SC 99185

IN THE SUPREME COURT OF MISSOURI

STEPHANIE DOYLE, et al.,

Appellants,

v.

JENNIFER TIDBALL, et al.,

Respondents;

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

BRIEF OF THE MISSOURI HOUSE OF REPRESENTATIVES AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS FILED WITH CONSENT OF ALL PARTIES

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CONSENT TO FILE THIS *AMICUS CURIAE* BRIEF

In accordance with Missouri Supreme Court Rule 84.05(f)(2), counsel for *Amicus Curiae* certify that counsel for plaintiffs, defendants, and intervenors have consented to the filing of this brief.

Statement of Interest of Amicus Curiae

All appropriations of state funds begin with appropriations bills in the Missouri House of Representatives. The House, along with the Missouri Senate, participated in enacting the appropriations related to MO HealthNet (Medicaid in Missouri) that are at issue in this appeal. The House has interest in the appeal to protect its constitutional role in the appropriation process.

INTRODUCTION

In 2021, the General Assembly did not fund Medicaid Expansion. Instead, the General Assembly funded Pre-Expansion Medicaid, as it had done consistently since Congress implemented Medicaid Expansion (a new health care program) under the Affordable Care Act ("ACA").

The constitutionality of Medicaid Expansion in Amendment 2 is in doubt. The amendment purports to provide eligibility for health benefits in MO HealthNet to individuals nineteen years of age or older and under sixty-five years of age. Yet the General Assembly still maintains the authority to debate and decide whether to appropriate funds for the new Medicaid Expansion program. The General Assembly could not implement the new program, however, without spending any money.

Amendment 2 purports to mandate that a new category of approximately 275,000 individuals shall be eligible for medical assistance under MO HealthNet. Missouri could not provide such coverage without paying for it. Missouri could not compel medical providers to treat these patients without compensating the doctors and nurses. Amendment 2 purports to create a new obligation of state government, to-wit: providing coverage for the health benefits service package of MO HealthNet to an estimated additional 275,000 individuals. But Amendment 2 fails to provide new revenues to pay for the coverage.

The legislature is presumed to know existing case law when it enacts laws. The 2021 legislative budget process and the resulting budget legislation signed by the Governor, must be viewed in light of recent appellate decisions defining Pre-Expansion Medicaid and Medicaid Expansion; instructing the General Assembly not to include

restrictive language in appropriations bills; and upholding the General Assembly's power to appropriate even under Amendment 2. In the 2021 regular legislative session, the General Assembly debated whether to fund Medicaid Expansion and declined to appropriate funds for this new program. Instead, the General Assembly funded Pre-Expansion Medicaid. This is demonstrated in the appropriations bills themselves, the circumstances surrounding their enactment, and the understanding of both the legislative branch and executive branch. Plaintiffs now ask the judicial branch to contradict that understanding.

Following Amendment 2, if the legislature retained the authority to decide whether to fund or not to fund Medicaid Expansion, then the decision of the legislature not to fund Medicaid Expansion must be affirmed. If Amendment 2 took away the legislature's authority to decide whether to fund or not to fund Medicaid Expansion and left it without discretion, then Amendment 2 violates the constitutional prohibition against appropriating by initiative without creating the necessary revenues. If Amendment 2 violated the constitution, then the decision of the legislature in the 2021 session not to fund Medicaid Expansion must be affirmed since the legislature cannot be bound by an unconstitutional amendment. In either case, the legislature was empowered with the decision whether to fund or not to fund Medicaid Expansion. This Court must uphold the decision of the General Assembly not to fund Medicaid Expansion.

STATEMENT OF FACTS

In 1945, Missouri adopted its present constitution. Brought forward from the previous constitution was the provision allowing amendments by initiative. *See* Mo. Const. art. 4, § 57 ("[T]he people reserve to themselves power to propose laws and amendments to the Constitution, and to enact or reject the same at the polls, independent of the legislative assembly.") The people of 1945 added a restriction to the initiative process, by adopting Article III, Section 51, which provides, "The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution." Mo. Const. art. III, § 51. The people of Missouri have not changed or revoked this restriction on the right to amend the constitution by initiative.

In May 2020, an amendment by initiative to the Missouri Constitution was proposed which would adopt Medicaid Expansion and offer MO HealthNet to approximately an additional 275,000 Missourians. (L.F. 17, ¶ 26). If adopted, individuals nineteen years of age or older and under sixty-five years of age, who otherwise qualify for MO HealthNet, would be eligible for medical assistance. The proposed amendment further stated that such individuals "shall receive coverage for the health benefits service package."

The Secretary of State certified the proposed amendment, and it became known as Amendment 2. A lawsuit challenged the constitutionality of the amendment because it appropriates money without creating or providing for any new revenues.

The Missouri Court of Appeals considered the issue in *Cady v. Ashcroft*, 606 S.W.3d 659 (Mo. Ct. App. 2020). The court held, "We agree with the circuit court that the

substantive challenge to the Proposed Measure (Point I) is not ripe for judicial determination…" *Id.* at 665. Thus, the appellate court did not rule on the substantive question of whether Amendment 2 violated Article III, Section 51 of the Missouri Constitution by appropriating money without creating or providing for any new revenues.

The court noted that in pre-election litigation, courts are bound to adopt an "interpretation [that] harmonizes the provisions of ... the initiative and article III, section 51 of the state constitution rather than creating an irreconcilable conflict." *Id.* at 668. In conducting the pre-election review of the matter, the court harmonized the provisions of Amendment 2 and Article III, Section 51 and stated, "The Proposed Measure does not direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs." *Id.* The court also opined that Amendment 2 was an "amendment to Mo HealthNet's eligibility criteria, subject to the legislature's appropriation power." *Id.* at 670-71.

Voters approved Amendment 2 on August 4, 2020, and it purportedly was incorporated into the Missouri constitution as Article IV, Section 36(c). Missouri's governor submitted budget requests to the General Assembly which called for appropriating funds for Medicaid Expansion pursuant to Amendment 2. (L.F. 17 ¶¶ 33-34, 41-42, 52-59). The Department of Social Services ("DSS") took multiple steps to change MO HealthNet, so that it would conform to Amendment 2. The agency proposed regulatory amendments to account for the expanded-eligibility population. (L.F. 17 ¶¶ 93-94, 98-99). DSS also submitted Medicaid State Plan Amendments to the federal Department of Health

and Human Services, Centers for Medicare and Medicaid Services (CMS), to account for Medicaid Expansion under Amendment 2. (L.F. 17 ¶¶ 95-97).

