No. SC99092

In the
Supreme Court of Missouri

CONSERVATION COMMISSION, *et al.*,

Respondents,

v.

ERIC SCHMITT, *et al.*,

Appellants.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable S. Cotton Walker, Circuit Judge

BRIEF OF APPELLANTS

ERIC S. SCHMITT
Attorney General of Missouri

D. JOHN SAUER, #58721
Solicitor General
JESUS A. OSETE, #69267
Deputy Solicitor General
Office of the Attorney General
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102
Tel. (573) 751-1800
Fax (573) 751-0774
Jesus.Osete@ago.mo.gov
Counsel for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

Other Authorities

INTRODUCTION

The power over the purse is vested in the legislature—not state agencies. *Rebman v. Parson*, 576 S.W.3d 605, 609 (Mo. banc 2019). Yet, the Conservation Commission and Department of Conservation ("Plaintiffs") "claim[] constitutional authority to order payments from the Conservation Commission Fund within the state treasury *independent of the appropriations authority of the Missouri General Assembly*." D48 p. 1 (emphasis added). The circuit court agreed, leaving the Commissioner "no choice" but to certify payments requested by Plaintiffs even in the absence of an appropriation made by law. D83 p. 2; App 2.

This was erroneous. The circuit court's judgment contradicts the plain language of the Missouri Constitution, which provides that "[n]o money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law," and confers appropriation authority—as it has since 1820—over conservation funds in the state treasury on the General Assembly. *See, e.g.*, MO. CONST. art. IV, § 28; *id.* § 23 ("The general assembly shall make appropriations[.]"); MO. CONST. art. III, § 36 ("All revenue collected and 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."). Even when the Constitution creates a special fund, the original public meaning of

the applicable constitutional provisions confirm that the power over appropriations was to remain with the legislature.

The creation of the Conservation Commission and its ability to "expend[] and use" monies in its own Fund is no exception to these bedrock principles. Nothing in Article IV, §§ 40-44—the constitutional provisions governing the Conservation Commission—purports to wrest this well-established authority from the General Assembly and confer it upon the Conservation Commission, and nothing in those provisions states that conservation funds "stand appropriated" without an act of appropriation by the General Assembly. Nor do these provisions mandate an appropriation be made annually.

On the contrary, the General Assembly's appropriation authority over conservation revenues is fully harmonious with the Commission's authority over conservation matters, and the two have coexisted without conflict for over 40 years, and continue to do so to this day. Plaintiffs' contention—and the circuit court's judgment accepting it—that the Conservation Commission has implied appropriation authority over conservation revenues contradicts the plain meaning of the Constitution, ignores powerful contextual evidence in the Constitution, violates well-established principles of interpretation, and breaks from decades of consistent historical practice. The circuit court's alternative holding on Plaintiffs' single-subject challenge under Article III, § 23 is also erroneous. The Court should reverse the circuit court's judgment.

JURISDICTIONAL STATEMENT

Article V, § 3 of the Missouri Constitution vests this Court with "exclusive appellate jurisdiction in all cases involving the validity of a … statute … of this state[.]" MO. CONST. art. V, § 3; *accord Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs.*, 602 S.W.3d 201, 204 (Mo. banc 2020) (exercising exclusive appellate jurisdiction over case involving validity of appropriation bill).

This appeal satisfies the foregoing criterion. The circuit court entered final judgment in Plaintiffs' favor, finding H.B. 2019, § 19.020, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020), unconstitutional under Article IV, §§ 40-44 (conservation provisions) and Article III, § 23 (single-subject provision) of the Missouri Constitution. D83 pp. 27-28; App 27-28. Thus, this case falls within the Court's exclusive jurisdiction.

STATEMENT OF FACTS

I. Relevant Constitutional History.

A. The General Assembly's Power Over Appropriations.

The General Assembly's authority over funds in the State Treasury is well established. In 1820, Missouri's first constitution provided that "[n]o money shall be drawn from the treasury but in consequence of appropriations made by law[.]" MO. CONST. art. III, § 31 (1820); D48 p. 8. This language appeared verbatim in Missouri's second constitution in 1865 following the Civil War. MO. CONST. art. XI, § 6 (1865); 49 Mo. 216, 219 (1872) (advisory opinion to Governor Brown); D48 p. 8. So too in Missouri's third constitution in 1875 during Reconstruction, and the language directed the General Assembly to not "permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law." MO. CONST. art. IV, § 43 (1875); D48 p. 8.

Except for minor changes made in 1945, Missouri's current constitution provides, as it has since 1820, that "the general assembly shall have no power to … permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law." MO. CONST. art. III, § 36; D48 p. 8. *See also* MO. CONST. art. IV, § 28 (1945) ("No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law."). Moreover, Article IV, § 23 makes clear what branch of government is authorized to make such appropriations by law: "The *general*

assembly shall make appropriations for one or two fiscal years[.]" MO. CONST. art. IV, § 23 (emphasis added).

For over a century, it has also been well established that the General Assembly possesses the power to enact any law not prohibited by the text of the Missouri Constitution. *See Planned Parenthood*, 602 S.W.3d at 206; *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209, 213 (Mo. banc 1975); *Todd v. Reynolds*, 199 S.W. 173, 175 (Mo. 1917); *State ex rel. Heimberger v. Bd. of Curators of Univ. of Missouri*, 268 Mo. 598, 188 S.W. 128, 131 (1916); *Ex parte Berger*, 193 Mo. 16, 90 S.W. 759, 760 (1905). Indeed, where, as here, the General Assembly's power over appropriations is implicated, this Court has explained that the General Assembly possesses the "undoubted power to make or to refuse to make an appropriation authorized by the Constitution[.]" *State ex rel. Tolerton v. Gordon*, 236 Mo. 142, 139 S.W. 403, 410 (1911).

Modern jurisprudence has reaffirmed this "bedrock" principle: "[U]nless funds stand appropriated by the constitution or the constitution mandates an appropriation be made, *it is beyond question that the General Assembly has discretion* to decide appropriations on an annual or biannual basis." *Planned Parenthood*, 602 S.W.3d at 210–11 (emphasis added).[1] The Court recently

[1] For the reasons stated in the State's briefing in *Doyle v. Tidball*, No. SC99185, 2021 WL 3173699 (Mo. banc July 8, 2021), at 13, 33, 48-53, and set forth further below in Point II, *infra*, this Court should overrule its decision in *Planned Parenthood v. Department of Social Services*, 602 S.W.3d at 210–11,

described constitutional appropriations as those provisions that "expressly appropriate money ... for [their] purposes or that deprive the General Assembly of discretion and require it to appropriate money for [those] purposes." *Doyle v. Tidball*, --- S.W.3d ----, 2021 WL 3119116, at *4 (Mo. banc July 22, 2021) (per curiam). "The policy underlying the constitutional appropriations requirement is that each legislature must have discretion to respond to the financial needs of the times." *State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 278 (Mo. App. 2010).

B. Creation of the Conservation Commission.

During the Great Depression, Missouri faced "one of the most severe droughts in recorded history." D48 p. 3; D51 p. 11 (JAMES F. KEEFE, MISSOURI DEPARTMENT OF CONSERVATION: THE FIRST 50 YEARS, at 6 (1987)). "[M]ercury climbed above normal highs. Rivers and streams were either dried up or reduced to trickles. Even in the summer months, a smoke pall hovered over the Ozark hills, as wildfires raced virtually unchecked through parched vegetation." *Id.* "Scarcity of water, owing to the drought, made the waterfowl

---

as it pertains to the application of the single-subject rule of Article III, § 23 to appropriation bills. The quoted statement from the *Planned Parenthood* decision, however, aptly summarizes this Court's case law on the legislature's power of appropriation. Indeed, the State contends that the decision should be overruled in large part because the remainder of the decision is not consistent with this quoted statement about the legislature's authority over appropriations. *See* Point II, *infra*.

season the most unfavorable in history. Fishermen, because of heat and low stream conditions, reported poor luck despite heavy stocking. The legal deer kill during a three-day season in seventeen south-Missouri counties totaled sixty-eight." *Id.* (quotation marks omitted).

"Thoughtful and concerned sportsmen" in Missouri "were voicing their displeasure with political game and fish management." *Id.* They were concerned, in part, with politicians spending over $2 million of the sportsmen's fees to pay for salaries for the Game and Fish Department but only $80,000 "for replenishing the game" in Missouri. *Id.* Thus, in 1935, sportsmen and conservationists gathered in Columbia and formed the Restoration and Conservation Federation of Missouri. *Id.* The Federation formed a committee tasked with drafting an initiative petition for the 1936 general election that proposed creating "a four-man, non-partisan commission to restore Missouri's wildlife and forests." D48 p. 3; D51 p. 12 (KEEFE, *supra*, at 7). The president of the Federation "emphasized that the purpose of the new organization was not only to protect the state's present resources, but to restore … those that have been lost." *Id.* The proposed commission was to address "the lack of permanence" in the Game and Fish Department due to "constantly changing direction and personnel," which had made it "impossible to make proper advancement in conservation, propagation and restoration of natural resources." D48 p. 3; D51 pp. 12-14 (KEEFE, *supra*, at 7-9).

On November 3, 1936, Missouri voters amended the Missouri Constitution to create the Conservation Commission. *See, e.g.*, MO. CONST. art. IV, §§ 40(a), 41, & 44; *see also* D48 p. 3; D51 (KEEFE, *supra*, at 331). According to the initiative petition, the Commission was to be vested with the "control, management, restoration, conservation and regulation" of all conservation matters in Missouri. D48 p. 5; D57 p. 1. The voters were also told that the Commission would be vested with the "administration of the laws" existing at the time and going forward "pertaining" to all conservation matters. *Id.* Members of the Conservation Commission were required to possess "knowledge of and interest in wild life conservation." *Id.* The Commission received the power to acquire property by purchase, gift, and eminent domain. *Id.* And any "fees, monies, or funds arising from" the Commission's activities were to be used by the Commission "for the control, management, restoration, conservation and regulation" of all conservation matters in Missouri but "for no other purpose." *Id.* Missouri voters allowed the General Assembly to enact laws "in aid of" the new constitutional amendment but none that were "inconsistent" with it. *Id.* The amendment provided that "all existing laws inconsistent" with the new amendment were "no longer" effective and that the amendment was "self-enforcing[.]" *Id.*

Within two years after the creation of the Conservation Commission, the amendment creating the Commission was upheld by this Court. *Marsh v.*

Bartlett, 343 Mo. 526, 121 S.W.2d 737 (1938); D48 p. 3; D52 pp. 12-13 (KEEFE, *supra*, at 45-46). Byron Marsh had been convicted for fishing bass in closed season, even though the Commission had established that the season was open. D48 p. 3; D52 p. 12 (KEEFE, *supra*, at 46). This Court vacated the conviction, holding that the statute closing the season predated and conflicted with the Commission's regulation and, therefore, was invalid under the new amendment. *Marsh*, 343 Mo. at 539–41. But the Court carefully narrowed its ruling: the Commission's authority under the amendment "does not deprive" the General Assembly "of its power or functions" and addresses "only a small portion of the power reserved to the people, the exercise of which suspends and supersedes the power of the legislature *as to that portion alone*[.]" *Id.* at 539 (emphasis added).

