IN THE SUPREME COURT OF MISSOURI

No. SC99966

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 AUDIT AND COMPLIANCE UNIT; ROBERT KNODELL, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR 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 OF THE MISSOURI MEDICAID AUDIT AND COMPLIANCE UNIT,

Appellants.

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

RESPONDENTS' BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

This case is here because the General Assembly brazenly attempted to sidestep this Court's ruling in *Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs.*, 602 S.W.3d 201 (Mo. banc 2020) ("*PPSLR*"). That case unequivocally held the General Assembly cannot use an appropriation bill to alter the *statutory* criteria that determine which providers are eligible to receive MO HealthNet payments. Rather "[i]f the General Assembly wants to change the conditions that must be met to be an authorized provider of MO HealthNet services, *it must do so by amending the statutes in which those conditions are found . . . .*" *Id.* at 210 (emphasis added). "Until amended, sections 208.153.1 and 2018.152.1(6), (12) control which providers are eligible to receive whatever funds are appropriated to provide covered services to Medicaid-eligible individuals, and the General Assembly cannot circumvent those statutes by inserting new limitations in an appropriation bill." *Id.* at 210 n.9.

Even though this Court laid out a clear road map for how the General Assembly might accomplish its policy goals, the General Assembly did not amend those statutes. Instead, it enacted a supplemental appropriation bill that once again purports to prohibit MO HealthNet from making payments to abortion providers (except for hospitals) and affiliates or associates of abortion providers. The language in the bill is slightly different than last time the parties were here, but "the state does not seriously dispute that [it] is substantively the same as the language addressed in [*PPSLR*]." D143:P4. And MO HealthNet once again relied on this unconstitutional appropriation bill to deny Planned Parenthood of the St. Louis Region, Planned Parenthood Great Plains, and Comprehensive Health of Planned Parenthood Great Plains (collectively "Planned Parenthood") reimbursement — and refused to even process Planned Parenthood's claims.

So, the exact same parties are back three years later, on the exact same issue. The question here is still simply whether the State may stop MO HealthNet payments to otherwise eligible providers because an appropriation bill purports to

deny funding to those providers, even though the statutes say all eligible providers must be paid. The answer to that question is still "no."

Likely aware of its shaky position on the merits, MO HealthNet launches a series of meritless procedural roadblocks, asking this Court not to take the issue up at this time. MO HealthNet argues Planned Parenthood failed to exhaust its administrative remedies and that it lacks standing because it did not prove injury. Both contentions are absurd.

As this Court has made clear, mere exposure to an unconstitutional law constitutes irreparable injury. *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019). And it is well established that a plaintiff need not exhaust administrative remedies where it raises only constitutional claims. *Farm Bureau Town & Country, Inc. Co. of Mo. v. Angoff*, 909 S.W.2d 348, 353 (Mo. banc 1995). Forcing Planned Parenthood to proceed first in the Administrative Hearing Commission ("AHC") would be a waste of time. Indeed, the last time the same parties litigated this same issue, Planned Parenthood *did* start in the AHC and the AHC declined to answer the question at issue — because it lacks authority to do so. Litigating in the AHC would be futile, because the AHC cannot grant the relief Respondents requested: a declaration that the appropriation bill is unconstitutional.

MO HealthNet also contends there is an antecedent contractual question that could resolve this case without wading into constitutional issues. As discussed below, that is wrong. Application of the contract provisions in question depends on whether there are inadequate MO HealthNet funds available to pay claims. And there would be inadequate MO HealthNet funds available to pay Planned Parenthood's claims only if the appropriation bill provisions in question are constitutional. The contract is not an escape hatch for MO HealthNet.

Put simply, enough is enough. This Court told the General Assembly in *PPSLR* what it needed to do if it wanted to try to exclude Planned Parenthood from receiving MO HealthNet payments. For whatever reason, the General Assembly chose not to heed that advice and instead enacted slightly different — but equally

unconstitutional — appropriation language. There is no requirement that Planned Parenthood go through a legally inadequate and futile administrative hearing before coming back to the courts to have this matter resolved. There are no factual questions that require development at the agency level — MO HealthNet has made clear it will not pay Planned Parenthood's claims regardless of the facts. To resolve this case, the Court merely needs to confirm that it meant exactly what it said in *PPSLR*.

STATEMENT OF FACTS

Planned Parenthood is dissatisfied with the statement of facts submitted by MO HealthNet. It largely covers the procedural and underlying facts but omits or otherwise mischaracterizes certain key facts to which the parties stipulated below.

Planned Parenthood operates a number of clinics that provide health care services, including physician and family planning services. D125:P1. Each Planned Parenthood entity has a valid and current MO HealthNet provider agreement. D126, D127, D128. Each year, the General Assembly funds MO HealthNet by appropriation and supplemental appropriation bills for the Department of Social Services ("DSS"). D125:P3. During the 2021 legislative session, the General Assembly passed House Bill 11 ("HB 11"), appropriating approximately $12.6 billion to the MO HealthNet program for Fiscal Year 2022 (July 1, 2021 through June 30, 2022). *Id.*; D129. When funding authorized under HB 11 ran out, the General Assembly passed House Bill 3014 ("HB 3014"), a supplemental appropriation bill for the Fiscal Year 2022, including approximately $1.5 billion in additional funding for the MO HealthNet program. D125:P4; D131. Spending authority provided in HB 3014 covered the time period February 24, 2022, through June 30, 2022 (Fiscal Year 2022 Supplemental). *Id.*[1]

[1] The exclusionary language in HB 3014 was adopted in the Fiscal Year 2023 and 2024 budgets. *See* HB 3011 (2022); HB 11 (2023).

The General Assembly Attempts to Exclude Planned Parenthood from MO HealthNet Funding

Historically, and like other Medicaid providers, Planned Parenthood billed MO HealthNet for covered physician and family planning services, and MO HealthNet paid those bills. HB 11 included no language purporting to exclude Planned Parenthood from MO HealthNet funding. D129. However, when it adopted HB 3014, the General Assembly included two sections that excluded abortion providers and affiliates or associates from receiving any MO HealthNet funding. D131. On March 4, 2022, Planned Parenthood received preemptive and total denial letters in which MO HealthNet declared, in response to HB 3014, it would suspend all payments to Planned Parenthood for claims submitted after 5:00 p.m. on March 11, 2022. D125:P5; D132; D133; D134.

