SUPREME COURT OF MISSOURI

No. SC99092

ERIC SCHMITT, ATTORNEY GENERAL, and
SARAH STEELMAN, COMMISSIONER OF ADMINISTRATION,
Appellants,

v.

MISSOURI CONSERVATION COMMISSION, and
MISSOURI DEPARTMENT OF CONSERVATION,
Respondents.

On Appeal from the Circuit Court of Cole County
Nineteenth Judicial Circuit
The Honorable S. Cotton Walker

RESPONDENTS' BRIEF

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INTRODUCTION

The people of Missouri, through two constitutional amendments proposed by initiative and one by referendum, removed certain powers from the General Assembly and vested those powers in a four-member Conservation Commission. The Commission's powers are unique in Missouri government; it holds broad authority—to the exclusion of interference from the General Assembly—over conservation subjects and to use and expend money from the Conservation Fund in the state treasury.

The historical context and text of the amendments compel this conclusion. The Conservation Commission was created in 1936 following a terrible drought and alarming decline in wildlife made worse by an overly political and underfunded State Fish and Game Department. (L.F. D50, p. 11); (L.F. D83, p. 19).[1] In response to this crisis, Missourians gave the Commission sole authority for "[t]he control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the State …." (L.F. D56, p. 3; Resp. App., p. A24). At the same time, the people removed the General Assembly's plenary control over "fees, monies, or funds arising from the operation and transactions of said Commission and from the

[1] For stipulated exhibits in the legal file, Respondents refer to the page numbers assigned by the e-filing system, not to the page numbers in the original documents.

application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the State," by providing that such fees, monies or funds "shall be expended and used by said Commission[.]" (L.F. D56, p. 4; Resp. App., p. A24-A25).

In 1976, the people, by a constitutional amendment enacting Article IV, §§ 43(a), (b), and (c):

- created a new, dedicated revenue stream (the Conservation Sales Tax, resulting in additional funding for the Conservation Fund);
- specified the parameters within which that Fund can be used; and
- kept language that bestows on the Conservation Commission, rather than the General Assembly, the authority to decide when and (within those parameters) how that Fund would be spent.

In 1980, a further amendment added payments in lieu of taxes (PILT) to counties to the list of permissible uses of the Conservation Fund—and directed the Commission to use conservation funds to offset some county revenue loss from its increased public land holdings. (L.F. D48, ¶25; Resp. App., p. A6; L.F. D83, p. 8).

The people made Article IV, §§ 40-43 "self-enforcing"—with limited exceptions: § 43(c) allows the General Assembly to adjust tax brackets for the collection of the sales and use tax, and § 44 permits the General Assembly to enact laws "in aid thereof" §§ 40-43, but "not inconsistent therewith."

Over its 80+-year history, the Conservation Commission has used conservation funds to acquire land for conservation purposes from willing sellers. (L.F. D48, ¶19; Resp. App., p. A5; L.F. D83, p. 6). It has faithfully made annual PILT payments since 1980. (L.F. D48, ¶54; Resp. App., p. A13; L.F. D83, p. 16).

In 2020, the General Assembly created a new obstacle for the Commission. As introduced, HB2019 would have appropriated money from the Conservation Fund in the amount the Commission approved for its Fiscal Year 2021 budget for land acquisition, PILT payments, and certain other capital projects. But a late amendment removed standard purpose language from HB2019—language that would have stated the appropriated funds could be used, as the Commission desired, for "land acquisition" for conservation purposes and "financial assistance to other public agencies." (L.F. D71, p. 8, 19; Resp. App., p. A27; L.F. D63). This was the first time the General Assembly failed to appropriate moneys the Commission deemed necessary for land acquisition and PILTs. (L.F. D48, ¶40; Resp. App., p. A9; L.F. D83, p. 11).[2]

[2] In previous years, the General Assembly tried to include limitations in appropriations bills to prevent the Commission from using conservation funds in areas other than land acquisition and PILT, specifically, for salary increases or building costs; but those limits were deemed unconstitutional by the Attorney General. (*See* L.F. D72; Resp. App., p. A28; L.F. D73; Resp. App., p. A34).

When the Conservation Commission sought to purchase imperiled prairie habitat in St. Clair County and issue $900,000 in county PILT payments from available funds, the OA Commissioner refused to certify the payments, citing the limited purposes listed in HB2019. (L.F. D48, ¶¶9, 59; Resp. App., p. A2, A14; L.F. D83, p. 4, 17).

The Circuit Court of Cole County agreed that the OA Commissioner was required to certify the land purchase and PILT payments as requested because the General Assembly lacked power to limit the Conservation Commission's conservation expenditures. (L.F. D83, p. 23).

The Appellants (the Commissioner of Administration and Attorney General) take the position that despite the breadth of the 1936, 1976, and 1980 conservation amendments, no funds can be expended by the Conservation Commission from the Conservation Fund except according to terms set by the General Assembly through an appropriations bill. (L.F. D48, ¶¶7, 9; Resp. App., p. A2). Taken to its logical end, the Appellants' view is that:

- if the legislature does not include the Conservation Fund as the source in one or more line items in appropriations bills, no money from the Fund can be spent in that fiscal year;

- when the legislature does include the Fund as a source for one or more line items in appropriations bills, whatever number it puts as the total maximum in appropriations bills for a fiscal year is the maximum that can be expended from the Fund in that fiscal year—whether that be $1,000,000, $1,000, or $1; and

- when the legislature leaves out of the purpose portion of the lines in appropriations bills any, most, or even all of the purposes constitutionally allowed, then no money from the Fund can be spent for the omitted purposes during that fiscal year.

Respondents agree that, as a general rule, unless otherwise indicated by the constitution, as with the Conservation Fund, the General Assembly has plenary authority over each revenue stream to decide how much (if any) can be spent, when it can be spent, and on what it can or cannot be spent (so long as the authorization or restriction is consistent with existing law). According to Appellants, then, in enacting Article IV, §§ 43(a), (b), and (c), the people limited the legislature's plenary authority in one and only one respect: that conservation revenue, if ever spent, could be spent only on the purposes listed. Otherwise, according to the Appellants, the people entirely failed to remove that Fund from that general rule, leaving whether, when, how much, and on what to spend dedicated conservation revenue within the purview of the General Assembly.

But Appellants fail to explain how that could be true without authorizing the legislature to violate the language of the conservation provisions of Article IV. In enacting §§ 43(a), (b), and (c), and § 44 the people gave the Conservation Commission—not the General Assembly—full authority to decide how much of the Conservation Fund to be spent, when to spend it, and what to spend it on (within the constitutional parameters). The General Assembly may enact laws

in aid of §§ 43(a), (b) and (c) in facilitating the Conservation Commission's access to funds for constitutional purposes and it may continue to adjust tax brackets, but it may not thwart the Conservation Commission's ability to spend available conservation funds for authorized conservation purposes.

The judgment should be affirmed.

STATEMENT OF FACTS[3]

Parties

Plaintiff-Respondent Missouri Conservation Commission is a four-member entity created by § 40(a) of Article IV of the Missouri Constitution. Plaintiff-Respondent the Missouri Department of Conservation (MDC) is a department of Missouri state government. Mo. Const. art. IV, § 12; § 252.002, RSMo. (L.F. D48, ¶3; Resp. App., p. A1).

Defendant-Appellant Attorney General Eric Schmitt (Attorney General) is a state elective official charged with defending state statutes and with representing the interests of the State in any proceeding or tribunal in which the State's interests are involved. (L.F. D48, ¶6; Resp. App., p. A2).

Defendant-Appellant Office of Administration Commissioner Sarah Steelman (OA Commissioner) is charged by Article IV, § 28 of the Missouri

[3] Respondents provide their own statement of facts pursuant to Rule 84.04(f).

Constitution with certain obligations with respect to state treasury withdrawals. (L.F. D48, ¶8; Resp. App., p. A2).