After the creation of the Conservation Commission, Missouri amended its constitution for a fourth time in the state's history. To be sure, the constitutional convention of 1943-44 did not address the new amendment creating the Conservation Commission. Indeed, "[w]hen the 1945 Constitution was passed, its provisions for the Conservation Commission were exactly as passed by the voters in 1936." D48 p. 3; D51 (KEEFE, *supra*, at 72).

But the convention did address the broader subject of using the initiative process to appropriate funds. Relevant here, delegates understood that there was a distinction between the appropriation of money and the earmarking of

funds. *See, e.g.*, 2 DEBATES OF THE 1943-44 CONSTITUTIONAL CONVENTION OF MISSOURI, p. 459 ("[A]ppropriation is one thing and marking is another."). The framers of the 1945 Constitution intended to preserve the people's "right to vote a special tax" but ensure that "the appropriation of money … remain with the legislative body irrespective of whether it is a general fund or whether it is a special fund[.]" *Id.* at 460; *see also id.* at 497 (remarking that initiative process cannot "try to take some of the legislative functions away from the Legislature").

Marsh would not be the last time the Conservation Commission and the General Assembly came into disagreement. In 1966, a conflict arose between the two entities when the latter attached a proviso on the former's budget that prohibited staff salary increases. D48 p. 3; D51 (KEEFE, *supra*, at 106). After the Comptroller—today's Commissioner of Administration—refused to certify the requested increases, the Commission requested an opinion from the Attorney General, who advised that the Commission was not under the Governor of Missouri's control, so the Comptroller lacked authority not to certify, "except when the expenditure is not within the purpose of the appropriation[.]" *Id.*

Before the underlying dispute, the Conservation Commission never questioned the General Assembly's power over appropriations. Indeed, before 1937, "the amount of funding for the Fish and Game Department from

sportsmen's fees depended on how much the legislature saw fit to appropriate." D48 p. 3; D53 p. 31 (KEEFE, *supra*, at 261). For instance, in 1931, during the Great Depression, "the legislature neglected to appropriate any funds for forestry." D48 p. 3; D53 p. 18 (KEEFE, *supra*, at 202).

C. Creation of the Conservation Sales and Use Taxes.

Although Missouri voters created the Conservation Commission in 1936 and vested it with powers over conservation matters in the state, they did not provide an independent source of revenue to fund the Commission's activities. No sales or use taxes were included in the proposed constitutional amendment. By as early as 1964, "[f]unds in the reserve were at a dangerously low level and the outlook was grim." D48 p. 3; D52 pp. 29-30 (KEEFE, *supra*, at 115-16). The Commission's "primary source of funding came from hunting and fishing licenses, plus various federal aid programs in wildlife, fisheries and forestry." D48 p. 3; D52 p. 30 (KEEFE, *supra*, at 116). But "steadily rising inflation" and the "rising curve of expenditures would cross the line of income—with disastrous results." *Id.*

Eventually, a Citizens Committee for Conservation was formed, which was tasked with proposing initiative petitions to secure funding. D48 p. 3; D52 pp. 30-31 (KEEFE, *supra*, at 116-17). Such a drive was launched in 1971 for *Design for Conservation*, a "blueprint for Missouri's outdoor future—a plan to help mitigate the adverse impacts of modern development."

D48 p. 3; D52 p. 32 (KEEFE, *supra*, at 118). The petition proposed a constitutional amendment that imposed a one-cent tax on soft drinks, over the objections of the bottling industry. *Id.* That petition was legally flawed and it never made it to the ballot. *Id.* But in 1975, the Citizens Committee came up with a different method for funding after input from the public: proposing a one-eighth of one percent sales tax. D48 p. 3; D52 p. 33 (KEEFE, *supra*, at 119). The Committee "kept a steady stream of publicity going to the public. The *Conservationist* magazine reached hundreds of thousands of people with its articles on *Design*." D48 p. 3; D52 p. 35 (KEEFE, *supra*, at 121). A majority of newspapers, radio, and television stations "backed the campaign editorially or in other ways." *Id.* State and national organizations also supported the measure. *Id.*

On November 2, 1976, Missouri voters were presented with the following language from the initiative petition:

> [T]o provide additional money for the Conservation Commission, Department of Conservation, to use and expend for the same purposes for which the Conservation Commission, Department of Conservation, is presently authorized to use and expend its money. Such additional money to be provided by levying and imposing an additional sales tax of one-eighth of one percent on retail sales and on the rendering of taxable services and an additional use tax of one-eighth of one percent on the privilege of storing, using and consuming within this state tangible personal property.

D48 p. 6; D58 p. 1. Missouri voters adopted the measure, which repealed Article IV, § 43 of the Missouri Constitution and created three new sections.

D48 p. 6; *see also* MO. CONST. art. IV, §§ 43(a) (creating sales and use taxes), 43(b) (sales and use taxes "shall be expended and used" for conservation purposes),[2] 43(c) (laws "inconsistent" with the amendments are ineffective, and the amendments are "self-enforcing").

II. Factual Background.

On July 9, 2020, the Conservation Commission approved the purchase of 510 acres of land in St. Clair County from a willing seller as an addition to the Linscomb Wildlife Area for $1,034,000 ("St. Clair Property"). D48 p. 12; D75 p. 1; D76 pp. 4-6. To purchase the St. Clair Property, the Conservation Commission approved the use of unencumbered funds within the Conservation Commission Fund out of $21 million in funds designated by the Commission in its Fiscal Year ("FY") 2021 budget for new land acquisition, new capital improvement projects, and payments to counties in lieu of taxes ("PILTs"). D48 p. 13. All moneys arising from the additional sales and use taxes provided for in Article IV, Section 43(a) of the Missouri Constitution and all fees, moneys or funds arising from the operation and transactions of the operation and transactions of the Conservation Commission, Missouri Department of Conservation, and from the application and the administration of laws and regulations pertaining to the bird, fish, game, forestry and wildlife

[2] Use of the 1976 sales tax for payments to counties was approved on November 4, 1980. D48 p. 6.

resources of the state and from the sale of property used for said purposes are deposited and held in the state treasury in the Conservation Commission Fund. D48 p. 5.

The General Assembly has appropriated funds for the Conservation Commission on numerous occasions, including for land acquisition and PILTs. D48 p. 8. The Conservation Commission and the Department of Conservation "annually provide information regarding the budget approved by the Conservation Commission in response to requests made by the General Assembly and the Governor's office." D48 p. 9. Before this dispute, the Conservation Commission and the Department of Conservation have "never" expended funds from the Conservation Commission Fund within the state treasury except pursuant to an appropriation by the General Assembly. *Id.* Before this dispute, there has never been an instance in which the Conservation Commission contended that the General Assembly failed to appropriate funds in a manner that matched the Conservation Commission's planned use of funds for land acquisition or PILT payments. *Id.*

Plaintiffs requested that the Commissioner of Administration certify or otherwise approve payment from the Conservation Commission Fund within the state treasury for the St. Clair Property, and instructed that the payment be debited against the $21 million FY 2021 appropriation passed by the General Assembly as House Bill 2019 (2020) ("HB 2019"). D48 p. 13; *see also*

D48 p. 10; D63 p. 2; App 30. HB 2019 included the following line item: "Section 19.020. to the Department of Conservation For major improvements and repairs (including materials, supplies, and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities, erosion control, and land improvement on department land[.]" D63 pp. 1-2; App 29-30. Unlike appropriations made in prior years, this appropriation does not provide authority for expenditures to acquire land. *See id.*

Plaintiffs also requested, albeit well after having filed their First Amended Petition, that the Commissioner of Administration certify or otherwise approve the 2020 PILTs and instructed that the payments be debited against the $21 million FY 2021 appropriation passed by the General Assembly as HB 2019. D48 pp. 13-14. Unlike appropriations made in prior years, this appropriation does not authorize PILT payments to counties—i.e., "financial assistance to other public agencies or in partnership with other public agencies."

The Commissioner of Administration refused to certify or otherwise approve the requested payment for purchase of the St. Clair Property and the PILTs, D48 p. 14, claiming that HB 2019 contained no appropriation authority for these expenditures. D47 p. 15.

III. The Underlying Litigation.

Plaintiffs sued the Attorney General of Missouri and the Commissioner of Administration (collectively, "the State"). D46 p. 1. In the sole Count of the First Amended Petition, Plaintiffs sought seven alternative declarations from the circuit court. *See* D46 pp. 18-20. These requests for relief, however, fall under two general legal theories: (1) Article IV, §§ 40-44 of the Missouri Constitution supposedly remove the General Assembly's traditional authority over appropriations from the state treasury with respect to the conservation sales and use taxes, and instead confer authority on the Conservation Commission and Department of Conservation to withdraw and expend such funds without any oversight or restriction from the General Assembly in the appropriations process; and (2) the specification of purposes for the use of conservation revenues in HB 2019 supposedly violates the single-subject requirement of Article III, § 23. *See id.*

In its Answer, the State admitted that the Commissioner of Administration had "not certified" Plaintiffs' request for payment for the St. Clair Property "from § 19.020 of HB 2019 (2020) because the bill does not contain an appropriation for land acquisition." D47 p. 2. The State further admitted that Plaintiffs sent the Commissioner a letter advising her that this request for payment "was unsupported by an appropriation in HB 2019 (2020)." D47 pp. 2-3. The State also responded that HB 2019 contained no

appropriation authority for the requested PILTs, so the Commissioner could not certify this payment either. D47 p. 15.

The case was submitted on stipulated facts. D48; D70; D75; D78.

IV. The Circuit Court's Judgment.

After a hearing, the circuit court "enter[ed] a declaratory judgment" in Plaintiffs' favor. D83 pp. 2, 27-28; App 2, 27-28. The Court found that the General Assembly's omission of appropriation authority in HB 2019 for land acquisition and PILTs was an unconstitutional "legislative restriction[]" on the Conservation Commission's "exclusive authority" to "expend[] and use[]" monies in the Conservation Commission Fund. D83 pp. 1-2, 25-26; App 1-2, 25-26. Through Article IV, Sections 43(a)-(c), the Court explained, the Commission alone decides "when, how much, and for what money in the … Fund may be spent within the parameters of § 43(b), which include land acquisition for conservation purposes and PILT[s]. *Section 43(c) leaves only adjustment of tax brackets to the General Assembly*." D83 p. 2; App 2 (emphasis added).

