No. SC99185

In the
Supreme Court of Missouri

STEPHANIE DOYLE, *et al.*,

Appellants,

v.

JENNIFER TIDBALL, *et al.*,

Respondents.

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

BRIEF OF RESPONDENTS

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INTRODUCTION

Amendment 2, enacted by the voters in August 2020, added Article IV, § 36(c) to the Missouri Constitution, which adopts Medicaid Expansion for Missouri by providing that members of the Adult Expansion Group shall be eligible for Medicaid services and receive coverage. But implementing Medicaid Expansion costs hundreds of millions of dollars, and Amendment 2 did not create or provide any new revenues to fund services for the new Expansion population. And Article III, § 51 of the Constitution provides that "[t]he initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby."

Thus, it fell upon the General Assembly to decide whether to fund Medicaid Expansion. The General Assembly intensively debated this question in the 2021 legislative session, and the many bills and amendments that would have funded Medicaid Expansion were defeated. Instead, the General Assembly enacted House Bills 5, 10, and 11 without appropriating funds for Medicaid Expansion.

Plaintiffs-Appellants Stephanie Doyle, et al. ("Plaintiffs") claim that the Legislature's decision not to fund Medicaid Expansion was unconstitutional. Relying on this Court's recent decision in *Planned Parenthood v. Department of Social Services*, 602 S.W.3d 201 (Mo. banc 2020), they insist that the Legislature's failure to fund Medicaid Expansion violates the single-subject rule for appropriation bills by purporting to "amend" the eligibility criteria in Article IV, § 36(c). Plaintiffs contend that, under *Planned Parenthood*, the Legislature *must* fund services for the Medicaid Expansion population if

it funds any Medicaid services at all. On their view, if the Legislature wants to avoid funding Expansion, it must de-fund the State's entire Medicaid program. This would mean that Amendment 2 mandates appropriations for Medicaid Expansion "through practical necessity." *City of Kansas City, Missouri v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014).

Plaintiffs' reliance on *Planned Parenthood* presents a mortal threat to Amendment 2, a constitutional amendment approved by the majority of Missouri voters. As the circuit court recognized, D63, pp. 2-5, Plaintiffs' argument places Amendment 2 in "irreconcilable conflict" with Article III, § 51, which prohibits appropriations by initiative. *Comm. for a Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503, 510 (Mo. banc 2006). The Court should resolve this conflict in a manner that preserves both the validity of Amendment 2 and the Legislature's authority over appropriations protected by Article III, § 51. The best way to do this is to revisit and overrule the unduly expansive reading of the single-subject rule for appropriation bills that this Court applied in *Planned Parenthood*. That rule lacks support in the plain language of the Constitution, rests on shaky jurisprudential footing, has failed to generate significant reliance in the near-century since its recognition in 1926, and places the single-subject rule at loggerheads with "bedrock legal principles" long recognized in this Court's cases. *Planned Parenthood*, 602 S.W.3d at 211.

In addition to preserving the validity of Amendment 2, the Court should reject Plaintiffs' thinly supported argument that the Legislature actually appropriated funds for Medicaid Expansion in HB 5, HB 10, and HB 11, without realizing it. The plain language of these bills, their express mandate for strict construction, and all relevant principles of

statutory interpretation confirm that the General Assembly did not intend to appropriate funds for Medicaid Expansion. The preambles of those bills adopt a principle of strict construction for the purposes of the appropriations therein, which contradicts Plaintiffs' expansive reading of the bills. The appropriation bills consistently appropriate funds for Medicaid services at the federal-state matching rate for the non-Expansion population, not the very different matching rate for the Expansion population. The bills do not appropriate any federal funds for the necessary information technology costs needed to implement Medicaid Expansion. They include explicit references to the pre-Expansion population that pointedly exclude the Expansion population. They never include any reference to the Adult Expansion Group or its eligibility criteria. They appropriate funds for Medicaid services using exactly the same language as recent appropriation bills that did not fund Medicaid Expansion. These and many other indicators of meaning demonstrate that the appropriation bills mean exactly what the Governor and legislators who enacted them thought they meant—they did not appropriate funds for Medicaid Expansion.

This Court should affirm the judgment of the circuit court.

JURISDICTIONAL STATEMENT

The appeal filed by Plaintiffs-Appellants Stephanie Doyle, et al., addresses "the validity … of a … provision of the constitution of this state," *i.e.*, Article IV, § 36(c) of the Constitution, and thus it falls within this Court's exclusive jurisdiction under Article V, § 3 of the Constitution. *See* MO. CONST. art. V, § 3.

The separate appeal filed by Proposed Intervenors Barber and Chaney, who were denied leave to intervene in the trial court, challenges the circuit court's decision denying leave to intervene. *See* Br. of Intervenors, at 8-13. Their appeal does not fall within any category of this Court's original and exclusive appellate jurisdiction under Article V, § 3, and thus it should have been filed in the Missouri Court of Appeals, Western District. MO. CONST. art. V, § 3 ("The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court."); *see also Kirk v. State*, 520 S.W.3d 443, 448 n.2 (Mo. banc 2017). However, given the importance of the issues and the time-sensitivity of the case, the Court should treat Intervenors' brief as a brief of *amici curiae* and give their arguments consideration in that light.

STATEMENT OF FACTS

Appellants' Statement of Facts is neither accurate nor complete, as it omits many important facts that directly undermine Appellants' arguments. Mo. Sup. Ct. R. 84.04(f). Respondents provide this more complete Statement of Facts. *Id.*

A. The Affordable Care Act Authorizes Medicaid Expansion.

"Enacted in 1965, Medicaid offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 541 (2012) ("*NFIB*") (citing 42 U.S.C. § 1396a(a)(10)). "In order to receive that funding, States must comply with federal criteria governing matters such as who receives care and what services are provided at what cost." *Id.* at 541-42. "By 1982 every State had chosen to participate in Medicaid. Federal funds received through the Medicaid program have become a substantial part of state budgets, now constituting over 10 percent of most States' total revenue." *Id.* at 542.

"In 2010, Congress enacted the Patient Protection and Affordable Care Act," also known as the "ACA." *Id.* at 538. The ACA mandated the expansion of Medicaid to include able-bodied adults without children with incomes near the federal poverty level (the "Adult Expansion Group"). "The Affordable Care Act expands the scope of the Medicaid program and increases the number of individuals the States must cover. For example, the Act requires state programs to provide Medicaid coverage to adults with incomes up to 133 percent of the federal poverty level, whereas many States now cover adults with children only if their income is considerably lower, and do not cover childless adults at all." *Id.*

(citing 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII)). The ACA "increases federal funding to cover the States' costs in expanding Medicaid coverage, although States will bear a portion of the costs on their own." *Id.* (citing 42 U.S.C. § 1396d(y)(1)). Under the ACA as originally passed, "[i]f a State does not comply with the Act's new coverage requirements, it may lose not only the federal funding for those requirements, but all of its federal Medicaid funds." *Id.* (citing § 1396c).

In *NFIB*, the Supreme Court held that it was unconstitutional for Congress to require States to adopt Medicaid Expansion under threat of losing all their federal Medicaid funds. *Id.* at 581. Threatening to force States to cancel their Medicaid programs, the Court held, was a "gun to the head" that left States with no practical option but to acquiesce: "In this case, the financial 'inducement' Congress has chosen is much more than 'relatively mild encouragement'—it is a gun to the head." *Id.* at 581. The Court noted that "the States have developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid," *id.*, making it virtually impossible to cancel their programs overnight. Thus, the Court held that the threatened cancellation of a State's Medicaid program "is economic dragooning that leaves States with no real option but to acquiesce in the Medicaid expansion." *Id.* at 582.

In so holding, the Supreme Court emphasized the dramatic differences between the pre-Expansion and Expansion Medicaid programs: "The Medicaid expansion … accomplishes a shift in kind, not merely degree." *Id.* at 583. "The original program was designed to cover medical services for four particular categories of the needy: the disabled, the blind, the elderly, and needy families with dependent children." *Id.* (citing 42 U.S.C.

§ 1396a(a)(10)). "Under the Affordable Care Act, Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level." *Id.* The ACA was thus "enlisting the States in a new health care program." *Id.* at 584.

B. The Pre-Enforcement Challenge to Amendment 2.

In the years following *NFIB*, the Missouri Legislature declined to adopt Medicaid Expansion from 2012 to 2020. But in 2020, a proposal was submitted to the voters to amend the Missouri Constitution to implement Medicaid Expansion by popular vote ("Amendment 2"). At the outset, the proposal faced a legal challenge because it provided no independent source of funding, and Article III, § 51 of the Missouri Constitution provides that "[t]he initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby." MO. CONST. art. III, § 51. Implementing Medicaid Expansion would cost well over $150 million in state funds per year—plus nine times that amount of federal revenues—but Amendment 2 did not purport to "create[]" or "provide[]" any new revenues to finance Medicaid Expansion. *See* MO. CONST. art. IV, § 36.

Opponents of Medicaid Expansion sued to exclude Amendment 2 from the ballot, arguing that it would violate Article III, § 51 of the Constitution by requiring appropriations by initiative. *Cady v. Ashcroft*, 606 S.W.3d 659, 664 (Mo. App. 2020). Counsel for proponents in *Cady*—who also represent Plaintiffs here—argued that Amendment 2 would *not* restrict the Legislature's discretion to fund Medicaid Expansion: "eligibility … is distinct from funding.… The legislature retains authority to determine how much funding

to allocate and does so in an appropriation bill each year." Br. of Respondent-Intervenors Miller and Dominick *in Cady v. Ashcroft*, No. WD83834, 2020 WL 3548952, (Mo. App. filed June 5, 2020), at 34. They argued that "[w]hen the initiative is read in this manner, it does not appropriate funds, by practical necessity or otherwise. The Initiative merely expands eligibility for Medicaid benefits, leaving decisions about how to fund the program to the legislature." *Id.* at 11 (citing *City of Kansas City, Missouri v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014)).

The Court of Appeals accepted the proponents' argument, holding that Amendment 2 did not require the appropriation of funds, at least on its face. In *Cady*, the Court of Appeals noted that "[t]here are no words on the face of the Proposed Measure that appropriate existing funds." 606 S.W.3d at 667. Thus, "there is nothing on the face of [Amendment 2] that clearly and unavoidably purports to appropriate previously existing funds." *Id.* at 668 (quoting *Boeving v. Kander*, 496 S.W.3d 498, 510-11 (Mo. banc 2016)). Further, the Court of Appeals reasoned, Amendment 2 "does not use the phrase 'stand appropriated' or any similar phrase that indicates an appropriation of existing funds or directs the legislature to appropriate such funds." *Id.* Thus, at least on its face, the proposal left the General Assembly's plenary discretion over appropriations intact: "Funding for the Missouri Medicaid program, MO HealthNet, is appropriated annually by the General Assembly. The Proposed Measure does not direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs." *Id.* *Cady* concluded that, if Amendment 2 were interpreted to require appropriations to fund MO

HealthNet Expansion, Amendment 2 would fall into "irreconcilable conflict" with Article III, § 51, and thus be unconstitutional: "This interpretation harmonizes the provisions of [Amendment 2] and article III, section 51 of the state Constitution rather than creating an 'irreconcilable conflict.'" *Id.* at 668-69 (quoting *Comm. for a Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503, 510 (Mo. banc 2006)).

The Court of Appeals in *Cady* left open the possibility that Amendment 2 might be invalidated in a post-enactment challenge on the ground that it mandated an appropriation "through practical necessity." *Cady* noted that *Boeving v. Kander*, 496 S.W.3d 498, 511 (Mo. banc 2016), had limited pre-enactment challenges under Article III, § 51 to cases where "the face of the [Proposed Measure] … clearly and unavoidably purports to appropriate previously existing funds." *Cady*, 606 S.W.3d at 667 (quoting *Boeving*, 496 S.W.3d at 510-11). *Cady* held that the circuit court had "properly rejected [the challengers'] invitation to 'delve into the hypothetical interaction between the [Proposed Measure] (if passed), Missouri appropriations law, and substantive Medicaid law' and adjudicate their article III, section 51 challenges on the merits." *Id.* at 667. Rather, *Boeving* and other cases "make clear that such review is appropriate only *after* the election, should the Proposed Measure pass." *Id.* (emphasis in original).