Conservation Provisions in the Missouri Constitution[4]

A. 1936 Amendment

The Conservation Commission was born of popular dissatisfaction with Missouri's politically appointed and underfunded Fish and Game Department and a wildlife crisis made acute by the drought that began in 1933 and continued through 1936. (L.F. D50, p. 11; L.F. D83, p. 19). A 1935 wildlife survey estimated the State's breeding reserve for common species stood at precipitously low levels, with only 2,500 turkeys, 1,800 deer, and 100 beavers statewide, among other alarming figures. (L.F. D49, p. 15).[5]

Concerned sportsmen and conservationists banded together to sponsor an initiative to amend the Missouri Constitution to divorce the Fish and Game Department from politics and give it adequate authority to carry out all essential phases of a broad conservation program embracing both wildlife and

[4] Additional details of the history surrounding adoption of the conservation provisions in Article IV are included in Part I, *infra*.

[5] Since the Conservation Commission was established, fish and wildlife populations have improved dramatically over levels in the 1930s. In 2018, for example, more than 290,000 deer were sustainably harvested; in 2019, MDC staff and citizen volunteers recorded observations of over 70,000 turkeys in a three-month survey; beaver and otter can be found throughout most of Missouri; and raccoon and muskrat are common. (L.F. D48, ¶14; Resp. App., p. A4).

forestry. (L.F. D50, p. 12-20). Ultimately, an amendment to the Missouri Constitution, Amendment 4, was placed on the November 3, 1936 ballot via the initiative process. It was adopted by a large popular majority. (L.F. D48, ¶20; Resp. App., p. A5).

Amendment 4 created the Conservation Commission and gave it broad authority over conservation subjects, personnel decisions, conservation land acquisition decisions, and the funds arising from both its operations and the application and administration of laws pertaining to the bird, fish, game, forestry, and wildlife resources of the State. (L.F. D56, p. 3, 4; Resp. App., p. A24, A25; L.F. D83, p. 19).

The provisions were expressly "self-enforcing," with a proviso that the "general assembly may enact any laws in aid thereof but not inconsistent with the provisions of this amendment[.]" (L.F. D56, p. 4; Resp. App., p. A25). Any "existing laws" that were "inconsistent" were "no longer … in force or effect." (L.F. D56, p. 4; Resp. App., p. A25).[6]

From the beginning of its operations, the Commission and MDC were careful to shun politics and maintain independence from the General Assembly, consistent with the intent of Amendment 4. (L.F. D51, p. 33-35).

[6] The self-enforcing clause is now contained in Art. IV, § 44, with similar language in Art. IV, § 43(c).

Over the years, this Court and the Attorney General sustained that independence against attack.

In *State ex. inf. McKittrick v. Bode*, 342 Mo. 162 (Mo. 1938), this Court upheld the Commission's plenary authority to determine qualifications of the Director of MDC in response to a suit seeking to oust the first director.

In *Marsh v. Bartlett*, 121 S.W.2d 737 (Mo. 1938), this Court concluded that a law setting an open season for bass became a nullity because a conflicting regulation adopted by the Commission on that subject controlled. *Id.* at 743-744.

And during the 1950s, the Missouri Attorney General issued opinions finding unconstitutional legislative provisos in appropriations bills purporting to prohibit the Commission from expending conservation funds for the erection of a central office building or salary increases for MDC personnel. (L.F. D72; Resp. App., p. A28; L.F. D73; Resp. App., p. A34).

B. 1976 Amendment

In 1976, voters, by initiative, again amended the Missouri Constitution to provide additional funds to the Conservation Commission through a sales tax levied and controlled by Article, IV, §§ 43(a)-(c). (L.F. D48, ¶24; Resp. App., p. A6). The 1976 tax initiative followed demands for increased conservation services and the widespread publication of the Conservation Commission's long-range plan called "*Design for Conservation*," which pledged to use

additional funds for the acquisition of public land for conservation purposes and the enjoyment of Missouri citizens. (L.F. D48, ¶¶13, 23, 24; Resp. App., p. A3, A6; L.F. D52, p. 30-36; L.F. D83, p. 20).

Revenue from this sales tax—as well as "all fees, moneys, or funds arising from the operation and transactions of the operation and transactions of the Conservation Commission, MDC, and from the application and administration of 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" (Article IV, § 43(b))—are deposited and held in the state treasury in the Conservation Commission Fund (Conservation Fund). (L.F. D48, ¶17; Resp. App., p. A5; L.F. D83, p. 7).

In *Conservation Federation of Mo. v. Hanson*, 994 S.W.2d 27 (Mo. banc 1999), this Court again addressed an effort to erase the line drawn by the people to protect conservation funds. There, the Court granted a request by taxpayers to stop state officials from using conservation funds for Hancock Amendment returns, finding that a legislative appropriation of conservation funds for such purposes was unconstitutional, because it would have prevented the funds "from being used or expended for permissible conservation purposes" as required by Article IV, § 43(b). *Id.* at 28.

C. 1980 Amendment

In 1980, the General Assembly proposed and the people adopted a constitutional amendment to § 43(b). (L.F. D48, ¶25; Resp. App., p. A6; L.F. D83, p. 8). The amendment permitted the Conservation Fund to be used for PILT payments to counties. (*Id.*) This allowed the Commission to offset county revenue losses stemming from increased conservation land holdings. (L.F. D54, p. 5; Resp. App., p. A21; L.F. D83, p. 20). The 1980 amendment allows PILT payments to be made "in such amounts as may be determined by the conservation commission," so long as the amounts are not less than certain minimums. Mo. Const. art. IV, § 43(b). This language is in contrast to a failed 1978 proposal that would have made such payments subject to legislative control "as provided by law." *Official Manual of the State of Missouri 1979 – 1980*, p. 1270-71.

D. Conservation land acquisitions and PILT payments

Over the past 80 years, the Conservation Commission has used the Conservation Fund to acquire more than 800,000 acres of conservation land exclusively through willing sellers or donations. (L.F. D48, ¶16; Resp. App., p. A4; L.F. D83, p. 20).

The Conservation Commission employs criteria to set priorities for land acquisition. Current criteria are set forth in the "Land Conservation Strategy" (LCS) approved in 2018. (L.F. D48, ¶15; Resp. App., p. A4; L.F. D83, p. 20-21).

The LCS builds on *Design for Conservation*, and its goal is to enhance conservation efforts in priority geographies, enhance conservation of imperiled species and habitats, expand existing conservation areas and close inholdings to maximize resource management efforts, and increase citizen access to the outdoors near where they live. (L.F. D48, ¶15; Resp. App., p. A4).

Since adoption of the PILT amendment to § 43(b) in 1980, the Conservation Commission has made PILTs annually to counties. (L.F. D48, ¶54; Resp. App., p. A13).

E. Procedure for requesting payments from the Conservation Fund

Approximately 61.5% of the funds within the Conservation Fund are derived from the conservation sales tax, 16.9% from permit revenues, 15.6% from federal reimbursements, and the remaining funds from sales and rentals and other sources. (L.F. D48, ¶17; Resp. App., p. A5). The Conservation Commission and MDC 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. (L.F. D48, ¶38; Resp. App., p. A9). Historically, the General Assembly annually appropriated funds for the Conservation Commission, including for land acquisition and PILTs. (L.F. D48, ¶¶40-46; Resp. App., p. A9-A12).

To request that a payment be paid out of the Conservation Fund within the state treasury, the Conservation Commission submits a request for certification to the OA Commissioner through the SAMII system. (L.F. D48, ¶34; Resp. App., p. A8). The SAMII system requires that the Conservation Commission designate an appropriations bill from which the payment is to be debited. (L.F. D48, ¶35; Resp. App., p. A8).

F. HB2019 and the OA Commissioner's refusal to certify payments for conservation land acquisition and 2020 PILT payments

Fiscal Year 2021 is the first instance in which the stated parameters of an appropriation passed by the General Assembly did not match the Conservation Commission's plans for use of funds within the Conservation Commission Fund for land acquisition and PILTs. (L.F. D48, ¶¶40-46; Resp. App., p. A9-A12). Specifically, in HB2019, the General Assembly eliminated land acquisition and PILTs from the list of purposes commonly used for the appropriation corresponding to the Conservation Commission's budget request for such expenses. *Compare* (L.F. D48, ¶47; Resp. App., p. A12) and (L.F. D71, p. 4-5).

The following shows the changes between the relevant portion of the Introduced and Truly Agreed version of HB2019:

Section 19.020. To the Department of Conservation

For ~~stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in~~

~~partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; 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

~~10~~ 6 From Conservation Commission Fund (0609)..... $21,000,000

(L.F. D71).

