. Similarly, the General Assembly appropriates funds for the Department of Health and Senior Services and the Department of Mental Health in House Bill 10 or 2010. A10-A56. Various line items in these bills cover services and programs within MO HealthNet.

While the appropriations provide the funding for services for MO HealthNet eligible individuals, the general laws (statutes and now the Constitution) govern eligibility requirements, as well as describing the services available to these individuals. *See, e.g.*, Mo. Const. art. IV, § 36(c); § § 208.010 and 208.152, RSMo. In other words, the line items for MO HealthNet do not discuss eligibility for the services they are funding. A10-A115. Rather, these lines describe the purposes of the funding by referring to the services only. *Id.*

Historically, the funding provided in House Bills 10 and 11 has not been sufficient to provide funding for MO HealthNet's actual costs for the full fiscal year. *See* D41-D45. Therefore, the General Assembly has routinely found it necessary to pass one or more supplemental appropriations bills adding appropriation authority as yearly costs become apparent. *Id.* This is a common practice and one that is not unique to the MO HealthNet program. *Id.* Usually, in February, the General Assembly passes discrete supplemental budget bills to ensure that programs like the MO HealthNet program have the funds to pay for the costs incurred and for the remainder of the fiscal year. *Id.*

ARGUMENT

I. First Point Relied On: The trial court erred in granting judgment in favor of Defendants, declaring a provision of the constitution unconstitutional, because Article IV, § 36(c) does not violate Article III, § 51, in that Article IV, § 36(c) does not divest the General Assembly of its discretion over appropriations and does not purport to appropriate state funds.

Plaintiffs (and Defendants) are put in the unusual position of briefing and arguing an issue to this Court on which there was no briefing or discussion below. Until the Circuit Court issued its Judgment, all Parties were in agreement that Section 51 was not at issue. But the Circuit Court, *sua sponte,* decided anew a Court of Appeals decision without any basis for doing so. The only thing that changed between *Cady v Ashcroft* and the Circuit Court's decision here is that the General Assembly actually chose to appropriate funds that may be used to implement Article IV, Section 36(c). 606 S.W.3d 659 (Mo. App. 2020).

Although the Circuit Court said that "the *Cady* court declined to adjudicate the Article III, Section 51 challenge on the merits," that is simply not the case. *Cady v. Ashcroft* determined that Amendment 2 did not violate the prohibition on appropriation through the initiative process. 606 S.W.3d at 669. That interpretation still stands and is the only proper interpretation of Article IV, Section 36(c).

The Circuit Court flipped the analysis on its head. Rather than seeking an interpretation that avoids a constitutional conflict, the Circuit Court rushed to find one. The Judgment below creates an unnecessary and entirely avoidable conflict between two validly enacted provisions of the constitution—a result the case law does not support. This Court should avoid such an unprecedented conflict at all costs, and for the reasons discussed below, there simply is no conflict between Article III Section 51 and Article IV, Section 36(c) (Amendment 2).

But if this Court decides to join the Circuit Court and re-adjudicate *Cady,* it will conclude that the result in *Cady* was correct. Under this Court's precedent, an initiative violates Article III, § 51 only if it divests the legislature of discretion over appropriations. Moreover, the debates at the 1943-1944 Constitutional Convention confirm that Article IV, Section 36(c) does not "appropriate" in any way the framers contemplated. Article IV, Section 36(c) leaves intact the General Assembly's expansive discretion over appropriations. The Court should reverse the Circuit Court's Judgment.

A. *Cady* was correctly decided and governs this case.

The Court in *Cady* correctly found that Article IV, § 36(c) "does not direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-costs." *Cady,* 606 S.W.3d at 668. This interpretation properly "harmonizes the provisions of [Article IV, Section 36(c)] and article

III, section 51 of the state Constitution rather than creating an 'irreconcilable conflict.'" *Id.* at 668-69. After this Court denied transfer, the measure went to the ballot. *See Cady v. Secretary of State*, No. SC98561, June 5, 2020 Docket Entry (denying transfer). The task before the *Cady* Court was to decide whether the measure could be validly enacted. Once the court allowed the measure on the ballot, the decision was one for the voters—not to be taken away now by the courts.

But if this Court revisits the issue, *Cady* is a guidepost for Plaintiffs' arguments here. As the Court of Appeals found in *Cady*, the General Assembly still has the discretion to make choices about appropriations for Article IV, Section 36(c). 6060 S.W.3d at 668. All Plaintiffs ask this Court to do is to acknowledge those choices and require the Defendant State Officers to acknowledge them as well.

1. Article IV, Section 36(c) does not require an appropriation.

Article IV, Section 36(c) establishes a new eligibility category for the MO HealthNet program. This is the primary objective of the provision and that should govern when considering whether it acts as an appropriation. *See State, at inf. of Martin v. City of Independence,* 518 S.W. 2d 63, 66 (Mo. 1974). ("Of particular importance is the principle in determining meaning of a constitutional provision due regard will be given to tis [sic] primary objects and all related provisions should be construed as a whole and where necessary to bring conflict, if any, into harmony.") Nothing about establishing a new eligibility category for the MO HealthNet

program requires an appropriation. As detailed below, the general MO HealthNet statutes similarly establish eligibility categories without requiring an appropriation. The same construction should be applied to Article IV, Section 36(c).

