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No. SC99966

In the

Supreme Court of Missouri

PLANNED PARENTHOOD OF THE ST. LOUIS REGION; PLANNED PARENTHOOD GREAT PLAINS; COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS,

Respondents,

v.

MISSOURI DEPARTMENT OF SOCIAL SERVICES, MO HEALTHNET DIVISION; MISSOURI MEDICAID AND COMPLIANCE AUDIT; ROBERT KNODELL, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR[1] OF THE DEPARTMENT OF SOCIAL SERVICES; TODD RICHARDSON, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE MO HEALTHNET DIVISION; DALE CARR, IN HIS OFFICIAL CAPACITY AS DIRECTOR MISSOURI MEDICAID AND COMPLIANCE AUDIT,

Appellants.

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

APPELLANTS' BRIEF

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[1] Robert Knodell became Director of the Missouri Department of Social Services (rather than Acting Director) on June 2, 2023. *See* https://dss.mo.gov/press/06-01-2023-knodell-director.htm.

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JURISDICTIONAL STATEMENT

On December 28, 2022, the Cole County Circuit Court entered judgment in favor of Plaintiffs and held that §§ 14.277 and 14.230 of. 3014 (2022)—two sections of a supplemental Medicaid appropriations bill—are unconstitutional under article III, section 23 of the Missouri Constitution (the Single Subject rule). D143, pp. 4–5. The judgment became final on January 27, 2023, Rule 81.05(a)(1), and the State timely noticed its appeal on February 3, 2023. D145; Rule 81.04(a). This Court has exclusive jurisdiction over this case because it addresses the constitutional validity of a Missouri statute. *See* Mo. Const. art. V, § 3.

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INTRODUCTION

Legislatures have many legitimate reasons to differentiate between organizations when providing appropriations. This is especially true in the medical context. To compensate for unequal medical access, the legislature may choose to give more funds to organizations providing services to rural areas or low-income areas. To promote well-being, the legislature may provide more funds to organizations that have better track records. And for the same reason, the legislature may choose not to fund certain providers because of licensure problems, safety concerns, or any number of other issues.

The judgment below threatens this core sovereign function and puts at risk not only the appropriation at issue here, but also innumerable appropriations going back decades. Here, the General Assembly exercised core legislative power to determine that some providers should receive more funds than others. It issued a low supplemental appropriation—a $0 supplemental appropriation—to the plaintiffs, having determined that the services they provide should not be prioritized. If that is not constitutional, the entire appropriations process going back decades will be upended. After all, the entire purpose of the appropriations process is to prioritize funds.

The constitutional claim pressed by the plaintiffs is thus a threat to the very nature of one of the most important legislative functions. It should be rejected.

But this Court can also reverse for several even simpler reasons.

First, Plaintiffs failed to exhaust administrative remedies. This Court has been clear that challenges to the State's decision not to reimburse services must be brought initially in the Administrative Hearing Commission where factual or non-constitutional issues

might be resolved in a way that would obviate the need to address constitutional questions. Here, the case involves a number of factual disputes and questions about contract interpretation that should have been presented first to the AHC. The plaintiffs have failed to exhaust their administrative remedies.

Second, the plaintiffs failed to proffer any evidence at trial that they were injured by the bill they challenge. They assert that they were improperly denied reimbursements because of the legislature's $0 supplemental appropriation. But they have failed to present any evidence that any of their claims would have been statutorily eligible for reimbursement even if the legislature had appropriated more funds.

Third, in their contracts with the State, the plaintiffs waived any claims to specific Medicaid appropriations. All the plaintiffs agreed not to receive funds if there were no "appropriated funds available to the MO HealthNet Division for payment to the provider." When the legislature chose not to make supplemental "appropriated funds available to the MO HealthNet Division for payment to the provider," the legislature triggered that provision in the contract. That provision was also separately triggered when the MO HealthNet Division ran out of funds in early 2022, during the time period at issue here. The plaintiffs have thus expressly waived the claim they try to bring.

Fourth, the Circuit Court wrongly determined that the plaintiffs are entitled to appropriations under a separate, general appropriation provision. The court overlooked the well-established rule that a specific appropriation controls over a general appropriation.

For these reasons, this Court should reverse the Circuit Court's entry of judgment against the State and remand for entry of judgment against the plaintiffs.

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STATEMENT OF FACTS

I. Factual Background

A. The Planned Parenthood Entities and their Medicaid Provider Agreements

Plaintiffs the Planned Parenthood entities—Planned Parenthood of the St. Louis Region (PPSLR), Planned Parenthood Great Plains (PPGP), and Comprehensive Health of Planned Parenthood Great Plains (CH-PPGP)—operate nine clinics that provide services. D125, ¶¶ 1–3. Each of the Planned Parenthood Entities signed Medicaid Provider Agreements with MO HealthNet Division—the division within Missouri Department of Social Services ("DSS") responsible for administering Missouri's Medicaid program—as part of their enrollment as Medicaid providers. D125, ¶¶ 9–10, 12, 14; D126, D127, D128 (Medicaid Provider Agreements). These Medicaid Provider Agreements cover the relevant time period: March 11, 2022 through June 30, 2022. D125, ¶¶ 9–10, 12, 14. As relevant here, the Medicaid Provider Agreements clarify that when appropriated funds are insufficient to pay for otherwise-covered services, the Planned Parenthood entities agree to accept reductions in payments proportional to the funding deficiency.[2]

[2] The language in one of the agreements differs slightly, but they all address the same concept. Two agreements say, "If at any time state or federal appropriated funds available to the DSS/MMAC for payment to me for covered services under this agreement are insufficient to pay the full amount due, I agree to accept payments reduced in proportion to the funding deficiency." D126, ¶ 8; D128, ¶ 8. The third says, "If at any time state or federally appropriated funds available to the MO HealthNet Division for payment to the provider for covered services under this agreement are insufficient to pay the full amount due, the provider agrees to accept payments reduced in proportion to the funding deficiency." D127, ¶ 8.

Simply having a Medicaid Provider Agreement with MO HealthNet Division is insufficient for reimbursement of any particular Medicaid claim. D125, ¶ 44. "[R]eimburse[ment] [of an] enrolled provider [ ] also [requires], for instance, [that the provider have] provide[d] a covered service to a covered individual and submit[ted] a valid claim for payment." *Id.* A "valid claim must include, among other things, sufficient information to correctly identify the patient and diagnostic information to justify the medical need for the services or treatments being billed." *Id.*, ¶ 45.

Also, MO HealthNet reimburses valid claims from appropriations made for a particular fiscal year (here, July 1, 2021 through June 30, 2022) only if those valid claims are originally submitted during that fiscal year. D125, ¶ 41. Valid claims originally submitted after the end of the fiscal year may be paid from appropriations from the next fiscal year's appropriations bill. D125, ¶ 41.