C. Missouri's Voters Adopt Amendment 2, Placing a New Article IV, § 36(c) in the Constitution.

After the *Cady* decision, Amendment 2 was submitted to the voters on August 4, 2020, and it was adopted by a margin of 53 percent to 47 percent. *See* AUGUST 4, 2020 OFFICIAL ELECTION RESULTS, MISSOURI SECRETARY OF STATE, *at*

https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/All_Results_2020_Primary_8_4_2020.pdf.

Amendment 2 amended the Missouri Constitution to add one new Section—Article IV, § 36(c). Subsection 1 of that Section provides that the Medicaid Expansion population identified in the ACA, *i.e.*, the Adult Expansion Group, "shall be eligible for medical assistance under MO HealthNet." MO. CONST. art. IV, § 36(c)(1). Subsection 1 provides:

> Notwithstanding any provision of law to the contrary, beginning July 1, 2021, individuals nineteen years of age or older and under sixty-five years of age who qualify for MO HealthNet services under 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) and as set forth in 42 C.F.R. 435.119, and who have income at or below one hundred thirty-three percent of the federal poverty level plus five percent of the applicable family size as determined under 42 U.S.C. Section 1396a(e)(14) and as set forth in 42 C.F.R. 435.603, shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package.

Id. Subsection 2 provides that "[f]or purposes of this section 'health benefits service package' shall mean benefits covered by the MO HealthNet program as determined by the department of social services to meet the benchmark or benchmark-equivalent coverage requirement under 42 U.S.C. Section 1396a(k)(1) and any implementing regulations." MO. CONST. art. IV, § 36(c)(2).

Subsection 3 of Amendment 2 requires DSS and the MO HealthNet Division to "submit all state plan amendments necessary to implement this section to the United States Department of Health and Human Services" by March 1, 2021. *Id.* Subsection 4 states that "[t]he Department of Social Services and the MO HealthNet Division shall take all actions necessary to maximize federal financial participation in funding medical assistance pursuant to this section." *Id.*

Pursuant to Article IV, § 36(c)(3), DSS and MO HealthNet submitted state plan amendments to implement Medicaid expansion to CMS by March 1, 2021. D17, p. 11.

D. The General Assembly Vigorously Debates Funding for Medicaid Expansion, and Ultimately Decides Not to Fund It.

During the 2021 legislative session, the General Assembly intensively debated whether to appropriate funds for MO HealthNet Expansion. Governor Parson requested all necessary funding for MO HealthNet Expansion in the budgets of the Office of Administration (House Bill 5), the Department of Health and Senior Services (House Bill 10), and the Department of Social Services (House Bill 11). D17, pp. 4-6. Amendments were repeatedly offered to fund MO HealthNet Expansion through numerous appropriation bills, including House Bill 11, but they were all defeated.

1. Attempts to fund Expansion in House Bill 5 were defeated.

First, multiple attempts to provide necessary funding for MO HealthNet Expansion in the Office of Administration's appropriation bill, House Bill 5, were considered and defeated. For Fiscal Year ("FY") 2022, Governor Parson recommended a total of $1,866,135 in funding in House Bill 5, Section 5.025 for MO HealthNet expansion, but $0 was "Truly Agreed, Finally Passed." D17, p. 4; D21, p. 2. Two amendments to House Bill 5 were offered on the floor of the House. D17, p.4. First, one proposed amendment would have provided funding for "[e]xpenditures for information technology costs" required for Medicaid Expansion, but this amendment failed. *Id.*; D22 pp. 4-5. Another amendment would have denied insurance coverage to House members if they did not fund Medicaid

Expansion, but that amendment also failed. D17, p. 4; D22, pp. 5-6. House Bill 5 was passed and delivered to the Governor without these amendments. D17, pp. 4-5; D23, p. 2.

2. Attempts to fund Expansion in House Bill 10 were defeated.

House Bill 10 is the appropriation bill for the Department of Health and Senior Services, which administers Medicaid-covered home health services. According to official budget documents from the Office of Administration, Division of Budget and Planning, for FY 2022, Governor Parson recommended a total of $153,943,714 in funding in House Bill 10 for MO HealthNet expansion, but $0 was "Truly Agreed, Finally Passed." D17, p.5; D25, p.2.

On the floor of the House, Representative Fogle offered an amendment to House Bill 10 that would have inserted a line titled Section 10.1105 providing that "Funds shall not be denied for the provision of services to any individual eligible for such services, whose eligibility is established pursuant to federal or state law or regulation, or the Missouri State Constitution[,]" but the amendment failed. D17 p. 5; D22 pp. 7-8. House Bill 10 was passed and delivered to the Governor without this amendment. D17 pp. 4-6.

Before the Senate Appropriations Committee, Senator Hough offered an amendment to House Bill 10 that proposed $76,971,857 in funding for MO HealthNet expansion through Section 10.235—*i.e.*, half of what the Governor recommended in HB 10 for the Expansion—but the amendment also failed. D17, pp. 5-6; D26; D27.

On the floor of the Senate, Senator Rizzo offered amendments to House Bill 10 that would have inserted a line titled Section 10.237 to provide $153,943,714 in total funding—*i.e.*, the Governor's recommendation for MO HealthNet Expansion in HB 10—"[f]or

expenditures related to Section 36(c) of Article IV of the Missouri Constitution," but they failed. House Bill 10 was passed and delivered to the Governor without Senator Rizzo's amendments. Senator Rizzo voted against the truly agreed version of House Bill 10. D17, p. 6; D28, pp. 5-6.

3. Attempts to fund Expansion in House Bill 11 were defeated.

During the 2021 legislative session, the General Assembly passed House Bill 11 (2021), appropriating funds for the Department of Social Services, which administers most Medicaid services. D17 p. 6; D29. According to official budget documents from the Office of Administration, Division of Budget and Planning, for FY 2022, the Governor of Missouri recommended a total of $1,737,779,895 in funding in various Sections in House Bill 11—including $1,571,198,598 in Section 11.820—for MO HealthNet expansion, but $0 was "Truly Agreed, Finally Passed." D17 p. 6; D30.

On the floor of the House, Representative Unsicker offered an amendment to House Bill 11 that would have inserted a line titled Section 11.2022 into HB 11, providing that federal American Rescue Plan Act funds would be only used for Medicaid Expansion. D17 pp. 8-9. This amendment failed, and House Bill 11 was passed without it. *Id.*; D22 pp. 9-10, 13.

Before the Senate Appropriations Committee, Senator Hough offered an amendment to House Bill 11 that proposed $785,599,299 in funding for MO HealthNet expansion through Section 11.820—*i.e.*, half of what the Governor recommended for Medicaid Expansion—but the amendment failed. D17 p. 9; D26; D27. Thus, House Bill

11 left the Senate Appropriations Committee without Senator Hough's proposed amendment.

On the floor of the Senate, Senator Rizzo offered amendments to House Bill 11 that would have inserted a line titled Section 11.820 to provide $1,571,198,598 in total funding—*i.e.*, the Governor's recommendation for Medicaid Expansion—"[f]or expenditures related to Section 36(c) of Article IV of the Missouri Constitution," but they failed. D17, p. 9. Senator Rizzo voted against the truly agreed version of House Bill 11. House Bill 11 was passed and delivered to the Governor without Senator Rizzo's amendments. *Id.*; D28, pp. 7-9; D32; D33; D23, p. 2.

4. Attempts to fund Expansion in House Bill 20 were defeated.

During the 2021 legislative session, House Bill 20 was introduced. D17, pp. 9-10; D34. House Bill 20 proposed complete funding for MO HealthNet Expansion in three categories: (1) $1,866,135 for the Office of Administration; (2) $153,943,714 for the Department of Mental Health; and (3) a total of $1,737,779,895 for the Department of Social Services. D17, pp. 9-10; D34. These proposed amounts were identical to the Governor's recommendations for MO HealthNet expansion funding in House Bills 5, 10, and 11, respectively. D17, pp. 9-10; D35. House Bill 20 failed in the House Budget Committee. D17, p. 10; D36, p. 2.

In sum, during the 2021 session, the General Assembly considered appropriating funds explicitly designated for Medicaid Expansion in at least four different bills, eight proposed amendments, one House Committee vote, four House floor votes, two Senate Committee votes, and two Senate floor votes. In each case, the proposal under

consideration would have appropriated funds for Medicaid Expansion unambiguously and explicitly. In each case, the proposal was defeated.

At the conclusion of these proceedings, Governor Parson noted that he had supported full funding for Medicaid Expansion, but that "without a revenue source or funding authority from the General Assembly, we are unable to proceed with expansion at this time." D2, ¶ 56 (quoting Governor Parson).

E. Circuit Court Proceedings.

On May 20, 2021, Plaintiffs filed their Petition in this lawsuit, asserting two Counts. D2. Count I alleged that the Department's failure to implement Medicaid Expansion "is unlawful because the Constitution requires Medicaid Expansion to be implemented on July 1, 2021 and there is appropriation authority to implement the program." D2, p. 13. Count II alleged that the Department's failure to implement Medicaid Expansion "is unlawful because DSS and the MO HealthNet Division are not maximizing federal funding as directed by Article IV, Section 36(c)." D2, p. 15. The Petition pled that Medicaid Expansion must be implemented even without an appropriation by the General Assembly: "The Constitutional requirement to expand eligibility for the MO HealthNet program is not subject to appropriation and therefore does not require a specific appropriation by the General Assembly." D2, p. 8 (citing *McNeil-Terry v. Roling*, 142 S.W.3d 828 (Mo. App. 2004)).

In response to these allegations, the State asserted in its Affirmative Defenses that Plaintiffs' claims implied that Amendment 2 conflicts with Article III, § 51, and thus Amendment 2 was never validly adopted. The State's Affirmative Defense 3 stated that

Plaintiffs' allegations "imply that Article IV, Section 36(c) requires the expenditure of funds to implement Medicaid Expansion even without valid appropriations authority from the General Assembly." D9, pp. 18-19. "This interpretation of Article IV, Section 36(c) would render it in conflict with Article III, Section 51, which prohibits the appropriation of funds by initiative petition." *Id.* "Accordingly," the State pled, "Plaintiffs' claims would imply that Article IV, Section 36(c) was invalidly enacted and must be stricken from the Missouri Constitution." *Id.* In addition, in its Affirmative Defense 6, the State pleaded that "Plaintiffs' interpretation [of HB 11] is an impermissible attempt to circumvent bedrock constitutional requirements—including, but not limited to, MO. CONST. art. III, … § 51 (prohibiting appropriations by initiative)." D9, p. 21.

In their trial briefs, Plaintiffs again contended that Amendment 2 mandates appropriations for the Expansion population—and thus conflicts with Article III, § 51. In their Pre-Trial Brief, Plaintiffs argued that "[a]n appropriations bill violates the single-subject rule of Article III, § 23 of the Missouri Constitution if it purports to both appropriate funds and alter existing, generally applicable rules about how MO HealthNet funds may be used." D48, p. 9 n.1 (citing *Planned Parenthood v. Dep't of Social Servs.*, 602 S.W.3d 201, 208-11 (Mo. banc 2020)). Plaintiffs argued that "if Defendants' interpretation of the appropriations bills were correct, then the bills would be unconstitutional. Indeed, doubly so, since the generally applicable law that the appropriations bills seek to amend is the Constitution, something that the General Assembly cannot amend on its own." *Id.* They asserted that Defendants' interpretation of the appropriation bills thus raised "glaring constitutional problems." *Id.*

In its Pre-Trial Brief, the State argued that "the Court should reject Plaintiffs' interpretation because it constitutes a transparent attempt to end-run around the prohibition against appropriations by initiative in Article III, § 51 of the Constitution." D49, p. 31. "[O]n Plaintiffs' view, Amendment 2 still ends up mandating that the General Assembly appropriate additional funds for Medicaid—it just does so indirectly, by a two-step process. This interpretation still violates Article III, § 51." D49, p. 31. "Plaintiffs' theory, therefore, would imply that Amendment 2 was invalidly adopted." D49, p. 32. "Plaintiffs' argument that Amendment 2 requires the Department to implement Medicaid Expansion even without appropriation authority is self-defeating, because it implies that Amendment 2 was never validly adopted in the first place." D49, p. 32.