Cady was faithful to this Court's teachings in *Boeving v. Kander*. 496 S.W. 3d 498 (Mo. banc 2016) and like cases. In *Boeving,* this Court declined to find that an initiative petition violated article III, Section 51 because there was no "unavoidable and irreconcilable conflict." 496 S.W.3d at 510. Thus, as long as there is any way to interpret an initiative as not appropriating, the initiative does not violate the prohibition. Here, the plain language makes such an interpretation simple.

A plain language analysis of Article IV, Section 36(c) confirms it is not an appropriation. First, to ascertain the meaning of a measure, courts look to the plain language to guide their analysis. *See United Pharmacal Co. of Mo. v. Mo. Bd. of Pharmacy,* 208 S.W.3d 907, 909-10 (Mo. banc 2006). The word appropriation (or similar language) does not appear anywhere in the text of the provision. The plain language here makes clear that Article IV, Section 36(c) is substantive law, not an appropriation.

The Constitution tells us how to spot an appropriations law. "Every appropriation law shall distinctly specific the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose." Mo. Const. art. IV, § 23. There are no amounts listed in Article IV, Section 36(c) nor are there any purposes associated with any funds. Unlike substantive laws,

appropriations bills "may embrace the various subjects and accounts for which moneys are appropriated." Mo. Const. art. III, § 23. This law does not.

"An appropriation bill is just what the terminology imports, and no more. Its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or to look for anything else in an appropriation bill except appropriations." *State ex rel. Hueller v Thompson*, 289 S.W. 338, 340-41 (Mo. banc 1926). Article IV, Section 36(c) does not set aside moneys. It guarantees MO HealthNet coverage to eligible individuals. It does not provide any level of funding for that coverage nor is that the purpose of the amendment—just as the *Cady* court said.

Despite the absence of appropriations language, the Circuit Court's Judgment relies on the mistaken assumption that because Article IV, Section 36(c) mandates coverage of these newly eligible individuals, it therefore requires the General Assembly to appropriate funds. But this is not the case.

In *State ex rel. Kansas City Symphony v. State,* the Court found that a statute relating to the Arts Trust Fund did not compel the General Assembly to transfer moneys to the fund with an appropriation. 311 S.W.3d 272, 278 (Mo. App. 2010). ("The provision directing a transfer of funds from the general revenue fund to the Arts Trust Fund does not obviate the need for appropriation."). Rather, "[t]he legislature is permitted to establish a special fund and allocate revenue to that fund, but the actual disbursement of such

funds is nonetheless subject to appropriation by future legislators." *Id.* (quotation and citation omitted).

So it is here. The voters reserved to themselves the right to bypass the General Assembly and amend their Constitution. Mo Const. art. III, § 49. They exercised that right in August 2020 by enacting a new provision of the Constitution that added an eligibility category to the MO HealthNet program. But it is still within the purview of the General Assembly to appropriate and authorize disbursement of funds for MO HealthNet—or not. After all, the Executive Branch cannot take money from the treasury absent an appropriation from the General Assembly. Mo. Const. art. IV, § 28.

In fact, the decision to appropriate for the MO HealthNet program "was presumably one of thousands of difficult decision made each year during the appropriations process." *Planned Parenthood*, 602 S.W.3d at 211. In this case, as discussed in more detail below, the legislature did in fact appropriate funds for MO HealthNet as is does every year, of its own volition, not as a result of any directive in Article IV, Section 36(c) as imagined by the Circuit Court.

2. Regardless, the Court must harmonize Article IV, Section 36(c) with Article III, Section 51 as the Court in *Cady* did.

Although the issue was properly decided by the Court of Appeals (and a vote of the people), should this Court conduct its own analysis it will find that Article IV, Section 36(c) can easily be

harmonized with Article III, Section 51. In fact, the Court in *Cady*, did just that:

> The proposed Measure does not direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs. This interpretation harmonized the provision of the Proposed Measure and article III, section 51 of the state Constitution rather than creating an "irreconcilable conflict."

606 S.W. 3d at 668.

The analysis should be even more lenient after the change has been voted on. The Circuit Court cites no precedent for the radical action of invalidating a constitutional provision because it conflicts with another constitutional provision. And there is none, because Courts are bound to harmonize constitutional provisions if there is any way to do so. *Gregory v. Corrigan,* 685 S.W.2d 840, 843 (Mo. banc 1985)

Regardless of whether the analysis is before or after the election, "as a principle of statutory construction, the court should reject an interpretation of [a constitutional provision] that would render it unconstitutional, when [it] is open to another plausible interpretation by which it would be valid." *State ex rel. Neville v. Grate,* 443 S.W.3d 688, 693 (Mo. App. 2014). Any interpretation placing Article IV, Section 36(c) in conflict with Article III, Section 51 must be rejected. *See* 685 S.W.2d at 843 ("Furthermore, the

plaintiffs' reading of this constitutional subsection would place it directly in conflict with Article V, § 15.3...Since we are to attempt to harmonize all provisions of the constitution, the plaintiffs' contention in this regard must be rejected." (citation omitted)). *Boeving* specifically applied the directive to harmonize provisions to the analysis under Article III, Section 51. Rather than invalidate a provision as unconstitutional, this Court must look to fashion a remedy "that is far more narrowly tailored than the wholesale rejection" of the provision. 496 S.W.3d at 511.