B. Medicaid Appropriations Bill – HB 11 (2021)

During the 2021 legislative session, the General Assembly passed H.B. 11 (2021), which the Governor signed into law.[3] D125 ¶ 17; D129. H.B. 11 appropriated approximately $12.6 billion[4] to the MO HealthNet (Medicaid) program for fiscal year 2022 (July 1, 2021 to June 30, 2022). D125 ¶ 17; D129. Under H.B. 11, reimbursement for the Planned Parenthood entities would have come from the approximately $500 million

[3] The Governor line-item vetoed §§ 11.005, 11.006, 11.305, 11.705, and 11.765, none of which are relevant here. D130.

[4] Determined by adding the appropriations in §§ 11.600 through 11.900.

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appropriation in § 11.715 for "physician services and related services including, but not limited to, clinic and . . . family planning services" or from the approximately $1.3 billion appropriation in § 11.700 "for pharmaceutical payments under MO HealthNet fee-for-service program." D125 ¶ 19; D129.

C. Medicaid Supplemental Appropriations Bill – HB 3014 (2022)

The appropriations passed in 2021, however, were quickly running out by the beginning of the 2022 legislative session, so the General Assembly passed H.B. 3014, a supplemental Medicaid appropriations bill for fiscal year 2022. D125 ¶ 22; D131. That bill was signed into law on February 24, 2022, and included approximately $1.5 billion[5] in additional funding for the MO HealthNet Program from February 24, 2022, through June 30, 2022 (Fiscal Year 2022 Supplemental). D125 ¶¶ 22–23; D131. Section 14.277 of HB 3014 includes the following appropriation:

> For medical and health related services performed by any clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital, or any affiliate or associate of such clinic, physicians' office, or place or facility in which abortions are performed or induced other than a hospital.
>
> From General Revenue Fund (0101)…………...............$0
> From Federal and Other Funds (Various)……………….0
> Total……………………………………………………$0

D125 ¶ 24; D131, p.17. Section 14.2030 included the following appropriation:

> No funds shall be expended to any clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital, or any affiliate or associate of any such clinic, physician's office, or place or facility in which abortions are performed or induced other than a hospital.

[5] Determined by adding the appropriations in §§ 14.215, 14.220, 14.225, 14.230, 14.231, 14.235, 14.240, 14.245, 14.250, 14.255, 14.260, 14.265, 14.270, 14.275, and 14.280.

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D125 ¶ 25; D131, p.24. Each of the Planned Parenthood entities admits that it is an abortion provider or associate of an abortion provider, as described in H.B. 3014 §§ 14.277 and 14.2030 (2022). D125 ¶¶ 36–38.

On March 4, 2022, PPSLR received a letter from the Missouri Medicaid Audit and Compliance Unit (MMAC) declaring its intent to suspend all Medicaid payments to PPSLR for claims submitted after 5:00 p.m. on March 11, 2022, "as any claims submitted after that date and time would result in a check date of April 8, 2022, thereby using Fiscal Year 2022 supplemental funds." D125 ¶ 27; D132 (Letter to PPSLR). Claims submitted by PPSLR to MO HealthNet between March 11, 2022, and June 30, 2022, were held by DSS but not processed or denied, in response to H.B. 3014. D125 ¶ 29.

On the same day—March 4, 2022—Plaintiffs PPGP and CH-PPGP received similar letters from MMAC declaring its intent to suspend all Medicaid payments to them for claims submitted between 5:00 p.m. on March 11, 2022, and June 30, 2022. D125 ¶¶ 30, 33; D134 (Letter to PPGP); D133 (Letter to CH-PPGP). Claims submitted by PPGP to MO HealthNet between March 11, 2022, and June 30, 2022, were held by DSS but not processed or denied, in response to H.B. 3014. D125 ¶ 35. CH-PPGP submitted no claims to MO HealthNet between March 11, 2022, and June 30, 2022. D125 ¶ 32.

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D. The Planned Parenthood Entities Sue

On March 3, 2022, the Planned Parenthood entities sued DSS, MO HealthNet Division, MMAC, and those entities' respective directors (the "State").[6] On October 6, 2022, the Planned Parenthood entities filed a first amended petition, which included two counts. Count I alleged that HB 3014 violated the Missouri Constitution's Single Subject clause, article III, section 23. D116, ¶¶ 30–46. Count II alleged that HB 3014 violated the Missouri Constitution's Equal Protection Clause, Mo. Const. art. I, § 2. D116, ¶¶ 47–53.

The State filed an Answer and Affirmative Defenses to the First Amended Petition. D123. As relevant here, the State's affirmative defenses included (1) failure to exhaust administrative remedies and (2) contractual waiver of any claims related to decreased available funding from MO HealthNet. D123, pp. 9–11.

The Circuit Court held a bench trial and entered judgment for Planned Parenthood on Count I.[7] D142; D143, p. 4. The Circuit Court determined that the Planned Parenthood entities did not need to exhaust their administrative remedies because the First Amended Petition raised solely constitutional claims. D143 p. 1. It also found that the Medicaid Provider Agreements did not waive any claims related to a decrease in funding because the waivers provided for a prorated payment instead of no payment. D143, pp.2–3. Finally, on the Single Subject claim, the Circuit Court held that the Planned Parenthood entities

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[6] The directors included Robert Knodell, Director of DSS; Todd Richardson, Director of MO HealthNet Division; and Dale Carr, Director of Missouri Medicaid Audit and Compliance Unit.

[7] The Circuit Court did not address Count II.

could access appropriated funds under section 14.230 of HB 3014 beyond what those organizations were already appropriated. D143. Further, the Circuit Court held that this Court's prior opinion, *Planned Parenthood of St. Louis Region v. Department of Social Services*, 602 S.W.3d 201 (Mo. banc 2020), prohibited the General Assembly from excluding Planned Parenthood entities from the MO HealthNet program via § 14.2030. D143, p.4. The State appeals and requests that this Court reverse and remand with instructions to enter judgment in favor of the State.