The foregoing provisions, the Court found, "operate against the backdrop of §§ 40(a), 41 and 44[,]" and these provisions

> respectively vest the Conservation Commission with the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state including land acquired for those purpose [sic], *thereby limiting the General Assembly's powers over these subjects*; permit the Conservation

> Commission to acquire land it deems necessary for conservation purposes; and make §§ 40(a)-43 self-enforcing, *leaving the General Assembly the limited power of enacting laws as may "aid" these provisions.*

Id. (emphasis added).

Accordingly, the circuit court concluded that all of the foregoing constitutional provisions "leave the Commissioner of Administration *no choice* but to certify the disputed payments pursuant to the direction of the Conservation Commission *without regard to the language (if any) used by the General Assembly in an appropriations bill*." *Id.* (emphasis added).

The circuit court alternatively held that the General Assembly's omission in HB 2019 violated the single-subject requirement in Article III, Section 23 of the Missouri Constitution. D83 p. 28; App 28. The court explained that the legislature's "elimination in HB2019 of language permitting new land purchases and PILT payments from the list of purposes for which moneys in the Conservation Fund can be spent by the Conservation Commission" was an "attempt[] … to control Conservation Fund expenditures" and, therefore, an "unconstitutional attempt[] … to include general legislation within an appropriation act." *Id.*

The circuit court directed—i.e., "must certify"—the Commissioner of Administration to "certify the St. Clair land purchase and PILT payments as

requested by the Conservation Commission" even in the absence of appropriation authority in HB 2019. *Id.*[3]

The State timely appealed. D84; D86; D87.

[3] The circuit court's judgment ordering the Commissioner of Administration to "certify the St. Clair land purchase and PILT payments as requested by the Conservation Commission[,]" *id.*, exceeds the scope of the declaratory relief requested in the First Amended Petition.

POINTS RELIED ON

I. The circuit court erroneously declared and applied the law in entering its declaratory judgment, because the Conservation Commission does not have "exclusive authority" over the Conservation Commission Fund within the State Treasury, in that: (A) the Missouri Constitution preserves the General Assembly's traditional appropriation authority, even over conservation revenues; (B) Article IV, Sections 40-44 do not provide that conservation revenues stand appropriated or mandate that such funds be appropriated; (C) Article IV, Section 43(b)'s statement that conservation revenues "shall be expended and used" does not mean they "shall be appropriated"; (D) Article IV, Section 43(c)'s statement that the conservation tax is "self-enforcing" does not appropriate or mandate an appropriation of such funds; (E) Article IV, Section 40(a)'s "control" language does not confer appropriation authority on the Conservation Commission; and (F) any contrary interpretation violates several fundamental principles of interpretation.

- *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs.*, 602 S.W.3d 201 (Mo. banc 2020)
- *Doyle v. Tidball*, --- S.W.3d ----, 2021 WL 3119116 (Mo. banc July 22, 2021) (per curiam)
- *State v. Shanklin*, 534 S.W.3d 240 (Mo. banc 2017)
- *Calland v. City of Springfield*, 264 Mo. 296, 174 S.W. 396 (1915)
- MO. CONST. art. IV, § 28; *id.* § 23; *id.* §§ 40-44
- MO. CONST. art. III, § 36
- H.B. 2019, § 19.020, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020)

II. The circuit court erroneously declared and applied the law in entering its declaratory judgment, because House Bill 2019 (2020) ("HB 2019") does not violate the single-subject requirement in Article III, Section 23 of the Missouri Constitution, in that: (A) HB 2019 is a general appropriation bill that is exempt from the single-subject requirement; (B) HB 2019 does not (and cannot) purport to combine appropriations with an amendment of Article IV, §§ 40-44, which does not provide that Conservation Commission funds "stand appropriated" or mandate that the General Assembly appropriate the funds; and (C) to the extent this Court's decision in *Planned Parenthood of St. Louis Region v. Department of Social Services*, 602 S.W.3d 201 (Mo. banc 2020), compels a different result, then the Court should overrule that decision.

- *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs.*, 602 S.W.3d 201 (Mo. banc 2020) (Fischer, J., dissenting)

- *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371 (Mo. banc 2014) (Fischer, J., dissenting)

- MO. CONST. art. III, § 23

- H.B. 2019, § 19.020, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020)

ARGUMENT

I. The circuit court erroneously declared and applied the law in entering its declaratory judgment, because the Conservation Commission does not have "exclusive authority" over the Conservation Commission Fund within the State Treasury, in that: (A) the Missouri Constitution preserves the General Assembly's traditional appropriation authority, even over conservation revenues; (B) Article IV, Sections 40-44 do not provide that conservation revenues stand appropriated or mandate that such funds be appropriated; (C) Article IV, Section 43(b)'s statement that conservation revenues "shall be expended and used" does not mean they "shall be appropriated"; (D) Article IV, Section 43(c)'s statement that the conservation tax is "self-enforcing" does not appropriate or mandate an appropriation of such funds; (E) Article IV, Section 40(a)'s "control" language does not confer appropriation authority on the Conservation Commission; and (F) any contrary interpretation violates several fundamental principles of interpretation.

The circuit court erroneously accepted Plaintiffs' radical contention that they have "constitutional authority to order payments from the Conservation Commission Fund within the state treasury *independent of the appropriations authority of the Missouri General Assembly*." D48 p. 1 (emphasis added). This left the Commissioner of Administration with "no choice" but to certify payments requested by Plaintiffs even in the absence of an appropriation made by law. D83 p. 2; App 2.[4]

[4] Clarity is required as to the Commissioner of Administration's authority to certify expenditures for payment pursuant to her authority under Article IV, § 28 because the legislature has criminalized the knowing certification of any claim for payment "not authorized by law[.]" Section 33.200, RSMo.

The circuit court's judgment contradicts the plain language of the Missouri Constitution, which provides that "[n]o money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law," and confers appropriation authority—as it has since 1820—over conservation funds in the state treasury on the General Assembly. *See, e.g.*, MO. CONST. art. IV, § 28; *id.* § 23 ("The general assembly shall make appropriations[.]"); MO. CONST. art. III, § 36 ("All revenue collected and 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."). Even when the Constitution creates a special fund, the original public meaning of the applicable constitutional provisions confirm that the power over appropriations was to remain with the legislature. 2 DEBATES, *supra*, at 460 (preserving the people's "right to vote a special tax" but ensuring that "the appropriation of money … remain with the legislative body irrespective of whether it is a general fund or whether it is a special fund").

Contrary to the circuit court's judgment, the creation of the Conservation Commission and its ability to "expend[] and use" monies in its own Fund is no exception to these bedrock principles. D83 pp. 1-2, 25-26; App 1-2, 25-26. Nothing in Article IV, §§ 40-44—the constitutional provisions governing the Conservation Commission—purports to wrest this well-established authority

from the General Assembly and confer it upon the Conservation Commission, and nothing in those provisions states that conservation funds "stand appropriated" without an act of appropriation by the General Assembly. Nor do these provisions mandate an appropriation be made annually.

On the contrary, the General Assembly's appropriation authority over conservation revenues is fully harmonious with the Commission's authority over conservation matters, and the two have coexisted without conflict for over 40 years, and continue to do so to this day. Plaintiffs' contention—and the circuit court's judgment accepting it—that the Conservation Commission has implied appropriation authority over conservation revenues contradicts the plain meaning of the Constitution, ignores powerful contextual evidence in the Constitution, violates well-established principles of interpretation, and breaks from decades of consistent historical practice.

The Court should reverse the circuit court's judgment.

Standard of Review. In a court-tried case such as this one, "[t]he circuit court's judgment will be affirmed … unless it erroneously declares the law, or unless it erroneously applies the law." *Doyle*, 2021 WL 3119116, at *3 (citation omitted). Where, as here, "a case is submitted on stipulated facts, … this Court must determine whether the trial court drew the proper legal conclusions from the facts stipulated." *Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 337 (Mo. banc 2007) (per curiam) (quotation marks omitted).

"Constitutional challenges to a statute are reviewed de novo." *Planned Parenthood*, 602 S.W.3d at 206 (citation omitted).

Legal Standards. "An act of the General Assembly approved by the governor carries with it a strong presumption of constitutionality." *Id.* (quotation marks omitted). "The challenger bears the burden of establishing that an act of the General Assembly is unconstitutional." *Id.* "The Court will uphold the constitutional validity of an act passed by the General Assembly unless the act clearly and undoubtedly violates a constitutional limitation." *Id.* (quotation marks omitted).

"When construing a constitutional amendment, the 'fundamental purpose of constitutional construction is to give effect to the intent of the voters who adopted the Amendment.'" *State v. Shanklin*, 534 S.W.3d 240, 242 (Mo. banc 2017) (quoting *Sch. Dist. of Kan. City v. State*, 317 S.W.3d 599, 605 (Mo. banc 2010)). "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." *Id.* (quoting *State v. Honeycutt*, 421 S.W.3d 410, 414–15 (Mo. banc 2013)). "Words used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning." *Id.* (quoting *Wright-Jones v. Nasheed*, 368 S.W.3d 157, 159 (Mo. banc 2012)).

Preservation. The State preserved this issue for appellate review. *See, e.g.*, D83 pp. 3-4; App 3-4; D82; D81; D69; D48 p. 2; D47 pp. 15-19.

A. The Missouri Constitution Preserves the General Assembly's Traditional Appropriation Authority, Even Over Conservation Revenues.

Plaintiffs stated their primary legal theory succinctly in Paragraph 2 of the joint stipulation of facts: "The Conservation Commission claims constitutional authority to order payments from the Conservation Commission Fund within the state treasury *independent of the appropriations authority of the Missouri General Assembly*." D48 p. 1 (emphasis added). Plaintiffs' theory—accepted by the circuit court—that Article IV, §§ 40-44 withdraw authority over appropriations from the General Assembly with respect to conservation revenues, and confer that authority on the Conservation Commission instead, has no merit. The circuit court thus erred.

The Missouri Constitution generally requires an act of appropriation by the General Assembly before any funds may be withdrawn from the state treasury, with very limited exceptions. Article IV, § 28 of the Missouri Constitution provides: "*No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law*, nor shall any obligation for that payment of money be incurred unless the commissioner of administration certifies it for payment[.]" MO. CONST. art. IV, § 28 (emphasis added). Article IV, § 23 specifies which entity makes those

appropriations: "*The general assembly shall make appropriations* for one or two fiscal years[.]" MO. CONST. art. IV, § 23 (emphasis added). The Constitution thus confers on the General Assembly plenary authority and discretion over appropriation of funds from the State Treasury—again, with very limited exceptions.