On July 9, 2020, the Conservation Commission approved the purchase of 510 acres of land in St. Clair County (St. Clair Property) from a willing seller. (L.F. D48, ¶48; Resp. App., p. A12). The St. Clair Property includes imperiled prairie habitat and is adjacent to an existing conservation area. (L.F. D48, ¶49; Resp. App., p. A12).

In December 2020, the Conservation Commission made determinations pursuant to Article IV, § 43(b) for PILTs to counties. (L.F. D48, ¶55; Resp. App., p. A13; L.F. D83, p. 21).

There is an unencumbered balance in the Conservation Fund sufficient for the entirety of the Conservation Commission's Fiscal Year 2021 budget, including for the purchase price of the St. Clair County Property and the 2020 PILT payments. (L.F. D48, ¶58; Resp. App., p. A14).

The Conservation Commission approved the use of unencumbered funds out of the Conservation Fund for the land purchase and the approximately

$900,000 in PILT payments, consistent with its Fiscal Year 2021 budget. (L.F. D48, ¶55; Resp. App., p. A13). The Conservation Commission then directed MDC to submit payment requests for the St. Clair Property purchase and PILTs through the SAMII system, designating HB2019 as the appropriation, as that appropriation coincided with the Conservation Commission's budget for those purchases. (L.F. D48, ¶¶53, 56; Resp. App., p. A13-A14; L.F. D83, p. 21). The OA Commissioner, citing omissions from the purposes stated in HB2019, refused to certify the payments. (L.F. D48, ¶¶7, 9, 59; Resp. App., p. A2, A14; L.F. D83, p. 22).

G. The Cole County Circuit Court's declaratory judgment

The Conservation Commission and MDC filed suit in the Circuit Court of Cole County, Missouri. An amended petition was filed on October 23, 2020. (L.F. D45, p. 10). The Commission and MDC sought declaratory relief in alternative forms, each in effect requiring the OA Commissioner to certify the payments. (L.F. D46).

On January 29, 2021, and February 4, 2021, the parties filed several sets of stipulated facts and stipulations as to the record before the Circuit Court. (L.F. D48; Resp. App., p. A1; L.F. D70, D75).

Following briefing and a hearing held on February 5, 2021, the Circuit Court issued a judgment in favor of the Conservation Commission requiring the OA Commissioner to certify the requested land purchase and PILTs.

(L.F. D83). The Circuit Court concluded that (1) the General Assembly, by enacting HB2019, exceeded its authority in restricting the Conservation Commission's authority over Conservation Fund moneys, as the Missouri Constitution, in Article IV, §§ 43(a)-(c), places plenary power over the Conservation Fund with the Conservation Commission and that (2) even if the General Assembly had the authority to limit the Conservation Commission's authority over Conservation Fund moneys, it could not have done so in an appropriations bill, as such violates the single-subject rule in Article III, § 23. (L.F. D83, p. 22-23).

ARGUMENT

The clear intent of the people in enacting the conservation provisions of Article IV was to create a dedicated revenue stream for the Conservation Commission to expend and use for conservation purposes that was outside the legislature's normal, plenary control. As to both the amount to be expended in a fiscal year and the nature of those expenditures, the choices of whether, when, and on what to expend the Conservation Fund are constitutionally assigned to the Conservation Commission. This is the entity to which the people have entrusted the conservation of Missouri's wildlife and wildlife resources. The General Assembly may aid the Commission's exercise of this authority by enacting appropriations bills that meet the budget needs determined by the Commission and by adopting accounting and other

procedures that facilitate proposed use of the Conservation Fund. But it cannot use an appropriations bill to dictate or eliminate the Commission's choice of expenditures within permissible constitutional purposes.

In (I), we address the history and text of §§ 43(a), (b), and (c). That history shows that the people's purpose was to eliminate the ability of the General Assembly to control or interfere with expenditures from the Conservation Fund.

In (II), we address how §§ 43(a), (b), and (c) assign to the Conservation Commission control of amounts to be expended from the entire Fund, not just control over some portion of the Fund that the General Assembly includes in an appropriations bill for a particular fiscal year. The Commission, not the General Assembly, decides how much of the Fund to leave in reserve. The Commission, not the General Assembly, decides whether a particular expenditure should be made now or later. If there is a dispute as to timing or needs, the General Assembly cannot reduce the amount in an appropriations bill for a particular year below what the Commission finds to be necessary and appropriate, thus replacing the Commission's authority and expertise with its own.

And in (III), we address how §§ 43(a), (b), and (c) assign control of expenditure choices from the Fund to the Conservation Commission—to the exclusion of control by the General Assembly. Based on its expertise,

experience, and constitutional authority, the Commission decides, within the constitutional parameters, what expenditures to make and when during each fiscal year. The General Assembly cannot usurp that authority by omitting some constitutionally authorized use, nor by including in an appropriations bill some instruction.

Standard of Review

This case was decided on stipulated facts, therefore, "the only question before this court is whether the trial court drew the proper legal conclusions from the facts stipulated." *Incline Village Bd. of Trustees v. Edler*, 592 S.W.3d 334, 337 (Mo. banc 2019) (quoting *Schroeder v. Horack*, 592 S.W.2d 742, 744 (Mo. banc 1979)). The legal conclusions, here, involve the constitutionality of an appropriations bill. "Constitutional challenges to a statute are reviewed *de novo*." *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs*, 602 S.W.3d 201, 206 (Mo. banc 2020) (quoting *Calzone v. Interim Comm'r of Dep't of Elementary & Secondary Educ.*, 584 S.W.3d 310, 315 (Mo. banc 2019)).

This appeal presents a question of constitutional construction. In answering such questions, this Court must consider "the broader purposes and scope of constitutional provisions." *Brown v. Morris*, 290 S.W.2d 160, 167 (Mo. banc 1956). Ultimately, "the primary rule is to give effect to the intent of the voters who adopted the Amendment by considering the plain and ordinary

meaning of the word[s]." *Johnson v. State*, 366 S.W.3d 11, 25 (Mo. banc 2012) (internal quotations and citations omitted). "This Court's primary goal in interpreting Missouri's constitution is to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted." *State v. Honeycutt*, 421 S.W.3d 410, 414-15 (Mo. banc 2013) (internal quotations and citations omitted). "This Court must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage." *Id.* at 415. "The grammatical order and selection of the associated words as arranged by the drafters is also indicative of the natural significance of the words employed." *Boone Cnty. Ct. v. State*, 631 S.W.2d 321, 324 (Mo. banc 1982). "To this extent the intent of the amendment's drafters is influential." *Id.*

I. The history and text of §§ 43(a), (b), and (c) show that the people's purpose was to create a dedicated revenue stream for conservation that was beyond the reach of the General Assembly. (Responds to Appellants' Point I)

The history and text of the Conservation Commission amendments now comprising §§ 43(a), 43(b), and 43(c) of Article IV of the Missouri Constitution compel the conclusion that the voters' intent was to place plenary authority over expenditures of the Conservation Fund in the hands of the Conservation Commission.

a. The creation of the Conservation Commission

Until 1874, Missouri had no statewide conservation laws. (L.F. D49, p. 6). "Wildlife was simply taken for granted" as hunters[7] and trappers killed off great swaths of the species that had once inhabited the state. (L.F. D49, p. 6). Meanwhile, the development of farms, towns, and cities meant the destruction of habitats for many types of fauna. (L.F. D49, p. 6). In 1874, Missouri passed its first statewide game law, which established open and closed seasons for hunting, with enforcement mechanisms. (L.F. D49, p. 6-7). However, the continued decimation of native species still blighted the state from 1874 to 1905. (L.F. D49, p. 7). Market and sport hunting reached its peak, and the business of hunting kept a tight grip on the General Assembly. (L.F. D49, p. 7). Despite tinkering with game laws, the General Assembly left enforcement to the state game warden, who had little to no meaningful funding to attend to conservation needs. (L.F. D49, p. 7).

During 1907-1909, the "Walmsley Law" was passed, then gutted by "the forces of commercialism" (L.F. D50, p. 7), and later restored (for the most part) (L.F. D49, p. 7). *See* Mo. Rev. Stat. Article II, Chap. 49, §§ 6508-6591 (1909 ed). Among other things, the law vested title to all game and fish in the State (*id.*, § 6508), provided for the governor to appoint a game and fish commissioner

[7] Hunting was largely a business during this period, as sport hunting had not yet developed on the frontier. (L.F. D49, p. 6).