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POINTS RELIED ON

I. **The Circuit Court erred in entering judgment for the Planned Parenthood entities because it lacked subject matter jurisdiction over the case, in that the Planned Parenthood entities failed to exhaust their administrative remedies by first filing suit in the Missouri Administrative Hearing Commission.**

- *Farm Bureau Town & Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348 (Mo. banc 1995)
- *Kunzie v. City of Olivette*, 184 S.W.3d 570 (Mo. banc 2006)
- *Greenpoint Credit, L.L.C. v. Missouri Dep't of Revenue*, 98 S.W.3d 553 (Mo. banc 2003)
- *Ross v. State*, 335 S.W.3d 479 (Mo. banc 2011)

II. **The Circuit Court erred in entering judgment for Planned Parenthood because Planned Parenthood had no standing to challenge H.B. 3014, in that Planned Parenthood proffered no evidence at trial that H.B. 3014 harmed them.**

- *Worlledge v. City of Greenwood*, 627 S.W.2d 328 (Mo. App. W.D. 1982)
- *State ex rel. Williams v. Marsh*, 626 S.W.2d 223 (Mo. banc 1982)
- *Wilson v. City of St. Louis*, 662 S.W.3d 749 (Mo. banc 2023)
- *Linton by and through Linton v. Carter*, 634 S.W.3d 623 (Mo. banc 2021)

III. **The Circuit Court erred in entering judgment for the Planned Parenthood entities because they waived any claim of injury, in that their contracts expressly state that they agree to accept reduced payments when there is a funding deficiency.**

- *O'Connell v. Sch. Dist. of Springfield R-12*, 830 S.W.2d 410 (Mo. banc 1992)
- "Express," Black's Law Dictionary (11th ed. 2019).

IV. **The Circuit Court erred in entering judgment for the Planned Parenthood entities because it misunderstood which statutory provision provides an appropriation, in that (a) the Planned Parenthood entities are not provided an appropriation under § 14.230 of H.B. 3014 because a more specific provision,**

§ 14.277, controls; and (b) *Doyle v. Tidball*, 625 S.W.3d 459 (Mo. banc 2021), does not mandate the opposite.

- *Greenbriar Hills Country Club v. Dir. of Revenue*, 935 S.W.2d 36 (Mo. banc 1996)
- *Doyle v. Tidball*, 625 S.W.3d 459 (Mo. banc 2021)
- H.B. 3014, § 14.230 (2022)
- H.B. 2014, § 14.277 (2022)

V. The Circuit Court erred in entering judgment for the Planned Parenthood entities because H.B. 3014's decision not to appropriate supplemental Medicaid funds for abortion providers and their associates did not violate article III, section 23 of the Missouri Constitution, in that (A) the Circuit Court did not hold that § 14.277 was unconstitutional, and this is an independent basis on which to uphold H.B. 3014's $0 appropriation to providers like Planned Parenthood; and (B) in the alternative, this Court should overrule its precedent in *PPSLR*, 602 S.W.3d 201, because §§ 208.152 and 208.153 place restrictions on DSS's MO HealthNet Division, but not on the General Assembly's appropriations.

- *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs.*, 602 S.W.3d 201 (Mo. banc 2020)
- *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838–39 (Mo. banc 1991)
- H.B. 3014, § 14.277 (2022)
- § 208.152
- § 208.153

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ARGUMENT

I. The Circuit Court erred in entering judgment for the Planned Parenthood entities because it lacked subject matter jurisdiction over the case, in that the Planned Parenthood entities failed to exhaust their administrative remedies by first filing suit in the Missouri Administrative Hearing Commission.

Standard of Review: In a "bench-tried case," the circuit court's "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." *State v. Ent. Ventures I, Inc.*, 44 S.W.3d 383, 385 (Mo. banc 2001). Here, the circuit court's judgment erroneously declares and applies the law.

Preservation: D123, pp. 9–10; D135, pp.5–7.

The Circuit Court should never have entered judgment for the Planned Parenthood entities because they failed to exhaust their administrative remedies, which meant the Circuit Court lacked subject matter jurisdiction to hear the case. "The rule requiring exhaustion of administrative remedies is one of subject matter jurisdiction." *Kunzie v. City of Olivette*, 184 S.W.3d 570, 572 (Mo. banc 2006). This rule applies to declaratory judgment actions like this one. *See Farm Bureau Town & Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348, 352 (Mo. banc 1995) ("Exhaustion of administrative remedies is often said to be a jurisdictional prerequisite to a declaratory judgment action."). In fact, because exhaustion of administrative remedies is jurisdictional, it cannot even be waived and can be raised at any time. *Green v. City of St. Louis*, 870 S.W.2d 794, 796 (Mo. banc 1994). Though "there are exceptional circumstances where declaratory relief may be granted against an agency without exhaustion of administrative remedies[,]" "[t]hese

exceptions are usually characterized by the inadequacy of the administrative remedy." *Angoff*, 909 S.W.2d at 353.

The Circuit Court incorrectly relied on a narrow exception to this well-established rule to determine that Planned Parenthood did not need to exhaust administrative remedies. The Circuit Court held that "[b]ecause Plaintiffs seek a declaration on the constitutionality of the appropriation language, they need not exhaust their administrative remedies." D143 at 1. But in fact the exception to exhaustion is narrower than just any constitutional challenge: it allows a plaintiff to bring a "constitutional challenge to a statute *which forms the only basis for granting declaratory judgment*." *Angoff*, 909 S.W.2d at 353 (emphasis added). Under this Court's case law, applying this exception requires more than simply filing a petition alleging solely constitutional *claims*. It also requires that those constitutional claims not be "mixed with other claims involving construction of statutes and factual issues essential to determining whether . . . the constitutional questions need . . . be reached." *Id.*

Plaintiffs do not get an exception to the exhaustion requirement when there is at least one non-constitutional issue or factual dispute because the presence of those other issues means the AHC may resolve some issues—or even the entire case in a way in which the constitutional questions need not be reached. *Id.* In *Angoff*, the State brought disciplinary charges against an insurance agency. *Id.* at 351. In response, the insurance agency filed a declaratory judgment suit in the circuit court, challenging the constitutionality of the statute authorizing disciplinary charges. *Id.* The State moved to dismiss for failure to exhaust administrative remedies, but the insurance agency claimed it

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did not need to because, as here, its complaint contained only constitutional claims, which the AHC could not decide because it could not declare statutes unconstitutional. *Id.* at 351, 353. The circuit court granted the motion to dismiss for failure to exhaust, and this Court affirmed. *Id.* at 353. This Court held that because there were several unresolved factual disputes, the disposition of which may have resulted in judgment for the insurance agency without requiring the AHC to reach the constitutional questions, the insurance agency had failed to exhaust its administrative remedies. *Id.* Instead, this Court stated that the insurance agency should have raised its constitutional challenges to the statute by preserving the issue before the AHC and raising them on judicial review. *Id.*

Angoff is on all fours with this case. The Planned Parenthood entities filed a petition raising solely constitutional challenges to a statute, but those claims included at least three antecedent questions that had to be decided before reaching the constitutionality of the statute.