The Circuit Court's interpretation of Article IV, Section 36(c) runs head long into a constitutional conflict, rather than avoiding it, as this Court must do. In contrast, interpreting Article IV, Section 36(c) so as not to require an appropriation harmonizes this provision with Article III, Section 51.

This makes sense. Once an initiative petition has been duly enacted by the voters, it becomes part of the Constitution (or state statutes) and is subject to the same requirements and restrictions as any other law. In *Cady*, the Court declined to "delve into the hypothetical interaction between the [Proposed Measure] (if passed), Missouri appropriations law, and substantive Medicaid law." 606 S.W.3d at 667. But the Circuit Court somehow read this as an invitation to conduct a *sua sponte* review of Article IV, Section 36(c) under Article III, Section 51. That was error. The *Cady* Court declined to speculate about the effects of Article IV, Section 36(c) because that is only proper after the Amendment is enacted and

under a different set of constitutional requirements. *See e.g*. Mo. Const. art. III, § 36; Mo. Const. art. IV, § 28.

The Circuit Court's judgment assumes that Article III, Section 51 matters *after* an amendment has been validly adopted. That is not at all clear from the text of the Constitution or this Court's precedent. The idea that the prohibition on using the initiative to appropriate might prevent it from going to the voters has been well-examined by the courts. But once the measure has been adopted by the voters, the method by which it was adopted should not invalidate it. At most, because the method was the initiative, the Court should now interpret the measure as not requiring an appropriation. That's an easy result here.

B. Article IV, Section 36 does not limit the General Assembly's full discretion over appropriations.

Article III, Section 51 provides that "[t]he initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby." Mo. Const. Art. III, § 51. The Court has interpreted this provision to prohibit "an initiative that, either expressly or through practical necessity, requires the appropriation of funds." *City of Kansas City v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014).

In applying this standard, the central and consistent touchstone has been whether an initiative leaves the legislature with any discretion to appropriate funds. *See, e.g.*, *Dujakovich v. Carnahan*, 370 S.W.3d 574, 578 (Mo. banc 2012) (looking to whether municipality retained "discretion" whether to make

appropriations); *Kansas Cty. v. McGee*, 269 S.W.2d 662, 665-66 (Mo. 1954) (considering whether a measure "leave[s] any discretion to the City Council" regarding appropriations); *see also Boeving v. Kander*, 496 S.W.3d 498, 510 (Mo. banc 2016) (noting that successful Article III, Section 51 challenges have involved measures that leave the legislature with "no discretion" over appropriations).

1. The General Assembly can choose how much or how little to appropriate for the MO HealthNet program.

Nothing in Article IV, Section 36(c) limits the General Assembly's discretion over appropriations for the MO HealthNet program in any way. As the Court of Appeals explained in *Cady*, "[f]unding for the Missouri Medicaid program, MO HealthNet, is appropriated annually by the General Assembly. [Article IV, Section 36(c)] does not direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs." 606 S.W.3d at 668 (Mo. App. 2020).

When appropriating funds for the MO HealthNet program for Fiscal Year 2022 in the wake of Article IV, Section 36(c)'s enactment, the General Assembly retained complete discretion over appropriations: it could have kept the appropriations amounts the same as Fiscal Year 2021; it could have increased those appropriations; it could have decreased those appropriations; and it could have refused to appropriate any funds to MO HealthNet at all. Even under Article IV, Section 36(c), the General Assembly

possesses essentially unfettered discretion over the amount of appropriations.

The Circuit Court misunderstood the relevant inquiry and disregarded the significant discretion the Constitution grants the legislature in the realm of appropriations. The Circuit Court seemingly assumed that implementing Article IV, Section 36(c) would require the expenditure of funds, and from this assumption concluded that Article IV, Section 36(c) violates Article III, Section 51. But whether to appropriate is not a choice for the courts to make assumptions about—it is one for the legislature to make in appropriations bills.

More fundamentally, the relevant inquiry in the Section 51 context is whether the legislature retains discretion over appropriations, not whether full implementation of the initiative would involve any expenditures. The General Assembly retains expansive discretion over whether to appropriate the funds necessary to implement Article IV, Section 36(c). Subject to other provisions of the Missouri Constitution, discussed below, the General Assembly can choose not to appropriate the funds necessary to implement Article IV, Section 36(c). And nothing in Article IV, Section 36(c) purports to divest the General Assembly of that discretion. Thus, regardless of whether implementing Article IV, Section 36(c) would involve any expenditures, Article IV, Section 36(c) does not appropriate state funds via the initiative process.