In the General Assembly, the budget-making process began in the House of Representatives. (L.F. 17 ¶¶ 32, 40, 51, 80.) Legislators vigorously debated whether to appropriate funds for Medicaid Expansion under Amendment 2. For example, House Bill 20 was filed by the House Budget Chair along with the other proposed appropriations bills. It contained the funding the Governor had recommended for Medicaid Expansion under Article IV, Section 36(c) of the Constitution. The bill included appropriations to the Office of Administration, Department of Mental Health, and DSS for purposes of administering the new health care program. (L.F. 17 ¶¶ 73-74). The House Budget Committee held a hearing on House Bill 20 and a motion to "do pass" the bill was made, but the motion failed, and the bill died. (L.F. 17 ¶ 75)[1].

On the House Floor, several amendments were offered to include Medicaid Expansion in the budget bills, but all such amendments were defeated. (L.F. 17 ¶¶ 35, 43, 67). In the Senate, amendments to include Medicaid Expansion were offered to the budget bills in the Appropriations Committee and on the Senate Floor, but all were defeated. (L.F. 17 ¶¶ 44-48, 68-69). During floor debate before final passage of HB 11 in the House, Rep. Smith (House Budget Chair) and Rep. Merideth (Ranking Minority Member, Budget Committee) both stated that HB 11 did not fund Medicaid Expansion. (L.F. 32, Tr. Ex. 15, at 2, 3, 6; L.F. 17 ¶ 70).

[1] *See* also https://www.house.mo.gov/Bill.aspx?bill=HB20&year=2021&code=R (actions on HB 20) (last visited July 8, 2021)).

In the end, the General Assembly decided not to appropriate funds for Medicaid Expansion under Amendment 2. HB 11 (2021); H. Jrn 2404-2405 (2021); S. Jrn. 1478 (2021). In the relevant enacted appropriation bill, the General Assembly merely funded MO HealthNet without the Expansion called for in Amendment 2. HB 11 (2021). The executive branch responded to the budget passed by the General Assembly by withdrawing the previously filed proposed regulatory amendments and the Medicaid State Plan Amendments. (L.F. 17 ¶¶ 99-102).

In the FY22 state budget passed by the General Assembly and approved by the Governor in 2021, Medicaid Expansion under Amendment 2 was not funded. HB 11 (2021); *see also* HB 5 (2021), HB 10 (2021). No money was appropriated to pay for coverage of the approximately 275,000 Missourians purportedly made eligible by Amendment 2.

Plaintiffs filed suit on May 20, 2021, before they applied for MO HealthNet benefits, asking the trial court to declare that the defendants' refusal to implement Medicaid Expansion was unlawful. (L.F. 2). Plaintiffs also asked the court to adjudge that the defendants violated the new provision of the constitution, Article IV, Section 36(c), by refusing to maximize federal funding. (L.F. 2). Plaintiffs asked the court to find that there was sufficient appropriation authority in House Bill 11 to implement Medicaid Expansion for the new class of approximately 275,000 Missourians. (L.F. 2). Plaintiffs requested the court to allow the new class of approximately 275,000 Missourians to enroll in MO HealthNet beginning July 1, 2021, with full benefits under the program as other recipients. (L.F. 2). Plaintiffs prayed the court to order the executive branch to file all State Plan

Amendments necessary to implement Medicaid Expansion and to maximize federal funding. (L.F. 2).

The trial court received stipulated evidence and exhibits at a bench trial on June 21, 2021. (L.F. 1). The court entered its judgment on June 23, 2021, against plaintiffs and in favor of defendants. (L.F. 63). The court denied all plaintiffs' claims for relief. Plaintiffs appealed to this Court on June 24, 2021. (L.F. 64).

POINTS RELIED ON

POINT ONE

The trial court correctly ruled in favor of respondents because the General Assembly did not appropriate funds for Medicaid Expansion in that the General Assembly has the sole power and authority to appropriate state funds, it affirmatively decided not to fund Medicaid Expansion, and appellants would qualify for Medicaid coverage only under the Amendment 2 expansion.

National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012)

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

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

Mo. Const. art. III, § 36

Mo. Const. art. IV, § 23

Mo. Const. art. IV, § 28

POINT TWO

The trial court correctly ruled in favor of respondents because Amendment 2 violates Art. III, § 51 of the Missouri Constitution in that Amendment 2 purports to expand MO HealthNet to an additional class of approximately 275,000 persons and such expansion would require the appropriation of money to cover the associated costs, but no revenue is provided.

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

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

Buchanan v. Kirkpatrick, 615 S.W.2d 6 (Mo. 1981)

Mo. Const. art. III, § 51

Mo. Const. art. III, § 49

Mo. Const. art. XII, § 1

POINT THREE

The trial court correctly ruled in favor of respondents because appellants failed to prove they were entitled to a declaratory judgment in that the lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment and they have an adequate remedy at law.

State ex rel. Dir. of Revenue v. Pennoyer, 872 S.W.2d 516 (Mo.App. E.D. 1994)

Furlong Companies, Inc. v. City of Kansas City, 189 S.W.3d 157 (Mo. 2006)

State ex rel. SLAH, L.L.C. v. City of Woodson Terrace, 378 S.W.3d 357 (Mo. 2012)

ARGUMENT ON POINT ONE

The trial court correctly ruled in favor of respondents because the General Assembly did not appropriate funds for Medicaid Expansion in that the General Assembly has the sole power and authority to appropriate state funds, it affirmatively decided not to fund Medicaid Expansion, and appellants would qualify for Medicaid coverage only under the Amendment 2 expansion.

I. The 2021 legislative session of the General Assembly and the enacted FY 2022 budget, as it pertains to MO HealthNet, must be viewed in light of relevant case law.

As this Court has recognized, "The legislature is presumed to know the existing case law when it enacts a statute." *Scruggs v. Scruggs*, 161 S.W.3d 383, 390 (Mo. 2005). The 2021 legislative budget process and the resulting budget legislation enacted by the General Assembly and signed by the Governor, must be viewed through the triangular prism of three cases: *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (hereinafter "NFIB"); *Planned Parenthood of St. Louis Region v. Dep't of Social Services*, 602 S.W.3d 201 (Mo. 2020); and *Cady v. Ashcroft*, 606 S.W.3d 659 (Mo. Ct. App. 2020).

a. In *NFIB*, the U.S. Supreme Court made clear that Medicaid consists of two distinct health care programs: Pre-Expansion Medicaid and Medicaid Expansion.

The Affordable Care Act ("ACA") enacted by Congress required states to expand their Medicaid programs to cover *all* individuals under the age of 65 with incomes below 133 percent of the federal poverty level. *NFIB*, 567 U.S. at 576. In *NFIB*, the U.S. Supreme Court struck down this part of the ACA and held that Congress could not penalize States choosing not to participate in Medicaid Expansion by taking away their existing Medicaid

funding. *Id*. at 585. The Court expressly rejected the argument that Pre-Expansion Medicaid and Expansion Medicaid were "all one program." *Id*. at 582. Instead, because Medicaid Expansion "accomplishes a shift in kind, not merely degree," *id*. at 583, it is "a new health care program." *Id* at 584.