First, in the Circuit Court, the State argued that the Planned Parenthood entities lacked standing and that the parties disagreed about facts that would have determined whether the Planned Parenthood entities were injured. D135 at 6–7. Courts *must* address standing before deciding the case on the merits. *Greenpoint Credit, L.L.C. v. Missouri Dept. of Revenue*, 98 S.W.3d 553, 554 (Mo. banc 2003) ("[T]he court erred in reaching the . . . constitutional issues raised . . . without first reaching the standing issue and preliminary factual issues presented[.]"). In this case, Planned Parenthood had not pleaded any facts (or presented any evidence at trial) showing that, setting aside the appropriations issue, the Medicaid claims they submitted to MO HealthNet program were even eligible for

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reimbursement, even assuming H.B. 3014 was unconstitutional. As the parties agreed in the Joint Stipulations, whether an organization is qualified to be reimbursed depends on more than whether the organization has a Medicaid Provider Agreement and submits a claim. D125, ¶¶ 44–45. Rather, to be qualified for reimbursement, the organization must also provide a covered service to a covered individual and code the claim correctly. D125 ¶¶ 44–45. The parties never agreed about whether any claims submitted by the Planned Parenthood entities would have resulted in reimbursement. *See generally* D125. If this case had gone before the AHC, the AHC could have ruled on the merits without having to address the constitutional questions if it determined that the Planned Parenthood entities had not proffered sufficient evidence that H.B. 3014 actually damaged them.[8]

Second, this case encompassed an issue of contract law whose resolution could have obviated the need to reach the constitutional questions. As this Court has stated previously, courts should "avoid[ ] deciding a constitutional question if the case can be fully resolved without reaching it." *Ross v. State*, 335 S.W.3d 479, 480 (Mo. banc 2011). Here, the AHC would have had an opportunity to address a contract issue that could have resolved the case without addressing the constitutional issues. Specifically, all three Planned Parenthood entities signed contracts in which they waived the right to receive MO HealthNet payments in excess of what the General Assembly appropriated. D125, ¶¶ 11, 13, 15. If the AHC agreed with the State's interpretation of those contracts as waiving any claims based on

[8] Additionally, the universe of claims that could have theoretically been recovered under H.B. 3014 is a closed universe because H.B. 3014 only provides an appropriation for claims submitted to MO HealthNet between March 11, 2022, and June 30, 2022.

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lack of an appropriation, the AHC could have resolved the case without addressing the constitutional issues. Pre-Trial Br. at 7–9. Because the AHC could have avoided all constitutional questions if it had held as a matter of contract law that Planned Parenthood's waivers were enforceable, *id.* at 8–9, this is a case in which constitutional claims were "mixed with other claims involving construction of" contracts "and factual issues essential to determining whether . . . the constitutional questions need . . . be reached." *Angoff*, 909 S.W.2d at 353. The Planned Parenthood entities thus should have brought these claims to the AHC first for exhaustion of administrative remedies.

Third, with respect to the equal-protection claim, there were factual disputes about whether the Planned Parenthood entities were "similarly situated in all relevant respects" to recipients of MO HealthNet payments who were appropriated larger amounts in funding. *Coyne v. Edwards*, 395 S.W.3d 509, 519 (Mo. banc 2013). This "standard is a 'rigorous one' requiring proof." *Id.* Planned Parenthood alleged in a conclusory fashion—without providing "rigorous" proof—that MO HealthNet "reimburses other providers for the exact same services Planned Parenthood provides so long as they have a valid contract." D116, ¶ 50, but the State denied this allegation, explaining that "[r]eimbursement decisions are based on many other factors besides the existence of a valid contract." D123, ¶ 50. Similarly, in answer to Planned Parenthood's allegation that MO HealthNet "reimburses hospitals that provide MO HealthNet services even if the hospital performs abortions," D116, ¶ 51, the State explained that "hospitals in Missouri do not perform elective abortions in the same manner and for the same reasons as Plaintiffs"—and thus are not similarly situated in all relevant respects to—"Plaintiffs and their affiliates and associates,"

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D123, ¶ 51; *see also* D135 at 13. Thus, the AHC could have addressed the equal-protection-clause claim without addressing whether the statute violated equal protection if it had found that Plaintiffs were not similarly situated to other providers. The AHC might have concluded, for example, that the Planned Parenthood entities were not similarly situated in all relevant respects because of the manner in which they provide services, their health and safety record, or other factors.

With respect to other services, at least some of the Planned Parenthood entities have accumulated troubling records. In September 2018, health inspectors shut down a clinic in Columbia, Missouri, because a physician had for months been inserting moldy equipment into women during abortions. The equipment contained a substance that the physician's staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" her staff identified as mold. Statement of Deficiencies, Doc. 141-1, *Comprehensive Health of Planned Parenthood Great Plains v. Hawley*, No. 2:16-cv-04313, at 6–7 (W.D. Mo. 2018). A picture is included at this link.[9] The physician's staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "*continued* to use the machine on patients *after* they identified the issue." *Id.* at 7–8 (emphasis added) (parenthetical omitted). All these factual issues would have been relevant in the AHC to determining whether the Planned Parenthood entities were "similarly situated in all relevant respects."

[9] https://ago.mo.gov/docs/default-source/press-releases/2020-02-10-brief-of-the-state-of-missouri-and-appendix.pdf (at p.19).

Because there were several unresolved factual disputes and non-constitutional legal claims in this case, and because the disposition of these disputes and claims could have resulted in judgment for the State without requiring the AHC to reach the constitutional questions, Planned Parenthood failed to exhaust its administrative remedies. This Court should reverse the Circuit Court's judgment in favor of Planned Parenthood, for lack of jurisdiction.

II. The Circuit Court erred in entering judgment for Planned Parenthood because Planned Parenthood had no standing to challenge H.B. 3014, in that Planned Parenthood proffered no evidence at trial that H.B. 3014 harmed them.

Standard of Review: A trial court's holding after a bench trial cannot stand if "there is no substantial evidence to support it[,] … it erroneously declares the law, or … it erroneously applies the law." *Conseco Fin. Serv. Corp. v. Missouri Dep't of Revenue*, 98 S.W.3d 540, 542 (Mo. banc 2003). Here, there was zero evidence to support Planned Parenthood's claim of injury, so this Court should reverse and remand with instructions to enter judgment in favor of the State for lack of standing.

Preservation: D123, p. 16; D135, pp. 6–7.

Here the Circuit Court erred in entering judgment for Planned Parenthood because the Planned Parenthood entities proffered no evidence that they had standing to challenge H.B. 3014. "Standing is a jurisdictional matter antecedent to the right to relief. It asks whether the persons seeking relief have a right to do so." *Id.* "If a party's interests are unaffected by resolution of an issue he has no standing to raise it." *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227 (Mo. banc 1982). Further, "[t]he burden to establish standing lies with the party seeking relief." *Wilson v. City of St. Louis*, 662 S.W.3d 749, 753 (Mo.