Because it leaves the legislature's discretion over appropriations fully intact, Article IV, Section 36(c) stands in stark contrast with the measure that the Court found invalid in *McGee*. There, a proposed municipal ordinance would have created a pension fund overseen by a board of trustees. *McGee,* 269 S.W.2d at 665. "On recommendation of the trustees the city council shall from time to time appropriate additional contributions" to the fund. *Id.* (quoting the proposed ordinance). The Court found that the initiative violated § 51 because "[t]he trustees fix the amount and the Council *shall* appropriate the amount requested." *Id.*

As a result, the proposed ordinance did "not leave *any* discretion to the City Council." *Id.* at 666 (emphasis added). Importantly, the Court did not suggest that creating the pension program itself involved an appropriation, nor did the Court inquire whether funding the pension program would involve expenditures. *Id.* at 665-66. Indeed, the Court described the parties' dispute over the likely cost of the pension program as "immaterial." *Id.* at 665. Instead, the Court focused solely on the fact that the proposed ordinance would have enabled the trustees to dictate the content of the City Council's appropriations bills. *Id.* at 665-66.

That analysis works just fine here. Instead, the Circuit Court speculated about what implementing Article IV, §36(c) would cost. *See* Judgment at 4. But—in the words of *McGee*—that consideration is "immaterial." 269 S.W.2d at 665. Instead, the § 51 inquiry should have turned on whether Article IV, §36(c) "leave[s] any discretion to the" General Assembly over appropriations. *Id.* at 666. And as

described above, Article IV, §36(c) does not impair that discretion at all. Article IV, Section 36(c) does not violate Article III, Section 51.

Finally, the State may argue that coverage of any Medicaid eligibility group requires an appropriation and that therefore, Article IV, Section 36(c) unconstitutionally required appropriations. However, the *Cady* Court was fully aware that the Amendment created a new eligibility group and could have found that that the mere inclusion of a new eligibility group requires appropriations and violates Article III, Section 51. It did not. Instead it correctly found that the ballot initiative did not require an appropriation. Thus, the Circuit Court's finding that the mere addition of another group of eligible individuals violates Article III, Section 51 directly contradicts the holding in *Cady*.

2. Article IV, Section 36(c), like the general statutes governing MO HealthNet, mandates health coverage and services, but not funding.

A comparison of Article IV, Section 36(c) to the provisions of Chapter 208 RSMo. governing MO HealthNet eligibility further demonstrates that Article IV, Section 36(c) leaves full discretion over appropriations to the General Assembly. Before the voters enacted Article IV, Section 36(c), all of the MO HealthNet eligibility categories were established by statute. *See* § 208.151, RSMo. That language closely parallels Article IV, Section 36. The statute provides that certain populations "shall be eligible to receive MO HealthNet benefits." § 208.151.1, RSMo. The Constitution now provides that the expansion population "shall be eligible for medical assistance under

MO HealthNet and shall receive coverage for the health benefits service package." Mo. Const. art. IV, § 36(c)(1).

Just as an initiative may not appropriate funds, neither may a statute. *See Fath v. Henderson*, 60 S.W. 1093, 1097 (Mo. 1901); *State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 277-78 (Mo. App. 2010). A statute can mandate spending, "but the actual disbursement of such funds is nonetheless subject to appropriation by future legislators." *Kansas City Symphony*, 311 S.W.3d at 278. So while § 208.151 mandates that certain individuals receive MO HealthNet benefits, it does not (and *cannot*) appropriate the funds necessary to provide those benefits.

Instead, "[f]unding for . . . MO HealthNet[] is appropriated annually by the General Assembly." *Cady*, 606 S.W.3d at 668. The relevant language of Article IV, Section 36(c) is substantively identical to the language of § 208.151, and their legal effect is the same. Article IV, §36(c) mandates that certain individuals receive MO HealthNet benefits, but it does not (and *cannot*) appropriate the funds necessary to provide those benefits. Those benefits might be fully funded, partially funded, or not funded at all. Only through the constitutionally prescribed appropriations process may the General Assembly make that decision. And as noted earlier, this year the legislature did in fact exercise its discretion to appropriate funds for the various services the MO HealthNet Program provides – but not due to any "directive" in Article IV, Section 36(c).

It should also be noted that the legislature has ample authority to adjust the size of its appropriation in a variety of ways,

unconstrained in the least by Article IV, §36(c). It can alter statutory eligibility in Chapter 208, or it can adjust services or reduce provider reimbursement rates to adjust the size of the State appropriation for MO HealthNet. Indeed, the State has taken all of these actions previously to adapt to changing budgetary circumstances in recent years. For example, in 2005, the General Assembly chose to reduce eligibility for the MO HealthNet program in the face of a budget shortfall. *See Lankford v. Sherman,* 451 F.3d 496, 501 (8th Cir. 2006). The General Assembly may not wish to make such a "difficult choice," but that is the role of the legislature in a democracy. None of these actions are affected in the least by Article IV, Section 36(c), which leaves legislative discretion over appropriations intact.[1]

For these reasons, Article IV, Section 36(c) does not divest the General Assembly of its discretion over appropriations and thus does not violate Article III, Section 51, nor does it conflict with any other provision of the constitution.