(*id.*, § 6557), and included funding for deputies to aid in enforcement (*id.*, § 6566). From 1909 to 1931, however, wildlife populations continued to decline, despite continued tinkering with game laws by the General Assembly. (L.F. D49, p. 7).

> Then came the drouth years of the 1930's, beginning in 1933 and continuing through 1936, to climax the long years of exploitation and neglect…. [These] withering dry years, bringing the ominous dust clouds from Kansas and Oklahoma and threatening most forms of wildlife, aroused public interest in conservation as nothing else had been able to arouse it.

(L.F. D50, p. 11). The crisis was due, in part, to the "ineffectual Game and Fish Department" that was "totally unequipped to come to grips with the situation" due to being "[s]taffed entirely with employees whose only qualification … was that they voted right and secured the endorsement of the proper party leaders[.]" (L.F. D50, p. 11).[8]

A 1935 wildlife survey showed how dire the situation had become. The State's breeding reserve for common species stood at precipitously low levels: 2,500 turkeys, 1,800 deer, and 100 beavers statewide; otter were all but gone; among other alarming figures. (L.F. D49, p. 15; *see also* D53, p. 18). Legislative

[8] "If one knew the right people in the political organization" one would be "immune to arrest for illegal hunting or fishing." (L.F. D50, p. 11). Game wardens might find themselves spending more time doing "errands" for "the party organization to which they owed their jobs" than they spent protecting Missouri's ecosystems. (*Id.*)

control over regulation and funding contributed to the State's woes. (L.F. D49, p. 17).

Concerned hunters and conservationists collaborated on a ballot initiative to take control of conservation efforts away from the political process. They sought to give the Fish and Game Department "adequate authority to carry out ... a broad conservation program embracing both wildlife and forestry." (L.F. D83, p. 19; L.F. D50, p. 11).[9] They spearheaded Amendment 4 (which would later become Article IV, §§ 40-43). (L.F. D50, p. 15-16; L.F. D83, p. 19).

Amendment 4's language is broad. It vested the Conservation Commission with

> The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life resources of the State, including hatcheries, sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of the same ….

(L.F. D56, p. 3; Resp. App., p. A24).

Amendment 4 also provided, among other things, that

> The fees, monies, or funds arising from the operation and transactions of said Commission and from the application

[9] This was not their first attempt. (*See* L.F. D50, p. 11-12). These conservationists had fruitlessly sought reform from the General Assembly, but the last straw came when "the 1935 Legislature, like the mountain, labored and brought forth a mouse[.]" (L.F. 50, p. 12).

> and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wild life resources of the State and from the sale of property used for said purposes, shall be expended and used by said Commission for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wild life 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 general assembly may enact any laws in aid of but not inconsistent with the provisions of this amendment and all existing laws inconsistent herewith shall no longer remain in force or effect. This amendment shall be self-enforcing and go into effect July 1, 1937.

(L.F. D56, p. 4; Resp. App., p. A25).

In the 1936 general election, Amendment 4 was adopted, with 71 percent of voters in favor. (L.F. D56, p. 2; Resp. App., p. A23; L.F. D83, p. 19).

b. Conflicts between the Conservation Commission and the General Assembly in the mid-1900s

From the beginning, the Conservation Commission and MDC "shunned politics and sought to maintain independence from the General Assembly." (L.F. D83, p. 20, citing D51, p. 33-35).[10] Officials made a point to not voluntarily appear before the General Assembly. (L.F. D51, p. 34).

Two early challenges were decided by this Court. *State ex inf. McKittrick v. Bode* dealt with a challenge to the appointment of a director who did not

[10] Citation to the legal file reflects the same content cited by the trial court as "Ex. 3, pp. 28-30." *See supra* n.1.

meet the residency requirements for a public officer per Article VIII, § 10 (since removed by the 1945 Constitution). 342 Mo. at 165. The Court ruled that the later-passed Amendment 4, to the extent it conflicted with the prior provision, "must prevail because it is the latest expression of the will of the people." *Id.* at 168. Further, Amendment 4's limitation that "[t]he commission shall determine the qualifications except that no commissioner shall be eligible for such appointment or employment … would tend to show that other limitations were not intended." *Id.* at 169 (internal quotations and citations omitted).

In *Marsh*, this Court granted a habeas petition by a man convicted of catching a bass during "closed season" as fixed by a prior statute because the seasons set by the Conservation Commission governed. 121 S.W.2d 737. The people had used their authority to suspend and supersede the legislature's power through the initiative process. *Id.* at 743. The Court held that "the Conservation Commission has been granted the authority to control, regulate, etc., the matters committed to it." *Id.* at 744. The Commission's self-enforcing authority to regulate fish and wildlife was not dependent on the General Assembly taking affirmative legislative action, even though Article IV, § 44 permitted the General Assembly to enact laws that may "aid" the conservation amendments. *Id.* at 744.

In the 1950s, improper actions by the legislature motivated the MDC Director to request several advisory opinions from the Attorney General on

budgetary issues. (L.F. D83, p. 20; L.F. D72; Resp. App., p. A28; L.F. D73; Resp. App., p. A34). The Attorney General issued opinions finding that "provisos in appropriations bills purporting to prohibit the Conservation Commission from expending conservation funds for the erection of a central office building and salary increases for MDC personnel" were unconstitutional. (L.F. D83, p. 20, citing D72; Resp. App., p. A28; D73; Resp. App., p. A34).

c. *Design for Conservation* and the conservation sales tax provisions

In the late 1960s, MDC was on the verge of a funding crisis. (L.F. D52, p. 30). This was because there was increasing demand for programs and services that exceeded the existing primary sources of funding available to the Commission from the 1936 amendment—namely, hunting/fishing licenses and federal aid programs. (L.F. D52, p. 30).

The Commission and MDC desired a stable source of funding and engaged in long-range planning. (L.F. D52, p. 30). It was from these efforts that *Design for Conservation* arose. (L.F. D52, p. 30). *Design for Conservation* was a long-range plan "that pledged to use additional funds for the acquisition of public land for conservation purposes and the enjoyment of Missouri citizens." (L.F. D83, p. 20; *see also* L.F. D54, p. 5 (an August 1975 issue of *Missouri Conservationist* laying out *Design for Conservation* and discussing the plan to acquire more public land); Resp. App., p. A21).

After a soft-drink tax proposal failed to qualify for the ballot, (L.F. D52, p. 32-33), conservationists across the state redoubled their efforts and proposed the conservation sales and use tax provisions (L.F. D52, p. 33-36). The Commission's *Design for Conservation* was highly publicized before the vote took place. (L.F. D83, p. 20; *see also* D52, p. 30-36).

Voters passed the ballot measure in the 1976 election, replacing Article IV, § 43 of the Missouri Constitution with §§ 43(a), (b), and (c). (L.F. D48, ¶¶ 23-24; Resp. App., p. A16; D58; D59). The conservation sales tax amendment has a stated 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….

(L.F. D58). These new provisions are also self-enforcing, leaving to the General Assembly the ability to "adjust brackets for the collection of the sales and use taxes." Mo. Const. art. IV, § 43(c).

d. PILT payments

In 1980, a referendum amended Article IV, § 43(b) by requiring the Conservation Commission to use the Conservation Fund to make payments in lieu of taxes, or PILTs, to counteract counties' lost tax revenue from public land

holdings. (L.F. D48, ¶25; Resp. App., p. A6; L.F. D54, p. 5; Resp. App., p. A21; L.F. D83, p. 20). These PILTs "shall" be made "in such amounts as may be determined by the conservation commission[.]" Section 43(b), as amended, specifies only that "the amount determined [shall be no] less than the property tax being paid at the time of purchase of acquired lands." Mo. Const. art. IV, § 43(b).