1. Article IV, §§ 40-44 do not provide that conservation revenues stand appropriated or mandate such funds be appropriated.

This Court has recognized only two exceptions to the General Assembly's discretionary authority over appropriations: (1) funds that automatically "stand appropriated" without legislative action under the Constitution, and (2) funds for which the Constitution "mandates an appropriation." *Planned Parenthood*, 602 S.W.3d at 210–11. As *Planned Parenthood* stated, "unless [1] *funds stand appropriated by the constitution* or [2] the constitution *mandates an appropriation be made*, it is beyond question that the General Assembly has discretion to decide appropriations on an annual or biannual basis." *Id.* (emphasis added). And, in fact, each of these exceptions *involves an appropriation*—either an automatic appropriation made by the Constitution itself, in the case of funds that "stand appropriated"; or an appropriation that the General Assembly is obligated to make by the Constitution, in the case of funds for which the Constitution "mandates an appropriation be made." *Id.* Both of these exceptions, therefore, are consistent with the language of Article

IV, § 28 that "*No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law*[.]" (Emphasis added). No provision of the Constitution authorizes the withdrawal of funds from the state treasury *without any appropriation at all*. In short, no money may be withdrawn from the state treasury without an appropriation.

Plaintiffs contend—and the circuit court accepted—that the Conservation Commission may withdraw funds from the state treasury without an "appropriation made by law." *Id.* But this contradicts the plain text of the Missouri Constitution. *Id.* Nothing in the text of Article IV, §§ 40-44 purports to grant the Commission the authority to make appropriations.

As this Court has recognized, there are three ways in which "appropriations made by law" occur in Missouri: (1) when the Constitution provides that funds "stand appropriated," (2) when the Constitution "mandates an appropriation be made," and (3) when the General Assembly makes appropriations by law in its discretion. *Planned Parenthood*, 602 S.W.3d at 206. *Unless* funds stand appropriated by the Constitution or the Constitution mandates an appropriation, "it is beyond question that the General Assembly has discretion to decide appropriations on an annual or biannual basis." *Id.* This Court aptly described this rule as one of Missouri's "bedrock legal principles." *Id.*

Here, Article IV, §§ 40-44 do not state that conservation funds "stand appropriated" or "mandate that an appropriation be made," *id.*, so the General Assembly has discretion to make appropriations. Any contrary interpretation contradicts "bedrock legal principles." *Id.* Thus, because the funds from the conservation sales tax do not "stand appropriated," and the Constitution does not "mandate an appropriation" as to those funds, it is "beyond question" that the disbursement of those funds is left within the General Assembly's authority and discretion. *See id.* at 210–11.

First, when the Constitution provides that funds "stand appropriated" without any action by the General Assembly, it says so in specific terms. Indeed, at least twelve provisions of the Constitution provide that funds "stand appropriated" without legislative action, and they all use virtually identical language to specify this outcome. *See* MO. CONST. art. III, § 37(a) ("All funds paid into the Second State Building Bond Interest and Sinking Fund shall be and *stand appropriated without legislative action* to the payment of principal and interest of the said bonds[.]"); *id.* § 37(b) ("All funds paid into the water pollution control bond and interest fund shall be and *stand appropriated without legislative action* to the payment of principal and interest of the said bonds[.]"); *id.* § 37(c) ("[S]tand appropriated without legislative action[.]"); *id.* § 37(d) (same); *id.* § 37(e) (same); *id.* § 37(f) (same); *id.* § 37(g) (same); *id.* § 37(h) (same); MO. CONST. art. IV, § 27(a) ("[S]tand appropriated to the budget

reserve fund[.]"); *id.* § 30(a) ("[S]tand appropriated without legislative action[.]"); *id.* § 30(b) (same); MO. CONST. art. XIV, §1-4(2) ("[S]tand appropriated without further legislative action[.]") (emphases added). This specific language—"stand appropriated," or "stand appropriated without legislative action"—appears nowhere in Article IV, §§ 40-44. *See* MO. CONST. art. IV, §§ 40-44.

Second, the constitutional provisions concerning the Conservation Commission do not "mandate[] an appropriation be made." *Planned Parenthood*, 602 S.W.3d at 211. When the Constitution mandates an appropriation by the General Assembly, it speaks equally clearly. For example, Article III, § 47 provides that "For twelve years beginning with the year 1961, *the general assembly shall appropriate* for each year out of the general revenue fund, an amount not less than that produced annually at a tax rate of one cent on each one hundred dollars assessed valuation of the real and tangible personal property taxable by the state[.]" MO. CONST. art. III, § 47 (emphasis added). Article IV, § 47(a) provides that "monies deposited in the state parks sales tax fund pursuant to the provisions of section 47(b) of this article *shall also be appropriated* to make payments to counties for a period of five years for the unimproved value of land." MO. CONST. art. IV, § 47(a) (emphasis added). Article IV, § 47(b) provides that "monies in both funds *shall be expended pursuant to appropriation by the General Assembly* and used by

the state soil and water districts commission[.]" *Id.* § 47(b) (emphasis added). Likewise, Article IX, § 5 provides that funds in the public school fund "*shall be faithfully appropriated* for establishing and maintaining free public schools." MO. CONST. art. IX, § 5 (emphasis added). In each case, the Constitution speaks clearly and unambiguously, using similar language to create the constitutional obligation to make an appropriation—"shall appropriate," "shall … be appropriated," and "shall be expended pursuant to appropriation." *See id.* Again, no such language—or any similar language—appears in the constitutional provisions relating to the Conservation Commission. *See* MO. CONST. art. IV, §§ 40-44.

In short, when the Missouri Constitution specifies that funds "stand appropriated" or "shall be appropriated," it does so in clear and unambiguous terms. *Cf. Doyle*, 2021 WL 3119116, at *5 (constitutional provision "does not expressly appropriate money" and "[n]othing in [the provision] specifically requires the General Assembly to authorize the expenditure and disbursement of a specific amount of money for a specified purpose"); *Boeving v. Kander*, 496 S.W.3d 498, 510–11 (Mo. banc 2016) (noting "nothing on the face of" the proposed measure "clearly and unavoidably purports to appropriate previously existing funds (as opposed to those that may be generated by the amendment itself)"); *Cady v. Ashcroft*, 606 S.W.3d 659, 668 (Mo. App. 2020) (holding that a proposed measure did "not use the phrase 'stand appropriated' or any similar

phrase that indicates an appropriation of existing funds or directs the legislature to appropriate such funds") (cited in *Doyle*, 2021 WL 3119116, at *5). No such clear and unambiguous terms appear in Article IV, §§ 40-44. Like the constitutional provision at issue in *Doyle*, these provisions "do[] not use the phrase 'stand appropriated' or any similar phrase that indicates an appropriation." *Cady*, 606 S.W.3d at 668 (cited in *Doyle*, 2021 WL 3119116, at *5).

2. Article IV, § 43(c)'s statement that the conservation tax is "self-enforcing" does not appropriate or mandate an appropriation of such funds.

Plaintiffs contend—and the circuit court found, D83 pp. 25-26; App 25-26—that the statement in Article IV, § 43(c) that the conservation sales tax is "self-enforcing," and the similar statement in Section 44 that the provisions of Sections 40-44 are "self-enforcing," mean that the Commission may withdraw the funds without an appropriation. *See* MO. CONST. art. IV, § 43(c) ("All of the provisions of sections 43(a)-(c) shall be self-enforcing except that the general assembly shall adjust brackets for the collection of the sales and use taxes."); *id.* § 44 ("Sections 40-43, inclusive of this article shall be self-enforcing, and laws not inconsistent therewith may be enacted in aid thereof. All existing laws inconsistent with this article shall no longer remain in force or effect."). This violates the plain meaning of "self-enforcing" and contradicts that phrase's usage in identical contexts in the Missouri Constitution.

First, to state that the provisions of Sections 40-44 are "self-enforcing" simply does not address whether the General Assembly retains authority over appropriations of conservation sales tax funds from the state treasury. "Enforce" means "to put in force: cause to take effect: give effect to," as in to "enforce laws." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 751 (2002). "Self-enforcing" means "containing in itself the authority or means to guarantee its enforcement." *Id.* at 2060. Thus, in legal usage, a constitutional provision is "self-enforcing" if no further legislative action (such as an enactment of an implementing statute) is required to give effect to that provision. *See, e.g., State ex rel. Miller v. O'Malley*, 342 Mo. 641, 649, 117 S.W.2d 319, 322 (1938) (noting that a constitutional provision is "self-enforcing" if no "further provision must be made by statute" to give effect to it); *State ex rel. Applegate v. Taylor*, 224 Mo. 393, 123 S.W. 892, 918 (1909) (noting that a constitutional provision is "self-enforcing" when it "requires no legislation to give it force and effect"); BLACK'S LAW DICTIONARY (11th ed. 2019) ("Self-enforcing" means "effective and applicable without the need for any other action"). Indeed, Plaintiffs pled that a "self-enforcing" provision is one that "requires no ancillary legislation" to give it effect. D46 pp. 1-2.

Based on this plain meaning, the statement in Section 43(c) that Sections 43(a) and 43(b) of Article IV are "self-enforcing" does not change the

requirement in Article IV, § 28 that funds can be withdrawn from the state treasury only pursuant to an appropriation.

Sections 43(a) and 43(b) of Article IV themselves do not appropriate any conservation funds. Section 43(a) of the Missouri Constitution provides:

> For the purpose of providing additional moneys to be expended and used by the conservation commission, department of conservation, for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, an additional sales tax of one-eighth of one percent is hereby levied and imposed upon all sellers for the privilege of selling tangible personal property or rendering taxable services at retail in this state upon the sales and services which now are or hereafter are listed and set forth in, and, except as to the amount of tax, subject to the provisions of and to be collected as provided in the "Sales Tax Law" and subject to the rules and regulations promulgated in connection therewith; and an additional use tax of one-eighth of one percent is levied and imposed for the privilege of storing, using or consuming within this state any article of tangible personal property as set forth and provided in the "Compensating Use Tax Law" and, except as to the amount of the tax, subject to the provisions of and to be collected as provided in the "Compensating Use Tax Law" and subject to the rules and regulations promulgated in connection therewith.

MO. CONST. art. IV, § 43(a).