MO HealthNet Preemptively Denied Reimbursement and Then Did Not Process Planned Parenthood's Submitted Claims

Despite the appropriation of funds to reimburse entities with valid MO HealthNet provider agreements in Section 14.230 of HB 3014, MO HealthNet stated in its denial letters that it would not pay Planned Parenthood for providing physician and family planning services in Fiscal Year 2022 Supplemental. *Id.* It notified Planned Parenthood that, due to MO HealthNet's interpretation of certain language in HB 3014, any and all claims Planned Parenthood submitted after March 11, 2022 would be denied. *Id.* PPSLR and PPGP continued submitting claims to MO HealthNet for physician and family planning services between March 11, 2022 and June 30, 2022. D125:P5-6. MO HealthNet received but did not process the claims. *Id.* CHPPGP did not submit any claims between March 11, 2022 and June 30, 2022. *Id.*

Planned Parenthood Sues

On March 10, 2022, the Planned Parenthood entities sued DSS, MO HealthNet Division ("MHD"), the Medicaid Audit and Compliance Unit ("MMAC"), and the directors of each (collectively, "MO HealthNet"). D100.

Planned Parenthood filed its First Amended Petition on October 6, 2022, raising only two constitutional claims. D116. Count I alleged that HB 3014 violated the single-subject requirement in Article III, Section 23. *Id.* at 5-7. Count II alleged that HB 3014 violated the guarantee of equal opportunity under the law in Article I, Section 2. *Id.* at 7. Following a bench trial on stipulated facts, the trial court entered a final judgment in Planned Parenthood's favor. D143. MO HealthNet appealed. D145.

STANDARD OF REVIEW

The question here is whether HB 3014 violates the single-subject requirement in Article III, Section 23 of the Missouri Constitution. Constitutional challenges to a statute, including the constitutionality of Sections 14.277 and 14.2030 in HB 3014, are reviewed *de novo*. *Mo. Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 351 (Mo. banc 2013). Planned Parenthood agrees the sundry other issues raised by MO HealthNet are likewise all questions of law to be reviewed anew.

ARGUMENT

The trial court correctly decided this matter when it concluded that although the legislature attempted a maneuver to exclude Planned Parenthood from receiving MO HealthNet payments by way of a zero-dollar appropriation, such action is legally inadequate to "deny Plaintiffs access to other funding that is appropriated for MO HealthNet providers" in Section 14.230 of HB 3014. D143:P4. Further, the trial court correctly recognized that binding precedent controls the outcome in this case. *PPSLR*, 602 S.W.3d at 209 (holding an appropriation bill that seeks to "disqualify certain authorized providers based on services they provide separately and apart from the MO HealthNet program . . . is a naked attempt to use [an appropriation bill] both to appropriate funds for various purposes and to amend" substantive law — a "clear and unmistakable violation of the proscription

in article III, section 23 of the Missouri Constitution against bills with multiple subjects"). *PPSLR* is dispositive.[2]

MO HealthNet attempts to sidestep the clear constitutional violation by offering a number of meritless procedural arguments. First, MO HealthNet argues Planned Parenthood failed to exhaust administrative remedies, depriving the trial court of jurisdiction. There was no such failure. Because Planned Parenthood sought a declaration on the constitutionality of the relevant provisions in HB 3014, it did not need to exhaust administrative remedies. *See Angoff*, 909 S.W.2d at 353. ("[E]xhaustion of administrative remedies is not required" if "there is a constitutional challenge to a statute which forms the *only* basis for granting declaratory judgment.").[3] As discussed below, the cases make clear that filing this matter in the AHC would have been a futile exercise.

MO HealthNet next asserts Planned Parenthood lacks standing, on the theory that Planned Parenthood did not prove injury. There are several problems with this contention. First and foremost, Planned Parenthood claims it is subject to an unconstitutional statute and such exposure "'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Rebman*, 576 S.W.3d at 612 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Further, the parties stipulated that MO HealthNet issued letters stating it would deny all Planned Parenthood's claims after March 11, 2022, as a direct result of HB 3014. D125:P5. In fact, MO HealthNet went even further — it refused to even process Planned Parenthood's claims. *Id*. Planned Parenthood has standing.

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[2] There's a reason MO HealthNet's brief contains a section asking this Court to overrule *PPSLR*.

[3] MO HealthNet is also wrong that exhaustion is a jurisdictional matter. This Court has clarified which matters are jurisdictional and which are not. *See J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009). Exhaustion of remedies is not jurisdictional and, like any other defense, can be waived. *Kerr v. Mo. Veterans Comm'n*, 537 S.W.3d 865, 874-75 (Mo. App. 2017).

Finally, MO HealthNet argues Planned Parenthood waived its rights by agreeing to accept reduced payments if there were no "'appropriated funds available to the MO HealthNet Division for payment to the provider.'" App. Br. at 10 (quoting contracts). MO HealthNet suggests that by signing provider agreements with a provision regarding potential funding shortfalls, Planned Parenthood waived any right to contest the constitutionality of the appropriation bill.

This argument is meritless. The contract provisions MO HealthNet cites are triggered only if there are inadequate funds appropriated for the services Planned Parenthood provides. It is undisputed that HB 3014 appropriated more than $84 million to cover physician and family planning services. The only basis MO HealthNet has for claiming there is a funding "shortfall" to trigger these contractual provisions is the General Assembly's unconstitutional attempt to exclude Planned Parenthood from MO HealthNet payments. In short, even if the contract provisions operate as MO HealthNet contends, the constitutional question must still be answered. Further, MO HealthNet cites no authority for the proposition that a contractual waiver provision can bar a party from separately challenging the constitutionality of a statute.

Though MO HealthNet plainly wishes it could avoid the thrust of this case, the question at issue turns exclusively on the constitutionality of HB 3014. Sections 14.277 and 14.2030 of that bill reflect the General Assembly's blatant disregard of the Constitution, this Court's precedent, and unquestionable disdain for Planned Parenthood. Sections 14.277 (purportedly providing a $0 line-item appropriation to abortion providers/affiliates) and 14.2030 (purportedly directing that no funds be paid to abortion providers/affiliates) are ineffective. Both are attempts to skirt the Constitution's single-subject requirement because each seeks to avoid the still-operative statutory requirement that "MO HealthNet payments [] be made on behalf of those eligible needy persons" receiving care from "any provider of services

with which a[] [provider] agreement is in effect." §§ 208.152.1 and 208.153.1, RSMo.

This Court has told the General Assembly such attempts are unconstitutional. The provisions at issue are nothing more than an effort to score cheap political points at the expense of the eligible needy persons who choose to (or perhaps must) receive covered services from Planned Parenthood. Rather than amend Sections 208.152 and 208.153, the General Assembly appears determined to continue abusing the appropriations process — resulting in significant waste of taxpayer dollars and this Court's time.

This Court should affirm its holding in *PPSLR* and the judgment below.