Likewise, Plaintiffs' pre-trial Reply Brief repeatedly argued that, if HB 11 did *not* include appropriations for services to the Adult Expansion Group, then it would be unconstitutional under the single-subject rule of *Planned Parenthood v. Department of Social Services*, 602 S.W.3d at 211. D60, pp. 2, 4, 5, 6. In the State's pre-trial Reply Brief, the State argued that "Plaintiffs' Argument Implies that Amendment 2 Was Never Validly Adopted." D61, p. 11 (heading D). And the State argued, "Plaintiffs' argument is also inherently self-defeating, because it entails that Amendment 2 was never validly enacted in the Missouri Constitution." *Id.* "Plaintiffs' argument entails that Amendment 2 requires the appropriation of funds by "practical necessity," *City of Kansas City, Missouri v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014)." *Id.* at 12. "[U]nder Plaintiffs' logic, Amendment 2 violated Article III, § 51, and Amendment 2 was never validly adopted in

the first place. The Court should avoid this transparent attempt to end-run around Article III, § 51." D61, p. 12.

At trial, Plaintiffs led their argument by asserting that *Planned Parenthood v. Department of Social Services* required the Legislature to appropriate funds to serve the Expansion population. Tr. 4. They repeatedly argued to the trial court that, under *Planned Parenthood*, the Legislature was required to fund services for the Expansion population if it funded Medicaid at all. Tr. 7, 8, 12, 14, 38, 40, 42. In response to a direct question from the Court, Plaintiffs' counsel confirmed that, on their view, "unless [the Legislature] choose[s] not to fund Medicaid, … there is nothing they can do; if they are going to fund Medicaid, they are going to fund this eligible population." Tr. 50. Plaintiffs' counsel responded: "Yes, that is right. … If they are going to fund Medicaid, this population has to be included." Tr. 50-51. The State countered by pointing out that, if Plaintiffs were correct, then Amendment 2 conflicts with Article III, § 51 and it was never validly enacted in the first place. Tr. 33. Thus, Plaintiffs' argument was "self-defeat[ing]," and the State urged the Court to reject it. Tr. 51.

At no point during the trial court proceedings did Plaintiffs attempt to explain or distinguish the irreconcilable conflict that their arguments created between Amendment 2 and Article III, § 51. Plaintiffs repeatedly argued that *Planned Parenthood* mandated that the Legislature appropriate funds for Medicaid Expansion, but they never addressed the State's counterargument—presented in its Affirmative Defenses 3 and 6, its opening brief, its reply brief, and oral argument—that their argument directly entails that Amendment 2

is invalid. Plaintiffs ignored the logical consequences of their reliance on *Planned Parenthood*.

F. The Circuit Court's Judgment Invalidates Amendment 2.

On June 23, 2021, the Court entered its final judgment in this case. D63. The Court held that "Amendment 2 indirectly requires the appropriation of revenues not created by the initiative and is therefore unconstitutional under Article III, section 51 of the Missouri Constitution." D63, at 5. The Court agreed with Plaintiffs that, under *Planned Parenthood v. Department of Social Services*, Amendment 2 requires the General Assembly to appropriate funds for Medicaid Expansion: "Existing case law makes it excruciatingly clear that the General Assembly cannot, via the appropriations process, exclude the class of eligibles created by Amendment 2 and the subsequent payment of benefits to them." D63, at 2. And the Court agreed with the State that this logic leads inexorably to the conclusion that Amendment 2 was adopted in violation of Article III, § 51: "The Missouri Supreme Court in *City of Kansas City v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014), tells us that '[w]hat is prohibited is an initiative that, either expressly or through **practical necessity** requires the appropriation of funds to cover the costs associated with the [initiative] proposal." D63, at 3-4 (emphasis and alterations added by circuit court). "Amendment 2 does just that which is prohibited." D63, at 4.

The circuit court noted that an initiative that violates the procedural limitations on the adoption of amendments to the Constitution, such as Article III, § 51, was never validly enacted in the first place: "an initiative which does not comply with the limits of the constitution cannot stand." D63, p. 1. And the circuit court held that the Court of Appeals

in *Cady v. Ashcroft* had left open the question whether Amendment 2 would be held unconstitutional in post-enactment litigation, quoting *Cady*'s statement that "the circuit court properly rejected the invitation to 'delve into the hypothetical interaction between the [Proposed Measure] (if passed), Missouri appropriations law, and substantive Medicaid law,' and that 'such review is appropriate only *after* the election should the Proposed Measure pass.'" D63, at 3 (quoting *Cady*, 606 S.W.3d at 667).

The circuit court noted that Plaintiffs' interpretation clearly required the General Assembly to appropriate funds to finance Medicaid Expansion. "As Plaintiffs readily admitted at argument, under existing law, the choice of the General Assembly is either to fund the expansion **or** not have a Medicaid program at all. … Amendment 2 does direct or restrict the General Assembly's ability to change the appropriation. This result cannot be harmonized to avoid striking down the initiative." D63, at 5. The court reasoned that even de-funding Medicaid completely would violate the plain language of Amendment 2: "Were there no Medicaid program currently funded, Amendment 2 would require the creation of one for its beneficiaries. It clearly provides that adults between the ages of 19 and 65 with income at or below the 135% of poverty level "**shall** be eligible for medical assistance under MO HealthNet and **shall** receive coverage for the health benefits package." D63, at 4 (quoting MO. CONST. art. IV, § 36(c)) (emphasis added by circuit court).

The circuit court also noted that Plaintiffs were, in practical effect, requesting that the court order a supplemental appropriation to fund Medicaid Expansion: "The Plaintiffs admit that a supplemental appropriation would be required to fully fund expansion and implicitly request (in their proposed judgment at page 9) such an appropriation when they

ask this Court to order that 'plaintiffs and similarly situated individuals shall be provided MO HealthNet benefits described in Article IV, Section 36(c) beginning July 1, 2021.'" D63, p. 4. "The Court lacks authority to order such relief as the legal effect would be a court ordered appropriation." *Id.*

Accordingly, the circuit court concluded that Amendment 2 conflicted with Article III, § 51 and was therefore invalid: "The non-appropriation language in Article III, section 51 of the Missouri Constitution provides that the people, by initiative, may only spend or appropriate the revenues that they raise in the initiative. If the Court allows them to spend other state revenues by initiative, such action would deprive the General Assembly of its constitutional right to appropriate revenues in all other non-initiative circumstances." D63, at 4-5.

Plaintiffs timely appealed.

ARGUMENT

I. Plaintiffs' Reliance on *Planned Parenthood v. Department of Social Services* Creates an Irreconcilable Conflict Between Amendment 2 and Article III, § 51. The Court Should Resolve That Conflict, and Preserve the Validity of Amendment 2, by Overruling *Planned Parenthood*. (Responds to Appellants' First Point Relied On)

This case compels the Court to address the "irreconcilable conflict," *Comm. for a Healthy Future*, 201 S.W.3d at 510, that the circuit court discerned between Amendment 2 and Article III, § 51 of the Constitution. The linchpin of this conflict is this Court's recent decision in *Planned Parenthood v. Department of Social Services*, 602 S.W.3d 201 (Mo. banc 2020), which applied a broad reading of the single-subject rule for appropriation bills to invalidate a provision restricting funding for abortion facilities and their affiliates. *Id.* at 211. The circuit court held that *Planned Parenthood* makes it "excruciatingly clear" that the General Assembly cannot refuse to appropriate funds to fund Medicaid Expansion, D63, p. 2, and thus Amendment 2 mandates appropriations "through practical necessity" and is invalid under Article III, § 51. *Chastain*, 420 S.W.3d at 555.

This conflict is real, and it stubbornly resists Plaintiffs' belated attempts to explain it away. The State respectfully submits that the best way to resolve this conflict, and to preserve the validity of Article IV, § 36(c), is for the Court to revisit and overrule the overbroad reading of the single-subject rule for appropriation bills that the Court applied in *Planned Parenthood*. The Court should clarify that, consistent with the plain language of Article III, § 23, an appropriation bill may decline to appropriate money even when apparently directed to do so by a previously enacted general statute (or, as here, a constitutional provision), and that an appropriation bill does not violate the single-subject

rule as long as it "embrace[s] the various subjects and accounts for which moneys are appropriated." MO. CONST. art. III, § 23; *see also Planned Parenthood*, 602 S.W.3d at 213-14 (Fischer, J., dissenting).

Standard of Review. The validity of Amendment 2 presents a question of law that this Court reviews *de novo*. *See Holmes v. Steelman*, No. SC97983, 2021 WL 2445785 (Mo. banc June 15, 2021), at *2.

A. Plaintiffs' Argument That *Planned Parenthood* Compels the General Assembly to Appropriate Funds for Medicaid Expansion Creates an Irreconcilable Conflict Between Amendment 2 and Article III, § 51.

Article III, § 51 of the Constitution provides that "[t]he initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby." MO. CONST. art. III, § 51. Under Article III, § 51, "[w]hat is prohibited is an initiative that either expressly or through practical necessity, requires the appropriation of funds to cover the costs associated with the [proposal]." *Chastain*, 420 S.W.3d at 555. Where "the practical operation" of the proposal "has the same effect as if read that a sum necessary to carry out its provisions … shall stand appropriated," that practical operation "yield[s] a violation of article III, section 51." *Id.* at 556. To be valid under Article III, § 51, the initiative proposal must "impose[] no unfunded financial obligations" on the legislature "either expressly or through practical necessity." *Id.*

Here, Plaintiffs' reliance on *Planned Parenthood* would entail that Amendment 2 forces the Legislature to appropriate funds for Medicaid Expansion, at least "through practical necessity." *Id.* In the trial court, Plaintiffs' argument was extremely clear on this point, at every stage of the proceedings. In their opening brief, they contended that any

interpretation of HB 11 that declined to fund Medicaid Expansion would raise "glaring constitutional problems" under *Planned Parenthood*. D48, p. 9 n.1. They made the same argument, repeatedly, in their pre-trial reply brief. D60, at 2, 4, 5, 6. At oral argument, in response to the court's question, their counsel made clear that, on Plaintiffs' view, the Legislature's *only* options are to appropriate funds for the Expansion population or cancel the State's entire Medicaid program: "Yes, that is right … ***If they are going to fund Medicaid, this population has to be included***." Tr. 50-51 (emphasis added); *see also* Tr. 51 ("[I]f you are going to fund Medicaid, it now includes a population that is specified in the constitution."). But Plaintiffs never addressed the State's repeated observation that their logic entailed that Amendment 2 was in irreconcilable conflict with Article III, § 51, and thus was never validly enacted. *See id.* ("[T]heir argument is self defeat[ing]. If that is true, [Amendment 2] didn't get validly enacted. [That] can't be right.").

Persuaded by Plaintiffs' argument, the circuit court held that "[e]xisting case law makes it excruciatingly clear that the General Assembly cannot, via the appropriations process, exclude the class of eligible created by Amendment 2 and the subsequent payment of Medicaid benefits to them." D63, at 2. Plaintiffs overlooked the next logical step, but the circuit court did not: If the Legislature's only options are to fund the Expansion population or de-fund the State's entire Medicaid program, then "the practical operation of" Amendment 2 is to impose "unfunded financial obligations" on the State "through practical necessity," *Chastain*, 420 S.W.3d at 556—which entails that Amendment 2 was never validly enacted. *See* MO. CONST. art. III, § 51; D63, at 2-5.

Nor do Plaintiffs retreat from their position on appeal, even though it is a poison pill that destroys Amendment 2. Their opening brief argues that the Legislature was required under *Planned Parenthood* to appropriate funds for the Expansion population. *See* App. Br. 2 ("Nor can the General Assembly, by appropriation, change that substantive law…."); *id.* at 4 ("[A]ccording to *Planned Parenthood v. Department of Social Services*, 602 S.W.3d 201 (Mo. banc 2020), it is impermissible to do what the State claims to have done—use an appropriation measure to amend substantive law."); *see also id.* at 14. Indeed, they dedicate an entire section of their brief to this argument, and it is the centerpiece of their statutory-interpretation discussion in their second Point Relied On. App. Br. 41-45.

B. Plaintiffs' Attempts to Explain Away the Irreconcilable Conflict They Have Created Between Amendment 2 and Article III, § 51 Are Unconvincing.

For the first time on appeal, Plaintiffs offer a series of arguments in attempt to resolve the "irreconcilable conflict" they have created between Amendment 2 and Article III, § 51. *Comm. for Healthy Future*, 201 S.W.3d at 510. These arguments lack merit.