In other words, Section 43(a) provides that, for conservation purposes, (1) "an additional sales tax of one-eighth of one percent is hereby levied and imposed on all sellers" of tangible personal property and taxable services in the State, that the additional sales tax shall be collected as provided in the Sales Tax Law; and (2) "an additional use tax of one-eighth of one percent is levied

and imposed for the privilege of storing, using or consuming within this state any article of tangible personal property," and shall be collected as provided in the Compensating Use Tax Law. *See id.*

And Article IV, § 43(b) of the Missouri Constitution provides:

> The moneys arising from the additional sales and use taxes provided for in section 43(a) hereof and all fees, moneys or funds arising from the operation and transactions of the conservation commission, department of conservation, and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the state and from the sale of property used for said purposes, shall be expended and used by the conservation commission, department of conservation, for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, and for no other purpose. The moneys and funds of the conservation commission arising from the additional sales and use taxes provided for in 43(a) hereof shall also be used by the conservation commission, department of conservation, to make payments to counties for the unimproved value of land for distribution to the appropriate political subdivisions as payment in lieu of real property taxes for privately owned land acquired by the commission after July 1, 1977 and for land classified as forest cropland in the forest cropland program administered by the department of conservation in such amounts as may be determined by the conservation commission, but in no event shall the amount determined be less than the property tax being paid at the time of purchase of acquired lands.

MO. CONST. art. IV, § 43(b).

In other words, Section 43(b) defines and limits the purposes for which the conservation funds may be used: "The moneys arising from the additional

sales and use taxes provided for in section 43(a) hereof," as well as other funds acquired for conservation purposes, "shall be expended and used by the conservation commission, department of conservation, for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, and for no other purpose." *Id.* § 43(b). Section 43(b) also provides that such funds from the sales and use taxes may be used for payments in lieu of taxes, "but in no event shall the amount be determined be less than the property tax being paid at the time of purchase of acquired lands." *Id.*

Thus, nothing in Section 43(a) or 43(b) authorizes the Conservation Commission or Department of Conservation to withdraw funds from the State Treasury without an appropriation. On the contrary, Section 43(a) establishes the sales and use taxes to be used for conservation purposes, and Section 43(b) defines and limits the purposes for which they may be used. To state that these provisions are "self-enforcing," MO. CONST. art. IV, § 43(c), merely entails that no statute is required to authorize the imposition or collection of the taxes, and no statute is required to specify or limit the uses to which such funds may be put. *See, e.g.*, *O'Malley*, 117 S.W.2d at 322.

Moreover, Article IV, §§ 47(a)-(c) also provide powerful evidence that the phrase "self-enforcing" is *not* equivalent to "shall be appropriated." The conservation sales tax's "self-enforcing" clause in Article IV, § 43(c) directly mirrors the language of the "self-enforcing" clause for the sales and use tax for soil and water conservation in Article IV, § 47(c). *Compare* MO. CONST. art. IV, § 43(c) ("All of the provisions of sections 43(a)-(c) shall be self-enforcing except that the general assembly shall adjust brackets for the collection of the sales and use taxes."), *with id.* § 47(c) ("All of the provisions of Sections 47(a), 47(b) and 47(c) shall be self-enforcing except that the General Assembly shall adjust brackets for the collection of the sales and use taxes.").

The two clauses address very similar subject matter and should be interpreted *in pari materia*. "If the meaning of a word is unclear from consideration of the statute alone," this Court "will interpret the meaning of the statute *in pari materia* with other statutes dealing with the same or similar subject matter." *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. banc 2014). This principle also applies to constitutional interpretation:

> The Constitution was designed by its framers to be a single, symmetrical, and harmonious chart of government of the people of the state, free from repugnancy or conflict in any of its provisions, and presenting a single scheme of correlated parts for the control and regulation of all organs and departments of the state government. The rules for interpreting its provisions are the same as those prescribed by law for the construction of statutory enactments which are *in pari materia* or parts of a single statutory plan or code.

Calland v. City of Springfield, 264 Mo. 296, 174 S.W. 396, 397 (1915).[5]

Section 47(c) makes very clear that its "self-enforcing" provision does *not* purport to mandate an appropriation, because the Constitution mandates an appropriation through other specific language in Article IV, §§ 47(a) and (b). Article IV, § 47(a) states that "monies deposited in the state parks sales tax fund pursuant to the provisions of section 47(b) of this article *shall … be appropriated*," and Article IV, § 47(b) states that "the monies in both funds shall be expended *pursuant to appropriation* by the General Assembly." MO. CONST. art. IV, §§ 47(a), 47(b) (emphases added). In addition to these statements that funds from the soil and water tax "shall be appropriated" and "shall be expended pursuant to appropriation," Section 47(c) states that

[5] At oral argument during trial, Plaintiffs' counsel suggested that different standards or principles of interpretation apply to constitutional provisions that are proposed by the General Assembly versus those proposed by private citizens. This argument has no support in Missouri law; the same principles of interpretation apply to all provisions of the Constitution. And Plaintiffs' suggestion is contradicted by *Calland*: all constitutional provisions must be read *in pari materia*, *i.e.*, as a "single … plan or code." 174 S.W. at 397. Both kinds of amendments are approved by the same authoritative body, the People of Missouri, through the voters at the ballot box. It makes no sense to suggest that different interpretive rules and principles should apply to constitutional amendments, all of which are adopted by the same authoritative body, the People. Moreover, private drafters are often just as legally sophisticated as the General Assembly—as is the case here, where the amendments were proposed by sophisticated, well-counseled conservation groups. The will of the voters is reflected in the "plain, ordinary, and natural meaning" of the Constitution's provisions, not the unwritten purposes of the drafters, regardless of who proposed the amendment. *Shanklin*, 534 S.W.3d at 242.

Sections 47(a) and 47(b) "shall be self-enforcing." *Id.* § 47(c). Plainly, "self-enforcing" must mean something *different* than "shall be appropriated" or "shall be expended pursuant to appropriation." If not, the latter phrases would be rendered meaningless and superfluous, in violation of fundamental principles of interpretation. *Accord Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983) ("Words used in constitutional provisions must be viewed in context; their use is presumed intended, and not meaningless surplusage."). And the fact that "self-enforcing" plainly does *not* mean "shall be appropriated" in Section 47(c) provides powerful evidence that it does not mean "shall be appropriated" in Section 43(c), either. *Calland*, 174 S.W. at 397.

Exactly the same logic applies to the statement in Article IV, Section 44 that "Sections 40-43, inclusive, of this article shall be self-enforcing." MO. CONST. art. IV, § 44. Like Sections 43(a)-(c), no provision of Sections 40-42 purports to provide that funds "stand appropriated" or mandates that funds shall be appropriated. Section 40(a) vests authority over conservation matters in the Conservation Commission and provides for its membership. *Id.* § 40(a). Section 40(b) provides for the continuation of incumbent members of the Commission. *Id.* § 40(b). Section 41 authorizes the Commission to acquire property by purchase, gift, or eminent domain. *Id.* § 41. Section 42 establishes the Director of Conservation appointed by the Commission. *Id.* § 42. None of these provisions purports to appropriate money, and none of these provisions

purports to alter the clear directive of Article IV, § 28: "No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law." *Id.* § 28. Accordingly, to state that these provisions are "self-enforcing" has no impact on the question whether the General Assembly retains its discretion over appropriations of conservation sales tax funds—since none of those provisions directly addresses that question.

Finally, the statement in Section 43(b) that "[t]he moneys arising from the additional sales and use taxes provided for in section 43(a) … *shall be expended and used* by the conservation commission, department of conservation" for specified conservation purposes does not purport to mandate an appropriation. *Id.* § 43(b) (emphasis added). In other words, the phrase "shall be expended and used" does not mean "shall be appropriated." *See Doyle*, 2021 WL 3119116, at *3–5 (distinguishing an "expenditure" from an "appropriation," and explaining that the former does not "deprive" a legislature from exercising its discretion over the latter); Mo. Att'y Gen. Op. (June 11, 1953) (D72 pp. 1-2, 5-6) (advising that proviso in appropriation bill that "no funds shall be *expended* … for the rental or erection of" office space for the Conservation Commission violates single-subject rule) (emphasis added); Mo. Att'y Gen. Op. (May 29, 1958) (D73 pp. 1, 4-6) (advising that proviso in appropriation bill that expressly prohibited *spending* appropriated funds for

"salary increases" for Conservation Commission staff violates single-subject rule because only the Commission can "fix" salaries under the Constitution) (citing *State ex rel. Hueller v. Thompson*, 289 S.W. 338 (Mo. banc 1926)). Plaintiffs' contrary argument—and the circuit court's judgment—contradicts both the plain meaning of the former phrase and its immediate context.

Under plain meaning, the phrase "shall be expended" does not mean "shall be appropriated," because "expenditure" and "appropriation" are two different things. "Appropriation" means "[a] legislative body's act of setting aside a sum of money for public purpose." BLACK'S LAW DICTIONARY 110 (8th ed. 2004). "Expenditure" means "[t]he act or process of paying out; disbursement." *Id.* at 617; *see also Doyle*, 2021 WL 3119116, at *3–5. "Appropriation" is the legally binding authorization to withdraw funds from the treasury for public purposes, while "expenditure" is the actual spending of such funds once they are appropriated. *See id.* These are two different actions taken at two different times, and the Constitution consistently treats them differently. *See, e.g.*, MO. CONST. art. IV, § 47(b) (providing that "monies … shall be *expended* pursuant to *appropriation* by the General Assembly," and thus distinguishing between the act of appropriation and the act of expenditure) (emphasis added). The Constitution's statement that funds "shall be expended" by the Commission does not mean that those funds "shall be appropriated" by the Commission.

Moreover, Plaintiffs—and the circuit court—ignore the immediate context of the phrase "shall be expended and used" in Section 43(b). *See* D83 pp. 24-25; App 24-25. The first sentence of that section is lengthy, but its grammatical structure is clear. The sentence states: "The moneys arising from the additional sales and use taxes … *shall be expended and used* by the conservation commission, department of conservation, *for the control, management, restoration, conservation and regulation* of the bird, fish, game, forestry and wildlife resources of the state … *and for no other purpose*." MO. CONST. art. IV, § 43(b) (emphasis added). Succinctly paraphrased, the sentence asserts that "money in the Conservation Fund shall be expended and used by the Commission and MDC for conservation purposes, and for no other purpose." *Id.* Thus, the phrase "shall be expended and used" for conservation purposes "and for no other purpose" is a *limitation* on the purposes for which the funds can be expended, and thus a limitation on the authority of the Commission—not a radical expansion of its authority vesting appropriation authority in the Commission by implication. *See id.* And that is how this Court has interpreted this sentence—as a limitation on the purposes for which conservation funds may be used. *Conservation Fed'n of Mo. v. Hanson*, 994 S.W.2d 27, 30 (Mo. banc 1999). Section 43(b) does not itself appropriate money. *Doyle*, 2021 WL 3119116, at *4.