I. Planned Parenthood Did Not Need to File in the AHC Because It Sought a Declaration on the Constitutionality of HB 3014 (Response to Point I)

A. Planned Parenthood Was Not Required to Exhaust Administrative Remedies Because It Raised Only Constitutional Claims

As a general rule, parties must exhaust available and adequate administrative remedies before seeking a declaratory judgment. *See, e.g.*, *Boot Heel Nursing Ctr., Inc. v. Mo. Dep't of Soc. Servs.*, 826 S.W.2d 14, 16 (Mo. App. 1992); *State ex rel. Mo. State Bd. of Registration for the Healing Arts v. Hartenback*, 768 S.W.2d 657, 659 (Mo. App. 1989). But, like every general rule, there are exceptions. *See Angoff*, 909 S.W.2d at 353. Namely, if the administrative remedy would be inadequate or where a "constitutional challenge to a statute . . . forms the only basis for granting declaratory judgment." *Id.*

Here, Planned Parenthood's potential administrative remedy is plainly inadequate. Planned Parenthood seeks only a declaration on the constitutionality of Sections 14.277 and 14.2030 of HB 3014. The AHC is legally incompetent to answer that question — rendering any remedy it could offer wholly inadequate. *See Geier v. Mo. Ethics Comm'n*, 474 S.W.3d 560, 564 (Mo. banc 2015) ("[T]he AHC cannot declare a statute unconstitutional."); *Duncan v. Mo. Bd. for Architects,*

Prof. Engineers & Land Surveyors, 744 S.W.2d 524, 531 (Mo. App. 1988) ("Raising the constitutionality of a statute before [an agency] is to present to it an issue it has no authority to decide. The law does not require the doing of a useless and futile act."). The AHC cannot declare HB 3014 unconstitutional and asking it to do so would be futile.

Further, Planned Parenthood challenges the constitutionality of provisions of HB 3014 based exclusively on their plain language. Thus, exhaustion is excused. Where the declaration sought turns only on constitutional interpretation and there are no fact disputes that require agency expertise, exhaustion is not required.[4] *Angoff*, 909 S.W.2d at 353; *see also Premium Standard Farms, Inc. v. Lincoln Tp. of Putnam Cty.*, 946 S.W.2d 234, 238 (Mo. banc 1997) ("Because the question . . . poses no factual questions or issues requiring the special expertise within the scope of the [administrative agency's] responsibility, but instead proffers only questions of law clearly within the realm of the courts, the doctrine of exhaustion does not apply[.]").

Planned Parenthood raises only constitutional claims that do not present unresolved factual disputes and the AHC cannot opine on matters of constitutionality. Both exceptions apply.

B. The AHC Can Offer No Adequate Remedy to Planned Parenthood

First, exhaustion is excused because the AHC cannot afford Planned Parenthood an adequate remedy. There is no doubt that the AHC could not have granted effective relief to Planned Parenthood. The AHC cannot issue a declaratory judgment because only judicial bodies may issue them. *See State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 75-79 (Mo. banc 1982) ("The declaration of the validity or invalidity of statutes and administrative rules thus is purely a

[4] The state arguably conceded this issue at the trial court when it agreed to submit the case on stipulated facts. D125. There was no fact dispute and nothing that required agency expertise. As the stipulation indicated, this was, and is, a straightforward legal dispute.

judicial function."). The AHC also cannot decide constitutional issues. *Geier*, 474 S.W.3d at 564. The same parties have been down this exact path before. In *PPSLR*, Planned Parenthood took its constitutional claims to the AHC, which predictably refused to decide them. 602 S.W.3d at 206. Planned Parenthood sought to avoid such wasted time and expense this go-around.

A few months after this Court decided *PPSLR*, the Court of Appeals expressly held that when a party wishes to present only claims the AHC cannot decide, that party should not waste its time going there. *See Little Sisters of the Poor v. Mo. Dep't of Soc. Servs.*, 611 S.W.3d 781 (Mo. App. 2020). MO HealthNet would apparently prefer needless delay, but the law eschews it.

In *Little Sisters*, nursing homes filed actions with the AHC challenging regulatory amendments to Medicaid reimbursement rates. Eventually, the AHC issued findings of fact and conclusions of law opining it lacked authority to reach a decision on these claims. 611 S.W.3d at 786. Later, the nursing homes filed a petition for judicial review. The matter ultimately ended up with the Court of Appeals, which concluded the entire proceeding was a nullity because the AHC lacked authority to render a final decision on the matter. It reversed and remanded the matter, directing the nursing homes "to amend their petition *to seek a declaratory judgment*, rather than judicial review of a contested case." *Id.* at 783 (emphasis added).

The same theme applies here. The AHC had no authority to render a final decision on either of Planned Parenthood's constitutional claims. Rather than wasting administrative resources and clogging up the AHC's docket—as MO HealthNet seems to prefer—Planned Parenthood took heed of applicable precedent and filed its declaratory judgment action directly with the Cole County Circuit Court. If Planned Parenthood followed MO HealthNet's suggested approach and first filed with the AHC, the Court of Appeals, when it eventually considered the matter, would have found that approach improper under *Little Sisters*. The AHC cannot grant Planned Parenthood's requested relief because it

cannot issue a declaratory judgment with respect to whether the language in HB 3014 is constitutional. Any effort to resolve the matter in front of the AHC would have been futile and "[t]he law does not require the doing of a useless and futile act." *Duncan*, 744 S.W.2d at 531.

C. Planned Parenthood Raises Only Constitutional Claims

Further, Planned Parenthood's Amended Petition raised only constitutional challenges. D116. Specifically, Planned Parenthood challenged Sections 14.277 and 14.2030 in HB 3014 under Article III, Section 23 (requiring all bills meet the Constitution's single-subject requirement) and Article I, Section 2 (guaranteeing equal opportunity under the law). Count I alleged a violation of the constitutional prohibition on appropriation bills amending general legislation, which this Court recently applied in *PPSLR*. Mo. Const. art. III, § 23. Count II — which the trial court never reached — alleges HB 3014 violates the Constitution's guarantee of equal opportunity. Mo. Const. art. I, § 2 ("[A]ll persons are created equal and are entitled to equal rights and opportunity under the law."). As just explained, it is beyond question that the AHC could not have decided either claim.

MO HealthNet nonetheless argues the existence of various factual disputes requires exhaustion. It relies principally on *Angoff*. But MO HealthNet is wrong and its reliance on *Angoff* is misplaced.

In *Angoff*, the Department of Insurance notified an insurer it intended to initiate administrative disciplinary action based on the insurer's alleged refusal to write policies, in violation of the Missouri Unfair Trade Practice Act. Thereafter, the insurer brought a lawsuit against the Department seeking a declaration the statute was unconstitutional. 909 S.W.2d at 351. The same day, the Department instituted administrative proceedings against the insurer. *Id.* Ultimately, this Court concluded the insurer had to exhaust its administrative remedies. *Id.* at 355.