II. In §§ 43(a), (b), and (c), the people gave the Conservation Commission full authority to decide when and to what extent the Conservation Fund would be expended. (Responds to Appellants' Point I)

Respondents agree that the Missouri Constitution creates a default rule regarding legislative authority over revenue. *See* Mo. Const. art. IV, §§ 15, 28, 36; *Rebman v. Parson*, 576 S.W.3d 605, 609 (Mo. banc 2019). The General Assembly, as a general rule, has plenary authority over state funds. Appellants further agree that the General Assembly can and must exercise that authority through appropriations bills. This appeal addresses the extent to which the general default rule extends to the amount of money in the Conservation Fund that can be used for certain purposes during a fiscal year. In that regard, this appeal raises two intertwined questions: Is an appropriations bill even required for Conservation Fund expenditures by the Conservation Commission? (That is discussed in this section II). If so, can the General

Assembly restrict those expenditures by omitting constitutionally permissible purposes from the stated purposes in the bill? (Discussed in section III).

a. The Conservation Commission's use of the Conservation Fund lies outside the general rule requiring authorization through an appropriations bill.

The General Assembly's plenary authority over state funds is not universal. In *Rebman*, this Court held that this general legislative authority did not permit the General Assembly to use a restriction in an appropriations bill to invade executive authority. 576 S.W.3d at 609 ("The power of the purse, however, is not unlimited. The general assembly may not use its appropriation authority to encroach on powers vested solely in the separate, coequal branches of government"). One method that the constitution uses to create exceptions or partial exceptions to the general rule is to create special funds and to define the nature of and authority over those funds.

Appellants concede that three sections of the Missouri Constitution (Article IV, §§ 23, 28; Article III, § 36) demand that the General Assembly make all appropriations, "with very limited exceptions." (App. Brief, p. 36). The limited exceptions are constitutional provisions creating other types of special funds, which make "appropriations by law" without the General Assembly's input. Funds under the authority of another branch, such as the state road fund, do not require an appropriations bill from the General Assembly because such funds are subject to a constitutional appropriation by an authorized

entity. The Conservation Fund established by Article IV, §§ 43(a) and (b) similarly falls outside the general rule under which the General Assembly usually acts. This case addresses to what degree.

i. The constitution addresses special funds specially—sometimes requiring legislative appropriations, and sometimes not.

Our constitution does require that each dollar spent be pursuant to an "appropriation made by law." Mo. Const. art. IV, § 28. In *Planned Parenthood*, this Court listed three ways in which appropriations are made "by law": (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 bill, using its discretion. 602 S.W.3d at 210-11. *Planned Parenthood* did not purport to be analyzing the nuances of any of those methods—because nuance was not required.

Here, however, nuance is required. The words "stand appropriated" were not used by the people in drafting and enacting §§ 43(a), (b), and (c). But nothing in *Planned Parenthood* suggests those are magic words, and that the same message can't be sent using other words—or by implication. To see how that can happen, Respondents point to the ways in which the Missouri Constitution deals with dedicated funds.

Special fund exceptions to the general rule can come in two types: (a) limitations on the nature of permitted expenditures, *i.e.*, limiting or

eliminating the General Assembly's usual role in determining how funds can be spent; and (b) limitations on amount, *i.e.*, limiting or eliminating the General Assembly's usual role in setting the maximum level of spending. Missouri's dedicated funds fall into five categories—three categories in which the constitution expressly states the scope (or lack) of the legislature's role, and two categories in which the scope (or lack) of a legislative role is implied by the assignments made (or not made) in connection with that fund. The first category, which we will call Category 1, consists of funds as to which the constitution expressly states the nature of permitted expenditures but otherwise provides for the General Assembly to retain its appropriation role. There are seven such funds:

- The lottery proceeds fund (Art. III, § 39(b));
- The gaming activities fund (Art. III, § 39(d));
- The facilities maintenance and review fund (Art. IV, § 27(b));
- The soil and water sales tax fund (Art. IV, § 47(b));
- The state park sales tax fund (*id.*);
- The public school fund (Art. IX, §§ 3(a), 4, 5); and
- The seminary fund (Art. IX, § 6).

As to each Category 1 fund, the constitution speaks directly, either by referencing "appropriation," or by requiring that distribution and regulation be determined "by law." Thus, the General Assembly can and must appropriate moneys in those funds, because there is no other alternative. In doing so, the General Assembly decides the total amount to be appropriated and identifies the nature of expenditures to be made, within the scope of the constitutional instructions. This represents a slight limitation on the legislature as compared to the default rule.

In stark contrast is what we will call Category 2: funds that the constitution expressly declares to be exempt from the appropriations process. The primary example of a constitutionally dedicated revenue stream is the state road fund (Article IV, §§ 30(a) and (b)).

With the state road fund, the constitution declares that the funds "stand appropriated." Mo. Const. art. IV, § 30(a) and (b). The constitution itself sets out where some of the funds are distributed, without legislative action. Mo. Const. art. IV, § 30(a). It then assigns authority for the remainder—what becomes the state road fund—not to the legislature, but to a commission: "The remaining balance in the state road fund shall be used and expended in the sole discretion of and under the supervision and direction of the highways and transportation commission[.]" Mo. Const. art. IV, § 30(b).

The "stands appropriated" language also appears in the sections establishing funds we label as Category 3: funds used to pay the state's debt obligations. Unlike the funds in Categories 1 and 2 (and 4 and 5 below), the money for those funds come from general revenue. The money is to be taken from general revenue by the Commissioner of Administration per constitutional, *i.e.*, non-legislative, authority. It then "stands appropriated" without any requirement of or constitutional opportunity for legislative interference.

Category 3 consists of funds that are named or tied to:

- The third state building bond issue (Art. III, § 37(d));
- Additional water pollution control bonds (Art. III, § 37(c));
- The water pollution control fund (Art. III, § 37(b));
- The Second State Building Bond Interest and Sinking Fund (Art. III, § 37(a));
- Water pollution control, improvement of drinking water systems and storm water control (Art. III, § 37(e));
- The fourth state building bond and interest fund (Art. III, § 37(f));
- Rural water and sewer grants and loans (Art. III, § 37(g)); and
- Storm water control plans, studies, and projects (Art. III, § 37(h)).

For Category 3 funds, as for those in Category 2, the constitution declares that there is no legislative role because it assigns to another official

or agency (the Commissioner of Administration or, in the older ones, the State Comptroller) the authority to act without legislative appropriation.

The other two categories consist of special funds as to which the express language of the constitution does not clearly set out the nature, if any, of legislative authority. In Category 4, the constitution's silence leads to one result; in Category 5, consisting solely of the fund at issue here, the constitution is not entirely silent, and its language leads to a different result.

Category 4 consists of funds as to which the constitution imposes only substantive limits. These funds state for what purposes the money may be spent, but do not explicitly address who makes the decisions regarding how much can be spent and for what. Respondents have identified two Category 4 funds:

- Blind pension fund (Art. III, § 38(b)); and
- State park fund (Art. IV, § 47(a)).

As to these, constitutional silence leaves no alternative but legislative determination. In other words, having declined to assign any authority over or responsibility for these funds elsewhere, those who drafted and enacted the constitution necessarily left responsibility and authority in the General Assembly.

This case addresses what we call Category 5, consisting of a unique fund—the Conservation Fund—that does not fit into Categories 1-4. Like the funds in Category 4, the constitution does not expressly state the legislature's role for the Conservation Fund. But like the funds in Category 2 and 3, the constitution assigns authority and responsibility to a non-legislative body.

ii. Article IV, §§ 43(a)-(c) create a fund controlled by the Conservation Commission, much like Article IV, §§ 30(a)-(b) create funds controlled by the Highway and Transportation Commission.

The authority given to the Conservation Commission in Article IV, § 43(b) is like that given to the Highway and Transportation Commission in Article IV, §§ 30(a) and (b). The Conservation Commission, not the General Assembly, controls all "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[.]" Mo. Const. art. IV, § 43(b). Those moneys "shall be expended and used by the conservation commission, department of conservation" (*id.*), not by the General Assembly. They are described as "[t]he moneys and funds of the conservation commission"

(*id.*), not as state funds subject to legislative control, as are the funds in Categories 1 and 4.

The constitution does limit, of course, the purposes for which the Conservation Commission can use these funds: "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," and "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[.]" *Id.* In that respect, the Conservation Commission is like the General Assembly with regard to Category 1 and 4 funds, and like the Highway and Transportation Commission with regard to Category 2 funds: all expenditures must fall within the constitutional parameters. But the Conservation Commission is like only the Highway and Transportation Commission in that the constitution declares that it, rather than the General Assembly, has control (within the defined parameters) over how much is spent and on what.

iii. Article IV, § 43(b) grants authority over the Fund to the Conservation Commission. Section 43(b) does not *only* establish a limit on how those funds may be used, but it also *requires* that the funds be used by the Conservation Commission for those purposes.