Thus, to state that funds shall be "expended and used" for certain purposes does not *appropriate* funds from the state treasury, because expenditure typically follows *after appropriation*. Once again, the provisions of Section 47 are instructive. Section 47(b) provides that, for the soil and water sales tax funds, "the monies in both funds shall be *expended* pursuant to *appropriation* by the General Assembly." MO. CONST. art. IV, § 47(b) (emphasis added). This provision clearly distinguishes *expenditure* from *appropriation*, by providing for both in the same clause. Section 43(b), by contrast, discusses funds being "expended" without mentioning "appropriation." *Id.* § 43(b). Thus, Section 43(b) does not purport to appropriate funds or amend the default rule that no money shall be withdrawn from the State Treasury without an appropriation by the General Assembly. *Id.* §§ 23, 28.

To be sure, Section 43(b) requires that the new monies, *when appropriated*, "be used and expended by the commission for the specified, permissible conservation purposes" and thus "[a]ny action by the General Assembly that purports to appropriate these funds for any purpose that is not an authorized use or expenditure by the commission" violates the Missouri Constitution. *Hanson*, 994 S.W.2d at 30 (emphasis added). In *Hanson*, this Court rejected the General Assembly's appropriation of over six million dollars from the Conservation Commission Fund to be refunded to taxpayers under

the Hancock Amendment. *Id.* But *Hanson* did not hold that the General Assembly lacks appropriations authority over the conservation revenues—only that it cannot appropriate them for purposes other than those specified in Article IV, §§ 40-44. *See id.*

For these same reasons, the circuit court's conclusion that the General Assembly is "bar[red] … from telling the Conservation Commission that it can use money from the Conservation Fund to manage bird resources but not fish resources, or to spend to save one species of fish but not another" is beside the point. D83 p. 26; App 26. Undoubtedly, once the General Assembly appropriates conservation money, it must be spent on conservation purposes. *See Hanson*, 994 S.W.2d at 30. But, where, as here, the money has not been appropriated, the legislature is not "dictating whether, where, or when to purchase property for conservation purposes or how much to pay counties in PILT[,]" D83 p. 26; App 26; rather, it is exercising its discretion over appropriations in deciding what to fund or not fund. *Cf. Doyle*, 2021 WL 3119116, at *5 (determination "whether and how much funding to authorize for [state agency] in a given year … is left to the discretion of the General Assembly in its appropriation process"); *Rebman*, 576 S.W.3d at 610 ("[t]he legislature may ... attempt to control the executive branch ... by the power of appropriation.") (alterations in original) (citation omitted); *Tolerton*, 139 S.W.

at 410 (legislature possesses the "undoubted power to make or to refuse to make an appropriation authorized by the Constitution").

In sum, no provision of Article IV, §§ 40-44 provides that funds "stand appropriated" or mandates that funds be appropriated. In the absence of such a provision, "it is beyond question that the General Assembly has discretion to decide appropriations on an annual or biannual basis." *Planned Parenthood*, 602 S.W.3d at 211.

3. The "control" language of Article IV, § 40(a) does not confer appropriation authority on the Commission.

Plaintiffs contend—and the circuit court found, D83, pp. 2, 26; App 2, 26—that Article IV, § 40(a) confers "control, management, restoration, conservation and regulation" of wildlife resources on the Conservation Commission, MO. CONST. art. IV, § 40(a), and they infer from that authority that they must have direct authority over the Conservation Commission Fund in the state treasury. *See* D48 p. 1. This too is erroneous for several reasons.

First, there is no inherent or necessary conflict between the Commission's authority and control over conservation matters and the General Assembly's appropriation authority over the conservation revenues. Plaintiffs concede that, in the over 40 years since the enactment of the conservation sales and use taxes, they have "never expended funds from the Conservation Commission Fund within the state treasury except pursuant to an

appropriation by the General Assembly." D48 p. 9. They further concede that, during those 40-plus years, the General Assembly's appropriation authority has never created a significant conflict or issue with regard to the Commission's authority and control over conservation matters. *Id.* Thus, the Commission's authority and control over conservation matters set forth in Article IV, § 40(a) is not in conflict, but in harmony, with the General Assembly's authority over appropriations in Article IV, §§ 23 and 28.

Second, Plaintiffs' attempt to *infer* appropriation authority from Section 40(a)'s general conferral of authority over conservation matters—when no such appropriation authority is explicitly granted in the Constitution's text—violates well-established principles of Missouri law. State agencies in Missouri "possess only those powers expressly conferred or necessarily implied" by statute or the Constitution. *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621, 622 (Mo. banc 1995). The language of Section 40(a) neither "expressly confer[s]" nor "necessarily implie[s]" appropriation authority over conservation funds. Indeed, that provision, which merely creates the Commission and serves as its enabling act, does not "expressly appropriate money." *Doyle*, 2021 WL 3119116, at *4. In other words, Section 40(a) concerns itself with matters that simply do not touch the legislature's exclusive authority over appropriations.

Third, Plaintiffs cite the purposes of Article IV, §§ 40-44 to alter the plain meaning of its text. This violates fundamental principles of interpretation. "No legislation pursues its purposes at all costs." *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987) (per curiam). This Court should not "indulge an argument based on legislative purpose when the text alone yields a clear answer." *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 81 (1995). "The text alone," *id.*, of Article IV, §§ 40-44 does not confer appropriation authority on the Commission over conservation revenues, and the Court should not infer one from the text.

4. Plaintiffs'—and the circuit court's—contrary interpretation violates several fundamental principles of interpretation.

Plaintiffs'—and the circuit court's—interpretation that the Conservation Commission may withdraw funds from the state treasury without an appropriation made by law violates several fundamental principles of interpretation.

First, as noted above, this interpretation violates the principle that similar provisions of the Constitution must be read *in pari materia*. *Union Electric*, 425 S.W.3d at 122; *Calland*, 174 S.W. at 397. As discussed above, related provisions in Article IV use clear and consistent language when they specify that funds stand appropriated or mandate an appropriation—language which is absent from Sections 40-44. Likewise, as discussed above, the parallel

usage of "self-enforcing" in Sections 47(a)-(c) provides powerful evidence that Sections 43(a)-(c) do not purport to appropriate money or mandate particular appropriations. To impose a different interpretation on the same phrases in the Constitution would violate the principle that related provisions of the Constitution should be read *in pari materia*.

Second, Plaintiffs'—and the circuit court's—interpretation violates the principle that the Constitution does not use meaningless or superfluous phrases. As noted above, their interpretation would render the phrases "shall be appropriated" and "pursuant to appropriation" in Sections 47(a) and 47(b) meaningless and superfluous. This violates the principle that courts do not presume the Constitution contains meaningless or superfluous phrases. *Buechner*, 650 S.W.2d at 613. Indeed, "[a]ll words used in constitutional provisions are presumed to have some purpose." *Gregory v. Corrigan*, 685 S.W.2d 840, 842 (Mo. banc 1985) (per curiam).

Third, Plaintiffs'—and the circuit court's—interpretation fails to harmonize the provisions of the Constitution by creating an unnecessary conflict between Article IV, §§ 40-44 and the bedrock principle set forth in Article IV, §§ 23 and 28 and Article III, § 36, that no funds shall be withdrawn from the state treasury without an appropriation by the General Assembly. Constitutional provisions must be read harmoniously with each other. *Gregory*, 685 S.W.2d at 843; *Calland*, 174 S.W. at 397. Article IV, §§ 40-44 can

be read harmoniously with Article III, § 36 and Article IV, §§ 23, 28. This Court avoids any interpretation that would place constitutional provisions "directly in conflict" with each other, and instead "attempt[s] to harmonize all provisions of the constitution." *Gregory*, 685 S.W.2d at 843.

Fourth, Plaintiffs' contention—that they need not "tie the requested FY 2021 payments to a legislative appropriation at all[,]" D46 p. 17—and the circuit court's conclusion—that the Commissioner of Administration has "no choice" but to certify payments requested by the Conservation Commission regardless of "the language (if any) used by the General Assembly in an appropriations bill[,]" D83 p. 2; App 2—contradicts long-standing historical practice between the Conservation Commission and the General Assembly. *See* D48 pp. 8-9. In all prior appropriations cycles, the Conservation Commission has submitted a budget to the General Assembly and received a warrant to withdraw funds from the state treasury pursuant to an appropriations bill duly enacted by the General Assembly. *Id.* Indeed, the Commission has never expended conservation revenues except pursuant to an appropriation by the General Assembly. D48 p. 9. The General Assembly has exercised its discretion and appropriated funds for the Conservation Commission on numerous occasions, including for land acquisition and payments to counties in lieu of taxes. D48 pp. 8-9; D61 pp. 5, 10-11, 14. Indeed, Plaintiffs "annually provide information regarding the budget

approved by the Conservation Commission in response to requests made by the General Assembly and the Governor's office." D48 p. 9.

This consistent historical practice reflects a common understanding, rooted in the plain language of Article IV, §§ 40-44, that those provisions did not purport to amend the General Assembly's authority over appropriations. For similar reasons, in *Shanklin*, this Court concluded that the right-to-farm constitutional amendment contained no text "suggesting Missouri voters intended to nullify or curtail longstanding laws regulating or prohibiting possession, cultivation, and harvest of controlled substances." 534 S.W.3d at 242–43. Likewise, in *Hill v. Missouri Department of Conservation*, 550 S.W.3d 463, 473–74 (Mo. banc 2018), this Court concluded that the same constitutional amendment contained no text to suggest that Missouri voters "intended to overthrow" almost a century's worth of regulations over captive cervid enterprises by adopting the amendment. Longstanding historical practice also contradicts Plaintiffs'—and the circuit court's—interpretation here.

Indeed, those decades of historical practice reflect the Constitution's original public meaning. The voters adopted the amendments that authorized the conservation sales and use taxes in 1976. From 1976 onward, both the General Assembly and the Commission understood that an act of appropriation by the General Assembly was required to withdraw conservation funds from

the state treasury. D48 p. 9. For over 40 years, no one ever contended that the Commission had *its own* vaguely defined authority to withdraw such funds without an "appropriation made by law" under Article IV, § 28. On the contrary, "[b]efore this dispute, the Conservation Commission and [the Department of Conservation] have *never* expended funds from the Conservation Commission Fund within the State Treasury except pursuant to an appropriation by the General Assembly." *Id.* (emphasis added). Plaintiffs have annually provided budget requests to the General Assembly. D48 p. 9; D61 p. 2. The General Assembly has routinely made appropriations from the Conservation Commission Fund—including for land acquisition and payments in lieu of taxes—in every appropriation cycle since 1976. *See* D61 pp. 9-10, 14 (Plaintiffs' response to interrogatories, identifying such appropriation bills for every calendar year since 1976). And the Commission concedes that the General Assembly has always provided adequate funding for its budgeted priorities, consistent with availability of funds. D48 p. 9.