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banc 2023). When a case proceeds to trial, that burden requires the party seeking to establish standing to offer evidence that they actually have an injury caused by the law. *See Linton by and through Linton v. Carter*, 634 S.W.3d 623, 629 (Mo. banc 2021) ("[W]hen a plaintiff bears the burden of proving causation, assurance of possibility is not of itself … sufficient to make a submissible case." (internal quotation marks and brackets omitted)); *Worlledge v. City of Greenwood*, 627 S.W.2d 328, 331 (Mo. App. W.D. 1982) (concluding that because the plaintiffs introduced "[n]o evidence … to establish that Worlledge or any of the other plaintiffs were Greenwood taxpayers, an allegation denied in defendants' answer," plaintiffs "failed" "to prove this essential element of the case").

Here, Planned Parenthood asserts a financial injury—they will lose money if the State refuses to fund their claims for Medicaid reimbursement under H.B. 3014. *See, e.g.*, D116, ¶ 39. However, there is no evidence on this record that Planned Parenthood will lose any money because of H.B. 3014. The parties tried this case on a joint stipulation of facts and attached exhibits. D125; Transcript (Tr.) at 3–4; *see generally* Transcript (containing no witnesses or other evidence). Neither party admitted any evidence via witness or affidavit. *See generally* Transcript. The parties agreed that merely having a Medicaid Provider Agreement—as the Planned Parenthood entities do—does not automatically qualify a provider for Medicaid reimbursement for claims submitted to the State. D125, ¶ 44. The parties also agreed that a claim can only be reimbursed if it independently qualifies for benefits. D125, ¶¶ 44–45. And to do that, a provider needs to submit a claim that identifies the patient and justifies the medical need for the treatment. D125, ¶ 45. Because "[t]he parties have not stipulated to whether any claims submitted

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by" Planned Parenthood "are valid," D125, ¶ 40, and because the universe of claims at issue in this suit is finite,[10] Planned Parenthood needed to introduce evidence at trial that it should have been reimbursed for at least one claim. But it did not.

Planned Parenthood could have proffered evidence but made no attempt to discover any. Planned Parenthood never served discovery to determine whether the State disputed the validity of any claim or would have had any reason other than H.B. 3014 to deny them. *See generally* Legal File (containing no certificate of service of filing discovery on the State). Planned Parenthood also failed to depose any State witnesses. *See generally id.* (containing no notices of deposition filed by Planned Parenthood). And the Planned Parenthood entities failed to submit as evidence any of their own claims for coverage, along with fact or expert testimony about whether those claims would have qualified for coverage under Medicaid and whether the applicable patients were enrolled in Medicaid.

In short, Planned Parenthood failed to proffer any evidence that their claims would have been reimbursed under H.B. 3014 absent the challenged provisions. Thus, they have no evidence of injury and so cannot satisfy their burden to prove standing. This Court should reverse for Planned Parenthood's failure to provide any evidence of the injury required for standing.

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[10] The only claims that would have been reimbursed out of H.B. 3014 were claims originally submitted during that bill's applicable timeframe—March 11, 2022, through June 30, 2022. D125, ¶ 41; D131, p.1 (page number on bottom is p.1) ("AN ACT [t]o appropriate money for supplemental purposes … for the fiscal period ending June 30, 2022).

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III. The Circuit Court erred in entering judgment for the Planned Parenthood entities because they waived any claim of injury, in that their contracts expressly state that they agree to accept reduced payments when there is a funding deficiency.

Standard of Review: A trial court's holding after a bench trial cannot stand if "there is no substantial evidence to support it…it erroneously declares the law, or…it erroneously applies the law." *Conseco*, 98 S.W.3d at 542. Questions of contractual interpretation are questions of law, which this Court reviews *de novo*. *Griffitts v. Old Republic Ins. Co.*, 550 S.W.3d 474, 478 (Mo. banc 2018). Here, the circuit court erroneously declared and applied the law when it incorrectly held that the Planned Parenthood entities have not waived claims for funding deficiencies such as the one in H.B. 3014.

Preservation: D123, p. 10; D135, p.8.

The circuit court erred by entering judgment for Planned Parenthood because each Planned Parenthood entity expressly consented not to receive payments in the event funds were deficient. Funds were deficient here for two alternative reasons. This Court can reverse on this basis alone.

"The guiding principle of contract interpretation under Missouri law is that a court will seek to ascertain the intent of the parties and to give effect to that intent. The intent of the parties to a contract is presumed to be expressed by the ordinary meaning of the contract's terms." *Triarch Indus., Inc. v. Crabtree*, 158 S.W.3d 772, 776 (Mo. banc 2005) (internal citations omitted). This principle applies equally to contractual waivers, which are interpreted as part of contracts.

"Waiver is the intentional relinquishment of a known right." *O'Connell v. Sch. Dist. of Springfield R-12*, 830 S.W.2d 410, 417 (Mo. banc 1992). It can be either express, meaning accomplished through words, or implied from conduct. *Missouri Hwy. & Transp. Comm'n v. Myers*, 785 S.W.2d 70, 74 n.4 (Mo. banc 1990); *Milgram Food Stores, Inc. v. Gelco Corp.*, 550 F. Supp. 992, 995 (W.D. Mo. 1982). A person expressly waives a right when she communicates that waiver "clearly and unmistakably . . . with directness and clarity." "Express," Black's Law Dictionary (11th ed. 2019).

Each of the Planned Parenthood entities expressly waived its right to reimbursement when there are insufficient appropriations, as here. PPSLR and CH-PPGP[11] each agreed that:

> If at any time state or federally appropriated funds available to the DSS/MMAC for payment ***to me*** for covered services under this agreement are insufficient to pay the full amount due, I agree to accept payments reduced in proportion to the funding deficiency.

D125 ¶¶ 10–11, 14–15 (identifying PPSLR's and CH-PPGP's agreements); D126, ¶ 8 (emphasis added); D128, ¶ 8 (emphasis added).

PPGP agreed that:

> If at any time state or federally appropriated funds available to the MO HealthNet Division for payment ***to the provider*** for covered services under this agreement are insufficient to pay the full amount due, the provider agrees to accept payments reduced in proportion to the funding deficiency.

[11] CH-PPGP did not submit any claims for Medicaid reimbursement during the timeframe March 11, 2022 to June 30, 2022, and so has no injury from H.B. 3014 for that reason as well. D125, ¶ 32 ("CHPPGP submitted no claims to MO HealthNet between March 11, 2022 and June 30, 2022.").