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[1] Here, the implementation of Article IV, Section 36(c) will bring substantial additional funds into the state that will be unavailable to Missouri without implementation or Amendment 2. D35. And House Bill 11 specifically included a line item for receipt of enhanced federal matching funds, including funds that could be received as a result of Medicaid expansion. A95 Thus, it is unlikely that the legislature would even have to exercise its discretion to adjust appropriations to address the expansion eligibility group.

3. The constitutional debates confirm that Article IV, §36(c) is not the type of measure Article III, § 51 was meant to prohibit.

The original public meaning of Article III, § 51 buttresses the conclusion that Article IV, Section 36(c) does not appropriate through the initiative process. "This Court's primary goal in interpreting Missouri's constitution is to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted." *State v. Honeycutt*, 421 S.W.3d 410, 414-15 (Mo. banc 2013) (quotation omitted). The Court has long viewed the understandings of the framers expressed at the 1943-1944 Constitutional Convention as strong evidence of the original public meaning of constitutional provisions. *See, e.g.*, *id.* at 415-16 (relying heavily on the convention debates to interpret a constitutional provision); *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 830 & 830 n.4 (Mo. banc 1990) (relying on convention debates to interpret constitutional provisions relating to initiative petitions); *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 924 (Mo. banc 2016) (Fischer, J. concurring) (collecting cases).

The convention debates show that Section 51 does not impose the sweeping limitations the Circuit Court ascribed to it. Section 51 was added as a new provision of the 1945 Constitution. Mr. Phillips of Jackson County, the chair of the committee that drafted the prohibition against appropriation by initiative, described the scope of the term "appropriation" in detail. *Compare Missourians to*

Protect the Initiative Process, 799 S.W.2d at 830 & 830 n.4 (relying on statements by Phillips to construe constitutional provisions relating to the initiative process).

Phillips emphasized that Section 51 uses the term "appropriation" in a "restricted sense." VERBATIM STENOGRAPHIC TRANSCRIPTION OF THE DEBATES OF THE 1943-1944 CONSTITUTIONAL CONVENTION OF MISSOURI ("Convention Debates"),[2] v.2, p. 451. In particular, "***all*** the Committee had in mind was to prevent the initiative from endeavoring to appropriate the money ***officially as the word appropriations is used in the Constitution in other sections.*** . . . Now, the Committee had ***only that in mind.***" *Id.* at 495 (emphases added). Phillips further explained that "the wording of the [provision] simply says that the initiative shall not be used for the appropriation of money. As used by the Committee ***it meant the very act of passing an appropriation bill receiving the approval of the Governor*** . . . ." *Id.* at 476 (emphasis added); *see also id.* at 450-51 (exchange between Mr. Phillips of St. Louis City and Mr. Phillips of Jackson County) (Q. "Then the word 'appropriate' here means the same as appropriation by an appropriation committee, only in a restricted sense?" A. "That is correct.").

Thus, as understood at the time of its enactment, Section 51 prohibited an initiative from making "appropriations" in a narrow

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[2] *Available online at* https://dl.mospace.umsystem.edu/umkclaw/islandora/object/umkclaw%3A56.

and technical sense: an actual appropriations bill that directly authorizes specific disbursements from the state treasury. Section 51 "merely says that the appropriation of money . . . must remain with the legislative body." *Id.* at 460. The convention debates provide a clear illustration of what would constitute an "appropriation" in this narrow and technical sense. The framers adopted Section 51 in direct response to the initiative considered by the Court in *Moore v. Brown*, 165 S.W.2d 657 (Mo. banc 1942). *See* Convention Debates, v. 2, p. 445. The text of that initiative provided that there shall "annually stand appropriated out of any money in the general revenue of the State of Missouri the sum of $29,000,000" to provide monthly grants to the elderly and needy children. *Moore*, 165 S.W.2d at 659 (quoting the proposed initiative). The initiative considered in *Moore* shares all the hallmarks of the appropriations bills that the General Assembly passes each year. It expressly purports to "appropriate[]" state funds, in a particular amount and for specified uses. *Id.* In a very literal sense, the initiative amounted to an appropriations bill that would be put directly to the voters and incorporated into the Constitution. *See id.*

The framers also made clear that the narrow restrictions of Section 51 did ***not*** prevent the people from using the initiative process to make important policy decisions, including decisions about how to spend state funds. Indeed, the framers expressly understood that an initiative ***could*** require expenditures for specific purposes. As Phillips put it, Section 51 "is an inhibition against appropriation and not an inhibition against earmarking."