These decades of unbroken historical practice provide powerful evidence of the original public meaning of the 1976 amendments. At the time these amendments were passed, both the Commission and the General Assembly understood them to preserve the General Assembly's traditional authority over appropriations, and both acted accordingly. This common understanding persisted for many years since then. For over 40 years, everyone shared this

common understanding—until this case. Plaintiffs'—and the circuit court's—interpretation thus contradicts the original public meaning of the 1976 amendments, which all parties understood for over 40 years.

Fifth, Plaintiffs'—and the circuit court's—interpretation runs counter to the enactment history of Article IV, §§ 40-44. While the drafters of the initiative petition presented to Missouri voters in 1976 could have mandated that the General Assembly appropriate the funds generated from the sales and use taxes, they chose not to. Indeed, the drafters of the 1936 initiative petition that created the Commission in the first place did not propose any tax to fund the new Conservation Commission, much less mandate that the General Assembly appropriate funds for it to operate. What is more, the 1936 amendment remain unchanged after the constitutional convention that resulted in Missouri's fourth constitution in 1945, even though before 1937, "the amount of funding for the Fish and Game Department from sportsmen's fees depended on how much the legislature *saw fit to appropriate*." D48 p. 3; D51 (KEEFE, *supra*, at 72, 261) (emphasis added); *accord* 2 DEBATES, *supra*, at 460 (preserving the people's "right to vote a special tax" but ensuring that "the appropriation of money … remain with the legislative body irrespective of whether it is a general fund or whether it is a special fund").

Because Article IV, §§ 40-44 do not provide that conservation revenues "stand appropriated" or mandate that such funds be appropriated, "it is beyond

question that the General Assembly has discretion to decide appropriations on an annual or biannual basis" for conservation revenues. *Planned Parenthood*, 602 S.W.3d at 210–11. With no textual basis in the Constitution, Plaintiffs'—and the circuit court's—interpretation of Article IV, §§ 40-44 would result in the nullification of the General Assembly's longstanding power over appropriations, which dates back two centuries. That was not Missouri voters' intention in creating the Conservation Commission, which was primarily to address "the lack of permanence" its predecessor had and which had made it "impossible to make proper advancement in conservation, propagation and restoration of natural resources." D48 p. 3; D51 pp. 12-14 (KEEFE, *supra*, at 7-9). Nor could that have been their intent in proposing additional taxes in 1976, which was done to address the Commission's dire financial condition due to rising inflation and expenditures. D48 p. 3; D52 pp. 29-30 (KEEFE, *supra*, at 115-16).

In sum, the text, structure, and original public meaning of Article IV §§ 40-44 of the Missouri Constitution do not support Plaintiffs' interpretation that they do not need an appropriation from the General Assembly to access funds from the state treasury. Unless funds stand appropriated by the Missouri Constitution or the Constitution mandates an appropriation be made, it is indisputable that the General Assembly possesses the power to make or refuse to make an appropriation. The General Assembly refused to

appropriate funds for land acquisition under HB 2019. Any contrary interpretation goes outside what Missouri voters enacted in 1936 and 1976.

II. The circuit court erroneously declared and applied the law in entering its declaratory judgment, because House Bill 2019 (2020) ("HB 2019") does not violate the single-subject requirement in Article III, Section 23 of the Missouri Constitution, in that: (A) HB 2019 is a general appropriation bill that is exempt from the single-subject requirement; (B) HB 2019 does not (and cannot) purport to combine appropriations with an amendment of Article IV, §§ 40-44, which does not provide that Conservation Commission funds "stand appropriated" or mandate that the General Assembly appropriate the funds; and (C) to the extent this Court's decision in *Planned Parenthood of St. Louis Region v. Department of Social Services*, 602 S.W.3d 201 (Mo. banc 2020), compels a different result, then the Court should overrule that decision.

The circuit court alternatively held that HB 2019 imposed an impermissible restriction on the Conservation Commission's authority over conservation revenues, in violation of the single-subject rule of Article III, § 23. D83 p. 28; App 28. This too was erroneous.

Standard of Review. The State incorporates by reference the prior discussion of the applicable standard of review. *See* Point I, *supra*.

Legal Standards. The State incorporates by reference the prior discussion of the applicable legal standards. *See id.* Additionally, "[t]his Court will resolve doubts in favor of the procedural and substantive validity of an act of the legislature." *Planned Parenthood*, 602 S.W.3d at 206 (citation omitted).

Attacks on the procedural validity of an act of the General Assembly have traditionally been disfavored by the judiciary. *Id.*

Preservation. The State incorporates by reference the prior discussion regarding preservation for appellate review. *See* Point I, *supra*.

A. HB 2019 Does Not Violate the Single-Subject Rule.

Plaintiffs' claim—and the circuit court's alternative holding—that the General Assembly's appropriation bill for conservation revenues (i.e., HB 2019) violates Article III, § 23 contradicts the plain text of the Missouri Constitution, because that provision specifically *exempts* appropriations bills from the single-subject rule: "No bill shall contain more than one subject which shall be clearly expressed in its title, *except … general appropriation bills*, which may embrace the various subjects and accounts for which moneys are appropriated." MO. CONST. art. III, § 23 (emphasis added). The sole limitation on this exception is that appropriations bills cannot enact or amend substantive legislation, but must address "appropriations only." *Planned Parenthood*, 602 S.W.3d at 207. "In other words, any bill that purports to combine appropriations with the enactment or amendment of general or substantive law necessarily contains more than one subject in violation of article III, section 23, and such a bill does not fall within the exception for 'general appropriation bills.' " *Id.*

HB 2019 does not violate the single-subject requirement of Article III, § 23. This enactment is a general appropriation bill that is exempt from the

single-subject requirement. *Id.* at 206–07. It doesn't "purport[] to combine appropriations with the enactment or amendment of general or substantive law." *Id.* at 207. Nor could it, because nothing in the text of Article IV, §§ 40-44 provides that Conservation Commission funds "stand appropriated" or mandates that the General Assembly appropriate the funds. The appropriation bill at issue in this case is unlike the enactment at issue in *Planned Parenthood*. There, the challenged provision of the appropriation bill prohibiting the expenditure of funds to abortion facilities was held to be an impermissible attempt to "directly amend" statutes that required a state agency to use appropriated funds to reimburse authorized providers for physicians' services and family planning services provided to Medicaid-eligible individuals. *Id.* at 208–11. Because the General Assembly "chose to appropriate" funds for "providing physicians' services and family planning to Medicaid-eligible individuals[,]" this Court held, the state agency was "bound" by that decision. *Id.* at 211. Because the Conservation Commission funds do not "stand appropriated" and the General Assembly has no obligation to appropriate the funds annually or biannually, there was no attempt by the General Assembly to "directly amend" any substantive law. *See also* Mo. Att'y Gen. Op. (June 11, 1953) (D72 pp. 1-2, 5-6) (advising that proviso in appropriation bill that "no funds shall be *expended* … for the rental or erection of" office space for the Conservation Commission violates single-subject

rule) (emphasis added); Mo. Att'y Gen. Op. (May 29, 1958) (D73 pp. 1, 4-6) (advising that proviso in appropriation bill that expressly prohibited *spending* appropriated funds for "salary increases" for Conservation Commission staff violates single-subject rule because only the Commission can "fix" its own salaries under the Constitution) (citing *State ex rel. Hueller v. Thompson*, 289 S.W. 338 (Mo. banc 1926)).

Plaintiffs contend that HB 2019 violates the single-subject rule as applied on these particular facts, because it purports to interfere with the Conservation Commission's authority to engage in the St. Clair land acquisition and/or its ability to pay specified payments in lieu of taxes. D46 pp. 4-6. Put another way, Plaintiffs contend that *any* specification of purposes in the appropriations bills violates the single-subject rule because it purports to restrict or narrow the Conservation Commission's ability to pursue its conservation goals. This argument proves far too much, because every appropriations bill contains language specifying the purposes for which the appropriations may be used—that is the very purpose of an appropriations bill. In fact, such specification is constitutionally mandated by Article IV, § 23 of the Constitution. MO. CONST. art. IV, § 23. An appropriations bill's "sole purpose is to set aside moneys for *specified purposes*." *Planned Parenthood*, 602 S.W.3d at 207 (emphasis added) (quoting *Hueller*, 289 S.W. at 340–41). In other words, every specification of purposes for appropriated funds in an appropriation bill imposes some

limitation on the uses for which the agency may expend the funds. If Plaintiffs' argument were accepted, virtually every appropriations bill would violate the single-subject rule. When it comes to appropriations bills, under this Court's cases, the single-subject rule "only applies to resolve a conflict between the general statute and an appropriation when it attempts to amend the general legislation." *Id.* (quoting *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 4 (Mo. banc 1992)). Here, Plaintiffs do not identify any "general statute" that supposedly stands in direct "conflict" with HB 2019, so they have not stated any claim for violation of the single-subject rule.

At bottom, Plaintiffs' argument that HB 2019 unconstitutionally restricts the Conservation Commission's authority over conservation matters through their general specification of purposes for which funds may be used is nothing more than arguing that the Conservation Commission and Department of Conservation have plenary appropriations authority over the conservation revenues. This argument is meritless for all the reasons discussed above. *See* Point I, *supra*. The appropriation bill in this case does not "directly amend" the conservation amendments to the Constitution, because those amendments are fully consistent with the General Assembly's plenary discretion over appropriations. *See id.*

B. The Court Should Overrule the Overbroad Reading of the Single-Subject Rule For Appropriation Bills Adopted in *Planned Parenthood*.

As noted above, even under this Court's cases, the single-subject rule is simply not applicable in this case, because the appropriation bill here does not purport to "directly amend" the Constitution or any substantive legislation. But to the extent this Court's decision in *Planned Parenthood* compels a different result, respectfully, the Court should revisit and overrule the unduly expansive reading of the single-subject rule for appropriation bills that this Court applied in *Planned Parenthood*. As noted in the State's briefing in *Doyle v. Tidball*,[6] *see supra*, at n.1, that rule lacks support in the plain language of the Constitution, rests on shaky jurisprudential footing, has failed to generate significant reliance in the near-century since its recognition in 1926, and places the single-subject rule at loggerheads with "bedrock legal principles" long recognized in this Court's cases. *Planned Parenthood*, 602 S.W.3d at 211. The Court should clarify that, consistent with the plain language of Article III, § 23, an appropriation bill may decline to appropriate money even when apparently directed to do so by a previously enacted general statute (or, as here, a constitutional provision), and that an appropriation bill does not violate the single-subject rule as long as it "embrace[s] the various subjects and accounts

[6] In *Doyle*, this Court declined to reach this issue. 2021 WL 3119116, at *6.

for which moneys are appropriated." MO. CONST. art. III, § 23; *see also Planned Parenthood*, 602 S.W.3d at 213–14 (Fischer, J., dissenting).