1. The State repeatedly raised this issue in the trial court.

First, Plaintiffs fault the circuit court for supposedly addressing "a constitutional question not advanced by the parties" in the trial court. App. Br. 3. They argue that the validity of Amendment 2 is "an issue … on which there was no briefing or discussion below." App. Br. 16. These statements are incorrect. To be sure, Plaintiffs ignored the logical consequences of their steadfast reliance on *Planned Parenthood* in the court below, but the State did not. The State repeatedly pointed out, at every stage of the lower-court proceeding, that if Plaintiffs were right about the *Planned Parenthood* decision, their

arguments entailed that Amendment 2 violated Article III, § 51 and was not validly enacted. The State raised this issue in its responsive pleading in Affirmative Defenses 3 and 6, in its opening trial brief, in its reply brief, and repeatedly at oral argument in the circuit court—including in its very last statement to the court. Tr. 51:12-23. As the circuit court correctly recognized, in addressing the validity of Amendment 2, the court was "consider[ing] the State's argument that this is an 'end-run' around the requirements of Article III, section 51 of the Missouri Constitution," D63, at 2.

2. Funding the State's Medicaid program is a "practical necessity."

Second, Plaintiffs contend that, even under their reading of *Planned Parenthood*, Amendment 2 does not actually restrict the General Assembly's authority over appropriations. For example, they argue that "[t]he General Assembly may choose to fund the MO HealthNet program robustly, partially, or not at all, but it may not use appropriations bills to change the substantive laws governing eligibility," App. Br. 4, and that "[n]othing about establishing a new eligibility category for the MO HealthNet program requires an appropriation." App. Br. 19; *see also id.* at 25, 26, 27, 28, 29 (repeating the same argument in various ways).

Their brief, however, makes clear that they have not retreated from their pellucid position in the trial court—that under Amendment 2, if the Legislature appropriates a single dollar for Medicaid services, a portion of that dollar *must* be allocated to services for the Expansion population. It remains Plaintiffs' view that, if the Legislature wants to refuse to fund Medicaid Expansion, its only constitutional option is to de-fund the State's entire Medicaid program. *See* App. Br. 21 ("But it is still within the general purview of the

General Assembly to appropriate and authorize disbursement of funds for MO HealthNet—*or not*."); *see also id.* ("In fact, the decision *to appropriate for the MO HealthNet program* 'was presumably one of the thousands of difficult decision[s] made each year during the appropriations process.'") (quoting *Planned Parenthood*, 602 S.W.3d at 211) (both emphases added). Their brief states: "There are only two options—either the language of the appropriations bills prohibit the use of funds for the new population, which would unconstitutionally amend Article IV, § 36(c), *or* the language permits the use of such funds." App. Br. 43 (italics in original). They asserted the same argument, with admirable clarity, in the trial court. *See* Tr. 50:15-51:11. Proposed Intervenors, moreover, make exactly the same argument, with equal clarity: "The General Assembly retains the discretion not to appropriate any additional funds for the Medicaid program. Granted, *this may result in the termination of the Medicaid program*, but that choice rests with the General Assembly, not the trial court." Br. of Intervenors, at 21 (emphasis added). Thus, both Plaintiffs and Proposed Intervenors clearly argue that the Legislature has two options only: (1) appropriate funds for Medicaid Expansion, or (2) de-fund the State's entire Medicaid program.

On Plaintiffs' argument, therefore, under Amendment 2, the General Assembly *must* fund Medicaid Expansion if it provides *any* funding for Medicaid. *Id.* This argument obviously entails that Amendment 2 requires an appropriation "through practical necessity." *Chastain*, 420 S.W.3d at 555. As Plaintiffs and the State agreed in the trial court, and as the circuit court held, the State cannot simply de-fund its Medicaid program overnight. Even setting aside the massive practical disruptions such a sudden and dramatic

change would surely cause, such a decision would violate federal law. As the Court of Appeals noted in *McNeil-Terry v. Roling*, 142 S.W.3d 828 (Mo. App. E.D. 2004)—a case frequently cited by Plaintiffs—defunding entire classes of services "conflicts with the federal Medicaid regulation." 142 S.W.3d at 834. As Plaintiffs stated in the trial court, "the federal government might have a problem with that," *i.e.*, defunding Medicaid services. Tr. 38.

Indeed, the U.S. Supreme Court's statements in *NFIB* are particularly instructive here. In that case, the Court held that threatening the cancellation of States' Medicaid programs was "a gun to the head" that left States with no practical option but to acquiesce. *Id.* at 581. The Court noted that "the States have developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid," making it virtually impossible to cancel their programs overnight. *Id.* Thus, the Court held that threatening to cancel a State's Medicaid program "is economic dragooning that leaves States with no real option but to acquiesce in the Medicaid expansion." *Id.* at 582. In the words of *NFIB*, Plaintiffs' suggestion that the Legislature has the option of not funding Medicaid at all is "no real option." *Id.* If the Legislature's only choices under Amendment 2 are to fund Medicaid Expansion or de-fund the State's entire, longstanding Medicaid program, then Amendment 2 plainly mandates appropriations "through practical necessity."

In any event, Plaintiffs' position suffers from a more fundamental problem. Their argument that the Legislature has the option of defunding Medicaid entirely contradicts their own interpretation of Amendment 2. *See* MO. CONST. art. IV, § 36(c). As the circuit

court held: "Were there no Medicaid program currently funded, Amendment 2 would require the creation of one for its beneficiaries. It clearly provides that adults between the ages of 19 and 65 with income at or below the 135% of poverty level '**shall** be eligible for medical assistance under MO HealthNet and **shall** receive coverage for the health benefits package." D63, at 4 (quoting MO. CONST. art. IV, § 36(c)) (emphasis added by the circuit court). This statement fully accords with Plaintiffs' interpretation of Amendment 2 as mandating funding for coverage. On Plaintiffs' interpretation, the mandate for eligibility includes a mandate for funding. Thus, on their view, Amendment 2 mandates the creation of a Medicaid program, at least for the Adult Expansion Group, and then mandates that the Legislature fund it, on pain of violating the single-subject rule. It is hard to imagine a clearer "practical necessity" of appropriating funds for Medicaid Expansion under Plaintiffs' interpretation of the single-subject rule.

Plaintiffs also argue that "the relevant inquiry in the Section 51 context is whether the legislature retains discretion over appropriations, not whether full implementation of the initiative would involve any expenditures." App. Br. 26. Indeed, this Court's cases discuss Article III, § 51 as requiring that the initiative preserve the legislative body's discretion over appropriations. But Plaintiffs' argument fares even worse on this formulation of the test. As noted above, they contend that *any* appropriation for Medicaid services *must* include money for the Expansion population: "If they are going to fund Medicaid, this population has to be included." Tr. 51. Thus, under Plaintiffs' argument, Amendment 2 does not "leave[] the legislature's discretion over appropriations fully intact," App. Br. 27, because it restricts the legislature's discretion in the most critical and

fundamental way—it requires the Legislature to fund Medicaid Expansion if Missouri is to have a Medicaid program *at all*.

Finally, Plaintiffs' statutory-interpretation argument violates the "practical necessity" test as well. Under their view of the statute, Amendment 2 still ends up mandating that the General Assembly appropriate additional funds for Medicaid—it just does so indirectly, by a two-step process. But under Article III, § 51, "[w]hat is prohibited is an initiative that, either expressly or through practical necessity, requires the appropriation of funds to cover the costs associated with the ordinance." *Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014) (emphasis added). Here, if Plaintiffs' interpretation of HB 10 and HB 11 is correct, then Amendment 2 will require a supplemental appropriation of approximately $2 billion for Medicaid services sometime in the middle of the year "through practical necessity." *Id.*; *see also* D63, at 4 (circuit court holding that "Plaintiffs admit that a supplemental appropriation would be required to fully fund expansion and implicitly request … such an appropriation"). Plaintiffs' statutory-interpretation argument, like their constitutional argument, implies that Amendment 2 was invalidly adopted in violation of Article III, § 51.

In sum, Plaintiffs' attempt to argue on appeal that Amendment 2 preserves the Legislature's plenary discretion over appropriations is unconvincing. On their view, the Legislature is obligated by Amendment 2 to appropriate funds for Medicaid Expansion. Thus, they create a direct conflict with Article III, § 51.

3. *Cady* does not dictate the outcome of this case.

Plaintiffs also argue that the legal and practical effects of Amendment 2 were already decided by the Court of Appeals in *Cady*, and thus this Court need not revisit these issues. App. Br. 16-18. This argument fails for three reasons.

First, *Cady* was a decision of the Court of Appeals that does not bind this Court. This Court may make its own determination about the "practical effect" of Amendment 2 and its validity.

Second, *Cady* emphasized that it addressed only the limited standard for *pre-enactment* challenges under Article III, § 51, which considers only whether "the face of the [Proposed Measure] … clearly and unavoidably purports to appropriate previously existing funds." *Cady*, 606 S.W.3d at 667 (quoting *Boeving*, 496 S.W.3d at 510-11). As noted above, *Cady* held that the circuit court "properly rejected [the challengers'] invitation to 'delve into the hypothetical interaction between the [Proposed Measure] (if passed), Missouri appropriations law, and substantive Medicaid law' and adjudicate their article III, section 51 challenges on the merits." *Id.* at 667. Rather, *Cady* noted, *Boeving* and other cases "make clear that such review is appropriate only *after* the election, should the Proposed Measure pass." *Id.* (emphasis in original). Thus, *Cady* declined to reach the issue whether Amendment 2 mandates appropriations "through practical necessity." *See also* D63, at 2 ("This issue was not resolved in *Cady*…").

Third, if *Cady* decided this issue, it did so adversely to Plaintiffs' arguments here. Based on the face of Amendment 2, and at the urging of the same lawyers who represent Plaintiffs here, *Cady* held that Amendment 2 did *not* impose any limitations (at least facially) on the Legislature's discretion over Medicaid appropriations: "Funding for the

Missouri Medicaid program, MO HealthNet, is appropriated annually by the General Assembly. The Proposed Measure does not direct or restrict the General Assembly's ability to change the amount of appropriations for the MO HealthNet program or to increase or decrease funding for the program based on health-care-related costs." *Cady*, 606 S.W.3d at 668. If Amendment 2 did "direct or restrict" the General Assembly's authority over appropriations, *Cady* reasoned, that would place Amendment 2 in "irreconcilable conflict" with Article III, § 51. *Id.* at 669 (quoting *Comm. for a Healthy Future*, 201 S.W.3d at 510). Both of these points contradict Plaintiffs' arguments here. Here, Plaintiffs argue that Amendment 2 does "direct or restrict" what the General Assembly can do with appropriations for Medicaid—it must fund Medicaid Expansion if it appropriates any money for Medicaid at all. And this significant restriction, as urged by Plaintiffs, places Amendment 2 in "irreconcilable conflict" with Article III, § 51. *Id.* Thus, if it were true that "*Cady* … governs this case" as Plaintiffs contend, App. Br. 17, *Cady* would be fatal to their arguments.

4. The constitutional convention debates about Article III, § 51 do not support Plaintiffs' argument.

For the first time on appeal, Plaintiffs argue that statements in the debates at the constitutional convention of 1943-44 support a much narrower reading of Article III, § 51 than this Court has long adopted. *See* App. Br. 31-35. This argument lacks merit.

First, as Plaintiffs concede, this artificially narrow interpretation of Article III, § 51 contradicts the test that this Court has long adopted. Plaintiffs concede that "[t]he Court has interpreted this provision to prohibit 'an initiative that, either expressly or *through*

practical necessity, requires the appropriation of funds.'" App. Br. 24 (quoting *Chastain*, 420 S.W.3d at 555) (emphasis added). In many cases, the Court has reiterated that the provision considers whether the practical effect of the initiative mandates an appropriation, not just whether it appropriates funds on its face. *See, e.g., Boeving v. Kander*, 496 S.W.3d 498, 510 n.6 (Mo. banc 2016) (noting that pre-election challenges had been successful "where the evident purpose and effect of the proposal was to impose a new obligation leaving no discretion as to whether would or could pay this new obligation"); *State ex rel. Card v. Kaufman*, 517 S.W.2d 78, 80 (Mo. 1974) ("While the proposed amendment does not in terms and in and of itself appropriate the money necessary to pay the compensation it mandates, it leaves no discretion to the city manager or the city council and in effect is an appropriation measure…. The proposed amendment has the same effect as if it read that sums necessary to carry out its provisions stand appropriated."); *Kansas City v. McGee*, 269 S.W.2d 662, 666 (Mo. 1954) ("It is true that the proposed ordinance does not in and of itself appropriate the money to carry out the pension plan but it does not leave any discretion to the City Council…. The ordinance has the same effect as if it read that a sum necessary to carry out its provisions as certified by the trustees shall stand appropriated…"). Indeed, *McGee*, which was decided within a decade after the debates cited by Plaintiffs, held that an initiative that "has the same effect" as ordering that funds "shall stand appropriated" violates "the plain mandate of Sec. 51 of the Constitution." *McGee*, 269 S.W.2d at 666.