Appellants argue that § 43(b) merely sets out limits for what the General Assembly may appropriate to the MDC or the Conservation Commission out of the Conservation Fund. This Court's precedent and rules of textual analysis negate this argument.

In *Hanson*, this Court ruled on the legality of an appropriation by the General Assembly, for the fiscal years 1995-96, of "more than six million dollars from the conservation commission fund to be refunded to the taxpayers" under Article X, § 18(b) (the Hancock Amendment). 994 S.W.2d at 29. The Court reiterated that "[a] constitutional provision is interpreted according to the intent of the voters who adopted it." *Id.* at 30 (internal quotations omitted). The public officials defending the diversion of moneys from the Conservation Fund, represented by the Attorney General's Office, argued that a refund was neither a "use" nor an "expenditure." *Id.* This Court assumed, *arguendo*, that this was correct. *Id.* The public officials thus argued that the shall "be expended and used… and for no other purpose" language of section 43(b) stood as a mere prohibition on the use or expenditure of the fund for unauthorized purposes. *Id.* at 29-30. Thus, a refund to taxpayers did not fall under the

prohibition because it was not an expenditure or use of the moneys. *Id.* This Court rejected this argument:

> Article IV, section 43(b) is not, as Respondents' analysis requires, phrased as a prohibition that conservation funds shall not be used or expended for any purposes but those specified. Rather, the section is written as a positive command.

Id. at 30 (emphasis added). Appellants have cited to *Hanson* for the proposition that this sentence in § 43(b) is *only* a limitation. (App. Brief, p. 51). However, this misrepresents the analysis. The General Assembly in 1995-96 indeed attempted to divert money from the Conservation Fund for unapproved purposes. However, the Court's rationale was not based on the act of an unlawful expenditure by a party with authority, but rather on the fact that the refund "prevent[ed] [the moneys in the Fund] from being used or expended for permissible conservation purposes[.]" *Hanson*, 994 S.W.2d at 28. Indeed, "Article IV, section 43(b) requires that the conservation funds identified therein be used and expended by the commission for the purposes specified in that section." *Id.* at 30 (emphasis added).

Appellants nevertheless persist in arguing that § 43(b) *only* establishes a limit on how the Conservation Commission can use funds that the General Assembly appropriates.[11] Analysis of the text supports the rationale of *Hanson*

[11] The necessary corollary of this argument is that the General Assembly retains authority over appropriations from the Conservation Fund. But

and does not support Appellants' interpretation.[12] Section 43(b) states that the Conservation Fund "shall be expended and used by the conservation commission" for the purposes listed. (Emphasis added). "Expend" means "to disburse; to pay out; to consume by using; to use up." Webster's New Twentieth Century Dictionary 644 (unabridged 2d ed 1968). "Use" means "to put into action or service; to employ for or apply to a particular purpose"; "to consume, expend, or exhaust by use." *Id.* at 2012. "Generally, the word 'shall' connotes a mandatory duty." *Bauer v. Transitional Sch. Dist. of City of St. Louis*, 111 S.W.3d 405, 408 (Mo. banc 2003).[13] This contrasts with the word "may," which is permissive. *State ex inf. McKittrick v. Wymore*, 119 S.W.2d 941, 944 (Mo. banc 1938). While the Conservation Commission *may* acquire property "by purchase, gift, eminent domain, or otherwise" (§ 41), the Commission *shall* expend and use the funds for (among other things) the purchase or acquisition of property and PILTs (§ 43(b)).

Hanson shows that § 43(b) has limited *the General Assembly's* appropriation authority, even when the appropriation did not purport to "expend or use" the moneys of the Fund.

[12] The historical context of the amendments, as addressed *infra*, also fails to support Appellants' interpretation.

[13] Respondents recognize that "[w]hether the statutory word 'shall' is mandatory or directory is primarily a function of context and legislative intent." *Bauer*, 111 S.W.3d at 408.

The "and for no other purpose" provision is *in addition to* the "shall be expended and used by the conservation commission" language.[14] The drafters of this amendment could have made a simple limitation by stating that the Fund "shall *only* be expended and used" for the delineated purposes. The drafters could have reserved power for the legislature by stating that the Conservation Fund "*may* be expended and used pursuant to appropriation" for the delineated purposes, with a limit on that authority set by the "and for no other purpose" language. These grammatical structures, if used, would have implied that the purpose of the clause was to set a limit while retaining default rules for appropriations. The drafters did not use these grammatical structures. Rather, they used the word "and," while offsetting the limiting language from the primary "shall" clause by a comma. The word "and" is a conjunctive, implying something *additional*. *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, 615 (Mo. banc 2016). This limitation on the use of the moneys is *in addition to* the authority over the Conservation Fund that is granted in the earlier clause to the Conservation Commission.

Appellants focus on the parks sales tax counterparts to §§ 43(a), (b), and (c), found in §§ 47(a), (b), and (c). But Appellants' claim that the sections should

[14] The Conservation Fund "shall also be used" to make PILTs. This provision, notably, does not contain the "and for no other purpose" language, and thus could not be read as a mere limitation even under Appellants' untenable argument.

be read the same, drawing on the doctrine of *in pari materia*, ignores the key differences between the two. It asks the Court to ignore that when the General Assembly wrote §§ 47(a), (b), and (c), it decided, based on its experience with §§ 43(a), (b), and (c), to retain legislative appropriations authority that is missing from the conservation tax version.

Comparing § 43(b) to §§ 47(a)-(b) yields the same conclusion as the analysis of the plain text of § 43(b). Section 47(a) directs PILTs to be paid from the state parks sales tax fund "in such amounts as determined by appropriation[.]" Section 47(b) dictates that the moneys of the Soil and Water Tax Fund and the State Park Sales Tax Fund "*shall be expended pursuant to appropriation by the General Assembly* and used by the state soil and water districts commission and the department of natural resources for the purposes set forth in Section 47(a), *and for no other purpose*." (Emphasis added).[15]

While § 47(a) mandates that the PILT amounts are "determined by appropriation[,]" § 43(b) mandates that PILT amounts are "determined by the conservation commission[.]" To interpret the two provisions as having functionally the same mandate would nullify a crucial difference in language. Section 47(b) sets the entity exercising control over the spending using the

[15] No case has yet conducted a statutory analysis of § 47(a). Respondents posit that this is because the language speaks for itself and lends itself to no meaningful controversy.

"shall be expended" language ("pursuant to appropriation by the General Assembly"), lists the purpose for which the funds are to be used (those stated in § 47(a)), and sets a limitation using the conjunctive "and" phrase. Section 43(b) does the same, except this provision vests authority in the Conservation Commission ("shall be expended and used by the conservation commission"), not "pursuant to appropriation by the General Assembly." Appellants' proposed interpretation, therefore, seeks to add implied language to § 43(b) that is conspicuously absent and in open conflict with the express provision of authority to the Conservation Commission. This proposed interpretation would also render the explicit provisions of authority to the General Assembly of §§ 47(a)-(b) mere surplusage.[16] This interpretation must be rejected. The Conservation Commission expending and using the moneys in the Conservation Fund is *mandated*. This is the functional equivalent of the "stands appropriated" language. An appropriation has been defined as the "act of appropriating or setting apart; prescribing the destination of a thing;

[16] Section 47(b) also disjoins "expended" and "used" in an instructive way. The funds in § 47(b) are "expended pursuant to appropriation by the General Assembly" and then "used by the state soil and water districts commission and the department of natural resources[.]" This implies that expending the funds is the act by which the spending is authorized, which is followed by the entity using the funds that have been expended (or disbursed) under the appropriation. In § 43(b), the Conservation Commission is tasked with expending *and* using the funds, without reference to an appropriation or the General Assembly.

designating the use or application of a fund." Black's Law Dictionary 67 (6th ed. 1991); *see also* APPROPRIATION, Black's Law Dictionary (11th ed. 2019) ("A legislative body's or business's act of setting aside a sum of money for a specific purpose. • If the sum is earmarked for a precise or limited purpose, it is sometimes called a specific appropriation.").