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D127, ¶ 8 (emphasis added). Thus, all three entities expressly agreed to accept reduced payments when the State does not have enough money to pay them specifically.

For two alternative reasons, funds were deficient. First, funds were deficient when the legislature chose to appropriate $0 to the Planned Parenthood entities. Because this meant that there were not sufficient "funds available to the MO HealthNet Division for payment to [Planned Parenthood]," D127, ¶ 8, the waiver was triggered and Planned Parenthood "agree[d] to accept payments reduced in proportion to the funding deficiency," *id.* Second, and in the alternative, a funding deficiency occurred in early 2022 when the appropriations for that fiscal year ran out. That triggered the waiver provision in the Medicaid Provider Agreements. When the legislature passed a supplemental appropriation, its $0 appropriation for the Planned Parenthood entities simply made clear that the legislature was choosing to exercise the State's contractual option not to provide more funds.

The Circuit Court incorrectly determined that this language simply "provide[s] for a pro-rata payment should the appropriation be insufficient to pay the claims." D143, p.2. That interpretation overlooks that the contracts discuss reducing payments based on *provider*, not the type of services rendered. Under all three agreements, the respective organization agreed to accept reduced funds when there were insufficient funds "for payment *to me*" or "for payment *to the provider*," regardless of the service rendered. D126, ¶ 8; D128, ¶ 8 (emphasis added). And that is exactly what happened here.

Even under the Circuit Court's interpretation, the Planned Parenthood entities are entitled to no funds. The Medicaid Provider Agreements discuss payment "reduc[tions] in

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proportion to the funding deficiency." *E.g.*, D127, ¶ 8. Here, the funding deficiency was 100% because there were *no* "funds available to the MO HealthNet Division for payment to [Planned Parenthood]." *Id.* A pro-rata reduction for a 100% funding deficiency is a 100% reduction—that is, no payment at all. A few examples suffice. If one of the Planned Parenthood entities submitted $1,000 in reimbursements, but MO HealthNet had only $100 available, the contract plainly states that Planned Parenthood would have to accept a 90% reduction. Here, because the funding deficiency was total, Planned Parenthood must accept a total reduction in payment. Reading the contract otherwise leads to absurd results, like requiring MO HealthNet to project a funding deficiency before it happens and retroactively reduce all payments already processed.

Planned Parenthood thus contractually agreed to accept zero dollars from the State if the State did not have enough money to pay Planned Parenthood's claims. The language of the waiver is "unequivocal, plain, and clear" because the Medicaid Provider Agreements unequivocally say that the Planned Parenthood entities agree to payments reduced based on funding deficiencies. On this basis alone, this Court should reverse the Circuit Court's judgment and remand with instructions to enter judgment in favor of the State.[12]

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[12] The Circuit Court also ruled in favor of Planned Parenthood on this issue because it found that the State's "argument assumes there is no appropriation" for Planned Parenthood, but the Circuit Court disagreed. Because this argument relates to Point IV, the State addresses it there.

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IV. The Circuit Court erred in entering judgment for the Planned Parenthood entities because it misunderstood which statutory provision provides an appropriation, in that (a) the Planned Parenthood entities are not provided an appropriation under § 14.230 of H.B. 3014 because a more specific provision, § 14.277, controls; and (b) *Doyle v. Tidball*, 625 S.W.3d 459 (Mo. banc 2021), does not mandate the opposite.

Standard of Review: A trial court's holding after a bench trial cannot stand if "there is no substantial evidence to support it…it erroneously declares the law, or…it erroneously applies the law." *Conseco*, 98 S.W.3d at 542. Here, the Circuit Court erroneously declared and applied the law. "This Court applies *de novo* review to questions of law decided in court-tried cases." *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012).

Preservation: D135, p.11.

The Circuit Court erred in entering judgment for the Planned Parenthood entities because it misunderstood which statute provides an appropriation. It erroneously read § 14.230 of H.B. 3014 to include an appropriation. D143, pp.3–4. But in fact the relevant provision is § 14.277, which expressly and specifically provides a $0 appropriation.

First, § 14.230 provides coverage for physician services *generally*:

> For the MO HealthNet Division
> For physician services and related services including, but not limited to, clinic and podiatry services, telemedicine services, physician-sponsored services and fees, laboratory and x-ray services, asthma related services, diabetes prevention and obesity related services, services provided by chiropractic physicians, and family planning services under the MO HealthNet fee-for-service program, and for a comprehensive chronic care risk management program, and Major Medical Prior Authorization, and the Program of All-Inclusive Care for the Elderly [….]
>
> From General Revenue Fund (0101) $3,153,635
> From Medicaid Stabilization Fund (0809) [$]4,290,016
> From Title XIX – Federal Fund (0163) [$]14,129,187
> From Title XIX – Adult Expansion Federal Fund (0358) [$]38,610,142
> For payment of physician and related services to Certified

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Community Behavioral Health Organizations

From General Revenue Fund (0101)	[$]8,311,328
From Medicaid Stabilization Fund (0809)	[$]1,320,706
From Title XIX – Federal Fund (0163)	[$]2,769,247
From Title XIX – Adult Expansion Federal Fund (0358)	[$]11,886,353
Total	[$]84,470,614

A later provision then provides a more *specific* appropriation in § 14.277:

> For the MO HealthNet Division
> For medical and health related services performed by any clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital, or any affiliate or associate of any such clinic, physician's office, or place or facility in which abortions are performed or induced other than a hospital

From General Revenue Fund (0101)	$0
From Federal and Other Funds (Various)	[$]0
Total	$0

The latter provides the relevant appropriation under the settled rule that the specific controls the general. "When the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general." *Greenbriar Hills Country Club v. Dir. of Revenue*, 935 S.W.2d 36, 38 (Mo. banc 1996). There is no doubt that H.B. 3014 prevents Planned Parenthood from receiving supplemental Medicaid funds for 2022. First, Planned Parenthood admitted that each of its entities are either abortion providers or associates of abortion providers as described in § 14.277. D125, ¶¶ 36–38. Second, those abortion providers and their associates are expressly granted $0 in appropriations for "medical or health related services"—unless they are hospitals—under § 14.277.

The Circuit Court incorrectly believed that Planned Parenthood's Medicaid claims would have fallen under the broader provision allowing reimbursement for physician

services in § 14.230. Not only is there no evidence that the Medicaid claims submitted by Planned Parenthood were for physician services, but even if there were, the more specific provision in § 14.277 would control. *Greenbriar*, 935 S.W.2d at 38. Any interpretation otherwise would render § 14.277 superfluous. And indeed, if in fact the Circuit Court were correct, then Planned Parenthood's constitutional claims would be moot, and the suit would be barred because Planned Parenthood should have brought its claims first in the AHC.