Convention Debates, v. 2, p. 459. However, such expenditure mandates would not be self-executing; to be implemented, they would still require an appropriation of money by the legislature through an appropriations bill. *See id.* at 460-61. In fact, one delegate expressed concern about whether the General Assembly might refuse to appropriate funds necessary to implement a spending mandate established by initiative. *See id.*[3]

The original public meaning of Section 51, as reflected in the convention debates, makes clear that Article IV, Section 36(c) does not appropriate funds by initiative. Article IV, Section 36(c) does not purport to "appropriate" any funds out of the state treasury. *See* Mo. Const. art. IV, § 36(c). Nor does it purported to authorize the withdrawal of a specific amount of money from the state treasury in a particular fiscal year. *Id.* Instead, the implementation of Article IV, Section 36(c)'s mandate to expand MO HealthNet eligibility depends on action by the General Assembly through the constitutionally mandated appropriations process. Subject to other constitutional constraints (including the single-subject rule), the General Assembly possesses the discretion to appropriate funds necessary to implement Article IV, Section 36(c). Under the original public

[3] In response to this concern, Phillips noted that although implementing a measure might require legislative action, "the Legislature has always acted." Convention Debates, v. 2, p. 461. Of course, in this case, the State claims that the General Assembly did precisely what Phillips suggested it would not, that is, use the appropriations process to thwart the express will of the people of Missouri.

meaning of § 51, Article IV, §36(c) plainly does not appropriate by initiative. On this Point, this Court ought to reverse the Judgment of the Circuit Court.

II. Second Point Relied On: The trial court erred in granting judgment in favor of Defendants, because Article IV, Section 36(c) guarantees Plaintiffs the right to participate in MO HealthNet and the Fiscal Year 2021 appropriations bills permit Defendants to expend state funds to cover MO HealthNet benefits for Plaintiffs, in that the plain text of the appropriations bills permit Defendants to cover MO HealthNet benefits for Plaintiffs.

After this Court finds that the *Cady* decision is correct and Article IV, Section 36(c) did not then and does not now conflict with any other provision of the constitution, it should consider the merits of the original claim. The Circuit Court's judgment is instructive:

> If Amendment 2 was validly enacted, the Plaintiffs are absolutely right. Any appropriation for Medicaid services would be available for **all** eligibles including the Medicaid Expansion class of eligible, not just those who are eligible prior to July 1, 2021. Existing case law makes it excruciatingly clear that the General Assembly cannot, via the appropriations process, exclude the class of eligible created by Amendment 2 and the subsequent payment of Medicaid benefits to them.

A2. The Circuit Court correctly rejected the State's interpretation of House Bills 10 and 11 as their interpretation was not grounded in the plain text of the measures.

A. Analysis of unambiguous statutes starts and ends with the plain text of those statutes.

"The statutory language guides" analysis of statutes. *United Pharmacal,* 208 S.W.3d at 909-10(citations and quotations omitted). When that "language is unambiguous, a court must give effect to the legislature's chosen language." *State ex rel. Young v. Wood,* 254 S.W.3d 871, 872-73 (Mo. banc 2008) (citations and quotations omitted). "A court may not add words by implication to a statute that is clear and unambiguous." *Id.* In such cases, "both this Court and the court of appeals are bound by that language and cannot resort to statutory interpretation." *Simpson v. Simpson,* 352 S.W.3d 362, 365 (Mo. banc 2011) (citations and quotations omitted).

There is ambiguity only when the "plain language does not answer the current dispute as to its meaning." *Truman Med. Ctr., Inc. v. Progressive Casualty Ins. Co.,* 597 S.W.3d 362, 367 (Mo. App. 2020) (citation omitted). "Ambiguity means duplicity, indistinctness or uncertainty of meaning of an expression." *Cook v. Newman,* 142 S.W.3d 880, 886 (Mo. App. 2004) (citations and quotations omitted). It is not "whether a particular word in a statue, considered in isolation is ambiguous, but whether the statute itself is ambiguous." *Id.* Therefore, "the meaning of a particular word must be considered in the context of the entire statute in which it appears." *Id.*

B. The plain language of Article IV, Section 36(c) entitles Plaintiffs and similarly situated individuals to enroll in the MO HealthNet program.

The first step to determining of the plaintiffs here are entitled to MO HealthNet benefits, is to determine if they are eligible for them. Article IV, Section 36(c) defines a new group of individuals eligible for the MO HealthNet program:

> 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 MO HealthNet services under 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) and as set forth in 42 C.F.R. 435.119, 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 as determined under 42 U.S.C. Section 1396a(e)(14) and as set forth in 42 C.F.R. 435.603, shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package.

Mo. Const. art. IV, § 36(c)(1). It is clear. It describes the age and income requirements for individuals to be eligible for the MO HealthNet program. Plaintiffs fall squarely within these requirements as a matter of fact. They are individuals between the ages of 19 and under 65 years of age, and have incomes below 138% of the federal poverty level for their applicable family size. D 17:P1-2,¶ 1-16.

C. The plain language of House Bills 10 and 11 gives the State authority to expend money to provide MO HealthNet benefits to individuals whose eligibility arises under Article IV, Section 36(c).