In any event, the debates at the constitutional convention support this Court's longstanding interpretation of Article III, § 51, not Plaintiffs' novel interpretation. "The

policy underlying the constitutional appropriations requirement is that each legislature must have discretion to respond to the financial needs of the times." *State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 278 (Mo. App. 2010). The constitutional debates reflect this concern, which directly supports this Court's "practical necessity" test.

The debates demonstrate that the convention as a whole was acting to ensure that the initiative process did not infringe on the legislature's exclusive responsibility over the public fisc by requiring appropriations of money either expressly or through practical necessity and endanger the fisc by adopting unfunded mandates. During the debate over Article III, Section 51, Mr. McReynolds stated that the appropriation of money by initiative raised "extreme difficulty" because, unlike the legislature, "the people have no opportunity in connection with that vote to appraise or definitely deal with the problem of the whole state budget, and that's one of the reasons why, from the inception, it has seemed to me a very serious question whether you could properly safeguard that situation." 2 DEBATES OF THE MISSOURI CONSTITUTION, pp. 485-86.

As he stated:

> It isn't a problem of not trusting the people. The problem is that the people lack the information to enable them to form a satisfactory or intelligent judgement and there's no opportunity for them to inform themselves upon the intricate problem of state finance that your committee come down here and study for three or four or five, six months of an Assembly. They must weigh the sources of revenue. They have before them the budgets that have been prepared. They determine the requirements as to expenditures. They check up and find out whether the appropriations can be made within the range of the estimates which are submitted to them.
>
> * * *
>
> Now, we find ourselves in the situation where we are considering the intricate problem of state finance. We have a budget of one hundred million dollars per year. That's gone over by the Budget Commission, it is gone over by the government.

> Those estimates that go to the Legislature, they are considered by the appropriation committees in both houses and each of the four considerations always takes into account the question of how much money will be available. Now, inevitably, you must protect the sources of your revenue and when you make it possible to disturb or destroy those sources by intervening forces from the outside, you're endangering the whole scheme of your public financial situation in the state[.]

Id. (emphasis added).

Moreover, Plaintiffs reading of Mr. Phillips' comments at the convention is far too narrow. His comments, viewed in context, actually support this Court's longstanding view that Article III, § 51 prohibits appropriations by practical necessity. Mr. Phillips explained that the provision was designed to prohibit "a certain sum of given money" from being "set aside year after year and beyond the two years appropriation period for certain purposes" and "that is as far as the Committee felt it should go with respect to directing the funds." *Id.* at 450. Because the provision intended to prohibit the setting aside of money by "the very act of passing an appropriation bill receiving the approval of the Governor," this provision encompasses both an express appropriation and an appropriation by practical necessity. *Id.* at 476.

In sum, Plaintiffs' attempts to explain away the conflict they have created between Amendment 2 and Article III, § 51 are not convincing.

C. The Court Should Resolve the Conflict and Preserve the Validity of Article III, § 36(c) by Overruling the Overbroad Reading of the Single-Subject Rule For Appropriation Bills Adopted in *Planned Parenthood*.

For the reasons stated above, the single-subject rule for appropriation bills adopted in *Planned Parenthood* is the logical linchpin of the conflict between Amendment 2 and Article III, § 51. The Court should resolve this conflict and preserve the validity of

Amendment 2 by overruling *Planned Parenthood* and the overbroad reading of the single-subject rule for appropriation bills that it endorsed.

Overruling *Planned Parenthood* and its interpretation of the single-subject rule will undoubtedly resolve this conflict. Absent Plaintiffs' reliance on that doctrine, Amendment 2 merely creates an *eligibility* category for Medicaid, and leaves the Legislature with unfettered discretion to fund or not fund services for the newly eligible category. This includes the authority to do what the Legislature did here—appropriate funds for the pre-Expansion population, but not the Expansion population, while leaving the constitutional provision creating eligibility fully intact. As Plaintiffs' counsel argued in *Cady*, "'eligibility … is distinct from funding. Who is eligible does not tie precisely to costs or appropriations. … The legislature retains authority to determine how much funding to allocate and does so in an appropriation bill each year." Br. of Respondent-Intervenors Miller and Dominick *in Cady v. Ashcroft*, No. WD83834 (Mo. App. W.D. filed June 5, 2020), at 34. "When the initiative is read in this manner, it does not appropriate funds, by practical necessity or otherwise. The Initiative merely expands eligibility for Medicaid benefits, leaving decisions about how to fund the program to the legislature." *Id.* at 11. Without *Planned Parenthood*'s single-subject rule, the Court can readily harmonize Amendment 2 with Article III, § 51 by concluding that Amendment 2 renders the Adult Expansion Group eligible for Medicaid benefits, while leaving intact the Legislature's plenary discretion over whether to appropriate funds for services for the Expansion population. *See* MO. CONST. art. IV, § 36(c).

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

First, as Judge Fischer's dissent in *Planned Parenthood* compellingly demonstrates, that rule "lacks any textual foundation in the constitution." 602 S.W.3d at 215 (Fischer, J., dissenting). There is no textual single-subject rule for appropriation bills, because Article III, § 23 explicitly "exempts appropriation bills from its purview." *Id.* at 213. It provides: "No bill shall contain more than one subject which shall be clearly expressed in its title, ***except*** … general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated." MO. CONST. art. III, § 23 (emphasis added). The only arguable limitation that Article III, § 23 imposes on appropriation bills is that they "embrace the various subjects and accounts for which moneys are appropriated." *Id.* "When the language of a constitutional provision is clear and unambiguous, this Court has no other duty than to apply the language of the provision as written." *Planned Parenthood*, 602 S.W.3d at 213 (Fischer, J., dissenting) (citing cases).

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

602 S.W.3d at 208 n.7. The other two cases applied the doctrine only in the extremely narrow and distinguishable context of appropriation bills that directly interfered with the salaries of state officials. *State ex rel. Hueller v. Thompson*, 289 S.W. 338, 340-41 (Mo. banc 1926); *State ex rel. Davis v. Smith*, 75 S.W.2d 828, 830 (Mo. banc 1934). Both of those cases could readily have been decided on other grounds, as this Court effectively recognized in its recent decision in *Rebman v. Parson*, 576 S.W.3d 605 (Mo. banc 2019). In the 86 years between *Davis* and *Planned Parenthood*, this Court cited the expanded single-subject doctrine only once, "[t]here generations later," 602 S.W.3d at 207, in *Rolla 31 School District v. State*, 837 S.W.2d 1, 4 (Mo. banc 1992). In other words, in the near-century between the Court's recognition of this doctrine in the 1926 and its 2020 decision in *Planned Parenthood*, the doctrine generated little or no significant reliance.

Third, the expanded single-subject rule recognized in *Planned Parenthood* is inconsistent with the General Assembly's long-recognized, plenary authority over appropriations, as enshrined in Article III, § 36 and Article IV, §§ 23 and 28 of the Constitution. Under *Planned Parenthood*'s logic, a general statute can effectively mandate future appropriations and restrict a future General Assembly's discretion over appropriations, so long as there is a "direct conflict" between the general statute's command to fund, and the future appropriation bill's failure to do so—which is practically always. 602 S.W.3d at 208. *Planned Parenthood* held that, "if [the appropriation provision] is in direct conflict with [the general statutes], then it is an attempt to amend those general statutes and is unconstitutional because [the appropriation bill] contains multiple subjects." *Id.* This doctrine conflicts with an older, more deeply rooted, and more

persuasive line of cases—cited by Plaintiffs here—holding that an earlier General Assembly cannot, by general legislation, bind the hands of a future General Assembly to engage in future acts of appropriation. Most notably, in *State ex rel. Fath v. Henderson*, 60 S.W. 1093 (Mo. 1901), this Court held that, when it comes to future appropriations, "one general assembly cannot tie the hands of its successor." *State ex rel. Fath v. Henderson*, 60 S.W. 1093, 1097 (Mo. banc 1901). The Court of Appeals persuasively summarized and applied this doctrine in *Kansas City Symphony v. State*, 311 S.W.3d 272, 278 (Mo. App. W.D. 2010), which held that a general statute mandating that funds "*shall* be transferred from the general revenue fund to the Missouri arts council trust fund" could not compel a future legislature to appropriate money from the general revenue fund to the arts council trust fund—notwithstanding the clear conflict between the general statute and the later appropriation bill. *Id.* at 278. *Kansas City Symphony* cited *Fath* as holding that "one general assembly cannot tie the hands of its successor," *id.*, and held: "To otherwise interpret the statute as avoiding the appropriations process would render it unconstitutional under article III, section 36. Such an interpretation would also create a perpetual or automatic continuing appropriation … in violation of other constitutional provisions." *Id.* (citing MO. CONST. art. IV, § 23, 28).

The expanded single-subject rule recognized in *Planned Parenthood* conflicts with the General Assembly's authority over appropriations recognized in the century of cases from *Fath* to *Kansas City Symphony*, and it eviscerates that doctrine. Under *Planned Parenthood*, a general statute that compels future appropriations "through practical necessity" can bind the hands of a future General Assembly to make those future

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

To be sure, *Planned Parenthood* indicated that its application of the single-subject rule did not restrain the Legislature's traditional authority over appropriations, because it left open the possibility that the Legislature might choose not to fund physician and family-planning services under Medicaid at all. *Planned Parenthood*, 602 S.W.3d at 211. "Here," *Planned Parenthood* reasoned, "the General Assembly chose to appropriate $400 million" for such services, and thus "*having made this decision*, MO HealthNet is bound by general law … defining what those services are and which providers are entitled to payment for delivering them." *Id.* (emphasis added). This statement was likely incorrect, because as the Court of Appeals noted in *McNeil-Terry*, the Legislature's decision not to fund an entire class of Medicaid services would "conflict[] with the federal Medicaid regulation requiring that 'services … be sufficient in amount, duration, and scope to reasonably achieve its

purpose.'" *McNeil-Terry*, 142 S.W.3d at 834 (quoting 42 C.F.R. § 440.230(b)). So the residual authority over appropriations left to the Legislature by *Planned Parenthood* was largely illusory. Moreover, even if the Legislature had the option of de-funding Medicaid's physician and family-planning services, or (in this case) de-funding *all* Medicaid services, *Planned Parenthood*'s single-subject rule still imposes an extremely significant restriction on the Legislature's authority and discretion over appropriations, as the facts of this case vividly illustrate. This reality places the single-subject rule of *Planned Parenthood*—which lacks any footing in the text of the Constitution—at loggerheads with what *Planned Parenthood* itself aptly described as "bedrock legal principles." 602 S.W.3d at 211.

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

So also here, *Planned Parenthood* represents "the final misdirection" of the line of cases expanding the single-subject rule for appropriation bills, *id.*, and the Court should

overrule it. As long as an appropriation bill "embrace[s] the various subjects and accounts for which moneys are appropriated," it is valid under Article III, § 23. The plain language of the Constitution requires nothing more.

II. The Plain Language of the Appropriation Bills and Every Relevant Principle of Statutory Interpretation Confirm That the General Assembly Did Not Appropriate Funds for Medicaid Expansion in HB 5, HB 10, or HB 11 (Responds to Appellants' Second Point Relied On).

Assuming that the Court holds that Amendment 2 does not mandate that the Legislature appropriate funds for Medicaid Expansion and is therefore valid, the question arises whether the Legislature *actually did* appropriate funds for Medicaid Expansion in the relevant appropriation bills—HB 5, HB 10, and HB 11. This is not a difficult question. The plain language of these appropriation bills and every relevant principle of statutory interpretation confirm what everyone understood at the time—*i.e.*, that the Legislature did not appropriate funds for Medicaid Expansion in its 2021 appropriation bills.

Standard of Review. This issue presents a question of statutory interpretation which this Court reviews *de novo*. *Gross v. Parson*, No. SC98619, 2021 WL 2668318, at *4 (Mo. banc June 29, 2021).