As interpreted in *NFIB*, the Medicaid system now has two distinct programs: (1) Pre-Expansion Medicaid and (2) Medicaid Expansion. The original program—which the U.S. Supreme Court referred to as "pre-expansion Medicaid," *NFIB*, 567 U.S. at 581—"requires States to cover only certain discrete categories of needy individuals—pregnant women, children, needy families, the blind, the elderly, and the disabled." *NFIB*, 567 at 575. On the other hand, Medicaid Expansion under the ACA—which the Court referred to as a "new health care program," *id.* at 581—makes eligible all individuals under the age of 65 with incomes below 133 percent of the federal poverty level. *Id*. at 576.

Importantly, the U.S. Supreme Court highlighted the difference between federal funding in Pre-Expansion Medicaid and federal funding in Medicaid Expansion. Under Pre-Expansion Medicaid, "Congress pays 50 to 83 percent of the costs of covering individuals currently enrolled in Medicaid," and the States pay the remaining costs. *Id.* at 584. Under Medicaid Expansion, however, "Congress will pay 90 percent of the costs for newly eligible persons." *Id*.

b. After the 2020 decision of the Missouri Supreme Court in *Planned Parenthood*, the General Assembly would risk judicial scrutiny by inserting express prohibition provisions in the budget bills.

Plaintiffs argue that the relevant appropriations bills give state agencies authority to spend money to implement Medicaid Expansion because the bills do not expressly prohibit

the use of funds for such purpose. App. Br., pp. 38-40. In *Planned Parenthood*, 602 S.W.3d 201 (Mo. 2020), this Court struck down a provision in an appropriation bill that expressly prevented provider payments under Pre-Expansion MO HealthNet from going to abortion facilities. The Court found that the restrictive language violated the single-subject requirement in article III, section 23 of the Missouri Constitution. The Court opined that "an appropriation bill can say how much money can be used and for what purpose," 602 S.W.3d at 210, but that the Court would regard restrictive language of the type under consideration to be an enactment of general or substantive law, which the Court considered inappropriate in an appropriation bill. *See id*. at 207, 209.

In recent years, before 2021, legislation that appropriated money to DSS for the Pre-Expansion Mo HealthNet program included restrictive language specifying that the funds could not be used for Medicaid Expansion under the ACA. *See* HB 2011 § 11.920 (2020)[2]; HB 11 § 11.925 (2019).[3] In 2021, after the *Planned Parenthood* decision and in accordance with it, the General Assembly did not include the same express language in the appropriation bill (even though the appropriation bill did not fund Medicaid Expansion). *See* HB 11 (2021).[4]

To be sure, the House does not concede that language expressly prohibiting Medicaid Expansion in the Pre-Expansion Medicaid appropriation would have been unconstitutional. The issue with respect to a whole new health care program under

[2] Tr. Ex. 25, HB 2011 (2020).
[3] Tr. Ex. 24, HB 11 (2019).
[4] Tr. Ex. 12, HB 11 (2021).

Medicaid Expansion is different than the Pre-Expansion Medicaid provider-payment issues considered in *Planned Parenthood*. Nevertheless, the legislature is presumed to have known that, after *Planned Parenthood*, such restrictive language in the appropriation bill could at least risk judicial scrutiny. Nevertheless, the express restrictive language that had been employed in previous years' appropriations bills was unnecessary, because it was clear from the funding methodology—understood properly in accordance with the technical import of the budget process and Medicaid funding—that the General Assembly had not appropriated funds for Medicaid Expansion, as will be discussed more fully below.

c. In *Cady*, the Missouri Court of Appeals stated that Amendment 2 did not inhibit the General Assembly's appropriation power and that funding for Medicaid Expansion was subject to that appropriation power.

The Court of Appeals addressed a constitutional challenge to Amendment 2 in *Cady*. The court first agreed with the trial court that the substantive challenge to Amendment 2 was not ripe. *Id.* at 665. The court then went on to conduct a pre-election review and harmonized the provisions of Amendment 2 with Article III, Section 51. The court opined:

- Amendment 2 did *not* "direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs." *Id.* at 668; and

- Amendment 2 was an "amendment to Mo HealthNet's eligibility criteria, *subject to the legislature's appropriation power*." *Id*. at 670-71 (emphasis added).

Amendment 2 was approved by the voters on August 4, 2020, and incorporated into

the Missouri constitution as Article IV, Section 36(c). In 2021, the General Assembly--presumed to have known about *NFIB*, *Planned Parenthood*, and *Cady*--appropriated money to fund Pre-Expansion Medicaid but not Medicaid Expansion.

II. The General Assembly did not intend to fund Medicaid Expansion in the FY2022 budget enacted during the 2021 legislative session.

In interpreting the relevant enacted appropriations bills, the Court will apply well-established and familiar canons of statutory construction. The "polestar is the intent of the legislature. Construction must always seek to find and further that intent." *Centerre Bank of Crane v. Director of Rev.*, 744 S.W.2d 754, 759 (Mo. 1988).

"A court normally accomplishes this task by attributing to the words used in the statute their plain and ordinary meaning." *Sermchief v. Gonzales*, 660 S.W.2d 683, 689 (Mo. 1983); *see* RSMo. § 1.090. But "technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." RSMo. § 1.090; *see Murphy v. Director of Revenue*, 170 S.W.3d 507, 513 (Mo. 2005); *see also Am. Fed'n of Teachers v. Ledbetter*, 387 S.W.3d 360, 364-67 (Mo. 2012) (determining that "collective bargaining" had a technical meaning that included a duty to negotiate in good faith based on the history of collective bargaining in the United States).

A court also is informed by case law when considering a statute's plain meaning to discern the intent of the legislature. *See Murphy*, 170 S.W.3d at 513-14 (considering case law in its plain-meaning analysis). This Court has further stated:

> The provisions of a legislative act are not read in isolation but construed together, and if reasonably possible, the provisions will be harmonized with each other. . . . In determining the intent and meaning of statutory language, the words must be considered in context and sections of the statutes in *pari*

> *materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words.. . . .

R.M.A. ex rel. Appleberry v. Blue Springs R-IV Sch. Dist., 568 S.W.3d 420, 429 (Mo. 2019).

A court may gain further insight into legislative intent by "identifying the problems sought to be remedied and the circumstances and conditions existing at the time of enactment." *Sermchief*, 660 S.W.2d at 688. And if the words of a statute are ambiguous, a court may properly consider "the history of the legislation, the surrounding circumstances, and the ends to be accomplished." *See State ex rel. Zoological Park Subdistrict of City & City of St. Louis v. Jordan*, 521 S.W.2d 369, 372 (Mo. 1975).

a. A plain reading of House Bill 11 (2021) demonstrates that the General Assembly intended to fund Pre-Expansion Medicaid and not Medicaid Expansion.