The real dispute lies with the next issue. The State refuses to provide benefits because they say there is no appropriation. But the plain language of House Bills 10 and 11 ***does*** give the State authority to expend state funds for the purpose of providing MO HealthNet coverage to Plaintiffs and others like them whose eligibility for the MO HealthNet program arises under § 36(c). Consistent with historical practices, the relevant provisions of the appropriations bills provide funding for particular kinds of ***services***, but they do not limit funding to particular ***eligibility populations.*** Section 11.700 of House Bill 11 (2021) states:

> Section 11.700 To the Department of Social Services For the MO HealthNet Division…For pharmaceutical payments under the MO HealthNet fee-for-service program professional fees for pharmacists, and for a comprehensive chronic care risk management program…

A94-A95. This section is exemplary of how MO HealthNet appropriations are written. First, it describes the department and division to which the appropriation is directed—here the Department of Social Services and the MO HealthNet Division. And, second, it describes the services the funding is to support—"pharmaceutical payments." Nothing in this Section or any other Section of House Bill 11 (or 10) purports to specify which eligibility populations may

receive benefits via the bill's appropriations. *See e.g.* A47-A48. A96-A104.

Plaintiffs acknowledge that it may have been the *subjective* intent of many (not all) in the legislature to deny funding for individuals eligible for the MO HealthNet program under Article IV, Section 36(c). But Missouri courts administer the law based on bills that pass the General Assembly and are signed by the Governor, not based on the subjective legislative intentions not appearing on the face of the bill. That approach to statutory interpretation is even more sensible in the context of the appropriations bills, which fund a wide array of programs and can be difficult for a legislator to vote against. *See State ex rel. Hueller,* 289 S.W. at 341.

This Court should not attempt to "fix" the appropriations bills to conform to some of the legislators' subjective intents. It is not the role of the courts, which "do not engraft language onto a statute that the legislature did not provide." *Hill v. Ashcroft,* 526 S.W.3d 299, 309 (Mo. App. 2017) (quotation omitted). Further, even affirmative statements of individual legislators about a statute's meaning carry little weight when interpreting a statute. *See Commerce Bank of Kansas City, N.A. v. Missouri Div. of Finance,* 761 S.W.2d 431, 435 (Mo. App. 1988). And statements that are not consistent with the language of the statute should be disregarded. *See Risk Control Assoc., Inc. v. Melahn,* 822 S.W.2d 531, 535 (Mo. App. 1991). Because the plain text of the relevant appropriations bills does not prohibit the use of funds to cover individuals like Plaintiffs, there is no basis for the Court to rewrite the bills to impose such limitation.

And further, this Court can presume the legislature knows how to draft and pass legislation about the MO HealthNet program. *See State ex rel. Nothum v. Walsh,* 380 S.W.3d 557, 569 (Mo. banc 2012) ("The legislature knew how to grant transactional immunity when it wished to do so, yet . . . did not use the language the Missouri legislature has chosen to use when providing for transactional immunity."). In prior appropriations bills for the Department of Social Services, the General Assembly used language to modify the MO HealthNet funding provisions to specifically prohibit the use of funds for Medicaid Expansion, stating either "no funds from these sections shall be expended for the purpose of Medicaid expansion as outlined under the Affordable Care Act" or "no funds shall be expended for the purpose of Medicaid expansion as outlined under the Affordable Care Act." *See* D37-D40.

This is explicitly different language than what is in House Bills 10 and 11 passed in 2021 by the General Assembly. "It is presumed the legislature did not intend a meaningless act." *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, L.L.C.,* 248 S.W.3d 101, 109 (Mo. App. 2008). The legislature's clear break from the language in the prior five years of appropriations bills demonstrates that the FY 2022 appropriations bills fund the entirety of the MO HealthNet program, including the newly eligible population.

D. The State's interpretation of House Bills 10 and 11 should be rejected because that interpretation renders the bills unconstitutional under this Court's recent decision in *Planned Parenthood v. Department of Social Services*.

In spite of the plain language of the bills, at the Circuit Court, the State claimed that the legislature did not really fund all of the MO HealthNet program. The basic argument is that the legislature separated out a particular population and then voted down funding for that population—leaving some with services and others not. If that were true, it would be unconstitutional. *Planned Parenthood,* 602 S.W.3d at 210-11.

Under the doctrine of constitutional avoidance, when the Court can construe a statute or bill in a way that avoids constitutional problems, it should. *See, e.g., Lang v. Goldsworthy,* 470 S.W.3d 748, 752 (Mo. banc 2015); *State v. Vaughn,* 366 S.W.3d 513, 517 (Mo. banc 2012). The only construction of House Bills 10 and 11 that avoids a constitutional problem under this Court's decision in *Planned Parenthood* is one that provides funding for all eligibility categories of MO HealthNet.

1. This Court should not allow the legislature to do implicitly, what it is prohibited from doing explicitly under the *Planned Parenthood* decision.

In *Planned Parenthood v. Department of Social Services,* 602 S.W.3d 201 (Mo. banc 2020), this Court considered a situation where an appropriations bill explicitly prohibited funding from going to particular Medicaid providers. There, although there was

appropriation authority, the Department of Social Services refused to make payments to Planned Parenthood, an eligible MO HealthNet provider, due to language in an appropriations bill. But because there was an appropriation for the MO HealthNet program, the Department of Social Services was bound by the statutory requirement to make payments to all eligible providers.