Stare decisis is not an inexorable command. *Accord Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 379 (Mo. banc 2014) ("The adherence to precedent is not absolute, and the passage of time and the experience of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course.") (cleaned up); *Gamble v. United States*, 139 S. Ct. 1960, 2005–06 (2019) (Gorsuch, J., dissenting) ("Indeed, blind obedience to *stare decisis* would leave this Court still abiding grotesque errors like *Dred Scott v. Sandford*, *Plessy v. Ferguson*, and *Korematsu v. United States*.") (footnotes omitted).

This is particularly true in cases—like this one—that involve prior constitutional interpretations because "correction through legislative action is practically impossible[.]" *Templemire*, 433 S.W.3d at 387, 389 n.4 (Fischer, J., dissenting) (citations omitted). Such prior interpretations can only be altered by constitutional amendment or by overruling prior decisions. *See Agostini v. Felton*, 521 U.S. 203, 235 (1997); *Watts v. Lester E. Cox Med. Centers*, 376 S.W.3d 633, 644 (Mo. banc 2012) ("[I]f a decision construes the constitution in a manner not acceptable to the people, the opportunity of changing the organic law is remote.") (quoting *Mountain Grove Bank v. Douglas Cty.*, 146 Mo. 42, 47 S.W. 944, 947 (1898)). "In other words, in constitutional cases, this Court is

"unlike that of the highest court of England, where … Parliament is free to correct any judicial error[.]" *Templemire*, 433 S.W.3d at 387 (Fischer, J., dissenting) (citations omitted); *see id.* at 388 (collecting cases that considered only prior constitutional interpretations, citing *Watts*, 376 S.W.3d at 636 (interpreting article I, section 22(a), involving the right of trial by jury), and *Independence–Nat'l Educ. Ass'n v. Independence Sch. Dist.*, 223 S.W.3d 131, 137 (Mo. banc 2007) (interpreting article I, section 29, involving the right to bargain collectively)). Thus, where, as here, "it appears that an opinion is clearly erroneous and manifestly wrong, stare decisis is never applied to prevent the repudiation of such a decision." *Templemire*, 433 S.W.3d at 379 (cleaned up).

There are several compelling reasons to revisit and overrule the broad reading of the single-subject rule for appropriation bills applied in *Planned Parenthood*.

First, as Judge Fischer's dissent in *Planned Parenthood* compellingly demonstrates, that rule "lacks any textual foundation in the constitution." 602 S.W.3d at 215 (Fischer, J., dissenting). There is no textual single-subject rule for appropriation bills, because Article III, § 23 explicitly "exempts appropriation bills from its purview." *Id.* at 213. It provides: "No bill shall contain more than one subject which shall be clearly expressed in its title, *except* … general appropriation bills, which may embrace the various subjects

and accounts for which moneys are appropriated." MO. CONST. art. III, § 23 (emphasis added). The only arguable limitation that Article III, § 23 imposes on appropriation bills is that they "embrace the various subjects and accounts for which moneys are appropriated." *Id.* "When the language of a constitutional provision is clear and unambiguous, this Court has no other duty than to apply the language of the provision as written." *Planned Parenthood*, 602 S.W.3d at 213 (Fischer, J., dissenting) (citing cases).

Indeed, for just such reasons, this Court overruled *City of Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539 (1947), in *Independence-National Education Ass'n*, 223 S.W.3d at 137–38, because it determined that the holding in *Clouse* was "contradict[ed by] the plain meaning of article I, section 29, which states simply that employees, without qualification, have the right to collective bargaining."

Second, the expanded single-subject rule recognized in *Planned Parenthood* rests on the shakiest of jurisprudential foundations. It was adopted in a trifecta of unpersuasive New Deal-era cases that gave little heed to the plain language of the Constitution, and instead relied heavily on "policy considerations" outside the Constitution's text. *Id.* at 215. One of these three cases was the shameful decision *State ex rel. Gaines v. Canada*, 342 Mo. 121, 113 S.W.3d 783 (Mo. banc 1937), which employed this expanded single-subject rule to justify racial segregation at the University of Missouri Law School, and

which this Court has disavowed as "infest[ed]" with "the rot of state-mandated racial segregation." 602 S.W.3d at 208 n.7. The other two cases applied the doctrine only in the extremely narrow and distinguishable context of appropriation bills that directly interfered with the salaries of state officials. *Hueller*, 289 S.W. at 340–41; *State ex rel. Davis v. Smith*, 75 S.W.2d 828, 830 (Mo. banc 1934). Both of those cases could readily have been decided on other grounds, as this Court effectively recognized in its recent decision in *Rebman v. Parson*, 576 S.W.3d 605 (Mo. banc 2019). In the 86 years between *Davis* and *Planned Parenthood*, this Court cited the expanded single-subject doctrine only once, "[t]hree generations later," 602 S.W.3d at 207, in *Rolla 31 School District*, 837 S.W.2d at 4. In other words, in the near-century between the Court's recognition of this doctrine in 1926 and its 2020 decision in *Planned Parenthood*, the doctrine generated little or no significant reliance.

Third, the expanded single-subject rule recognized in *Planned Parenthood* is inconsistent with the General Assembly's long-recognized, plenary authority over appropriations, as enshrined in Article III, § 36 and Article IV, §§ 23 and 28 of the Constitution. Under *Planned Parenthood*'s logic, a general statute can effectively mandate future appropriations and restrict a future General Assembly's discretion over appropriations, so long as there is a "direct conflict" between the general statute's command to fund, and the future appropriation bill's failure to do so—which is practically always. 602 S.W.3d

at 208. *Planned Parenthood* held that, "if [the appropriation provision] is in direct conflict with [the general statutes], then it is an attempt to amend those general statutes and is unconstitutional because [the appropriation bill] contains multiple subjects." *Id.* This doctrine conflicts with an older, more deeply rooted, and more persuasive line of cases holding that an earlier General Assembly cannot, by general legislation, bind the hands of a future General Assembly to engage in future acts of appropriation. Most notably, in *State ex rel. Fath v. Henderson*, 60 S.W. 1093, 1097 (Mo. 1901), this Court held that, when it comes to future appropriations, "one general assembly cannot tie the hands of its successor." The Court of Appeals persuasively summarized and applied this doctrine in *Kansas City Symphony*, 311 S.W.3d at 278, which held that a general statute mandating that funds "*shall* be transferred from the general revenue fund to the Missouri arts council trust fund" could not compel a future legislature to appropriate money from the general revenue fund to the arts council trust fund—notwithstanding the clear conflict between the general statute and the later appropriation bill. *Kansas City Symphony* cited *Fath* as holding that "one general assembly cannot tie the hands of its successor," *id.*, and held: "To otherwise interpret the statute as avoiding the appropriations process would render it unconstitutional under article III, section 36. Such an interpretation would also create a perpetual or automatic

continuing appropriation … in violation of other constitutional provisions." *Id.* (citing Mo. Const. art. IV, § 23, 28).

The expanded single-subject rule recognized in *Planned Parenthood* conflicts with the General Assembly's authority over appropriations recognized in cases from *Fath* to *Kansas City Symphony*. Under *Planned Parenthood*, a general statute that compels future appropriations can bind the hands of a future General Assembly to make those future appropriations, by creating a "direct conflict" between the general statute and the future appropriation bill that refuses to fund the policy mandated in the general statute. But, unlike the expanded single-subject rule in *Planned Parenthood*, the rule recognized in *Fath* and *Kansas City Symphony* is more deeply rooted, better reasoned, and rests in the text of the Constitution—in Article III, § 36 and Article IV, §§ 23 and 28. *See Kansas City Symphony*, 311 S.W.3d at 278 (citing these three constitutional provisions as adopting this doctrine). Indeed, *Planned Parenthood* itself described that the doctrines of *Fath* and *Kansas City Symphony* as "bedrock legal principles," including the longstanding rule that "unless funds stand appropriated by the constitution or the constitution mandates an appropriation be made, it is beyond question that the General Assembly has discretion to decide appropriations on an annual or biannual basis." *Planned Parenthood*, 602 S.W.3d at 206.

Fourth, this Court's cases support the practice of revisiting constitutional doctrines that are not soundly rooted in the Constitution, even when the Court has recently applied them. In *City of Normandy v. Greitens*, 518 S.W.3d 183, 190–95 (Mo. banc 2017), this Court applied its then-existing special laws jurisprudence to invalidate provisions of a municipal-reform bill that applied more stringent standards to municipalities in St. Louis County than elsewhere in the State. Two years later, in *City of Aurora v. Spectra Communications Group*, 592 S.W.3d 764, 777–78 (Mo. banc 2019), the Court disavowed the doctrines it had applied in special-laws cases in more recent years and reestablished the sounder rational-basis test for special-laws challenges. In so holding, this Court explicitly disavowed *City of Normandy*, holding that the case had committed "the final misdirection" in the Court's special-laws jurisprudence. *Id.* at 779.

So too here, *Planned Parenthood* represents "the final misdirection" of the line of cases expanding the single-subject rule for appropriation bills, *id.*, and the Court should overrule it. As long as an appropriation bill "embrace[s] the various subjects and accounts for which moneys are appropriated," it is valid under Article III, § 23. The plain language of the Constitution requires nothing more.

To be sure, "decisions of this Court should not be lightly overruled, especially when the opinion has remained unchanged for many years."

Honeycutt, 421 S.W.3d at 422 (quotation marks omitted). But *Planned Parenthood* has not been in the books for "many years," so this aspect of stare decisis should not be given much weight. And to date only one Missouri court has cited *Planned Parenthood*, but not to its holding. *See Donaldson v. Missouri State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 62 (Mo. banc 2020) (stating the standard of review, and citing *Planned Parenthood*, 602 S.W.3d at 206, 208).

CONCLUSION

The Court should reverse the circuit court's judgment.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General of Missouri

/s/ *Jesus A. Osete*
D. JOHN SAUER, #58721
Solicitor General
JESUS A. OSETE, #69267
Deputy Solicitor General
Office of the Attorney General
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102
Tel. (573) 751-1800
Fax (573) 751-0774
John.Sauer@ago.mo.gov
Jesus.Osete@ago.mo.gov
Counsel for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that on this 3rd day of August, 2021, pursuant to Rule 84.06(c), Brief of Appellants complies with the limitations contained in Rule 84.06(b), was prepared using Microsoft Word in 13-point Century Schoolbook font, contains 16,666 words, as determined by Microsoft Word, and was electronically served on all counsel of record through Case.net.

/s/ *Jesus A. Osete*
Deputy Solicitor General

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2021, I electronically filed Brief of Appellants and Appendix of Appellants with the Clerk of the Court using the Court's electronic filing system, to be served on all counsel of record.

/s/ *Jesus A. Osete*
Deputy Solicitor General
Counsel for Appellants