A. The Plain Language of HB 5, HB 10, and HB 11 Makes Clear That the General Assembly Did Not Appropriate Funds for Medicaid Expansion.

Plaintiffs argue that the General Assembly made the momentous decision to fund Medicaid Expansion through the silent, oblique, and indirect method of failing to include explicit language restricting the use of funds for the Adult Expansion Group in individual appropriation line-items for Medicaid services in HB 11. This argument has no merit. The Legislature's intent is clear and manifest from the plain language of the relevant

appropriation bills, and abundant contextual evidence of meaning decisively confirms that intent. The appropriation bills were not intended to, and do not, appropriate funds for Medicaid Expansion.

1. The preambles to the appropriation bills require strict construction of the purposes specified in the bills.

First, the preamble to HB 11 contains specific limiting language that forestalls exactly what Plaintiffs attempt here—*i.e.*, the attempt to discern hidden purposes and broader meanings in the purposes of appropriations. HB 11 provides that appropriated funds are "to be expended only … for the purpose of funding each department, division, agency, fund transfer, and program described herein for the item or items stated, and ***for no other purpose whatsoever***." D29, p. 1 (emphasis added).[1] The same language—"for no other purpose whatsoever"—appears in the preambles of HB 5 and HB 10. D20, p. 1; D24, p. 1. This language adopts a principle of strict construction for the purposes specified in the appropriation bills: unless a purpose is clearly specified in the text of the bill, the bill does *not* authorize expenditures for that purpose. In other words, this language forestalls exactly what Plaintiffs attempt to do here—they attempt to discern much broader, implicit purposes in the appropriation bills than their plain language warrants and the Legislature plainly intended. Thus, their arguments are at loggerheads with the bills' plain language from the outset.

[1] Citations of HB 5, HB 10, HB 11, and HB 20 in this section use the bill's actual page numbering, which is one page lower than the electronically generated page number in the Legal File, because the latter includes "Exhibit" cover page.

2. HB 10 and HB 11 appropriate funds for Medicaid services at the federal matching rate that applies to pre-Expansion Medicaid, not the Expansion population.

Second, HB 10 and HB 11 make clear that they appropriate funds only for the pre-Expansion population, and not for the Adult Expansion Group, by appropriating funds at or very near the 66.36 percent federal matching rate that applies to the pre-Expansion population, and nowhere near the 90 percent federal matching rate that would apply to the Expansion population.

The federal matching rate for Missouri for federal FY 2022 is set forth in federal Medicaid regulations,[2] and it is 66.36 percent. 85 Fed. Reg. 76589. By contrast, the federal matching rate for the Expansion population in 90 percent. *NFIB*, 567 U.S. at 576. Plaintiffs admit that the 90 percent federal matching rate for Medicaid Expansion is very different from the 66.36 percent rate that applies without Expansion: "The federal government funds 90% of the cost of covering this group while most other groups are funded at a significantly lower rate – approximately 65% in Missouri." App. Br. 5 (citing D17, p. 2 ¶ 29).

Thus, if HB 10 and HB 11 had appropriated funds for Medicaid Expansion, one would expect to see those funds appropriated pursuant to the 90/10 federal-state matching percentage—which is exactly what one sees in House Bill 20, the separate bill to fund Medicaid Expansion that failed to pass. See D34, at 2 (to DMH, providing $138 million federal funds out of $153 million total funds for mental-health services, for a federal

[2] The contents of federal regulations "shall be judicially noticed." *Kawin v. Chrysler Corp.*, 636 S.W.2d 40, 44 (Mo. banc 1982); *see also Giddens v. Kansas City S. Ry. Co.,* 29 S.W.3d 813, 821 (Mo. banc 2000) (holding that "such rules and regulations promulgated pursuant to federal statutes may be judicially noticed").

matching rate of 90 percent); *id.* at 5 (to DSS, providing $1.415 billion federal funds out of $1.571 billion total funds, for a federal matching rate of 90 percent).

But the line items appropriating money for Medicaid services in HB 10 and HB 11—the bills that actually passed—do not appropriate federal and state funds at this 90/10 matching rate for the Expansion population. Rather, they appropriate federal and state funds at or very near the matching rate for the *non-Expansion* population. This applies to every single line-item appropriation for Medicaid services that Plaintiffs claim applies to the Expansion population—without exception, they reflect the federal matching rate for *non-Expansion* Medicaid.

For example, Section 11.715 appropriates $176 million in State funds for physician services, and $351 million in federal matching funds—for a total of $527 million and a federal matching rate of 67 percent. D29, at 40. That, of course, closely tracks the federal-state matching rate for physician services the non-Expansion Medicaid population of 66.36 percent. See 85 Fed. Reg. 76589. Likewise, Section 11.700 appropriates $901 million federal funds out of a total of $1.320 billion for pharmaceutical and related services, for a federal matching rate of 68 percent – again, closely tracking the matching rate for the non-Expansion population. *See* D29, at 38-39.

The same is true of all other line items for Medicaid services that Plaintiffs contend apply to the Expansion group. Section 10.815 of HB 10 appropriates funds for Medicaid-covered home health services at or very near the federal matching rate for the non-Expansion population, not the 90 percent federal matching rate that applies to the Expansion population. D24, at 39-40 (§ 10.815) (appropriating $338 million federal and

$162 million state funds, for a federal matching rate of 67.8 percent). Section 11.720 of HB 11 appropriates funds for "dental services under the MO HealthNet fee-for-service program" at a federal matching rate of 66.7 percent. D29, at 41 (appropriating $2.333 million federal funds out of a total of $3.496 million combined federal-state funds, for a federal matching rate of 66.7 percent). Likewise, Section 11.750 appropriates funds for "payments to providers of ground emergency medical transportation" at a federal matching rate of 66 percent, again tracking the non-Expansion matching rate. D29, at 45 (appropriating $55.42 million federal funds out of a combined federal-state total of $83.96 million, for a federal matching rate of 66 percent).

The other Sections of HB 11 cited by Plaintiffs follow the same pattern. Section 11.760 appropriates funds for managed care services at a federal matching rate of 69 percent. D29, at 46 (lines 23-33) (appropriating $619 million in state funds and $1.388 billion in federal funds, for a federal matching rate of 69 percent). Section 11.760 also appropriates funds for Medicare parity payments to primary care physicians at a federal matching rate of 66 percent. *See id.* (lines 34-38) (appropriating $998 thousand in state funds and $1.939 million in federal funds, for a federal matching rate of 66 percent). Section 11.760 appropriates funds for supplemental payments for physician and other healthcare professional services at a federal matching rate of 65.6 percent. *See id.* at 47 (lines 53-55) (appropriating $17.757 million federal funds out of a total of $27.073 million state and federal funds, for a federal matching rate of 65.6 percent). Section 11.765 appropriates funds for "hospital care under the MO HealthNet fee-for-service program" at a federal matching rate of 69.3 percent. *See id.* at 48 (lines 18-21) (appropriating $179

million state funds and $405 million federal funds for a federal matching rate of 69.3 percent). In each case, the appropriation closely tracks[3] the federal matching rate for the non-Expansion population, not the Expansion population.

Plaintiffs argue that Amendment 2 "required 'draw down' of the 90/10 federal match associated with the new eligibility category." App. Br. 7. But HB 10 and HB 11 simply did not "draw down" funds at "the 90/10 federal match associated with the new eligibility category." *Id.* Instead, they appropriated funds at or very near the 66.36 percent rate that applies to the old eligibility categories. This is irrefutable textual evidence that the Legislature did not intend to fund Medicaid Expansion. These provisions show that "[t]he legislature knew how to distinguish between [the pre-Expansion population] and [the Expansion population] and did so in these provisions." *State ex rel. Jones v. Eighmy*, 572 S.W.3d 503, 507 n.4 (Mo. banc 2019).

3. HB 5 did not appropriate any federal matching funds for the necessary information technology costs imposed by Medicaid Expansion.

House Bill 5 provides additional powerful evidence of the Legislature's intent *not* to fund Medicaid Expansion. Expanding Medicaid to include 275,000 new enrollees would entail significant information technology costs that would have to be appropriated to the Office of Administration in House Bill 5. *See* D34, at 2; D4, at 2. If such funds were designated for Medicaid Expansion, the Legislature would be able to appropriate the

[3] Missouri's federal matching rate for the adult non-Expansion population varies slightly from year to year, and the federal fiscal year begins a quarter later than the State fiscal year, resulting in minor variations between the matching rate in the appropriation bills and the precise federal FY2022 matching rate of 66.36 percent.

majority of the information technology costs from federal funds, not state funds. *See* D34, p. 2 (proposing to appropriate $1.399 million federal funds and $466 thousand state funds to the Office of Administration to pay for information technology costs to implement Medicaid Expansion). But HB 5, as enacted by the legislature, did not include *any* federal matching funds in its appropriation to OA for information technology costs to the Department of Social Services. HB 5 included only the general line-item for information technology for DSS in OA's budget, in Section 5.025 of the bill, and that line-item appropriated only *state* funds to OA for DSS's information technology costs—no federal fund at all. D20, p. 8 (lines 104-107) (appropriating $4.462 million in state funds *only* to OA for information technology "for the Department of Social Services"). Thus, HB 5 confirms that the Legislature did not intend to fund Medicaid Expansion, because it did not appropriate any federal matching funds for the necessary information technology costs required to implement the proposed Expansion.

4. Section 11.760 of HB 11 specifically authorizes managed care services for the pre-Expansion population and excludes the Expansion population.

As Plaintiffs pled, before the passage of Amendment 2, "childless adults aged 19 to under 65 years of age were generally not eligible for benefits under the MO HealthNet program unless they were aged, blind, disabled, or pregnant." D2, ¶ 30. Yet, in Section 11.760 of House Bill 11, which appropriates almost $2 billion for Medicaid managed-care services, the General Assembly explicitly authorized managed-care services for the pre-Expansion population—*i.e.*, the aged, blind, disabled, and pregnant—while excluding the Expansion population:

> For payment to comprehensive prepaid health care plans as provided by federal or state law or for payments to programs authorized by the Frail Elderly Demonstration Project Waiver as provided by the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508, Section 4744) and by Section 208.152 (16), RSMo, provided that the department shall implement programs or measures to achieve cost-savings through emergency room services reform, and *further provided that MO HealthNet eligibles described in Section 501(a)(1)(D) of Title V of the Social Security Act may voluntarily enroll in the Managed Care Program, and further provided that the Department shall direct its contracted actuary to develop an[] Aged, Blind, and Disabled rate cell inside the MO HealthNet Managed Care program to reflect the cost of those members choosing to be enrolled in a managed care plan*, and further provided that not more than ten percent (10%) flexibility is allowed between this section and Sections 11.700, 11.715, 11.720, 11.725, 11.730, 11.745, 11.755, 11.760, 11.765, 11.785, 11.800, 11.805, and 11.815, and further provided that not more than one quarter of one percent (0.25%) flexibility is allowed between this section and Sections 11.600 and 11.620[.]

D29, at 47 (emphasis added). Thus, Section 11.760 provides that "MO HealthNet eligibles described in Section 501(a)(1)(D) of Title V of the Social Security Act"—*i.e.*, the pre-Expansion population—"may voluntarily enroll in the Managed Care Program," *id.*, but it does not authorize the Adult Expansion Group to enroll in the Managed Care Program. *Id.* In the very next phrase, Section 11.760 directs the Department to develop a rate cell for the "Aged Blind, and Disabled," *id.*—*i.e.*, the pre-Expansion population—without directing the Department to develop a rate cell for the Expansion population. *See id.*

Words used in legislation are presumed to have been included for a specific purpose, and any interpretation rendering them meaningless or redundant is disfavored. *Sun Aviation, Inc. v. L-3 Commc'ns Avionics Sys., Inc.*, 533 S.W.3d 720, 726 (Mo. banc 2017); *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013) (presumed that "every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language"). If Plaintiffs are correct that, after passage of Amendment 2, all Medicaid-

eligible populations are entitled to benefits and services, then there was no need for the legislature to expressly direct DSS to develop a specific rate cell for pre-Expansion members such as the "Aged, Blind, and Disabled" without also including the new Adult Expansion Group. *See* Basic Health Program; Federal Funding Methodology for Program Year 2022, 85 Fed. Reg. 69525, 69528 (Nov. 3, 2020) ("Each rate cell represents a unique combination of age range (if applicable), geographic area, coverage category (for example, self-only or two-adult coverage through the [Basic Health Program]), household size, and income range as a percentage of [the Federal poverty level], and there is a distinct rate cell for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range.").