> [T]he General Assembly chose to appropriate nearly $400 million for, among other things, providing physicians' services and family planning to Medicaid-eligible individuals in section 11.455 of HB2011. This was one of presumably thousands of difficult decisions made each year during the appropriations process. But, having made this decision, MO HealthNet is bound by general law – e.g., sections 208.153.1 and 208.152.1(6), (12) – defining what those services are and which providers are entitled to payment for delivering them.

Planned Parenthood., 602 S.W.3d at 210-11. And, amending the general MO HealthNet law to exclude Planned Parenthood from receiving funds via an appropriations bill violated the single subject rule. *See Id.* ("Any attempt to use an appropriation bill to amend such general laws necessarily runs afoul of the multiple subject prohibition in article III, section 23 of the Missouri Constitution.").

However, the situation here is even more absurd. The State would like this Court to prohibit payment of coverage for individuals eligible for MO HealthNet because of language *not* in two appropriations bills. The State even acknowledges that there is no

language in the appropriations bills that expressly prohibit the use of appropriated funds for all eligible individuals, including Plaintiffs, and those like them.

The State will likely argue that, because there is no language referring to the population described in Article IV, Section 36(c), the Court must conclude members of that population are excluded from MO HealthNet funding. However, as discussed above, no eligibility group is described in the appropriations bills. By the State's logic, no eligibility group has MO HealthNet funding.

The State would like this Court to allow the legislature to implicitly do what this Court just last year prohibited the legislature from doing explicitly. In other words, the State hopes this Court will rubber stamp an end-run around its own ruling. Certainly, though, there is no "hidden intent exception" to the single-subject rule announced in *Planned Parenthood*. If the State is correct that the appropriations bills do not provide funding for the individuals eligible under Article IV, Section 36(c), then those bills violate the single-subject rule.

The General Assembly's power to appropriate "is not unlimited" but necessarily constrained by other constitutional requirements. *See Rebman v. Parson,* 576 S.W.3d 605, 609 (Mo. banc 2019). There are only two options—either the language of the appropriations bills prohibit the use of funds for the new population, which would unconstitutionally amend Article IV, Section 36(c), *or* the language permits the use of those funds. Under the doctrine of constitutional avoidance, the Court should select the latter option. If

the legislature wishes to change the Constitution, it may propose an amendment for a vote of the people. Mo Const. art. XII, § Sec. 2(b). But it may *not* amend the Constitution in an appropriations bill.

2. The legislature should be presumed to have enacted constitutionally compliant appropriations bills and not have implicitly excluded Appellants and other eligible individuals from funding for the MO HealthNet program.

The Court presumes "the Legislature d[oes] not intend to violate the organic law of the state." *State ex rel. McClellan v. Godfrey,* 519 S.W.2d 4, 8 (Mo. banc 1975). "Acts of the Legislature and provisions of the Constitution must be read together, and so harmonized as to give effect to both when this can be reasonably and consistently done." *Id.* at 9.

The Court further presumes the legislature knows the law. *State ex rel. Nothum v. Walsh,* 380 S.W.3d 557. 576 (Mo. banc 2012). Accordingly, the legislature must be presumed to know that Article IV, Section 36(c) requires the State to enroll newly eligible individuals in the MO HealthNet program beginning July 1, 2021. The legislature must also be presumed to know Article III, Section 23 of the Constitution prohibits it from amending Article IV, Section 36(c) through an appropriations bill. *Planned Parenthood,* 602 S.W.3d at 211. Ultimately, "if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is

presumed to have been intended." *Blaske v. Smith & Entzeroth, Inc,* 821 S.W.2d 822, 838-39 (Mo. banc 1991).

Conclusion

The Circuit Court's judgment is erroneous, and this Court should reject the invitation to question the Court of Appeal's decision in *Cady*. Article IV, Section 36(c) does not require an appropriation, as decided in *Cady*. And regardless, it is this Court's responsibility (as was the Court's in *Cady*) to harmonize Article IV, Section 36(c) and Article III, Section 51.

Further, to the merits of the underlying claims, Article IV, Section 36(c) entitles Plaintiffs and others like them to enroll in the MO HealthNet program on July 1, 2021 as long as there is funding. The State is wrong to refuse to enroll Plaintiffs because there is appropriation authority in House Bills 10 and 11 to implement Article IV, Section 36(c). The judgment of the Circuit Court should be reversed and this Court should enter the judgment the trial court should have entered, enjoining the State from denying MO HealthNet benefits to those who are eligible for coverage. Rule 84.14; *Woods v. Department of Corrections,* 595 S.W.3d 504, 505 (Mo. banc 2020).

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet e-filing system, which notifies counsel of record on this 1st day of July, 2021.

I also certify that the foregoing brief complies with the limitations in Rule 84.06(b) and that brief contains 11,434 words.

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