

**IN THE
MISSOURI SUPREME COURT**

No. SC84870

MISSOURI HEALTH CARE ASSOCIATION, ET AL.,

Appellants,

v.

BOB HOLDEN, ET AL.,

Respondents.

**Appeal From the Circuit Court of Cole County,
The Honorable Thomas J. Brown, III**

BRIEF OF RESPONDENTS

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STATEMENT OF FACTS

Appellants' statement of facts is unnecessarily long, and consists largely of legal discussion rather than the events leading to this appeal. The essential facts are these:

For state fiscal year 2002, the Governor submitted an executive budget that recommended appropriations totaling \$19.0 billion. L.F. 114. The Legislature appropriated \$19.4 billion. *Id.* At the end of fiscal year 2002, actual revenues to the state were only \$17.997 billion dollars. L.F. 116. The Governor's executive budget also included the consensus revenue estimate. E.F. 499. The consensus revenue estimate is a figure agreed upon by the Governor and the General Assembly; it represents some, though not all of the possible revenues projected to be received by the state. Tr. 256-257. L.F. 114. For fiscal year 2002, actual revenue for the revenue sources that made up the consensus revenue estimate was significantly less than the consensus revenue estimate had predicted. L.F. 117. For fiscal year 2002, actual revenue for the General Revenue Fund (as that fund is defined by statute) was less than revenue estimates for that Fund and was less than the total amount appropriated out of that Fund. L.F. 117. For fiscal year 2002, actual revenue to the Title XIX Fund was less than revenue estimates for the Title XIX Fund and less than the total amount appropriated out of that Fund. L.F. at 100-101.

House Bill 11 for fiscal year 2002 had appropriated \$133,000,000, partly from the IGT fund, an administrative fund within the General Revenue Fund, and partly from the Title XIX Fund, for one-time quality and efficiency grants to the state's nursing homes. L.F. 116. This \$133,000,000 was to be partially paid out in installments spread over the fiscal year. L.F. 121.

During fiscal year 2002, the Governor reduced a serious of expenditures in response to declining state revenues. L.F. 122. On May 10 of 2002, the Governor reduced the \$133,000,000

expenditure for one-time quality and efficiency grants ordering that the last payment of \$20,795,140 not be paid. L.F. 123.

This lawsuit followed. The trial court below found that the Governor had the authority to reduce the expenditure of one-time quality and efficiency grants to the state's nursing homes because actual state revenue was less than the revenue estimates upon which the state's budget was based. L.F. 129.

SUMMARY OF ARGUMENT

This case involves the interpretation of Article IV, Section 27 of the Missouri Constitution which gives “the Governor” the authority to reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based. To decide this case, the court must answer the following questions: 1. Does the Constitution give the Governor the authority to balance the state’s budget by reducing expenditures of the state as he sees fit when state revenues are less than the estimates upon which the state’s budget were based? 2. If not, does the Constitution allow the Governor to reduce an individual expenditure whenever the revenues are less than the estimate upon which the particular appropriation authorizing that expenditure was based? Neither the Constitution nor any other provision of Missouri law expressly requires that the state’s budget, or even an individual appropriation, be based on a particular revenue estimate. To answer these questions then, the Court must decide what the Constitution means by “revenue estimates upon which the appropriations were based.”

The trial court found that the Governor had acted properly in this case and answered the first question in the affirmative. L.F. 129. The trial court decided it was not necessary to determine the revenue estimate upon which the state’s budget was based because actual revenues were less than any estimate upon which the budget could have been based. *Id.* That decision should be upheld.

The Constitution gives the Governor broad authority to balance the state’s budget when the state’s actual revenues are less than the revenue estimates upon which the budget was based. *State ex rel. Sikeston R-VI School District v. Ashcroft*, 828 S.W.2d 372, 375 (Mo. 1992). The Governor’s authority is found in the plain language of the Constitution. Mo. Const. Art. IV, Section 27.

The Governor has three options during budget shortfalls: 1) “reduce the expenditures of the state” as he sees fit if actual state revenues are less than estimates upon which the state’s appropriations were based, Article IV, Section 27; 2) “reduce the expenditures of [individual state] agencies” whenever the revenues that would be used to fund these agencies are less than estimates upon which these particular appropriations were based, Article IV, Section 27; and 3) reduce expenditures from specific funds whenever actual revenues to that fund are less than revenue estimates for that fund, without regard to whether the appropriation was based on the revenue estimate for that fund, §33.290 RSMo (2000).¹

The budget process begins with the submission of the Governor’s budget. Mo. Const. Art. IV, Section 24. The consensus revenue estimate is featured prominently in the Governor’s budget and is the only figure that is called a revenue estimate. E.F. 499. The consensus revenue estimate is an estimate arrived at jointly by the General Assembly and the Governor to facilitate the budget process. L.F. 114. It is the lynchpin upon which the entire state budget is based. L.F. 114, Tr. 257. The state’s budget for fiscal year 2002 (FY2002), the year at issue here, was based on the consensus revenue estimate. L.F. 115. There is no dispute that actual revenues for the components of the consensus revenue estimate were less than the consensus revenue estimate. L.F. 116. Nor is there any dispute than the total actual revenues to the state were less than the total amount recommended by the

¹ All statutory cites will be to the Revised Statutes of Missouri (2000) unless otherwise indicated.