5. HB 11 appropriates funds for Medicaid services using language identical to that used in recent appropriation bills for DSS that did *not* fund Medicaid Expansion.

As this Court reaffirmed last week, "to determine a statute's plain and ordinary meaning, the Court looks to a word's usage in the context of the entire statute, and statutes *in pari materia*." *Gross*, 2021 WL 2668318, at *4 (citing *R.M.A. ex rel. Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 429 (Mo. banc 2019)). "Under the doctrine of *in pari materia*, statutes relating to the same subject matter should be construed to achieve a harmonious interpretation." *Roesing v. Dir. of Revenue*, 573 S.W.3d 634, 639 (Mo. banc 2019) (citing *Williams v. State*, 386 S.W.3d 750, 754 (Mo. banc 2012)). HB 11 (2021) relates to the same subject matter—*i.e.*, appropriations for the Department of Social Services—as the recent appropriation bills for DSS from the last two legislative sessions, HB 2011 (2020) and HB 11 (2019). But HB 11 used identical language to appropriate

funds for Medicaid services as was used in those previous appropriation bills for DSS passed in recent years, which did not provide funding for Medicaid expansion. *Compare* D29 (HB 11 (2021), §§ 11.700, 11.715, & 11.760), *with* D39 (HB 11 (2019), §§ 11.630, 11.645, & 11.690), *and* D40 (HB 2011 (2020), §§ 11.700, 11.715, & 11.760). Thus, Plaintiffs are forced to contend that identical language in appropriation bills on the exact same topic had dramatically different meaning in HB 11 (2021), as it had in HB 2011 (2020) and HB 11 (2019). *See Hayes v. Price*, 313 S.W.3d 645, 654 (Mo. banc 2010) (legislative intent may be discerned by reviewing "earlier versions" of the act in question). This violates the doctrine of *in pari materia*.

6. HB 10 and HB 11 did not refer anywhere to the eligibility criteria for the Expansion population or refer to the Adult Expansion Group.

Further, there are well-established phrases that are used to refer to the Expansion population. For example, DSS used such phrases both in its cover letters to CMS and in its proposed State Plan Amendments seeking authorization to implement Medicaid Expansion. *See, e.g.*, D56, at 1, 3, 51, 96, 98-99, 101 ("Adult Expansion Group"); *id.* at 110 (listing separate eligible groups: "Children," "Pregnant Women," and "Adult Expansion Group"); D58, at 108 ("This State Plan Amendment is to establish the eligibility group in Missouri's State Plan for the adult group authorized by section 1902(a)(10(A)(i)(VIII) of the Social Security Act. It is not the intent of this SPA to establish or end any other eligibility groups."); *id.* at 117 ("This State Plan Amendment is to establish the methodology the State will use to determine the appropriate Federal Medical Assistance Percentage (FMAP) rate the State will claim for the adult eligibility

group authorized by section 1902(a)(10)(A)(i)(VIII) of the Social Security Act."); *id.* at 134 ("This proposed amendment allows qualified hospitals to make Medicaid presumptive eligibility determinations for the Adult Expansion Group (AEG) per Article IV Section 36(c) of the Missouri Constitution."). A reasonable reader who wanted to understand whether HB 11 had authorized funding for the Expansion population would expect to see such phrases in HB 11, but they are not there. *See Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997) (interpreting a bill's title by asking what "a reasonable person reading the title would understand," and what a "reasonable reader" would gather from it).

Likewise, Article IV, § 36(c) uses specific and detailed language to identify the Expansion population by its eligibility criteria. *See* MO. CONST. art. IV, § 36(c). But HB 10 and HB 11 include no language referring to the eligibility criteria for the Expansion population. A "reasonable reader" would expect to see such language in a bill authorizing funding for the Expansion population, but it is not there. *Fust*, 947 S.W.2d at 429.

Furthermore, in this case, the Court does not have to speculate as to how reasonable readers *would* have understood HB 11, because there is overwhelming evidence of how they actually *did* understand HB 11. Powerful evidence of HB 11's plain and ordinary meaning arises from the fact that key participants in the legislative process uniformly understood that HB 11 had not provided funding for Medicaid Expansion at the time of its enactment. Perhaps most notably, Governor Parson, who had advocated in favor of funding Medicaid Expansion, clearly understood that HB 10 and HB 11 had not funded Medicaid Expansion. After the budget was passed, Governor Parson noted that he had supported Medicaid Expansion, but that "without a revenue source or funding authority

from the General Assembly, we are unable to proceed with expansion at this time." D2, ¶ 56 (quoting Governor Parson).

7. HB 10 and HB 11 appropriated funds for Medicaid services in amounts matching the budget requests for *non*-Expansion Medicaid.

When interpreting a statute, the court should consider the "circumstances and conditions" surrounding the statute's enactment to elucidate the legislature's meaning. "Insight into the legislature's object can be gained by identifying the problems sought to be remedied and the circumstances and conditions existing at the time of the enactment." *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 381 (Mo. banc 2014) (citation omitted) (quoting *Bachtel v. Miller County Nursing Home Dist.*, 110 S.W.3d 799, 801 (Mo. banc 2003); *see also* Matthew Davis, *Statutory Interpretation in Missouri*, 81 MO. L. REV. 1127, 1129–30 (2016) ("[N]on-textual evidence such as … the general circumstances surrounding the enactment of a statute … may also be used to shed light on legislative intent."); *id.* at n.14 (collecting cases). Here, the "circumstances and conditions" surrounding the enactment of HB 10 and HB 11 include the Governor's and the Department's specific budget requests for MO HealthNet. The Governor submitted separate budget requests for ordinary Medicaid and for the Medicaid Expansion population. *Compare* D30 ("Medicaid Expansion"), *with* D31 (funding for Sections 11.700, .715, & .760, none of which include "Medicaid Expansion"). In particular, the Governor requested a total of $1,628,387,090 in funding for Section 11.700 of House Bill 11; a total of $623,031,520 in funding for Section 11.715 of House Bill 11; and a total of $2,156,414,569 in funding for Section 11.760 of House Bill 11. D17, at 7 (Stip. ¶¶ 55, 59,

& 63). The General Assembly appropriated a total of $1,541,810,855 in funding for Section 11.700 (*id.* ¶ 57); a total of $622,147,599 in funding for Section 11.715 (*id.* ¶ 61); and a total of $2,039,148,026 in funding for Section 11.760 (*id.* ¶ 65). These appropriated amounts closely match the Governor's and the Department's budget requests for Medicaid *without* the Expansion population. This context provides additional, powerful evidence of HB 11's plain meaning—that the Legislature did not intend to appropriate funds for Medicaid Expansion.

8. On Plaintiffs' interpretation, the Legislature dramatically underfunded Medicaid services for all Medicaid recipients in the exact amount that would have been required to fund services for the Expansion population.

In addition, to accept Plaintiffs' interpretation, one would have to believe that the Legislature massively underfunded MO HealthNet in HB 11, by providing almost exactly what the Governor and the Department requested for MO HealthNet *without* Expansion, but silently allocating it to both the non-Expansion and the Expansion populations. If Plaintiffs' interpretation is correct, the Legislature underfunded Medicaid for the upcoming fiscal year by almost $2 billion. But this drastic underfunding would also *violate federal Medicaid regulations*. Those regulations require "actuarial soundness" in the funding of Medicaid services. 42 C.F.R. § 438.3(a). "Actuarially sound capitation rates are projected to provide for all reasonable, appropriate, and attainable costs that are required under the terms of the contract…" *Id.* Underfunding managed care services by over a billion dollars, for example, would not result in actuarially sound reimbursement rates and would be illegal under those regulations. *Id.* This is a patently unreasonable interpretation.

9. If the Court considers the appropriation bills ambiguous, their enactment history resoundingly demonstrates that the Legislature did not intend to fund Medicaid Expansion.

Even if there were any doubt or ambiguity about the plain meaning of HB 5, HB 10, and HB 11—which there is not—the enactment history of the appropriation bills would resolve such doubt against Plaintiffs here. Missouri law permits the Court to consult the enactment history of a statute to resolve questions of ambiguity in interpretation. "[W]hen the words of a statute are ambiguous, … it is proper to consider *the history of the legislation*, the surrounding circumstances, and the ends to be accomplished." *State ex rel. Zoological Park Subdistrict of City & Cty. of St. Louis v. Jordan*, 521 S.W.2d 369, 372 (Mo. 1975) (emphasis added). "When a statute's language is ambiguous or if its plain meaning would lead to an illogical result, extrinsic matters such as the statute's history … may be considered." *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, L.L.C.*, 248 S.W.3d 101, 109 (Mo. App. 2008) (en banc).

Here, the evidence from the enactment history of HB 11 and the related appropriation bills is overwhelming, and it demonstrates beyond possible doubt that HB 11 did not fund Medicaid Expansion. As discussed above, the General Assembly vigorously debated funding Medicaid Expansion and repeatedly considered amendments to all three bills that would have done just that. *See supra*, Statement of Facts, Part D. During the most recent legislative session, the General Assembly considered funding Medicaid Expansion in at least four different bills, eight proposed amendments, one House Committee vote, four House floor votes, two Senate Committee votes, and two Senate floor votes. *See id.* In each case, the proposal under consideration would have appropriated

funds for Medicaid Expansion unambiguously and explicitly. In each case, funding Medicaid Expansion failed to pass. House Bills 5, 10, and 11 were enacted without the amendments that would have authorized funding for Medicaid Expansion, and House Bill 20 (which would have separately funded the entirety of the Governor's recommendations for Medicaid Expansion) failed to pass. It is hard to imagine any clearer evidence of the Legislature's intent from the Legislature's repeated debates, committee votes, and floor votes during the same legislative session on the very same issue that Plaintiffs urge here.

10. Plaintiffs' interpretation of the appropriation bills leads to absurd and unreasonable results.

Regardless of whether the Court deems the bills to be ambiguous, the Court should avoid interpreting HB 5, 10, and 11 to create absurd and illogical results. *See Ivie v. Smith*, 439 S.W.3d 189, 202 (Mo. banc 2014) ("Courts look elsewhere for interpretation only when the meaning is ambiguous *or* would lead to an illogical result that defeats the purpose of the legislation."); *Anderson*, 248 S.W.3d at 106 ("Only in those cases where the language of the statute is ambiguous *or* where its plain meaning would lead to an illogical result, will this court look past the plain and ordinary meaning of a statute.") (emphases added).

Here, Plaintiffs' interpretation leads to at least two absurd, unreasonable, and illogical results. First, as noted above, it implies that the Legislature dramatically underfunded Medicaid by providing the amount requested for the pre-Expansion program for both the pre-Expansion program and the new Expansion population. This is an illogical outcome. Second, on Plaintiffs' view, HB 11 means effectively the opposite of what the

legislators who voted on it thought it meant. As the roll call votes demonstrate, key legislators who voted in favor of bills and amendments that would have expressly funded Medicaid Expansion voted against final passage of HB 11 in protest, while the legislatures who opposed the bills and amendments that would have funded Medicaid Expansion voted in favor of HB 11. Plainly, legislators thought that HB 11 did not fund Medicaid Expansion. To interpret a bill to mean the exact opposite of what legislators evidently thought it meant, is absurd and unreasonable.

B. Plaintiffs' Arguments on Statutory Interpretation Have No Merit.

Plaintiffs make various counterarguments in attempt to defeat the plain meaning of HB 5, HB 10, and HB 11, but their arguments have no merit. App. Br. 35-44. As an initial matter, though they claim that the text of those bills supports them, they hardly ever address the actual text of those bills. *See id.* In fact, the *only* language from the bills they include in their entire brief is a partial quotation of Section 11.700's appropriation for pharmaceutical services on page 38 of the brief. App. Br. 38. They never cite, discuss, or analyze the HB 11's plain language again, and they include no language at all from HB 5 or HB 10—no doubt because that plain language does not support them. *See supra* Part II.A. And their arguments suffer from additional deficiencies as well.

1. Plaintiffs ignore critical context that clarifies the meaning of the appropriation bills.

First and foremost, Plaintiffs' arguments depend on studiously ignoring critical contextual information about Medicaid that any reasonable reader would have in mind while reading an appropriation bill for *Medicaid* services. This includes Medicaid's federal

matching rates, the eligibility criteria for the Expansion population, the eligibility criteria for the non-Expansion population, rate cells for the non-Expansion population, the common terminology for the Adult Expansion Group, the language of prior appropriation bills for Medicaid Expansion, and the Governor's and Department's budget requests for Medicaid Expansion, among other things. In essence, Plaintiffs ask the Court to interpret appropriation bills for Medicaid without knowing anything about Medicaid.

