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

REPLY BRIEF OF INTERVENORS/APPELLANTS

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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.

Earth Island Institute v. Union Electric Company, 456 S.W.3d 27 (Mo. banc 2016).

Haley v. Horjul, Inc., 281 S.W.2d 832 (Mo. 1955).

In its response brief, the State does not contest Intervenors' right to intervene but suggests instead that jurisdiction lies with the Western District Court of Appeals, because the question of intervention does not involve the exclusive jurisdiction of this Court. *Respondents' Brief, 15.* This suggestion is not supported by law or logic.

The State concedes this Court's exclusive jurisdiction because the validity of Article IV, Section 36(c) of the Missouri Constitution, otherwise known as Amendment 2, is at stake. *Id.* Intervenors are not aware of any case, rule, or law recognizing the legality of, or requiring, the jurisdictional bifurcation of appeals arising out of a single case, and the State has provided none. In fact existing case law suggests that once the Court's exclusive appellate jurisdiction is properly invoked, the Court retains jurisdiction to determine all germane matters. See Haley v. Horjul, Inc., 281 S.W.2d 832, 833 (Mo. 1955) (Supreme Court retains jurisdiction over case involving the constitutionality of a statute, even though

Court declines to decide the question); Earth Island Institute v. Union Electric Company, 456 S.W.3d 27, 32 n. 7 (Mo. banc 2016) ("Once the case properly invokes this Court's **j**urisdiction, the ultimate determination that the constitutional issue is not meritorious or that the merits of the constitutional issue should not be addressed does not retroactively deprive this Court of jurisdiction").

Even so, Intervenors' direct interest in this matter is the constitutionality of Amendment 2 and its implementation in Missouri, and if intervention is permitted of right, Intervenors are entitled to be heard on that question's merits. The State's suggestion that the Court lacks jurisdiction to hear Intervenor's appeal is not supported by law, is illogical, and must be rejected.

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.

City of Kansas City v. Chastain, 420 S.W.3d 550 (Mo. banc 2014).

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).

The fundamental issue of this appeal, as expressed by the circuit court, is the constitutionality of Amendment 2. The State makes several arguments in support of the circuit court's judgment, relying extensively on this Court's constitutional denunciation of initiatives that demand an appropriation "through practical necessity". City of Kansas City

v. Chastain, 420 S.W.3d 550, 555 (Mo. banc 2014). This reliance is misplaced, for several reasons.

First, the Court's "practical necessity" indictment was not needed in the Chastain case, and that standard is not controlling. The Chastain Court held specifically that the initiative did not "mandate that the [government] spend any money, make any plans or do anything at all other than impose the two new sales taxes." Chastain, 420 S.W.3d at 556. The Chastain initiative was not an appropriations measure in any sense, thus it did could not violate Article III, Section 51. *Id*. The "practical necessity" standard on which the State relies is dicta.

Second, the State's utilization of the Chastain language is in error. This is demonstrated by the cases on which the State relies to buttress its "practical necessity" point. Rather than rely on an amorphous "practical necessity" standard, the courts in each of the State's cases address initiatives that effectively usurped the germane legislature's appropriations discretion. *Respondents' Brief, 44.* See Boeving v. Kander, 496 S.W.3d 498, 510 n.6 (Mo. banc 2016) (initiatives violate Article III, Section 51 "where the evident purpose and effect of the proposal was to impose a new obligation leaving no discretion as to whether [the legislature] would or could pay this new obligation"); State ex rel. Card v. Kaufman, 517 S.W.2d 78, 80 (Mo. 1974) (proposed initiative "leaves no discretion to the [legislature] and in effect is an appropriation measure"); Kansas City v. McGee, 269 S.W.2d 662, 666 (Mo. 1954) (proposed initiative "does not leave any discretion to the [legislature]"). According to the State's cited cases, the core question is whether an initiative takes away the legislature's appropriations authority.

The State's "appropriation through practical necessity" standard is thus no standard at all. If it was, then it would *almost always* pre-empt the people's constitutional initiative power, because *any* policy, program, or position the people might initiate would *almost always* require an "appropriation through practical necessity". The supposed test is nothing more than a construct that allows the State to conveniently absolve the General Assembly of its constitutional discretion and duty to appropriate funds.

Here, the people of Missouri expanded Medicaid eligibility by amending their constitution on August 4, 2020. The General Assembly subsequently appropriated funds for the Medicaid program, and those funds can be used by MO Healthnet for the expanded program. Granted, the amounts appropriated are not sufficient to sustain the expanded Medicaid program for the current fiscal year, but the General Assembly retains the discretion and authority to enact supplemental appropriations. Whether it does so or not is up to no one but the legislature.

Yet the State's officials, Tidball and Matthews, refused to implement Medicaid expansion by claiming a lack of funding for anticipated needs. No law gives Tidball and Matthews the authority to refuse to administer the expanded Medicaid program because of their own perceptions of insufficient funding. In fact, Amendment 2 specifically prohibits the imposition of "greater or additional burdens or restrictions" that would discriminate between the pre- and post-expansion Medicaid population. *Article IV, Section 36(c)(5)*. No law grants Tidball and Matthews the authority to subvert the people's will.

Yet by pretermitting Medicaid expansion, Tidball and Matthews did exactly that, relieving the General Assembly of its constitutional obligation to decide the difficult

question of passing a supplemental appropriation or risk letting the Medicaid program go into default with the federal government. Tidball and Matthews—not Amendment 2—are the usurpers in this case; they unlawfully deprived the General Assembly of its duty and discretion concerning supplemental Medicaid appropriations.

The circuit court's judgment does the same, as does the State's argument. Both essentially conclude that Amendment 2 puts a "gun to the head" of the General Assembly, that the choice between fully funding the expanded Medicaid program or risking its default is no choice at all. But that determination belongs to the legislature. If the General Assembly's priorities lie elsewhere than the health and welfare of Missouri's poor, that is its policy choice, and its members can be judged accordingly in Missouri's social and political arenas. But Amendment 2 does not rob the legislature of that choice, and it does not violate Section 51 of Article III.

The decision on the future of Medicaid in Missouri does not belong to Respondents Tidball and Matthews and it does not belong to the circuit court. Now that the voters have acted, the choice lies exclusively with the General Assembly.

Conclusion.

Intervenors respectfully submit that the 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 directed by Amendment 2, leaving all funding determinations 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 1,570 words.

/s/ Paul Martin

Certificate of Service

The undersigned hereby certifies that on the 12th day of July, 2021 a true and accurate electronic copy of this Intervenor/Appellants' Reply Brief was submitted to the Clerk of this Court for electronic service via Missouri Casenet pursuant to Rule 103.08.

/s/ Paul Martin