Governor or appropriated by the General Assembly for FY2002. L.F. 115, 116. Under these circumstances the constitution allowed the Governor to do exactly what he did here – reduce the expenditures of the state.

The nursing homes² ask the court to alter the plain language of Article IV, Section 27 to make it mirror the fund-by-fund approach in §33.290, and thus prevent the Governor from reducing expenditures of the state except on a fund-by-fund basis. App. Br. at 23. Even though the constitutional section never uses the word “fund,” the nursing homes argue that “the Governor can reduce expenditures below appropriations only if the Fund from which that money was appropriated suffers a revenue shortfall.” *Id.* Their interpretation is incorrect as a matter of law.

The nursing homes’ position simply assumes, without citing any law, facts, or even logic, that an appropriation from a fund is based on a revenue estimate specific to that fund. In so doing, they misread the constitution. In this case, the evidence establishes that the individual appropriation for quality and efficiency grants -- like other appropriations -- was based on the consensus revenue estimate. Tr. 374, L.F. 115. Because the consensus revenue estimate was not met, the Governor had the authority to “reduce the expenditures of the state” including the expenditure to nursing homes.

² Appellants are a trade association of nursing homes and several individual nursing homes. For the sake of clarity and brevity they are referred to as “the nursing homes” herein.

But even if the court accepts the nursing homes' invitation and finds that the Constitution only allows the Governor to balance the budget by reducing expenditure from one fund when revenues for that fund fall below estimates for that fund, the trial court's decision should be upheld. The appropriation at issue was from two funds: the General Revenue Fund and the Title XIX fund. L.F. 116. Actual revenues for both funds were less than revenue estimates for those funds. The nursing homes expressly concede that revenue for the Title XIX fund was less than estimates -- a concession that should end the inquiry. App. Br. at 68-69. But even under their theory, the nursing homes make an analytical mistake because they ask this court to disregard a state statute and consider revenues and estimates for "the IGT fund" which, as a legal matter, is simply an accounting device and not a separate fund in the treasury. *See* §33.543 RSMo (2000). Again, the real sources of revenue identified by the General Assembly for quality and efficiency grants were Title XIX funds and General Revenue Funds, both of which undisputedly fell below revenue estimates.

I. The Constitution allows the Governor to reduce expenditures of the State whenever actual revenues are less than revenue estimates upon which State appropriations were based. (Responds to Appellants' Point I. Sections B,C and D)

"Article IV, Section 27, broadly authorizes the Governor to balance the state's budget in the event that state revenues fall below the revenue expectations." *State ex rel. Sikeston R-VI School District v. Ashcroft*, 828 S.W.2d 372, 375 (Mo. banc 1992). Although the statement in *Sikeston* that Article IV, Section 27 allows the governor to balance the state budget may be dicta, it is a correct statement of the law. The conclusion is supported by fundamental principles of constitutional construction.

A. The Constitution must be construed using ordinary rules of construction.

Constitutional provisions should be construed using the same rules of construction that are used for statutes. The Constitution should be read using the plain meaning of terms. *Tannenbaum v. City of Richmond Heights*, 704 S.W.2d 227, 229 (Mo. 1986). Every word in the Constitution is assumed to have effect and meaning; words are not assumed to be surplusage. *Ensor v. Director of Revenue*, 998 S.W.2d 782, 784 (Mo. 1999). Constitutional provisions must be construed in harmony with related provisions. *Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. 1991). When construing a section of the Constitution, the Constitution should be read as a whole considering other sections that may shed light on meaning. *State ex rel. Mathewson v. Board of Election Commissioners*, 841 S.W.2d 301 (Mo. 1992). When there is doubt about how to interpret a constitutional provision,

the courts lean toward a broad interpretation because of the permanent nature of the constitution.

Roberts v. McNary, 636 S.W.2d 332, 335 (Mo. 1982).

i. Strict construction is not appropriate

The nursing homes urge the court to abandon a “broad interpretation” and instead to strictly construe Article IV section 27. They say that Section 27 must be construed strictly because it allows the Governor to participate in the appropriations process. App. Br. at 24. The fallacy of their argument is that they confuse the act of appropriating with the act of executing the state’s laws.