Consistent with the practice of the General Assembly since *NFIB*, the General Assembly in 2021 appropriated money to MO HealthNet only for Pre-Expansion Medicaid and *not* for Medicaid Expansion under the ACA. This is clear by reviewing the appropriations in House Bill 11 (2021) for their plain and ordinary meaning, understood according to the technical import of the appropriations and informed by relevant case law.

Medicaid is a program "under which the federal government assists participating states in providing health care to people who cannot afford it." *Bechtel v. State Dept. of Social Services*, 274 S.W.3d 464, 467 (Mo. 2009). Under this cooperative program, "the federal government reimburses state governments for a portion of the costs of providing medical assistance to low-income recipients." *In re Estate of Shuh*, 248 S.W.3d 82, 84 (Mo.

App. 2008). As the U.S. Supreme Court has recognized, **under Pre-Expansion Medicaid, the federal government's portion of the "costs of covering individuals currently enrolled in Medicaid" is "50 to 83 percent**," and the States pay the remaining costs. *NFIB*, 567 U.S. at 584. According to the federal Department of Health & Human Services, the federal portion for general Medicaid spending in Missouri for federal FY22 is 66.36 percent with a 76.45 percent enhanced federal matching rate for the Children's Health Insurance Program and certain others. 85 Fed. Reg. 76588 (Nov. 30, 2020). **Under Medicaid Expansion**, however**, the federal government would pay "90 percent of the costs for newly eligible persons.**" *NFIB*, 567 U.S. at 584.

Funding for MO HealthNet is appropriated annually by the General Assembly. *Cady*, 606 S.W.3d at 668. For purposes of interpretating legislative intent, bills that appropriate funding (such as House Bill 11 (2021)) should be viewed as having technical words and phrases. *See* RSMo. § 1.090. When the General Assembly appropriates money to DSS for MO HealthNet purposes, it goes through a methodical process that includes a review of the Governor's recommendations, budget and appropriation hearings in both chambers, and deliberations in both chambers. Determining the appropriation levels for a cooperative federal-state program like Medicaid involves a peculiar and technical methodology. To receive the federal match, the legislative appropriators must understand and incorporate the appropriate federal- and state-funding levels for Medicaid.

Legislators also must be presumed to have appropriated funds for Medicaid in a manner that is consistent with applicable federal rules. For example, under 42 C.F.R. § 438.4, states that participate in Medicaid are required to use "actuarily sound capitation

rates" for projecting and providing for costs of managed care delivery. In other words, a basic understanding of the technical aspects of Medicaid funding is needed. Those with an understanding of these principles (like DSS who would together the State Plan Amendment application (*i.e.*, alternative benefit plan) and the federal agency reviewing the State Plan Amendment) would know from the face of House Bill 11 that the limited amount of appropriations therein did not include funding for the expanded population under Medicaid Expansion.

Plaintiffs are wrong, therefore, to suggest that *any* appropriation for Medicaid services demonstrates that the legislature funded Medicaid Expansion. App. Brief, p. 35. Federal law requires actuarial soundness, which requires each rate cell in the managed care plan to be individually calculated. 42 C.F.R. § 438.4. To account for Medicaid Expansion, the legislature could not simply reduce one or more rate cells (even if the rate reduction were uniform across *all* eligibility classes) until the managed-care sum appropriated in House Bill 11 were reached. To interpret the appropriation in that manner is not sensible and not appropriate under federal law.

Plaintiffs completely ignore the technical aspects of House Bill 11, and hope that this Court will too. They argue that the levels of federal and state funding should be disregarded and that, simply because the MO HealthNet appropriations did not expressly prohibit the use of funds for Medicaid Expansion, this Court must read it into the "plain language" of the appropriations.[5] This argument lacks common sense and an understanding

[5] *See* Appellants' Br. at 38-40.

of the federal-state funding of Medicaid. Under traditional and statutory canons of statutory construction, as set forth above, even when conducting a plain-meaning analysis, this Court must understand the appropriations in House Bill 11 in accordance with their technical and appropriate meaning in law.

Dollar amounts in an appropriations bill mean something. They are not randomly drawn from a hat. Instead, the General Assembly, working with the Governor's recommendations, chooses funding levels through much deliberation and thought. And for federal-state cooperative programs, the appropriators factor in available federal dollars. They follow federal guidelines, like using actuarily sound capitation rates. Thus, the amounts identified in an appropriations bill are not just numbers on a page, as plaintiffs seem to suggest. A plain reading of the bill must take into account that the numbers have a technical import.

As an analogy, if in this brief the drafters cite to "567 U.S. 519 (2012)" and to "602 S.W.3d 201 (Mo. 2020)," the plain meaning of these words and phrases is that the drafters are referring to a 2012 opinion from the U.S. Supreme Court and a 2020 opinion from the Missouri Supreme Court, respectively. But even though this is the plain and ordinary meaning of the words and phrases, to a reader who doesn't understand them according to their technical import, the citations may seem like gobbledygook. But they nevertheless portray a plain and ordinary meaning to one who understands the words and phrases according to their technical import.

To determine whether the General Assembly appropriated money for Pre-Expansion Medicaid instead of for Medicaid Expansion, the Court need only consider the

plain meaning of the appropriations themselves according to their technical import. If the appropriations reflect, for example, that the federal percentage of funding of MO HealthNet is "50 to 83 percent" and not "90 percent," *NFIB*, 567 U.S. at 584, then the General Assembly funded Pre-Expansion Medicaid and not Medicaid Expansion.

The following table provides illustrative examples of MO HealthNet appropriations in 2021 as well as in the previous two years. Understood properly, it shows federal and state funding to be commensurate with Pre-Expansion Medicaid:

Appropriation Provision	Total Appropriation	Federal Portion	Federal %	State Portion	State %
HB 11 § 11.700 (2021) (pharmaceutical payments)[6]	$1,541,810,855	$901,650,626	**58.5%**	$640,160,229	41.5%
HB 11 § 11.715 (2021) (physician services)[7]	$622,147,599	$420,157,549	**67.5%**	$201,990,050	32.5%
HB 11 § 11.760 (2021) (prepaid health care plans) [8]	$2,039,148,026	$1,551,978,882	**76%**	$478,169,144	24%
HB 2011 § 11.700 (2020) (pharmaceutical payments)[9]	$1,486,373,043	$810,989,376	**54.5%**	$675,383,667	45.5%
HB 2011 § 11.715 (2020) (physician services) (2020) [10]	$570,283,027	$354,530,971	**62%**	$215,752,056	38%

[6] Tr. Ex. 12, HB 11 (2021).
[7] Tr. Ex. 12, HB 11 (2021).
[8] Tr. Ex. 12, HB 11 (2021).
[9] Tr. Ex. 25, HB 2011 (2020).
[10] Tr. Ex. 25, HB 2011 (2020).