This approach violates basic principles of statutory interpretation. As this Court reaffirmed last week, "[t]he context in which a word is used determines which of the word's ordinary meanings the legislature intended. So, to determine a statute's plain and ordinary meaning, the Court looks to a word's usage in the context of the entire statute…." *Gross*, 2021 WL 2668318, at *4 (citing *State ex rel. Anheuser-Busch, LLC v. Moriarty*, 589 S.W.3d 567, 570 (Mo. banc 2019)). "For an example of the importance of context, 'consider this sentence: The batter flew out. Without knowing context, one cannot determine whether that sentence describes what happened when the cook tripped while a carrying a bowl of cake mix, or the final act of a baseball game." *Id.* at *4 n.3 (quoting *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 302 (Mo. banc 1991)). Plaintiffs' approach of interpreting appropriation bills for Medicaid services while feigning ignorance about basic principles of Medicaid is akin to guessing at the meaning of "the batter flew out" without knowing if the statement was made in the kitchen or on the baseball field. *Id.*

This selective ignorance is on clear display when it comes to the different federal matching rates between the non-Expansion population and the Expansion population.

Plaintiffs do not dispute that the Court should—indeed, must—interpret the State's statutes that relate to Medicaid in light of federal statutes and regulations that address the exact same topic and logically interlock with them. *See id.* at *4. Federal statutes specify that the federal matching rate for the non-Expansion population is 90 percent, while federal regulations specify that the federal matching rate for the non-Expansion population is 66.36 percent. Every single line-item for Medicaid services in HB 10 and HB 11 that Plaintiffs contend should apply to the Expansion population appropriates funds at or very near the federal matching rate for the *non-Expansion* population, and nowhere near the matching rate for the Expansion population. Thus, to someone who understands Medicaid, the Legislature's intent is perfectly plain from the text of the statute: it intended to appropriate funds for the pre-Expansion population, and did not intend to appropriate funds for the Expansion population. Likewise, the multiple express references to the pre-Expansion population in Section 11.760 of HB 11, to the exclusion of the Expansion population, confirm the same point—but Plaintiffs ignore them. There is simply no mystery about what these bills mean. By insisting on interpreting them under ignorance of basic principles of Medicaid law, explicitly set forth in federal statutes and regulations, Plaintiffs would subvert the Legislature's plain intent. But this Court employs the rules of statutory interpretation in the opposite fashion—*i.e.*, to "subserve rather than subvert legislative intent." *Elrod v. Treasurer*, 138 S.W.3d 714, 716 (Mo. banc 2004) (quotation omitted).

2. The Legislature does not hide "elephants in mouseholes" by launching an enormous program like Medicaid Expansion through indirect, oblique, and implicit inferences.

Moreover, the central premise of Plaintiffs' interpretation is that the General Assembly's putative silence about Medicaid Expansion in the line-items for Medicaid services in HB 11 implies that the General Assembly appropriated funds for Medicaid Expansion. This argument flips a statutory interpretation on its head. Courts do not presume that the legislature purported to enact enormous policy changes in such obscure or indirect statutory language: "The legislature 'does not, one might say, hide elephants in mouseholes.'" *R.M.A.*, 568 S.W.3d at 430 n.12 (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001)). "[I[f the legislature intended" to adopt a massive policy change such as implementing Medicaid Expansion, "it is unlikely it would have hidden its intent to do so," *id.*, by enacting House Bills 5, 10, and 11 with literally no mention of the Expansion population. In *NFIB*, the U.S. Supreme Court aptly described Medicaid Expansion as "a shift in kind, not merely degree" for Medicaid; as "a new health care program"; and as a change that "transforms [Medicaid] … dramatically." 567 U.S. at 583-84. Implementing this massive new health care program would be a policy change of tremendous import. It is hard to imagine a more enormous "elephant[]" than Medicaid Expansion, and a more miniscule "mousehole[]" than legislative silence in line-items for services in Medicaid appropriation bills. *R.M.A.*, 568 S.W.3d at 430 n.12.

In addition, the numerous rejected amendments that would have explicitly authorized Medicaid Expansion support applying this principle here. As the Missouri Supreme Court has held, when "the legislature knows how" to expressly adopt a policy, its failure to do so indicates that it did not adopt that policy. *Fid. Sec. Life Ins. Co. v. Dir. of Revenue*, 32 S.W.3d 527, 529 (Mo. banc 2000) (holding that "the legislature knows how

to provide for a carry-over if such is its intent but did not do so here"); *see also, e.g., BNSF Ry. Co. v. Oregon Dep't of Revenue*, 965 F.3d 681, 690 (9th Cir. 2020) ("Clearly, the Legislature knows how to grant tax exemptions," and thus "we cannot infer … that the Oregon Legislature cloaked an exemption in unusual phrasing, for Oregon's tax code contains many, wide-ranging, explicit tax exemptions."). Here, the many failed amendments and bills that would have funded Medicaid Expansion demonstrate that the Missouri "legislature knows how to provide for [Medicaid Expansion] if such is its intent but did not do so here," *Fed. Sec. Life Ins. Co.,* 32 S.W.3d at 529; and it would be unreasonable to assume that the General Assembly "cloaked" Medicaid Expansion in legislative silence, when it plainly knew how to be "explicit." *BNSF Ry.*, 965 F.3d at 690.

3. Plaintiffs' negative inference from prior appropriation bills fails.

Plaintiffs argue that, "[i]n prior appropriation bills for the Department of Social Services, the General Assembly used language … to specifically prohibit the use of funds for Medicaid Expansion," and they infer that the absence of such explicit language in HB 11 implies that the Legislature intended to fund Medicaid Expansion. App. Br. 40. But this Court has cautioned against drawing just such negative inferences. In *Six Flags Theme Parks v. Director of Revenue*, the Court noted that the maxim that "omissions shall be understood as exclusions" should be "used with great caution." 179 S.W.3d 266, 269-70 (Mo. banc 2005) (quoting *Pippins v. City of St. Louis*, 823 S.W.2d 131, 133 (Mo. App. 1992)). "The maxim should be invoked only when it would be natural to assume by a strong contrast that that which is omitted must have been intended for the opposite treatment." *Id.*; *see also Springfield City Water Co. v. City of Springfield*, 182 S.W.2d 613,

618 (Mo. 1944) ("[A]ll the authorities agree that the maxim is a mere auxiliary rule of construction in aid of the fundamental objective, which is to ascertain the intention of the lawmakers; and that it must be applied with caution.").

Here, Plaintiffs attempt to do exactly what *Six Flags* and *Springfield City Water* caution against. They attempt to infer from the omission of an explicit restrictive clause in HB 11 that the Legislature purposely intended that there should be no such restriction in HB 11—*i.e.*, they argue that "omissions should be understood as exclusions." *Six Flags*, 179 S.W.3d at 269. But that inference only applies when "it would be natural to assume by a strong contrast that that which is omitted must have been intended for the opposite treatment." *Id.* at 270. And it should not be applied to subvert "the intention of the lawmakers." *Springfield City Water*, 182 S.W.2d at 618. Here, the "strong contrast" between HB 11 and previous appropriation bills for DSS is entirely absent. In fact, as noted above, HB 11 uses the same language to appropriate funds for Medicaid services as those prior bills, which strongly implies that HB 11 was *not* appropriating funds for Medicaid Expansion. And there is overwhelming evidence from both the plain language and the context of the appropriation bills that the Legislature did not intend to fund Medicaid Expansion. Under these circumstances, an additional restrictive clause would have been entirely superfluous. Accordingly, Plaintiffs' reliance on this argument fails.

4. The canon of constitutional avoidance does not apply here.

Finally, instead of engaging with the text of the bills, Plaintiffs argue that the State's appropriation bills renders them unconstitutional under *Planned Parenthood*, and the Court should apply the canon of constitutional avoidance to reject the State's interpretation. App.

Br. 41-45. This argument is the main focus of the statutory-interpretation argument in their second Point Relied On. *See id.* The argument lacks merit for three reasons.

First, the canon of avoidance applies only when the statute is ambiguous between two plausible interpretations. *See State v. Vaughn*, 366 S.W.3d 513, 517 (Mo. banc 2012) (holding that the canon of avoidance applies only if "a statutory provision can be interpreted two ways," and if it is "feasible" to adopt the avoiding interpretation); *see also State v. Stokely*, 842 S.W.2d 77, 79 (Mo. banc 1992); *Murrell v. State*, 215 S.W.3d 96, 102 (Mo. banc 2007). Here, however, the textual and contextual evidence of the appropriation bills' meaning, discussed in detail above, all points in one direction—it demonstrates that the Legislature did not intend to fund Medicaid Expansion. Because Plaintiffs do not offer a "feasible" alternative construction of the statute, *Vaughn*, 366 S.W.3d at 517, the canon of avoidance simply does not apply.

Second, if Plaintiffs are correct that *Planned Parenthood* compelled the Legislature to fund Medicaid Expansion in its recent appropriation bills, then Amendment 2 is in irreconcilable conflict with Article III, § 51, for the reasons discussed above. *Supra*, Part I. The Court should resolve this conflict by overruling the overbroad reading of the single-subject rule for appropriation bills adopted in *Planned Parenthood*, thus preserving the validity of Amendment 2 and the appropriation bills that did not fund Medicaid Expansion. *Id.* *That* is the outcome that avoids the constitutional conflict that Plaintiffs have created in this case.

Third, even if the Court declines to overrule *Planned Parenthood*, it may distinguish or narrow that case on the following ground. *Planned Parenthood* emphasized that the

Legislature unambiguously "chose to appropriate" funds for family-planning services, 602 S.W.3d at 211, whereas here the parties vigorously dispute whether the Legislature "chose to appropriate" funds for Medicaid Expansion. *Id.* *Planned Parenthood* stated that "[t]his was one of presumably thousands of difficult decisions made each year during the appropriation process," but "*having made this decision*, MO HealthNet is bound by general law." *Id.* (emphasis added). Here, the plain language of the statute indicates that the Legislature has not "made this decision" to fund Medicaid Expansion, *id.*, and the Court should distinguish the case on this ground instead of employing it to invalidate the General Assembly's decision. The State sought to distinguish *Planned Parenthood* on this ground in the circuit court, *e.g.* D61, at 12, though the circuit court was not persuaded. Unlike the circuit court, however, this Court has authority to overrule or narrow *Planned Parenthood*.

C. The Proper Interpretation of the Appropriation Bills Disposes of Both Count I and Count II of Plaintiffs' Petition.

As noted above, Plaintiffs asserted two Counts in their Petition. D2. Count I alleged that the Legislature had appropriated funds for the Expansion population in HB 11, and Count II alleged that the Department was failing to "maximize federal financial participation" in Medicaid by refusing to implement Medicaid Expansion. Count I is meritless because the Legislature did not appropriate funds for services for the Adult Expansion Group. *See supra*, Part II.A-B. And Count II is meritless for the same reason. Plaintiffs do not dispute that obtaining federal financial participation requires an initial outlay of state funds. Federal Medicaid law authorizes the payment of federal matching funds only to match "sums expended" by the participating States. 42 U.S.C. § 1396b(a).

For the reasons stated above, the Legislature did not provide that funding for the Expansion population. Under the Missouri Constitution, the Department lacks authority to "expend sums" without a valid appropriation. MO. CONST. art. IV, § 28 ("No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law…."). The Department lacks the ability to implement Expansion unless the Legislature provides necessary appropriation authority. Thus, Defendants have implemented MO HealthNet to the limits of their lawful authority, and thus they have "maximize[d] federal financial participation" in MO HealthNet. MO. CONST. art. IV, § 36(c)(4).

CONCLUSION

The circuit court's judgment should be affirmed.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that a copy of the above was filed electronically and served by operation of the electronic filing system through Missouri CaseNet on July 8, 2021, on all counsel of record.

The undersigned also certifies that the foregoing brief complies with the limitations in Missouri Supreme Court Rule 84.06(b) and 84.06(c)(1)-(4), and that the brief contains 19,797 words, excluding the portions exempted from the word count under Supreme Court Rule 84.06(b).

/s/ D. John Sauer