Angoff is readily distinguishable. There, this Court observed that the insurer's constitutional claims were "mixed with other claims involving

construction of statutes and factual issues essential to determining whether [the insurer] has violated the statutes which it claims to be unconstitutional." *Angoff*, 909 S.W.2d at 353. Indeed, had the insurer not violated the Missouri Unfair Trade Practice Act, "the constitutional questions need not be reached," *id.*, and thus, the constitutionality of the act was not essential to resolve the dispute. The Court accordingly held that the insurer failed to show that its administrative remedies were inadequate.

The situation here is fundamentally different. Sections 14.277 and 14.2030 exclude payment for abortion providers and their affiliates. The parties stipulated (and the Planned Parenthood entities do not contest MO HealthNet's finding in this litigation) that each is either an abortion provider or an associate of one — as those terms are defined in the provisions of HB 3014. D125:P6. The parties further stipulated MO HealthNet refused to process Planned Parenthood's claims based on those provisions. *Id.* Thus, there is no question those provisions apply to Planned Parenthood and are negatively impacting it.[5] The only question is whether they are constitutional. That distinction renders *Angoff* inapposite. *See Donaldson v. Mo. State Bd. of Registration for Healing Arts*, 623 S.W.3d 152, 158 n.2 (Mo. App. 2020) (distinguishing *Angoff* because agency denied plaintiff "his right to practice medicine on an emergency basis" and "[t]here was nothing 'hypothetical or speculative' concerning his challenge" to that suspension); *see also Angoff*, 909 S.W.2d at 353 (holding that "when a claim is made that under no circumstance or construction may a statute be constitutionally applied to the plaintiff, judicial

[5] Further, the relevant language in HB 3014 is materially indistinguishable from (or, as the trial court put it "substantively the same as") the language at issue in *PPSLR*. D143:P4. As the *PPSLR* decision notes, Planned Parenthood attempted to resolve its claims at the AHC and the AHC declined to afford Planned Parenthood relief, after concluding the appropriation language at issue applied to Planned Parenthood. 602 S.W.3d at 206.

intervention may be appropriate notwithstanding failure to exhaust administrative remedies").

The only question that could possibly have been presented to the AHC is whether Sections 14.277 and 14.2030 are constitutional. This is a question the AHC lacks the ability to decide and there is no other factual record to which the AHC can apply its expertise. Exhaustion is excused.

D. Planned Parenthood's Claims Do Not Require Resolution of Outstanding Factual Questions

In something of a preview of its other arguments, MO HealthNet contends exhaustion was required because the AHC could have resolved the dispute by addressing Planned Parenthood's standing, interpreting the provider agreements, and/or addressing allegedly underlying factual disputes on Planned Parenthood's equal opportunity claim. App. Br. at 21-25. The matters of standing and the provider agreements are addressed in the sections that follow. Put simply, those arguments are baseless. And, in any event, those are *defenses* MO HealthNet raised. "[E]xhaustion of administrative remedies is not required" if "there is a constitutional challenge to a statute which forms the *only* basis for *granting* declaratory judgment." *Angoff*, 909 S.W.2d at 353 (second emphasis added). Here, Planned Parenthood sought a declaratory judgment based solely on constitutional claims. MO HealthNet's meritless defenses do not convert constitutional challenges into non-constitutional claims.

MO HealthNet's purported concerns with Planned Parenthood's equal opportunity claim are also no basis to require exhaustion. The trial court did not reach the equal opportunity claim (because Planned Parenthood's right to relief on Count I is so clear) and Planned Parenthood is not asserting that claim as an alternative basis on which this Court should affirm. That claim is, therefore, not relevant. Even if it were, the fact that equal opportunity claims require courts to analyze facts does not change their fundamental nature — they are still

constitutional claims the AHC cannot decide.[6] Had Planned Parenthood taken that claim to the AHC, it could never have obtained relief and was thus entitled — perhaps required, according to the Court of Appeals — to seek a declaratory judgment in the Circuit Court. *See Little Sisters*, 611 S.W.3d 781 (AHC rendered impermissible advisory opinion where it did nothing more than find facts in connection with claims it had no authority to decide).

II. Planned Parenthood Has Standing Because it is Subject to an Unconstitutional Law and MO HealthNet Refused to Process Any of Planned Parenthood's Claims Based on HB 3014 (Response to Point II)

MO HealthNet next contends Planned Parenthood did not establish standing to challenge Sections 14.277 and 14.2030 because it did not show that it actually submitted any claims that would have been reimbursed, and thus lacks injury. App. Br. at 21-22. MO HealthNet's standing arguments are belied by the stipulated facts. Planned Parenthood has standing for at least two independent reasons.

First, Planned Parenthood sought a declaratory judgment as to the constitutionality of language in HB 3014. There is little doubt that language is unconstitutional — as the trial court concluded — because it does the same thing this Court deemed unconstitutional in *PPSLR*. D143:P4. And, as this Court has explained, being subjected to an unconstitutional statute "'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Rebman*, 576

[6] MO HealthNet surmises that Planned Parenthood is not similarly situated to hospitals that perform abortion because those hospitals "do not perform elective abortions in the same manner and for the same reasons as Plaintiffs." App. Br. 23. Even if that were true, the manner and reasons for performing abortions is completely irrelevant under HB 3014. The appropriation bill excludes any "clinic, physician's offices, or any other place or facility in which abortions are performed or induced." § 14.277. But for the addition of "other than a hospital," hospitals would be subject to the exclusion. *Id.* Any differences as to how and why a hospital provides abortion is immaterial, and there is no factually relevant dispute for the AHC to resolve.

S.W.3d at 612 (challenging the constitutionality of an appropriation bill) (quoting *Elrod*, 427 U.S. at 373).

Second, the parties stipulated — based on letters that are also in the record —that MO HealthNet preemptively refused to pay Planned Parenthood (or even process its claims) after March 11, 2022, as a direct result of the provisions in question. D125:P5. In a declaratory judgment action, the plaintiff merely needs to "have a legally protectable interest at stake in the outcome of the litigation." *Ste. Genevieve Sch. Dist. R II v. Board of Alderman of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002). Such interest "exists if the plaintiff is directly and adversely affected by the action in question[.]" *Id.* Sections 208.152.1(6), (12) and 208.153.1, RSMo, give each Planned Parenthood entity a legally protectable interest because the Parties stipulated each entity has a valid provider agreement to entitle it to payment for rendering covered services to MO HealthNet participants. D125:P2-3; D126; D127; D128. There can be no serious dispute that Planned Parenthood has standing based on MO HealthNet's refusal to pay or process its claims.