Appropriation Provision	Total Appropriation	Federal Portion	Federal %	State Portion	State %
HB 2011 § 11.760 (2020) (prepaid health care plans) [11]	$1,927,281,957	$1,409,770,943	**73%**	$517,511,014	27%
HB 11 §11.630 (2019) (pharmaceutical payments)[12]	$1,434,745,705	$792,892,055	**55%**	$641,853,650	45%
HB 11 §11.645 (2019) (physician services) [13]	$488,333,332	$341,084,294	**70%**	$147,249,038	30%
HB 11 §11.690 (2019) (prepaid health care plans) [14]	$1,989,097,673	$1,439,549,818	**72%**	$549,547,855	28%

As shown, just like in previous years, the appropriations for MO HealthNet in the 2021-enacted bills reflect that the federal government's share never reached 90 percent (Medicaid Expansion). Instead, just like the U.S. Supreme Court recognized as Pre-Expansion Medicaid, the federal government's share for has been "50 to 83 percent." NFIB, 567 U.S. at 584. Thus, the legislative intent for Pre-Expansion Medicaid and not Medicaid Expansion is seen in the plain language of House Bill 11, understood properly in accordance with the technical import of Medicaid appropriations.

[11] Tr. Ex. 25, HB 2011 (2020).
[12] Tr. Ex. 24, HB 11 (2019).
[13] Tr. Ex. 24, HB 11 (2019).
[14] Tr. Ex. 24, HB 11 (2019).

Not only does the federal-versus-state funding in House Bill 11 demonstrate appropriation for Pre-Expansion Medicaid only, but House Bill 11 also has no language incorporating or referencing the new health care program adopted through Amendment 2.

b. Considered in the context of related statutes, House Bill 11 (2021) appropriated funds only for Pre-Expansion Medicaid and not Medicaid Expansion.

The appropriations in the enacted HB 11 (2021) should not be reviewed by this Court in a vacuum. They instead should be read and construed within the context of related statutes. *See R.M.A. ex rel. Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 429 (Mo. 2019). Moreover, legislative intent may be determined by considering earlier versions of the same act. *See Hayes v. Price*, 313 S.W.3d 645, 654 (Mo. 2010).

As shown in the table above, previously enacted appropriations for Mo HealthNet demonstrate that, even without express language prohibiting Medicaid Expansion, the General Assembly inserted substantially similar federal and state funding levels by percentage in 2021 as it had done in 2020 and 2019. For example, pharmaceutical payments reflect similar federal and state input by percentage in each of the past three years: 2021—58.5 percent federal/41.5 percent state; 2020—54.5 percent federal/45.5 state; and 2019—55 percent federal/45 percent state. *Supra*, table.

Moreover, other appropriations bills enacted in 2021 demonstrate that Medicaid Expansion was not funded. For example, in House Bill 5 (2021), Tr. Ex. 3, the General Assembly appropriated funds for the Office of Administration. Although the Governor had recommended funding of over $1.8 million for implementation of Medicaid Expansion, the

General Assembly did not include any of the recommended amount for Expansion in the enacted version of House Bill 5. (L.F. 17 ¶¶ 32-33). Additionally, the Governor had recommended substantial funding for Medicaid Expansion in House Bill 10, which funds the Department of Mental Health and the Department of Health and Senior Services, but the General Assembly appropriated nothing for Expansion in the enacted version of House Bill 10 (2021). (L.F. 23, Tr. Ex. 6; L.F. 17 39-41, 49).

c. The actions of the Executive Branch after the General Assembly passed the budget confirm that the relevant appropriations bills did not fund Medicaid Expansion.

This Court has pronounced that "[t]he interpretation and construction of a statute by an agency charged with its administration is entitled to great weight." *Mercy Hospitals East Communities v. Missouri Health Facilities Review Comm.*, 362 S.W.3d 415 (Mo. 2012) (citation omitted). The Department of Social Services (DSS) is primarily charged with administering MO HealthNet.

After Amendment 2 passed yet before the General Assembly passed the budget on May 7, 2021, DSS proposed regulatory amendments to account for Medicaid Expansion. (L.F. 17 ¶¶ 93-94, 98-99). For example, on February 26, 2021, DSS proposed an amendment to 13 CSR 70-90.010, which would "allow[] the adult expansion group described in Article IV Section 36(c) of the Missouri Constitution to receive rehabilitative services." 46 MoReg 601-602 (Apr. 1, 2021). The effective date of the proposed regulatory change was July 1, 2021. *Id*. In addition, in January and February, DSS submitted Medicaid State Plan Amendments to the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services to account for Medicaid Expansion under Amendment

2. (L.F. 17 ¶¶ 95-197).

On May 7, the General Assembly passed House Bill 11 (2021) to appropriate money to DSS for FY22. (H. Jrn 2404-2405 (2021); S. Jrn. 1478 (2021)[15]). The actions of DSS thereafter demonstrate that the agency knew that House Bill 11 lacked funding for Medicaid Expansion. On May 13, DSS sent a letter to CMS to withdraw the State Plan Amendments, noting that it had no authority to implement Medicaid Expansion. (L.F. 55, Tr. Ex. 33; L.F. 17 ¶¶ 100, 103-104). DSS also terminated the proposed rulemaking regarding Medicaid Expansion on the same day. *Id*. (L.F. 17 ¶ 101-102; 46 MoReg 999 (June 15, 2021)). Clearly, the agency primarily charged with administering MO HealthNet did not think that House Bill 11 funded Medicaid Expansion.

The Governor also knew that the General Assembly did not fund Medicaid Expansion. As Plaintiffs allege, at the end of the budget process, the Governor stated that "without a revenue source or funding authority from the General Assembly, we are unable to proceed with expansion at this time." (L.F. 2, Pet. ¶ 56 (quoting Governor Parson)).

d. Legislative history shows that the General Assembly intended to appropriate money for Pre-Expansion Medicaid and did not believe it was funding Medicaid Expansion.

If it is still unclear what the enacted budget bills did, legislative history is unmistakable. One cannot reasonably review the enactment of appropriations for MO HealthNet in the 2021 legislative session and not come away with an understanding that

[15] Both of these journal citations (as well as other legislative activity related to HB 11 (2021)) can be accessed at https://house.mo.gov/Bill.aspx?bill=HB11&year=2021&code=R (last visited July 6, 2021).

the General Assembly did *not* appropriate money for Medicaid Expansion.

So as not to be duplicative, we incorporate Defendants' Trial Brief, pages 7-13, and the facts, stipulations, and exhibits cited therein related to legislative history. It is stuffed with examples of failed bills, amendments, legislative debates, and motions demonstrating that the legislators themselves (both proponents and opponents of Medicaid Expansion) believed that no funding had been appropriated for Medicaid Expansion.