Webster's Third New International Dictionary defines "appropriation" as follows:

> Appropriation: n. 1a: the act of appropriating to oneself or another person or to a particular use; b: something that has been appropriated *specif.* a sum of money set aside or allotted by official or formal action for a specific use (as from public revenue by a legislative body that stipulates the amount, manner, and purpose of items of expenditures)…
>
> Appropriate: v. 5. To set apart for or assign to a particular purpose or use in exclusion of all others.

Webster's Third New International Dict. Unabridged 106 (1961). *See also State ex rel. Sikeston R-VI Sch. Dist. v. Ashcroft*, 828 S.W.2d 372, 375 (Mo. banc 1992) (defining appropriation as "the legal authorization to expend funds from the treasury" in a case involving legislative appropriation); *Doyle v. Tidball*, 625 S.W.3d 459, 463 (Mo. banc 2021) ("the plain language of article IV, section 23 makes clear an appropriation is the authority to expend and disburse a specific amount of money for a specified purpose."). Despite omission of the words, "stands appropriated," §§ 43(a), (b), and (c) do appropriate: they "set apart for or assign to a particular purpose or use in exclusion of all others."

b. Article IV, §§ 43(a)-(c) are self-enforcing and require no act of the General Assembly to authorize that which such provisions already authorize.

The voters' adoption of § 43(c) further bolsters Respondents' interpretation. That section does two things. First, it expressly makes "[a]ll of the provisions of sections 43(a)-(c) … self-enforcing[.]"[17] That means that the Conservation Commission is *not* dependent on action by the General Assembly—even action in an appropriations bill—to be able to do what § 43(b) authorizes. These provisions are subject to "the often-used rule of construction [that] a court will read a constitutional provision broadly[.]" *American. Fed'n of Teachers v. Ledbetter*, 387 S.W.3d 360, 368 (Mo. banc 2012) (Fischer, J. dissenting) (internal quotations omitted).

As Appellants admit, "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." (L.F. D69, p. 15).[18] When the voters declared that the assignment of authority to the Conservation Commission in §§ 43(a) and (b) was "self-enforcing," their clear intent was to place it "beyond

[17] Article IV, § 44 also declares that "[s]ections 40-43, inclusive, of this article shall be self-enforcing[.]"

[18] Citing *State ex rel. Miller v. O'Malley*, 342 Mo. 641, 649 (Mo. banc 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*, 123 S.W. 892, 918 (Mo. 1909) (noting that a constitutional provision is "self-enforcing" when it "requires no legislation to give it force and effect").

the reach of the legislature to amend or enforce[.]" *State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397, 402 (Mo. banc 1994). Their intent cannot have been to leave the Conservation Commission entirely dependent on the General Assembly for permission to access the Conservation Fund, as Appellants insist.[19]

Second, § 43(c) carves out from the scope of the Conservation Commission's "self-enforcing" authority a specific, limited role to the General Assembly regarding the tax established by Article IV, § 43(a) that flows into the Conservation Fund: "except that the general assembly shall adjust brackets for the collection of the sales and use taxes." In an appropriations bill, the legislation does not, of course, "adjust brackets." Otherwise, § 43(c)'s "self-enforcing" language applies to *the entirety* of §§ 43(a)-(c).[20] Any argument that the voters intended to make only the collection of the tax (§ 43(a)) or the limitation on permitted uses of the fund (§ 43(b)) begs the question: why only those provisions, rather than the *entire* enactment? No language in the constitution answers this question because *all* the provisions are self-enforcing by the plain language. Had voters wished for the General Assembly to retain

[19] Part I, *supra*, discusses the historical facts that further illuminate the voters' intent in using these words and this grammatical structure.

[20] In addition to § 44's explicit grant of self-enforceability to §§ 40-44 in their entirety.

power over the subject matter of these enactments, they would not have declared the amendments "self-enforcing."

The "self-enforcing" language of § 43(c) solidifies a *constitutional* appropriation—an "appropriation made by law" sufficient to meet the requirements of Article IV, § 28. This provision also must be read "broadly" to achieve the intent of the voters. The peoples' intent was to place authority to spend this special fund solely with the Conservation Commission. The Conservation Commission is, to use the language of this Court in *Rebman*, "constitutionally empowered to make [spending] choices without interference by the general assembly." 576 S.W.3d at 610. So "the General Assembly may not compel" (*id.*) the Conservation Commission to spend funds in a particular way or at a particular time—nor bar it from doing so, if the expenditure meets the requirements the constitution imposes on the Conservation Fund.

Our reading of §§ 43(a), (b), and (c) is consistent with how the Missouri Constitution deals with "special funds." As discussed, *supra*, those funds can be placed in five categories according to what the constitution says or does not say about the legislature's role regarding that fund. For some, the legislature is given a specific role. For others, the legislative role is expressly eliminated. For a few, the legislative role must be presumed because the constitution makes no alternative assignment. But for the Conservation Fund, the legislative role is circumscribed by Article IV, §§ 43(a)-(c) and 44. That role

does not include deciding, as the General Assembly purported to do here, when and how the Conservation Commission may expend or use the Conservation Fund.

c. Appellants' reading of §§ 43(a)-(c) is not required by the general constitutional provisions they cite.

To make their argument, Appellants emphasize not any language from §§ 43(a), (b), and (c), but three other sections of the constitution—none of which specifically reference or address conservation funds or activities. Assuming, *arguendo*, that "the latest expression of the will of the people" does not govern (as it should per *Bode*, 342 Mo. at 168), these arguments still fail.

Two such sections are certainly inapposite: they provide instructions to the General Assembly, without imposing obligations on any other part of government.

The first is Article IV, § 23. That section tells the legislature something about what its appropriations bills must do: "The general assembly shall make appropriations for one or two fiscal years…." It resolved questions about the period that appropriations enacted by the General Assembly could cover; it does nothing more.

The second is Article III, § 36. That section bars the General Assembly from delegating its appropriations authority: "All revenue collected and money received by the state shall go into the treasury and the general assembly shall

have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law." (Emphasis added). But the people, when they amend the constitution and provide a revenue source, can divert revenue.

The words "appropriation made by law" appear in the last of the sections Appellants cite, Article IV, § 28: "No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law[.]" But the instruction there does not go as far as Appellants claim: an "appropriation by law" need not be one accomplished through an appropriations bill. We know that not just because the voters chose in Article IV, § 28 to use "by law" instead of "by bill," but because there are withdrawals from the state treasury without the need for appropriations bills. That includes withdrawals that are constitutionally mandated, such as those for payment of debts and the state road fund. It also includes payments required by federal law. *See Ashcroft*, 828 S.W.2d 372. Regardless, any conflict between § 28 and §§ 43(a)-(c) is resolved by the fact that §§ 43(a)-(c) were adopted after the most recent Amendment of § 28 in 1972. *See Bode*, 342 Mo. at 168. Sections 43(a)-(c) "must prevail because it is the latest expression of the will of the people." *Id.*

Indeed, the constitution itself indicates that appropriations can be made via the initiative, entirely independent of legislative action. Article III, § 51

bars such appropriation only of existing revenue: "The initiative shall not be used for the appropriation of money other than of new revenues[.]"

This Court has recognized that an amendment that requires certain expenditures to be made has "the same effect as if it read that the sums necessary to carry out its provisions stand appropriated." *State ex rel. Card v. Kaufman*, 517 S.W.2d 78, 80 (Mo. 1974). Appellants argue that the phrase "stands appropriated" must be used or the provision must mandate an appropriation to take funds out of the usual legislative process. (App. Brief, p. 36-41). But the Court's holding in *Card* demonstrates that the words, "stands appropriated," are unnecessary for an initiative to have that effect—which is precisely what the voters here intended in 1936 and 1976 when committing new revenues arising from the Conservation Commission itself and later the sales tax to be used and expended by the Conservation Commission for conservation purposes. Respondents concur with this Court that "the voter-approved mandate of article IV, section 43(b) that all moneys collected by the conservation sales tax be expended and used for conservation renders such spending voter-approved[.]" *Hanson*, 994 S.W.2d at 31 (emphasis added).

The rationale of the general rule of legislative control, and Article III, § 51's bar on initiative appropriations without new revenue, is logically sound. The General Assembly must be able to control cash flows and cannot be hamstrung by later enactments that deprive legislative priorities of funding.