MO HealthNet contends "the parties never agreed about whether any claims submitted by Planned Parenthood entities would have resulted in reimbursement." App. Br. at 22. Each Planned Parenthood entity received a blanket denial letter on March 4, 2022, in which MO HealthNet notified it that "any claims it submits to the MO HealthNet Division (MHD) for reimbursement under the Missouri Medicaid program after 5:00 p.m. on Friday, March 11, 2022, will be suspended. D132:P1,3; D133:P1,3; D134:P1,3.

Despite all this, MO HealthNet now contends Planned Parenthood has not shown any of its claims are "qualified for reimbursement." But MO HealthNet refused to process any claims. And indeed, the suspension letter "prohibit[s] [Planned Parenthood] from submitting any further claims" during the suspension.

Id. It is difficult to imagine a more obvious injury than MO HealthNet's refusal to pay or process "any claims."[7]

MO HealthNet's standing argument puts Planned Parenthood in an impossible Catch-22: on one hand MO HealthNet tells Planned Parenthood to not even attempt to submit claims (because they will be suspended and not even processed), and on the other hand, MO HealthNet argues Planned Parenthood has to prove each and every claim it should not have submitted (but submitted anyway) would have been paid but for HB 3014. Either way, under MO HealthNet's theory, Planned Parenthood could not prove an injury. That's because, as MO HealthNet stipulated, the parties cannot determine "whether any claims submitted by Plaintiffs from March 11, 2022 through June 30, 2022 are valid claims, as they have not yet been processed." D125:P6. But, fortunately, MO HealthNet's theory of standing is not the law. MO HealthNet's blanket denial is an injury.[8] MO HealthNet's refusal to process and pay any valid claims is also an injury. Planned Parenthood has standing.[9]

III. The Precise Mechanics of the Provider Agreements Are Irrelevant Because the Alleged Waiver Provision Would Apply Only if

[7]Although the letter purported to prohibit Planned Parenthood from even submitting claims, PPSLR and PPGP nonetheless properly submitted claims to MO HealthNet after the effective date of the letter. D125:P5,6. Per its promise, MO HealthNet simply refused to process those claims. *Id.*

[8] "During the fiscal year beginning July 1, 2021, Plaintiffs all received funding from MO HealthNet for the covered services they provided to MO HealthNet patients." D143:P3.

[9] It is true that CHPPGP submitted no claims between March 11, 2022 and June 30, 2022. That does not mean CHPPGP lacks injury. Again, being subjected to an unconstitutional law is itself an injury. *Rebman*, 576 S.W.3d at 612. The fact that the General Assembly's unconstitutional scheme to dissuade certain providers from seeking reimbursement was successful is no reason to avoid review of HB 3014. In any event, even if CHPPGP lacks standing, there is no question PPSLR and PPGP have it.

Sections 14.277 and 14.20230 Are Constitutional, Which They Are Not (Response to Point III)

In its third point, MO HealthNet contends the trial court should have rejected Planned Parenthood's claims based on what it characterizes as a contractual "waiver" of Planned Parenthood's right to receive payment when there is a funding shortfall. App. Br. at 22-23. Planned Parenthood does not agree that the provisions in question are a valid waiver, or that a contractual provision can bar a party from challenging the constitutional validity of an enactment of the General Assembly.

But this Court does not need to decide whether the provisions at issue are, in fact, "waiver" provisions. This is so because—by their plain language—the provisions apply only if appropriated funds are insufficient to pay the full amount due." D126:P2; D127:P1; D128:P2. As the trial court concluded, this is not a waiver provision; it merely "provided for a pro-rata payment should the appropriation be insufficient." D143:P2. Indeed, MO HealthNet appears to agree, arguing "[e]ach of the Planned Parenthood entities expressly waived its right to reimbursement when *there are insufficient appropriations*[.]" App. Br. at 29 (emphasis added).

> But there is no funding deficiency. It is undisputed HB 3014 appropriated funds to cover physician and family planning services. MO HealthNet received sufficient funding to continue meeting its performance obligations under the provider agreements. Section 14.230 in HB 3014 appropriated over $84 million to the MO HealthNet Division and includes authority for spending on "physician services" and "family planning services under the MO HealthNet fee-for-service program." D131:P13-14. Pursuant to Sections 208.152 and 208.153 and this Court's decision in *PPSLR*, there were thus funds available to pay Planned Parenthood's claims.

Because there is sufficient appropriation authority, MO HealthNet cannot avoid its performance obligations under the alleged waiver provisions.

Put simply, whether the provisions in question are a "waiver" matters not. Because they require an insufficient appropriation, the outcome-determinative question is whether there *was* adequate appropriation. MO HealthNet's contention that there was inadequate appropriation turns entirely on the validity

of Sections 14.277 and 14.2030. As explained below, the trial court correctly concluded the portions of those provisions that purport to restrict payment to Planned Parenthood are unconstitutional under *PPSLR*.

To the extent the agreements could be interpreted as full waivers, as MO HealthNet contends, the trial court correctly found the provider agreements' waiver terms were not "equivocal, plain, and clear . . . to constitute a total waiver of Plaintiffs' rights." D143:P.3.

IV. The Trial Court Correctly Concluded Section 14.230 Made Funds Available to MO HealthNet to Pay Planned Parenthood and That is True Regardless of Whether Section 14.277 is a Valid Appropriation (Response to Point IV)

In rendering judgment for Planned Parenthood, the trial court concluded MO HealthNet had funds available to pay Planned Parenthood's claims as a result of the $84 million appropriation in Section 14.230 of HB 3014. It reasoned:

> [T]he State does not explain, and the Court cannot fathom, how the zero appropriation in Section 14.277 means that Plaintiffs are denied access to the millions of dollars appropriated in Section 14.230. That same legislative maneuver was successfully challenged in *Doyle*. Precedent binds the Court to find that the zero appropriation does not deny Plaintiffs access to other funding that is appropriated for MO HealthNet providers. Section 14.230 is available to all eligible MO HealthNet providers and there is no dispute that Plaintiffs are eligible providers. A zero appropriation cannot exclude an otherwise eligible provider form the MO HealthNet program.

D143:P4.

The trial court further concluded the General Assembly's attempt to bar Planned Parenthood from accessing those funds by way of the restrictive language in Section 14.2030 was unconstitutional, for the same reasons this Court ruled similar efforts were unconstitutional in *PPSLR*. D143:P4. Put differently, the trial court saw no need to exhaustively address the constitutionality of the "zero-dollar appropriation" in Section 14.277 because there was another bucket of money available to pay Planned Parenthood's claims.