We highlight just a few examples. The House Budget Committee Chair, Rep. Cody Smith, filed House Bill 20 for consideration along with the other appropriations bills.[16] It contained the funding the Governor had recommended for Medicaid Expansion under Amendment 2. The bill included appropriations to the Office of Administration, Department of Mental Health, and DSS for purposes of administering the new health care program. (L.F. 17 ¶¶ 73-74). The House Budget Committee held a hearing on House Bill 20 and a motion to "do pass" the bill was made, but the motion failed, and the bill died. (L.F. 17 ¶ 75).

On the House Floor, several amendments were offered to include Medicaid Expansion in the budget bills, but all such amendments were defeated. (L.F. 17 ¶¶ 35, 43, 67). In the Senate, amendments to include Medicaid Expansion were offered to the budget bills in the Appropriations Committee and on the Senate Floor, but, again, all were defeated. (L.F. 17 ¶¶ 44-48, 68-69). Finally, during floor debate before final passage of HB 11 in the House, Rep. Smith (House Budget Chair) and Rep. Merideth (Ranking Minority

[16] *See* HB 20 (2021), *available at* https://www.house.mo.gov/Bill.aspx?bill=HB20&year=2021&code=R (includes bill and legislative action thereon).

Member, Budget Committee) both stated that House Bill 11 did not fund Medicaid Expansion. (L.F. 32, Tr. Ex. 15, at 2, 3, 6; L.F. 17 ¶ 70).

These and other circumstances during the enactment of the relevant budget bills demonstrate that the General Assembly funded Pre-Expansion Medicaid but not Medicaid Expansion.

e. Under the principle of separation of powers, this Court should refrain from interpreting House Bill 11 as funding Medicaid Expansion.

The powers of state government are divided among three distinct branches—legislative, executive, and judicial. Mo. Const. art. II § 1. Each branch is authorized to exercise the powers given to it but not the powers given to another branch. *Id*. The Governor has the power to propose a state budget. *Id.* art. IV § 24. The General Assembly maintains the appropriation power. *Id.* art. III § 36, art. IV §§ 23, 28. The General Assembly make laws. *Id*. art III § 1. And the Governor executes the laws. *Id*. art IV § 2.

During the budget-making process this year, the Governor and General Assembly acted in accordance with their constitutional powers. The General Assembly passed appropriation legislation in House Bills 5, 10 and 11. (L.F. 17 ¶¶ 32, 40, & 51 (and exhibits therein)). Except for line-item vetoes not relevant here, the Governor approved of the bills. *See* Veto Letters for HB 5[17], HB 10[18], & HB 11[19].

[17] *Available at* https://house.mo.gov/billtracking/bills211/rpt/HB5vl.pdf (last visited July 7, 2021).
[18] *Available at* https://house.mo.gov/billtracking/bills211/rpt/HB10vl.pdf (last visited July 7, 2021).
[19] *Available at* https://house.mo.gov/billtracking/bills211/rpt/HB11vl.pdf (last visited July 7, 2021).

In arguing that House Bills 10 and 11 appropriate moneys for Medicaid Expansion, plaintiffs imply that a decision by this Court to read Medicaid Expansion into the relevant appropriations bill would really be no big deal because it is a "common practice" for the General Assembly to pass supplemental appropriations. App. Br., p. 15. Nevermind that supplemental appropriations are not mandated, that they involve significant coordination between the Governor and the legislature, and that they cannot be presumed. The bigger problem, from the perspective of separation of powers, is that plaintiffs invite this Court to order the political branches, in perhaps unprecedented fashion, to appropriate money.

As shown above, the legislative branch and the executive branch agree that *no funding for Medicaid Expansion has been appropriated.* Out of respect for the coordinate branches of state government, this Court should also so find.

ARGUMENT ON POINT TWO

The trial court correctly ruled in favor of respondents because Amendment 2 violates Art. III, § 51 of the Missouri Constitution in that Amendment 2 purports to expand MO HealthNet to an additional class of approximately 275,000 persons and such expansion would require the appropriation of money to cover the associated costs, but no revenue is provided.

I. Amendment 2 requires appropriation without providing revenue.

Does Amendment 2 require Missouri to provide coverage for the health benefits service package in MO HealthNet to individuals nineteen years of age or older and under sixty-five years of age, who otherwise qualify? If yes, then could Missouri provide such coverage without spending any money?

Amendment 2 purports to mandate that a new category of approximately 275,000 individuals shall be eligible for medical assistance under MO HealthNet and receive coverage for the health benefits service package. Missouri cannot provide such coverage without paying for it. Missouri cannot compel medical providers to treat these patients without compensating the doctors and nurses. Missouri would have to appropriate money to pay for the coverage. Amendment 2 violates the Missouri Constitution because it purportedly creates a new obligation of state government, to-wit: providing coverage for the health benefits service package of MO HealthNet to an estimated additional 275,000 individuals. But the proponents of Amendment 2 failed to include a measure to create and provide new revenues to pay for the coverage.

The people of Missouri have reserved the power to propose and enact amendments to the constitution by initiative, independent of their elected representatives. But such power is not without limit. The people of Missouri of 1945 had the foresight to place a limitation on the power to legislate changes directly. The people may not direct that money be spent without providing the necessary revenue.

This case presents a conflict between the General Assembly's right and authority to appropriate state funds and the right of the people to change the law directly through initiatives. The General Assembly has the authority to appropriate funds, as more fully discussed above. The people have the right to change the law directly through a vote on an initiative.

The resolution of this conflict between the General Assembly's authority to appropriate money and the people's right to change the law directly through the initiative process is found in Art. III, § 51. The people have placed a limit on their right to change the constitution through initiative. The people have decided that initiatives cannot be used to appropriate money without creating and providing the new revenues.

Regarding the initiative process, this Court said, "Nothing in our constitution so closely models participatory democracy in its pure form… The people, from whom all constitutional authority is derived, have reserved the 'power to propose and enact or reject laws and amendments to the Constitution.'" *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. 1990) (citing Mo. Const. art. III, § 49). This Court recognized the self-imposed limits on the initiative process. "The people, speaking with equal vigor through the same constitution, have placed limitations on the initiative power.

That those limitations are mandatory is clear and explicit." *Id. See also* Mo. Const. art. XII, § 1 ("This constitution may be revised and amended only as therein provided.")

The right to change the law by initiative is an exercise in pure democracy. But the right of Missouri to adopt a fully democratic form of government is prohibited by the U.S. Constitution. The federal constitution requires states maintain a republican form of government. *See* U.S. Const. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government…").

> By the constitution, a republican form of government is guaranteed to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, national and state, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities.

Duncan v. McCall, 139 U.S. 449, 461, 11 S. Ct. 573, 577, 35 L. Ed. 219 (1891). How far a state may stray from a republican form of government is unknown and largely left to the political branches, not to the judiciary.