In the primary case cited by the nursing homes, the Governor was exercising veto power to reduce the amount that would be lawfully appropriated once he signed the appropriations bill. *See State ex rel. Cason v. Bond*, 495 S.W.2d 385 (Mo. 1973). There is no question that the exercise of veto power is participation in the appropriations process because the Governor has the authority to change how much is appropriated before the law takes effect. *Id.*

But unlike the veto, Article IV Section 27 is not relevant until the appropriation process is over. By its own terms, Section 27 gives the Governor the authority to reduce expenditures below their appropriated amounts when certain conditions are met. It requires that an amount must have already have been appropriated. Once a law is enacted, the legislative function ends and the executive does not encroach on legislative power by exercising its own power to administer and enforce that law. *State Auditor v. Joint Committee on Legislative Research*, 956 S.W.2d 228, 231 (Mo. 1997).

Legislative appropriation is simply “legal authorization to expend funds from the treasury.” *Sikeston*, 828 S.W. 2d at 375. *See also* Article IV, Section 28 (“No appropriation shall confer authority to incur an obligation after the end of a fiscal period.”) The executive is the branch with

authority to make expenditures within the limits of the appropriation. Nothing in the appropriation or other Missouri law requires the executive branch to expend all of the funds that are appropriated. Indeed, rather than enacting laws requiring expenditure of all funds appropriated, the General Assembly expects funds to remain unexpended at the end of an appropriation period and has made provisions for those unexpended funds to lapse into the ordinary revenue fund of the state treasurer. §33.080 RSMo. When a Governor exercises the line item veto, he reduces authority to spend – a legislative function. Once an appropriation authorizes expenditure, the executive function takes over.

Although Missouri courts have not addressed the question of whether the Governor can order expenditures reduced as part of his inherent executive powers,³ the court need not reach that question in this case. Article IV, Section 27 specifically grants the Governor the authority to use his executive power to reduce expenditures of the state and its agencies under the circumstances at issue here. When exercising such authority, the Governor is not purporting to exercise the authority of any other branch of government. No other branch of government has the authority to reduce state expenditures after an appropriation has authorized them, so the Governor cannot be exercising the authority of another branch. This court must reject the nursing homes' suggestion that the provision be interpreted strictly and must instead turn to standard rules of constitutional construction. Those rules require that the decision of the trial court be upheld.

³ *But see State ex rel. Robb v. Stone*, 25 S.W. 376 (Mo. 1894)(Supreme Court refused to order the Governor to pay a bill even though the funds for payment had already been appropriated).

ii. The plain meaning of the Constitution allows the Governor to reduce the State's expenditures whenever State revenues are less than estimates

Constitutional provisions should be given their plain meaning and every word is presumed to have effect. *Ensor*, 998 S.W.2d at 784. Article IV, Section 27 allows the Governor to “reduce the expenditures of the state or any of its agencies.” The plain meaning of this provision is that the Governor may reduce the expenditures of the whole state under certain conditions. The nursing homes’ argument, that the Constitution only allows the Governor to reduce expenditures from individual funds within the state treasury would require this court to hold that the word “state” in Article IV, Section 27 is meaningless.

But the word state is not meaningless. This is apparent from the text of Section 27 itself. As appellants correctly point out, Article IV, Section 27 begins with a discussion of the Governor’s power of allotment. App. Br. at 25. He may unconditionally “control the rate at which any appropriation is expended” by allotment (emphasis added). The Governor may also “reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based.” This second part of Article IV, Section 27 is broader than the first. While the first part focuses on the Governor’s power to control the rate of expenditure of a single appropriation -- “any appropriation” -- the second part allows the Governor to reduce “expenditures of the state.” This second part also discusses the estimates upon which the appropriations were based. If the Constitution intended that the Governor could only reduce any expenditure when the actual revenues are less than the estimate for any appropriation, it would have said so. Instead, a plain reading of the Constitution is that the second part of Section 27 gives the Governor

the authority to reduce state expenditures whenever actual revenues are less than the revenue estimates upon which the state's appropriations were based.

In contrast, the nursing homes offer an interpretation that rewrites Section 27 and would never allow the Governor to “reduce the expenditures of the state.” They say that the Governor may only reduce the expenditures from a fund whenever revenues to that fund are less than estimates for that fund. App. Br. at 23. Under their interpretation, the Governor would only be allowed to reduce expenditures of the whole state when every single constitutional, statutory or administrative fund has revenues less than estimated. This court can not take away the Governor's power to reduce the expenditures of the state because such power is specifically granted by the use of the words “reduce expenditures of the state” in the Constitution.