Now, MO HealthNet argues the trial court erred in entering judgment in favor of Planned Parenthood because it "misunderstood" which provision in HB 3014 provides an appropriation. App. Br. at 32. It further argues that because Section 14.277 is more specific than Section 14.230, the former section must be deemed the only "appropriation" available to abortion providers and their affiliates.[10] *Id.* at 33. But MO HealthNet cannot point to any constitutionally valid basis for barring Planned Parenthood access to the funds appropriated in Section 14.230.

A. HB 3014 Appropriated Funds to Generally Pay for Physician and Family Planning Services

Section 14.230 appropriated over $84 million specifically for "physician services and related services, including but not limited to . . . family planning services under the MO HealthNet fee-for-service program[.]" D143:P13-14. In Section 14.2030, the General Assembly attempted to wholly exclude abortion providers and their affiliates from receiving these funds. That provision reads:

Section 14.2030. To the Department of Social Services

> In reference to all sections, except Section 14.277, in Part 1 and Part 2 of this act:
>
> 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.

D143:P25.

As explained in Section V, Section 14.2030 is clearly unconstitutional and represents the General Assembly's unapologetic plan to violate the single-subject

[10] As explained in the Section V, Section 14.277 does not provide an appropriation at all.

requirement and attempt to amend a substantive statute.[11] Because Section 14.2030 is unconstitutional and Section 14.230 contains no other restrictions as to which providers the appropriated funds may be paid, those funds are available to pay for physician and family planning services provided by Planned Parenthood. As this Court noted in *Doyle v. Tidball*, MO HealthNet engages in "semantic and legal gymnastics" in an effort to avoid the mandate of unambiguous statutes providing that "MO HealthNet payments shall be made on behalf of those eligible needy persons" receiving care from "any provider of services with which a[] [provider] agreement is in effect." 625 S.W.3d 459, 466 (Mo. banc 2021); §§ 208.152.1, 208.153.1, RSMo.

B. Even if Section 14.277 is a Valid Appropriation, it Does Not Bar MO HealthNet from Using Funds Appropriated in Section 14.230 to Pay Planned Parenthood

MO HealthNet provides a tortured analysis attempting to argue that Section 14.230 is only a "general appropriation" (even though it directly allocates funding for the specific services provided under the MO HealthNet program) and is therefore usurped by the zero-dollar allocation in Section 14.277. But even if one assumes there is such a thing as a "zero-dollar appropriation," MO HealthNet cannot point to anything in HB 3014 (other than Section 14.2030, which MO HealthNet does not try to defend) providing that Section 14.277 is the *only* bucket of money available to pay abortion providers and their affiliates.

Nothing in Section 14.277 states it is the only appropriation that can be used to pay such providers. Nothing in Section 14.277 says its "zero-dollar appropriation" is mutually exclusive of the "general" appropriation in Section 14.230. As a result, once the "appropriation" in 14.277 is exhausted (*i.e.*, immediately), Sections 208.152 and 208.153, RSMo, obligate MO HealthNet to

[11] Indeed, MO HealthNet does not even try to argue in its brief that Section 14.2030 is constitutional.

continue paying abortion providers and their affiliates for eligible services from any other available appropriation. Section 14.230 is such an appropriation.

Ultimately, MO HealthNet asks the Court to read into HB 3014 language that is not there. It asks the Court to read Section 14.277 as if it were prefaced by words like: "To the exclusion of all other appropriations contained herein." This the Court cannot do. *See Li Lin v. Ellis*, 594 S.W.3d 238, 244 (Mo. banc 2020) ("In construing a statute, courts cannot 'add statutory language where it does not exist'; rather, courts must interpret 'the statutory language as written by the legislature.'") (quoting *Frye v. Levy*, 440 S.W.3d 405, 424 (Mo. banc 2014). "Because the plain and ordinary language of [Sections 14.230 and 14.277] does not restrict" use of funds appropriated in Section 14.230 to pay abortion providers or their affiliates and because Section 14.2030 is blatantly unconstitutional,[12] the trial court properly "d[id] not address" whether Section 14.277's "zero-dollar appropriation" "would violate this Court's holding in [*PPSLR*]." *Doyle*, 625 S.W.3d at 466 n.6.

V. Sections 14.277 and 14.2030 are Unconstitutional Attempts to Amend Substantive Law Through an Appropriation Bill and This Court Should Reject MO HealthNet's Request to Overturn *PPSLR* (Response to Point V)

This leaves only MO HealthNet's contention that Section 14.277 is a constitutionally valid prohibition on making MO HealthNet payments to Planned Parenthood. For the reasons just discussed, that is not a question this Court needs to decide. Regardless of whether Section 14.277 is constitutional, it does not even purport to bar MO HealthNet from using the funds appropriated in Section 14.230 to pay Planned Parenthood.

But if the Court determines Section 14.277 controls, the resolution of this case is straightforward because the same issue has already been decided in Planned

[12] If the Court takes this path and decides that Planned Parenthood is entitled to the funds in Section 14.230, the Court must still resolve whether Section 14.2030 is constitutional. For this reason, the statutory construction question does not obviate the constitutional question.

Parenthood's favor. Just three years ago the same parties litigated the same issue after the General Assembly included language in an appropriation bill to target and exclude Planned Parenthood from the MO HealthNet program. *See PPSLR*, 602 S.W.3d 201. There, this Court found a direct conflict between Sections 208.152.1(6), (12) and 208.153.1, RSMo—which require MO HealthNet to pay authorized providers for covered physicians' services and family planning provided to program participants — and Section 11.800 of HB 2011, which stated: "No funds shall be extended to any abortion facility as defined in Section 188.015, RSMo, or any affiliate or associate thereof." *PPSLR*, 602 S.W.3d at 204-05. This Court deemed the appropriation language adopted in 2018 a "*clear and unmistakable* violation of the proscription in article III, section 23 of the Missouri Constitution against bills with multiple subjects." *Id.* at 209 (emphasis added).

MO HealthNet again relies on the same unconstitutional approach to deny Planned Parenthood reimbursement. The only difference in this case is that the General Assembly made a $0 line-item "appropriation" in Section 14.277 for abortion providers or affiliates (excluding hospitals) in addition to including restrictive language in Section 14.2030. The difference is meaningless and the same legal rules apply. The substantive statutes remain unchanged. Sections 208152.1(6), (12) and 208.153.1 still require that "MO HealthNet payments *shall* be made on behalf of those eligible needy persons" for "physicians' services and "family planning" and participants "may obtain [benefits] from any provider of services with which an agreement is in effect." (emphasis added). This Court has already provided the applicable analysis:

> [T]he plain language of [Sections 208.152.1(6), (12) and 208.153.1] admits of no other conclusion. [N]othing 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.

PPSLR, 602 S.W.3d at 209.