Since before the adoption of the current constitution in 1945, the people retained the right to directly change the law through the initiative process. But with the adoption of the current constitution, the people wisely placed a limit on initiatives. The people "set bounds to their own power, as against the sudden impulses of mere majorities." *Id.* The process of directly changing the law through initiatives cannot be used to appropriate money other than new revenues created and provided by the initiative. "The plain language of article III, section 51 generally prohibits the appropriation of money by initiative, except that an

initiative may appropriate revenues created by the initiative proposal." *City of Kansas City, Missouri v. Chastain*, 420 S.W.3d 550, 555 (Mo. 2014).

The Missouri Supreme Court discussed the rights of the people and the need for a stable constitution in *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 11–12 (Mo. 1981). This Court called attention to the "safeguard procedures relating to the initiative process" by saying, "All of these procedural safeguards are designed either, (1) to promote an informed understanding by the people of the probable effects of the proposed amendment, or (2) to prevent a self-serving faction from imposing its will upon the people without their full realization of the effects of the amendment." *Id.*

The Supreme Court has found similar initiatives in violation of Art. III, § 51. In *Kansas City v. McGee*, 269 S.W.2d 662 (1954), the Supreme Court reviewed an "initiative petition proposing an ordinance creating a firemen's pension plan." *Id.* at 662. The Supreme Court framed the issue: "The question remains, can the proposed ordinance be classified as an appropriation law? This question must be answered in the affirmative." *Id.* 665. The Supreme Court said:

> What we do hold is that Sec. 51 of the Constitution, supra, requires that if such a law is to be enacted through the initiative it can only be done by making provision for new revenue to pay the bill. The proposed ordinance is fatally defective in this respect. It is true that the proposed ordinance does not in and of itself appropriate the money to carry out the pension plan but it does not leave any discretion to the City Council.

Id. at 665–66. The Court thus found the initiative-proposed ordinance to be "fatally defective in that it fail[ed] to make any provision to raise the revenue to be appropriated as required by [Section 51] of the constitution." *Id.* at 665.

A few years later, another proposed initiative ran afoul of Art. III, § 51 in *State ex rel. Sessions v. Bartle*, 359 S.W.2d 716 (Mo. 1962). The Court considered an ordinance that "establishes job classifications and wage schedules and provides when the changes in the salary schedule shall take effect." *Id.* at 719. The Court held the attempted change to the law was "an appropriation ordinance within the meaning and intendment of § 51 of Art. III and is fatally defective in failing to provide new revenues out of which to pay the increased salaries." *Id.*

The people, in adopting the limitation on initiatives in the 1945 constitution, recognized the danger of allowing a direct vote on particular popular spending measures without providing the funding source in the same measure. Art. III, § 51 serves as a safeguard. "What is prohibited is an initiative that, either expressly *or through practical necessity*, requires the appropriation of funds to cover the costs associated with the ordinance." *Chastain* at 555 (emphasis added). Thus, the people can order the state to spend money on particular programs, but only if the people create the funding source in the same initiative.

Amendment 2 violated this safeguard by submitting to the voters the question of whether a vast expansion of Medicaid would be undertaken without providing for the funding source. As discussed above, Missouri has funded Pre-Expansion Medicaid for years. Amendment 2 asked the voters if Medicaid Expansion should be adopted, but it did not create the revenues to pay for Medicaid Expansion.

Medicaid Expansion would add an estimated 275,000 individuals to MO HealthNet. (L.F. 63, p. 4). The trial court found that Medicaid Expansion would cost a substantial

amount of money[20]. (L.F. 63, p. 4). The trial court's finding that Medicaid Expansion would cost a substantial amount of money is supported by substantial evidence. (L.F. 17, ¶ 74-78, "funding for MO HealthNet expansion in three categories: (1) $1,866,135 for the Office of Administration; (2) $153,943,714 for the Department of Mental Health; and (3) a total of $1,737,779,895 for the Department of Social Services.") The General Assembly debated and decided not to fund Medicaid Expansion. The General Assembly, as the sole branch of government with appropriation authority, was within its discretion to reject funding Medicaid Expansion. Further, because Amendment 2 violates Art. III, § 51, the decision not to appropriate money for Medicaid Expansion does not run afoul of the constitution.

Before the election, the Court of Appeals in *Cady* followed the required standard of review for a "pre-election review of the facial constitutionality." "The Supreme Court is consistent in limiting pre-election judicial review of challenges to initiative petitions to whether there are obvious violations of express constitutional or statutory 'conditions precedent to placing a proposal on the ballot.'" *Cady* at 667. It agreed with the trial court that "the substantive challenge to the Proposed Measure (Point I) is not ripe for judicial determination…" *Cady v. Ashcroft* at 665. And during the pre-election review, it sought an "interpretation [that] harmonizes the provisions of ... the initiative and article III, section

[20] The Judgment states the cost of Medicaid Expansion would be $1.8 million. But this appears to be a typographical error in that the cost of Medicaid Expansion would be approximately $1.8 billion.

51 of the state constitution rather than creating an irreconcilable conflict." *Id.* at 668. But now this Court is called upon to decide the substantive, post-election challenge to Amendment 2. This Court acknowledged a post-election substantive review is different. *See Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 9 (Mo. 1981) ("some matters objected to prior to election may be judged by a different standard following the election.").

II. The General Assembly has sole appropriation authority.

The Missouri Constitution gives the legislative branch the power to appropriate money. Mo. Const. art. III § 36, art. IV §§ 23, 28. Even plaintiffs agree that the General Assembly has the sole power to appropriate state funds: "The General Assembly retains expansive discretion over whether to appropriate the funds necessary to implement Article IV, Section 36(c)." App. Brief, p. 26.

In *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209 (Mo. 1975), the Court struck down a statute that allowed the commissioner of administration to approve alterations to department appropriations. But such delegated authority to change the purpose for which money appropriated by the General Assembly could be used violated the constitution. The Court emphasized that "money may not be withdrawn from the state treasury for any purpose other than that specified in an appropriation law." *Id.* at 213.

The General Assembly's appropriation power was again upheld in *State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272 (Mo. App. 2010). There, a symphony argued that "the word 'shall' in the statute indicate[d] the State had a mandatory duty to transfer monies from the general revenue fund into the Arts Trust Fund, without the need for appropriation." *Id.* at 276-77. The court disagreed. Even a statutory provision "directing

a transfer of funds from the general revenue fund" to a particular fund "does not obviate the need for appropriation" under the constitution. *Id*. Thus, nothing can take away the General Assembly's power to appropriate.

III. Amendment 2 attempts to take appropriation power from the General Assembly.

Amendment 2 is unconstitutional because its text purports to mandate that individuals nineteen years of age or older and under sixty-five years of age, who otherwise qualify for MO HealthNet, are eligible for medical assistance and "shall receive coverage for the health benefits service package." Missouri cannot pay for the coverage without appropriating money for coverage. Therefore, the amendment violates Art. III, § 51 by purportedly making it necessary to appropriate money for coverage. All agree that the amendment does not create and provide new revenues.