Doyle v. Tidball does not require the opposite conclusion, as the Circuit Court incorrectly suggests. 625 S.W.3d 459 (Mo. banc 2021); D143, p.3. The Circuit Court's judgment stated that *Doyle* "held that once the legislature appropriates funding '[t]he substantive law defines the scope of MO HealthNet and … sets the eligibility criteria for participants *and providers*.'" D143, p.3. The antecedent condition in that statement is missing here because Planned Parenthood received no non-zero appropriation. Further, this case does not address Medicaid eligibility criteria for participants and providers. The Planned Parenthood entities were still Medicaid providers during the entire process. But as *Doyle* itself noted, "[t]he substantive law" (as opposed to appropriations law) "does not, however, determine whether and how much funding to authorize for MO HealthNet in a given year. That determination is left to the discretion of the General Assembly in its appropriation process." 625 S.W.3d at 465. *Doyle* simply does not address the instant issue of statutory interpretation. Given the independent existence of § 14.277, this Court should reverse the Circuit Court's determination that § 14.230 appropriates funds to Planned Parenthood.

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V. The Circuit Court erred in entering judgment for the Planned Parenthood entities because H.B. 3014's decision not to appropriate supplemental Medicaid funds for abortion providers and their associates did not violate article III, section 23 of the Missouri Constitution, in that (A) the Circuit Court did not hold that § 14.277 was unconstitutional, and this is an independent basis on which to uphold H.B. 3014's $0 appropriation to providers like Planned Parenthood; and (B) in the alternative, this Court should overrule its precedent in *PPSLR*, 602 S.W.3d 201, because §§ 208.152 and 208.153 place restrictions on DSS's MO HealthNet Division, but not on the General Assembly's appropriations.

Standard of Review: A trial court's holding after a bench trial cannot stand if "there is no substantial evidence to support it…it erroneously declares the law, or…it erroneously applies the law." *Conseco*, 98 S.W.3d at 542. Here, the Circuit Court erroneously declared and applied the law. "This Court applies *de novo* review to questions of law decided in court-tried cases." *Pearson*, 367 S.W.3d at 43.

Preservation: D135, pp.9–12.

The Circuit Court incorrectly held that H.B. 3014's decision to appropriate $0 to the Planned Parenthood entities violated the single-subject requirement in article III, section 23.

A. The Circuit Court did not hold that § 14.277 was unconstitutional, and this is an independent basis on which to uphold H.B. 3014's $0 appropriation to abortion providers and their associates.

The Circuit Court based its only constitutional ruling on the provision stating, in relevant part, "No funds shall be expended to any clinic, physician's office, or any other place or facility in which abortions are performed." § 14.2030. The court concluded that this provision was substantively the same as the language this Court previously declared to

be unconstitutional in *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs.*, 602 S.W.3d 201 (Mo. banc 2020) (*PPSLR*). D143, p.4.

But the $0 appropriation appears in a different provision, § 14.277, which the Circuit Court *did not* hold to be unconstitutional. And as noted above, this provision is the operative provision for determining appropriations for the Planned Parenthood entities. On this basis alone, this Court should reverse the Circuit Court.

Contrary to Planned Parenthood's arguments in the Circuit Court, § 14.277 does not violate article III, section 23. Article III, section 23 states, in relevant part:

> No bill shall contain more than one subject which shall be clearly expressed in its title, except … general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.

By its plain terms, article III, section 23 does not address appropriations bills like H.B. 3014. As this Court previously held, "[t]o keep the narrow exception for 'general appropriations bills' from swallowing the broad prohibition against bills containing multiple subjects," this Court "recognize[s] that this exception in article III, section 23 limits appropriations bills *to appropriations only*." *PPSLR*, 602 S.W.3d at 207. When a bill contains only appropriations, it is consistent with article III, section 23. *Id.* To determine whether a bill containing appropriations also purports to amend a general statute, courts must determine whether the bill "is in direct conflict with" the general statute. *Id.* at 208. Anything less than "direct conflict" is insufficient to constitute an attempted amendment. *Id.*

The relevant section here, § 14.277, plainly contains only an appropriation. The Circuit Court determined that the separate provision prohibiting "expend[ing funds] to any

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clinic, physician's office, or any other place or facility in which abortions are performed" was not an appropriation. In contrast to that language, § 14.277 reads just like every other appropriation in the bill, with the sole exception that the amount appropriated is $0.

The canon of constitutional avoidance confirms this reading. This "well accepted canon" instructs courts that "if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended." *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838–39 (Mo. banc 1991). Given the competing interpretations between the plaintiffs and the State, the State's interpretation is not only more plausible textually, but also compelled by this canon.

Doyle, too, confirms this reading. As the Court recognized there, even if the General Assembly cannot use an appropriations bill to substantively alter Medicaid eligibility, "[t]he General Assembly maintains the discretion to decide whether *and to what extent* it will appropriate money for MO HealthNet programs." 625 S.W.3d at 465 (emphasis added). Here, the General Assembly appropriated $0 to abortion providers and their associates in § 14.277. This is acceptable under *PPSLR* and *Doyle*. It is clearly an appropriation, and so should be upheld by this Court as constitutional under article III, section 23.

The Planned Parenthood entities complain that this appropriation amount is obviously lower than they would like, but there is no other administrable rule. Courts cannot assess the constitutionality of a statute absent standards that are "clear, manageable, and politically neutral." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2500 (2019). There are

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no "clear, manageable, and politically neutral" standards to determine whether an appropriation is constitutionally "too low." The Planned Parenthood entities complain that $0 is too low. What about $1? $100? $10,000? There are no neutral constitutional standards to assess these questions. If a clear line exists at all, it is the one this Court drew in *PPSLR* between a provision expressly forbidding an expenditure of funds and a provision delineating an appropriation.[13]

Nor are there neutral standards to assess the General Assembly's decision to prioritize certain *providers* for supplemental funding to finish out the last few months of the fiscal year. In support of its argument that making provider-based distinctions violates the Single Subject rule, Planned Parenthood points to language in *PPSLR* referencing §§ 208.153.1 and 208.152.1(6), (12). D136, pp.1–2, 5–7. *PPSLR* states that "nothing in these statutes states—or even suggests—that payment for covered services 'shall' be made only to some authorized providers but not others depending upon which uncovered, non-Medicaid services an authorized provider also happens to make available to its patients." *Id*. at 209. But this language does not prohibit the *appropriation* that occurred in this case. As *PPSLR* also noted, §§ 208.152 and 208.153 "plainly and unambiguously provide that MO HealthNet 'shall' use *appropriated funds* to pay any authorized provider that renders covered services to Medicaid-eligible individuals." *Id*. As § 14.277 of H.B. 3014 itself

[13] Section 11.455 of H.B. 2011 (2018) contained an appropriation of funds for the "purpose of funding physician services and related services including, but not limited to, … family planning services under the MO HealthNet fee-for-service program." But later on, the bill stated in § 11.800 that "In reference to [certain sections including § 11.455]: No funds shall be expended to any abortion facility…or any affiliate or associate thereof.

demonstrates, it is an appropriation of funds. A fair reading of *PPSLR* does not prohibit the legislature from making appropriations that prioritize certain providers.