The effect of the appropriation language at issue is exactly the same as the General Assembly's prior effort – it attempted to deny funding to "some authorized providers but not others." That is illegal and there is no other conclusion. This Court also addressed the interplay between the relevant statutes and appropriations in *Doyle*, holding the "substantive law" contained in the statutes at issue here "sets the eligibility criteria for participants *and providers*" and appropriation language does not alter eligibility. 625 S.W.3d at 465 (emphasis added).

Tellingly, MO HealthNet's notices to Planned Parenthood do not claim a *lack* of any appropriation to pay an otherwise eligible provider. Instead, as it did before, MO HealthNet relies on an unconstitutional appropriation bill to attempt to disqualify Planned Parenthood from receiving reimbursements and require the parties, and this Court, to waste valuable time and resources re-litigating the same issue. MO HealthNet presents the same issue and must meet the same fate.

A. Section 14.2030 Violates Article III, Section 23 of the Constitution

Although MO HealthNet does not try to defend Section 14.2030, Planned Parenthood will address it briefly for the sake of completeness. The language included in Section 14.2030 purporting to deny Planned Parenthood access to MO HealthNet funding is functionally equivalent to the language the General Assembly included in Section 11.800 in HB 2011 for Fiscal Year 2019 – the provision at issue in *PPSLR*. As here, the language in Section 11.800 stated: "No funds shall be expended to any abortion facility as defined in Section 188.015, RSMo, or any affiliate or associate thereof." The only real difference is the removal of the statutory reference. But the language here still attempts to impermissibly disqualify an otherwise eligible provider.

Because the substantive law remains unchanged and the Planned Parenthood entities are eligible providers, the General Assembly cannot use an appropriation bill to change which Medicaid providers are eligible to receive

reimbursements. Section 14.2030 is clearly unconstitutional, so evidently unconstitutional that MO HealthNet does not argue otherwise. Legislative maneuvers to use an appropriation bill to change substantive law were unconstitutional when this Court addressed the issue in 2020 and remain unconstitutional today.

B. Section 14.277 Also Violates Article III, Section 23 of the Constitution

An appropriation bill violates the single-subject requirement of Article III, Section 23 if it purports to both appropriate funds and alter existing, general laws that govern how MO HealthNet funds are to be used. *See id.* at 208-11. Section 14.277 is merely the General Assembly's latest attempt "to disqualify certain authorized providers based on services they provide separately and apart from the MO HealthNet program — and for which no MO HealthNet payments can be made." *Id.* at 209. And, just like last time, it "is a naked attempt to use [an appropriation bill] both to appropriate funds for various purposes and to amend sections 208.153.1 and 208.152.1(6), (12)." *Id.* The only difference in this case is that the General Assembly provided a zero-dollar line-item "appropriation" for abortion providers or affiliates or associates of such providers. This new attempt must similarly fail.

MO HealthNet argues Section 14.277 is a more specific appropriation than 14.230 and therefore controls. But Section 14.277 is not an actual appropriation and thus cannot be considered more specific. An appropriation is "a legislative body's . . . act of setting aside a sum of money for a specific purpose." *Black's Law Dictionary* at 123 (10th ed. 2014). Section 14.277 does not set aside any sum of money for any purpose. Consistent with the normal meaning of the word "appropriation," Article IV, § 23 requires appropriations bills to distinctly appropriate a specified amount of funds for a specified purpose. Until such appropriation is made, there are simply no funds available for a government agency's use. *See City of Jefferson v. Mo. Dep't of Nat. Res.*, 916 S.W.2d 794, 796

(Mo. banc 1996). In other words, until the legislature appropriates money, the funds available for any particular purpose in each fiscal year is necessarily zero dollars. *Fort Zumwalt Sch. Dist. v. State,* 896 S.W.2d 918, 922 (Mo. banc 2004). The legislature does not need — and it would be a waste of legislative effort — to appropriate "zero dollars." That is the status quo until an appropriation is made.

Here, the legislature set aside and appropriated funds for physician and family planning services in one part of HB 3014 and then attempted to eliminate the Planned Parenthood entities' eligibility to be reimbursed for those same services in another.

Because Section 14.277 does not appropriate any funds, it is fundamentally not an appropriation. Rather, it is a transparent attempt to circumvent the Constitution and this Court's decision in *PPSLR* and is in direct conflict with the statutory mandate to pay otherwise eligible MO HealthNet providers. Section 14.277 is a blatant attempt to control which providers are eligible to receive funds from the line-items appropriated for covered Medicaid services — the exact approach *PPSLR* dictates is unconstitutional. Plainly stated, Section 14.277 is more properly characterized not as an appropriation but an attempt to amend a substantive statute in a multi-subject appropriations bill, which is undoubtedly unconstitutional.

Even if Section 14.277 were a true appropriation (it is not), the funding limit is meaningless because there is sufficient and undisturbed appropriation authority in Section 14.230. And, the General Assembly cannot upend that appropriation authority with unconstitutional attempts to amend substantive law as it attempts to do in Sections 14.277 and 14.2030. The trial court confirmed 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:P3 (citing *Doyle*, 625 S.W.3d at 465 (Mo. banc 2021)). Funds are available to the Planned Parenthood entities under Section 14.230 and the substantive law

remains unchanged. Thus, the MO HealthNet Division has sufficient authority to, and, in fact it must, pay for services rendered by Planned Parenthood entities.

The State further contends that if this Court finds "that singling out abortion providers and their affiliates for specific appropriations (whether positive or negative) is unconstitutional, then certainly … other provider-specific appropriations — and any other possible provider-specific appropriations — are at-risk." App. Br. at 39. This is not so. This argument is flawed for at least a couple of reasons. First, the constitutionality of other provider-specific appropriations is not before this Court. Second, MO HealthNet's examples of "separate appropriations based on provider type" are ineffective.

MO HealthNet argues that at least three other sections in HB 3014 include provider-specific appropriations: Sections 14.245, 14.255, and 14.270. App. Br. at 39. Section 14.245 appropriates funds to the MHD for "funding long-term care services [f]or care in nursing facilities." The allocation provided here merely appropriates funds for specific services to be paid to the providers that can provide that service but does not distinguish among eligible providers. In other words, the appropriation is not necessarily provider-specific. Rather, it is service oriented and relies on the underlying statute (Section 208.153.1) to dictate which providers are eligible to receive payment for providing long-term care services.

Next, MO HealthNet argues Section 14.255 is another provider-specific appropriation. This section appropriates money to "comprehensive health care plans" or certain mental health programs. Neither of which is a MO HealthNet provider. MO HealthNet next highlights Section 14.270's appropriation to "hospitals." While this section identifies a provider, the General Assembly still funds a service. Section 14.270 provides funding:

> For payments to hospitals under the Federal Reimbursement Allowance Program including state cost shares to pay for an independent audit of Disproportionate Share Hospital Payments as required by the Centers for Medicare and Medicaid Services, for the expenses of the Poison Control Center in order to provide services to all hospitals

within the state, and for the Gateway to Better Health 1115 Demonstration.