The restriction on unfunded initiatives is analogous to a provision in the Hancock Amendment[21]. The state government cannot mandate that local governments take on new obligations without providing the funding for the new obligations. In other words, the greater political body (the state) can force the lesser political body (a county) to take action only if the greater provides the revenues to the lesser. In the case at bar, the people (the greater political body) can mandate that the state government (the lesser political body) take on new obligations only if the people create and provide the new revenue source.

[21] A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Mo. Const. art. X, § 21

Because the proponents of Amendment 2 failed to include provisions to create and provide the revenues necessary to pay for the cost of providing MO HealthNet coverage to approximately 275,000 Missourians, the amendment violates Art. III, § 51. The will of the people of Missouri, as expressed in Art. III, § 51 of the 1945 constitution, is clear and explicit and remains mandatory until the people say otherwise[22].

The trial court judgment which denied relief to plaintiffs must be affirmed.

[22] To the extent one might argue Amendment 2 rescinded Art. III, § 51 with the introductory language, "Notwithstanding any provision of law to the contrary," Amendment 2 would still fail. Initiative amendments may only amend or revise one article of the constitution. *See* Art. III, § 50. Thus, Amendment 2 would amend Art. IV, § 36 (implementing Medicaid Expansion) and Art. III, § 51 (prohibiting appropriation by initiative without creating and providing revenue).

ARGUMENT ON POINT THREE

The trial court correctly ruled in favor of respondents because appellants failed to prove they were entitled to a declaratory judgment in that the lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment and they have an adequate remedy at law.

I. Standard of Review

"The standard of review in a declaratory judgment case is the same as in any other court-tried case." *Levinson v. State,* 104 S.W.3d 409, 411 (Mo. banc 2003). "The judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Id.*

II. Plaintiffs Have an Adequate Remedy at Law.

Plaintiffs sued for a declaratory judgment on May 20, 2021. (L.F. 2). At the time of filing the suit and at the time of trial on June 21, plaintiffs had not applied for coverage under MO HealthNet. (L.F. 17, ¶ 106). Amendment 2 purports to make plaintiffs eligible for MO HealthNet coverage starting July 1. Mo. Const. art. IV, § 36(c)(1).

A party is not entitled to a declaratory judgment if that party has an adequate remedy at law. "The lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment." *Chastain* at 555. "Courts have interpreted § 527.020 RSMo 1986 to mean that a declaratory judgment action is not available for the construction of a statute where there is a specific, and an adequate, statutory procedure for challenging the administrative ruling

made under such statute or statutes." *State ex rel. Dir. of Revenue v. Pennoyer*, 872 S.W.2d 516, 518 (Mo.App. E.D. 1994).

Plaintiffs have an adequate remedy at law. Sections 208.080, 208.100 and 208.110, RSMo. provide plaintiffs a "specific, and an adequate, statutory procedure for challenging the administrative ruling made under such statute or statutes." *Pennoyer* at 518. Section 208.080, RSMo. states:

> Any applicant for or recipient of benefits or services provided by law by the family support division, children's division, or MO HealthNet division may appeal to the director of the respective division from a decision in any of the following cases:
>
> (1) If his or her right to make application for any such benefits or services is denied;…

§ 208.080, RSMo.

Plaintiffs allege that they will be denied services and benefits. If their applications are denied, they may appeal to the director. The procedure and the rights of the parties are set out in subdivision 7 of § 208.080, RSMo. Plaintiffs are guaranteed "reasonable notice of, and an opportunity for, a fair hearing in the county of his or her residence." *Id.* At the hearing, plaintiffs are entitled to:

> shall be entitled to be present at the hearing, in person and by attorney or representative, and shall be entitled to introduce into the record of such hearing any and all evidence, by witnesses or otherwise, pertinent to such applicant's or recipient's eligibility between the time he or she applied for benefits or services and the time the application was denied or the benefits or services were terminated or modified, and all such evidence shall be taken down, preserved, and shall become a part of the applicant's or recipient's appeal record.

§ 208.080, RSMo.

The director is required to take the steps necessary to preserve the records. Specifically, the director shall, "determine all questions presented by the appeal, and shall make such decision as to the granting of benefits or services as in his or her opinion is justified and is in conformity with the provisions of the law." *Id.* The director shall also, "clearly state the reasons for his or her decision and shall include a statement of findings of fact and conclusions of law pertinent to the questions in issue." *Id.*

If plaintiffs wish to challenge the decision of the director, they are entitled to appeal to the circuit court of the county in which they reside. § 208.100, RSMo. The entire record of the hearing, together with the hearing decision, shall be certified and transmitted to the circuit court. *Id.* Appeals are tried in the circuit court upon the record in accordance with § 536.140, RSMo. *Id.* The circuit court has discretion to order the director to reconsider the matter and may order the director to take further action as the court deems proper. *Id.* Either the plaintiffs or the director may appeal the circuit court's judgment. § 208.110, RSMo.

Although plaintiffs assert in their petition that they have no adequate remedy at law, plaintiffs have the right to apply for MO HealthNet benefits. If they are denied, the procedure in Sections 208.080, 208.100 and 208.110, RSMo. is "a specific, and an adequate, statutory procedure for challenging the administrative ruling." *Pennoyer* at 518.

Because plaintiffs have an adequate remedy after they are denied coverage, the trial court could not have granted a declaratory judgment in their favor. Thus, the trial court's denial of all relief to plaintiffs was proper. Further, "this Court will avoid deciding a constitutional question if the case can be resolved fully without reaching it." *State ex rel.*

SLAH, L.L.C. v. City of Woodson Terrace, 378 S.W.3d 357, 361 (Mo. 2012) (citations omitted). "This Court is primarily concerned with the correctness of the result, not the route taken by the trial court to reach it; the trial court's judgment will be affirmed if it is correct on any ground supported by the record, regardless of whether the trial court relied on that ground." *Missouri Soybean Ass'n v. Missouri Clean Water Comm'n*, 102 S.W.3d 10, 22 (Mo. 2003).

CONCLUSION

For the above reasons, *Amicus Curiae* support the Respondents. Because Amendment 2 purportedly mandates providing coverage to hundreds of thousands of new MO HealthNet recipients at a substantial cost but without providing new revenue to pay for the coverage, Amendment 2 is unconstitutional. In any event, the General Assembly did not appropriate funds for Medicaid Expansion in the FY22 state budget. *Amicus Curiae* therefore respectfully request the Court to uphold the judgment of the trial court.

Respectfully Submitted,

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CERTIFICATES OF SERVICE AND COMPLIANCE

I, the undersigned, hereby certify that the above and foregoing was transmitted to opposing counsel of record via the Missouri eFiling system on the date electronically stamped on the upper right edge of this document.

I further certify that the foregoing brief complies with the limitations contained in Rule 84.06(b) and that the brief contains 9,824 words.

/s/ Kevin R. Corlew
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