However, this rationale is inapplicable here, which goes to explain why the Conservation Commission would hold such unique authority. No use to which the Conservation Commission puts the Conservation Fund could ever deprive the legislature of revenue for other projects. The Conservation Fund can never be used to balance the State's non-conservation books. The Fund may *only* be used for conservation purposes and PILTs. And there is no issue here with regard to the conservation books: The stipulated facts before the Court include that there are sufficient unencumbered funds with the Conservation Fund for the entirety of the Commission's FY2021 budget. (L.F. D48, ¶58; Resp. App., p. A14).

Appellants' citations to this Court's recent opinion in *Doyle* are similarly unavailing. In *Doyle*, 625 S.W.3d 464, the Court observed that Article IV, § 36(c) "does not expressly appropriate money" because "[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." It set categories of persons eligible for a program the legislature retained discretion over. *Id.* Because the legislature could choose not to fund or to underfund the program, no appropriation was mandated. What was required, however, was for MO HealthNet to enroll persons eligible under § 36(c).

As this Court recognized in *Hanson*, § 43(b) *does* mandate expenditures, and therefore, can be read as an appropriation. *See* Part II.a.iii, *supra*. Appellants' arguments to the contrary are unavailing. Under Appellants' logic, nothing prevents the General Assembly from defunding the Conservation Commission entirely. Yet these "moneys and funds of the conservation commission" *shall* be used for the stated purposes and make PILTs in amounts determined by the Commission. Any alternative would defeat the purpose for which the Fund was created. The text provides no authority to the General Assembly over the "moneys and funds of the conservation commission."[21] The historical context (Part I, *supra*) demonstrates that this is not an oversight, but an important purpose of the Fund. Simply put, *not* expending and using the Fund simply is not an option, and thus an appropriation is mandated. Whether and how much of the Fund to use during each fiscal year is within the discretion of the Conservation Commission—not the General Assembly.

[21] It is informative that "[the] funds of" another entity is language used only in reference to the Conservation Commission (Mo. Const. art. IV, § 43(b)) and counties and other political subdivisions (*id.* art. III, § 39(10); art. IX, § 7).

III. In §§ 43(a), (b), and (c), the people gave the Conservation Commission full authority to decide how the Conservation Fund would be expended. (Responds to Appellants' Point I & II).

Assuming, *arguendo*, that §§ 43(a), (b), and (c) left the General Assembly with control over the total amount that can be expended from the Conservation Fund in a given fiscal year, that would still leave the question of whether the General Assembly can also, by language in or omitted from lines in appropriations bills, control how the total amount appropriated may be used. Those sections of the constitution are unequivocal: regardless of who sets the total amount that can be spent, the choice of how it is spent, within the constitutional parameters, is left entirely to the Conservation Commission.

a. The constitution assigns to the Conservation Commission, not the General Assembly, complete authority to choose among the expenditures allowed by that list.

As discussed, *supra*, § 43(b) is not a mere prohibition on unapproved uses of the Fund. "[T]he section is written as a positive command." *Hanson*, 994 S.W.2d at 30. In fact, the General Assembly may not "prevent[] [the moneys in the Fund] from being used or expended for permissible conservation purposes[.]" *Id.* at 28. This applies with equal force to legislating away the constitutionally mandated uses of the Conservation Fund as it does to unauthorized Hancock Amendment refunds at issue in *Hanson*.

This conclusion is even more unescapable as to PILTs:

> The moneys and funds of the conservation commission… shall also be used [for PILTs]… 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). These payments *must* be made, and the Conservation Commission is tasked with determining the amounts. Similarly, the Fund must be expended and used for the other purposes *by the Conservation Commission*. Conspicuously absent is any reference to determinations by the General Assembly.[22] It stands to reason, then, that "[the] funds of the conservation commission" (§ 43(b)) are subject to the priorities of the Conservation Commission.

b. The constitution lists the purposes for which the Conservation Fund can be expended, and the legislature cannot expand or contract that list.

If the General Assembly did have authority to limit the ability of the Conservation Commission to decide where money should be spent, that limit could not be made in an appropriations bill. It would be a substantive change in the Conservation Fund's approved purposes under § 43(b). Any attempt to amend a general law setting out the Conservation Commission's authority in an appropriations bill would be "unconstitutional because [it] contains

[22] Contrast Article IV, § 47(b), where funds are "expended pursuant to appropriation by the General Assembly and used by the state soil and water districts commission."

multiple subjects, i.e., appropriations and amendments to substantive law." *Planned Parenthood*, 602 S.W.3d at 208.

In *Planned Parenthood*, the General Assembly used the FY2019 appropriations bill to forbid expending of funds to any "abortion facility." House Bill No. 2011 (HB2011), § 11.800 (2018). However, § 208.152.1(6),(12) required MO HealthNet to "make payments to authorized providers 'on behalf of' Medicaid-eligible individuals for 'physician services' and '[f]amily planning.'" *Planned Parenthood*, 602 S.W.3d at 204. Planned Parenthood was such a provider and was entitled to payments under § 208.152, but was denied payment due to HB2011. *Id.* This Court held that HB2011 conflicted with the substantive statute and was thus invalid. *Id.* This was because "the applicable provisions of sections 208.152 and 208.153 … specify plainly and unambiguously what MO HealthNet payments will cover[.]" *Id.* at 208-09. The attempt "to disqualify certain authorized providers based on services they provide… [was] a naked attempt to use HB2011 both to appropriate funds for various purposes and to amend sections 208.153.1 and 208.152.1(6), (12)." *Id.* at 209. "This is a clear and unmistakable violation of the proscription in article III, section 23 of the Missouri Constitution against bills with multiple subjects." *Id.*

Here, HB2019 removed language that in the past had authorized what § 43(b) already mandates: "the acquisition of property" for conservation

purposes and "financial assistance to other public agencies" (PILTs). The General Assembly lacks the ability, through appropriations (and through any ordinary legislation), to amend the list of permissible (and mandated) uses of the Conservation Fund as laid out in the constitution. The removal by the General Assembly of longstanding language in HB2019 has the same effect as the express exceptions present in the appropriation acts deemed unconstitutional by the Attorney General's Office in 1953 and 1958. (*See* L.F. D72; Resp. App., p. A28; L.F. D73; Resp. App., p. A34). It further does precisely what the General Assembly attempted to do in *Planned Parenthood*: amend substantive law to prevent payments for purposes (or to entities) of which the General Assembly does not approve. This it cannot do.

Appellants further contend that the legislature's prior practice of appropriating funds based on proposed budgets submitted by the Conservation Commission establishes that the General Assembly retained full control over spending. (App. Brief, p. 58-61). Certainly, the General Assembly may not seize power denied to them by the people merely by appropriating for some period amounts consistent with the desires of the entity the people assigned such power.[23] Article IV, § 44 permits the General Assembly to enact laws in "aid

[23] Indeed, even funds that "stand appropriated" have been historically included in appropriations bills. *See, e.g.*, HB4, § 4.400 (2019) (appropriating moneys from the state road fund).

thereof" the Commission's authority that are not "inconsistent with" that authority. Therefore, historical practices that did not impede the Commission's decision-making cannot form the basis for a conclusion that the General Assembly may freely thwart the Commission now.

CONCLUSION

The history and text of the conservation provisions of Article IV show the people of Missouri vested the Conservation Commission with authority under Article IV, §§ 43(a)-(c) to use and expend money in the Conservation Fund for conservation land purchases, such as the St. Clair Property, and for PILT payments, such as the PILT payments at issue here. The General Assembly cannot usurp the Conservation Commission's authority by imposing limits on the amount or purpose of such expenditures; nor can the General Assembly legislate under the guise of an appropriations bill. As such, the circuit court correctly concluded that HB2019 was unconstitutional to the extent it limited use of the Conservation Fund and that §§ 43(a)-(c) required the OA Commissioner to certify the requested payments from the Fund. The judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 84.06(c) and Rule 55.03, the undersigned hereby certifies the following:

1. This brief includes the information required by Rule 55.03.

2. This brief complies with the limitations contained in Rule 84.06(b) and contains 13,680 words.

3. Microsoft Word was used to prepare Respondents' Brief.

/s/ Heidi Doerhoff Vollet

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of the Court on this 2nd day of September, 2021, to be served by operation of the Court's electronic filing system on all counsel of record.

/s/ Heidi Doerhoff Vollet