Indeed, the legislature has plenty of good reasons to prioritize certain providers when making appropriations. It may determine that some providers have better safety records, some providers offer services at more efficient prices, or some providers serve underserved populations, such as rural populations or low-income populations. Choosing how to allocate limited resources is a core sovereign function.

It is a core sovereign function that the legislature does all the time with Medicaid appropriations. For instance, H.B. 3014 itself provides other, separate appropriations based on provider type. Section 14.245 singles out long-term-care nursing facilities for specific appropriations. D131, pp.13–14. Section 14.255 singles out "comprehensive prepaid health care plans" for specific appropriations. D131, pp.14–15. Section 14.270 singles out hospitals for specific appropriations. D131, p.16. And § 14.230 singles out certain "physician services" appropriations to be made solely to Certified Community Behavioral Health Organizations. D131, p.13. These are all provider-specific appropriations included in the challenged H.B. 3014. H.B. 3014 includes these provider-based limitations on coverage despite the fact that § 208.152 addresses *services covered* rather than distinguishing based on provider. If this Court holds that singling out abortion providers and their affiliates for specific appropriations (whether positive or negative) is unconstitutional, then certainly these other provider-specific appropriations—and any other possible provider-specific appropriations—are at risk.

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Ruling in favor of the Planned Parenthood entities would thus not only upend the $0 appropriation, but would also risk retroactively declaring unconstitutional appropriations going back decades. Provider-based appropriations are much older than H.B. 3014 (2022). For instance, in H.B. 2011 (2018), the General Assembly made provider-based appropriations for hospitals in § 11.505 ("For supplemental payments to Tier 1 Safety Net Hospitals"). A0085. The same section of H.B. 2011 (2018) made a provider-based appropriation for "affiliated physician group[s] that provide[ ] physicians for any Tier 1 Safety Net Hospital." A0085. Section 11.470 of the same bill singles out long-term care nursing facility providers for specific appropriations. A0081.

The history goes back even further. Take 2005. In H.B. 11 (2005), hospitals were singled out again in sections 11.490 and 11.500. A0046. So were long-term nursing facilities in § 11.470. A0042. If singling out abortion providers and their associates for a specific supplemental appropriation (as here) violates the single-subject rule, then these other, historic appropriations based on provider type also violate the single-subject law—though no one is or was complaining about *them*. This Court should reverse.

B. In the alternative, this Court should overrule its precedent in *PPSLR*, 602 S.W.3d 201.

If this Court determines that no possible reading of *PPSLR*, 602 S.W.3d 201, would permit § 14.277's specific appropriation to stand, the Court should overrule that precedent to take into account the long and unchallenged history (until abortion came into the picture) of the legislature using its legitimate authority to differentiate between providers when making appropriations.

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i. Stare decisis factors

"The doctrine of stare decisis promotes security in the law by encouraging adherence to previously decided cases." *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 379 (Mo. banc 2014). But "[w]here it appears that an opinion is clearly erroneous and manifestly wrong, the rule [of] stare decisis is never applied to prevent the repudiation of such a decision." *Id.* In fact, the "rule of *stare decisis* is never applied," as here, "to prevent the repudiation of decisions that are patently wrong and destructive of substantive rights" like the General Assembly's appropriations power. This Court should overrule *PPSLR* insofar as it prohibits specific appropriations based on providers—especially in light of this Court's decision in *Doyle*, which is in some tension with *PPSLR*.

ii. H.B. 3014 does not contain multiple subjects because §§ 208.152 and 208.153, RSMo, place requirements on DSS's MO HealthNet Division, not the General Assembly.

To the extent this Court reads *PPSLR* to mean that § 14.277 violates the Single Subject rule, it misunderstands what §§ 208.152 and 208.153 are doing and should overrule *PPSLR*. Those statutes place requirements on DSS's MO HealthNet Division, *not* on the General Assembly. To the extent that *PPSLR* reads in a requirement that the services listed in § 208.152 must be reimbursed without reference to who provided them, that requirement should be placed on MO HealthNet based on the appropriations they receive, and it should not apply to appropriations made by the General Assembly. Sections 208.152 and 208.153 are not requirements that the General Assembly provide funding regardless of provider. Rather, the fact that §§ 208.152 and 208.153 place requirements on only DSS's MO HealthNet Division is evident when those statutes are viewed in the context of the statutes

around them—specifically, they are placed in the middle of a chapter that addresses DSS's duties. *See, e.g.*, § 208.181 (requiring the "department of social services" to "develop an expedited eligibility process for pregnant women for medical assistance benefits").

Reading § 208.152 as requiring the State generally (rather than MO HealthNet specifically) to make payments "on behalf of those eligible needy persons … for the" services listed under § 208.152.1 would literally require unlimited appropriations from the General Assembly for the services listed in that statutory subsection—a position this Court expressly disavowed in *Doyle*. 625 S.W.3d at 465 (stating that "[t]he substantive law," as opposed to appropriations law, "does not…determine whether and how much funding to authorize for MO HealthNet in a given year [because] [t]hat determination is left to the discretion of the General Assembly in its appropriation process"). Such a position also runs afoul of article IV, section 28 of the Missouri Constitution, which states that "[n]o money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law." As noted in *Blaske*, when statutes can be interpreted two different ways, and one of them would violate the constitution, this Court interprets them in the way that does not violate the constitution. 821 S.W.2d at 838–39. This Court should apply that principle here with respect to §§ 208.152 and 208.153 and hold that neither prohibits the General Assembly from placing provider-based restrictions on Medicaid funds. In doing so, this Court should determine that § 14.277 of H.B. 3014 does not violate article III, section 23 of the Missouri Constitution.

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CONCLUSION

This Court should reverse the Circuit Court and remand with instructions to enter judgment in favor of the State.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 10,407 words, is in compliance with Missouri Supreme Court Rule 84.06(b), includes the information required by Rule 55.03, and includes information on how the brief was served on the opposing party.

/s/Maria A. Lanahan

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CERTIFICATE OF SERVICE

I hereby certify that, on September 1, 2023, a true and correct copy of the foregoing was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

/s/ Maria A. Lanahan