For a continuation of the services provided through Medicaid Emergency Psychiatric Demonstration as required by Section 208.152(16), RSMo.

It is also worth noting the appropriation is from Title XIX funds, which are federal Medicaid funds provided to the states under Title XIX of the Social Security Act, funding federally required programs and demonstration projects. As such, the comparison falls flat. In this case, the General Assembly funded MO HealthNet physician services and then attempted to exclude statutorily eligible providers. Finally, MO HealthNet argues that Section 14.230 includes a provider-specific appropriation to Certified Community Behavioral Health Organizations. This is the only example that may ring true for MO HealthNet. Even so, the argument is ineffective because just as Planned Parenthood is eligible for the funds appropriated in Section 14.230, so too may the other providers be eligible for funding from other line-items if its funding falls short.

More importantly, the "provider-specific" appropriations to which MO HealthNet points are true appropriations in that the line-items provide funding and are not tied to unconstitutional attempts to amend a general statute and exclude otherwise eligible providers from reimbursement.

C. There is No Basis for this Court to Revisit *PPSLR*

"The doctrine of stare decisis promotes security in the law by encouraging adherence to previously decided cases." *Indep.-Nat. Educ. Ass'n v. Indep. Sch. Dist.*, 223 S.W.3d 131, 137 (Mo. banc 2007). Not only does stare decisis promote security, it "is the cornerstone of our legal system." *M & H Enterprises v. Tri-State Delta Chemicals, Inc.*, 984 S.W.2d 175, 178 n.3 (Mo. App. S.D. 1998). However, "adherence to precedent is not absolute, and the *passage of time and experience* of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course." *Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 644 (Mo. banc 2012) (emphasis added). While there are circumstances that certainly justify

repudiating precedent, no such circumstances exist here. This Court's prior *PPSLR* decision was undoubtedly correct—then and now.

MO HealthNet argues *PPSLR* invades the General Assembly's appropriations power and should be overruled "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*." App. Br. At 41. In introducing its argument, MO HealthNet suggests this Court "misunderstands what §§ 208.152 and 208.153 are doing." *Id.* Its principal argument begins with the claim that this Court and the trial court both fundamentally misunderstand how the law works. A bold approach.

Regardless, none of the stare decisis factors tilts in MO HealthNet's favor. Only three years have passed since this Court decided *PPSLR*. There has not been a significant passage of time and societal experience and attitudes have not changed. What was true then is true today: The General Assembly disfavors Planned Parenthood as a MO HealthNet provider and it attempts, again, to use the appropriation process to deny it funding, even though this Court has specifically explained the proper procedure for the legislature to address its policy goals.

MO HealthNet next claims *PPSLR* stands for the proposition that provider-specific appropriations are unconstitutional and thus stands at odds with *Doyle*. 625 S.W.3d at 465 (noting "[t]he substantive 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"). *PPSLR* does not render provider-specific appropriations unconstitutional. No one is arguing that. First, the "provider-specific" appropriations to which MO HealthNet points are not clearly provider-specific appropriations. More importantly, even if the appropriations are provider-specific, this does not run afoul of *PPSLR*. The line-items represent true appropriations and are not attempts to avoid statutory obligations — unlike the appropriation plan MO HealthNet seeks to uphold here. Planned Parenthood's position has been clear

from the start of these cases. The General Assembly cannot circumvent the State's statutory obligation to pay eligible MO HealthNet providers through the appropriation process.

The heart of MO HealthNet's argument seems to be that the General Assembly enjoys almost unfettered appropriation power. While the General Assembly holds the power of the purse, its power is not unlimited. *See Rebman*, 576 S.W.3d at 609; *see also* Mo. Const. art. III, § 36. In fact, it is not merely a power the General Assembly has, but a responsibility: "To facilitate its constitutional prerogative, the general assembly is vested with both the *authority and the responsibility* to raise revenue and allocate funds from the treasury *to pay the State's expenses*." *Rebman*, 576 S.W.3d at 609 (emphasis added). And *Rebman* confirms there are—indeed—limits on the appropriation power.

As this Court noted in *PPSLR*, while the particular restraint on the General Assembly's appropriation power at issue in *Rebman* was the Constitution as well as the separation of powers doctrine, that case nonetheless illustrated that "[u]ntil amended, sections 208.153.1 and 208.152.1(6), (12) control which providers are eligible to receive whatever funds are appropriated to provide covered services to Medicaid-eligible individuals, and the General Assembly cannot circumvent those statutes by inserting new limitations in an appropriation bill." 602 S.W.3d at 210 n.9. Again, the statutes remain unchanged and Planned Parenthood is still an eligible provider operating under a valid agreement. Despite both recent and longstanding authority[13] barring the use of appropriation bills to amend general

[13] *See Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 4 (Mo. banc 1992) (confirming the principle that appropriation bills cannot amend substantive legislation "is still good law"); *State ex rel. Davis v. Smith*, 75 S.W.2d 828, 830 (Mo. banc 1934) ("If this appropriation bill had attempted to amend [an existing statute], it would have been void in that it would have violated section 28 of article 4 of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title."); *Opponents of Prison Site, Inc. v. Carnahan*, 994 S.W.2d 573 (Mo. App. 1999) ("[A] general appropriation bill, containing appropriation for numerous unrelated state activities, cannot amend substantive

statutes, MO HealthNet stubbornly asks the Court to broaden the General Assembly's appropriation power to not only grant it authority to amend substantive law by appropriation, but also trample on MO HealthNet's ability to meet its statutory obligation to reimburse providers for valid MO HealthNet claims. It offers no new or compelling reason for the Court to do so.

CONCLUSION

Planned Parenthood has standing to bring its claims challenging the constitutionality of Sections 14.277 and 14.2030 in HB 3014. Because it brings only constitutional challenges, it did not need to exhaust administrative remedies. The challenged sections run afoul of the Constitution's single-subject requirement and this Court's holding in *PPSLR*. For these reasons and those discussed above, this Court should AFFIRM the Circuit Court's decision in all respects.

Respectfully submitted,

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legislation . . . . "); *State ex rel. Igoe v. Bradford*, 611 S.W.2d 343, 350 (Mo. App. 1980) ("Appropriations of money for payment of state obligations and the amendment of a general statute are entirely different and separate subjects for legislative action.")

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on October 2, 2023, to all counsel of record.

I also certify that the foregoing brief complies with the limitations in Rule No. 84.06(b) and that the brief contains 10,220 words.

/s/ Charles W. Hatfield