The nursing homes' interpretation similarly affects the reference in Section 27 to “agencies.” They would not allow the Governor to reduce the expenditures of an “agency,” but only to reduce particular line item expenditures by that agency. Again, the Governor is constitutionally authorized to do more than that. The nursing homes wish that Section 27 said the Governor has the authority to only “reduce the expenditures of the state or any of its agencies [under a particular appropriation] below [that] appropriation[.]” But it does not. Again, the plain language of Section 27 gives the Governor authority to do what he did here – “reduce expenditures of the state” below the levels of the various appropriations.

B. The “fund-by-fund” interpretation, when considered in light of the statutory budgeting scheme, violates rules of statutory construction.

The fund-by fund approach offered by the appellants was already contained in the statutes when Section 27 was adopted. App. Br. at 42. Section 33.290 requires the Governor to reduce the allotment (rate of expenditures) from a fund whenever revenues for that fund are less than estimates for that fund. §33.290 RSMo. Significantly, as discussed in more detail below, the statute does not require an inquiry into the estimate upon which an appropriation was based, but allows a reduction in expenditures from the fund when revenues are less than were estimated for that fund. This is the mechanism appellants ask for. It exists in statute. The Constitution uses quite different language.

The nursing homes' determination to give §33.290 and §27 the same meaning violates three related rules of statutory construction. The first two are closely related: that provisions with different language must have different meaning and that no statutory provision should be interpreted so as to give it no meaning. The third is to give significance to statutory interpretations by officers or agencies responsible for implementing the statute.

As the nursing homes correctly point out, the statutory fund-by-fund approach actually pre-dates the Constitutional provision. App. Br. at 42. The drafters of the constitution must have been aware of the statutory provision that discusses the funds of the state and allows the Governor to balance each fund against its revenue estimates. Yet the drafters did not choose to use the word "fund" in the constitution and chose to focus on the revenue estimates upon which an appropriation was based rather than just saying "the revenue estimate for a fund." If the drafters intended the constitution to mirror the statute and require a fund-by-fund approach, they could have done so. Instead they chose to allow the Governor to reduce the expenditures of the state when revenues are less than estimates upon which the state's appropriations were based.

The nursing homes' interpretation that the Constitution simply mirrors the statute assumes that the statute is a meaningless repetition of the Constitutional provision. The courts will not presume that a statute is meaningless. *State ex rel. Edu-Dyne Systems, Inc. v. Trout*, 781 S.W.2d 84, 86 (Mo. 1989). *Stiffelman v. Abrams*, 655 S.W.2d 522, 531 (Mo. 1983).

C. The trial court's holding is consistent with the interpretations of the Office of Administration, Division of Budget and Planning dating back more than twenty years

And the nursing homes decline to give appropriate consideration to the interpretation of the Constitution held by the agency that is responsible for implementing a specific provision. *Consolidated Freightways v. State*, 503 S.W.2d 1 (Mo. 1972). *Curators of the University of Missouri v. Neill*, 397 S.W.2d 666, 670 (Mo. banc 1966), (“The administrative interpretation given a constitutional or statutory provision by public officers charged with its execution, while not controlling, is entitled to consideration, especially in case of doubt or ambiguity.”) The whole state budget theory – looking to overall revenues of the states and the estimates upon which the whole state's appropriations were based to determine whether Article IV, Section 27 is triggered rather than trying to balance the budget on a fund-by-fund basis – is the interpretation held by the Office of Administration, Division of Budget and Planning for the last 20 plus years, spanning governors back to Teasdale. Tr. 132-133. As the agency responsible for implementing this section, its interpretation should be entitled to deference. §§33.210, 33.030 RSMo.

D. Giving the Governor full power to “reduce expenditures of the state” does not violate separation of powers or otherwise work mischief on the process.

Appellants argue that allowing the Governor to reduce expenditures of the state when state revenues are short is “startling” and would violate separation of powers. App. Br. at 48. They argue that such an interpretation gives the Governor “a continuous line-item veto.” *Id.* To the contrary, the Governor’s authority to take a whole budget view when faced with shortfalls is perfectly consistent with the constitutional separation of powers and is in the best interest of public policy. “The people of Missouri . . . have a vital interest in government living within its means.” *Sikeston*, 828 S.W.2d at 375. The Constitution gives the Governor the authority to ensure that interest is met.

The Governor’s authority in Article IV, Section 27 is not a continuous line-item veto and the Governor has never claimed that it is. As discussed above, the legislative function ends once a bill becomes law. Then the executive has the authority to enforce and execute the laws. *State ex rel. Cason v. Bond*, 495 S.W.2d 385 (Mo. 1973), is not helpful in this case because the Governor does not purport to reduce the amount appropriated at the outset – he reduced expenditures after the appropriation bill took effect.

Nor does *State ex rel Danforth v. Merrell*, 530 S.W.2d 209 (Mo. 1975), dictate a particular result here. In *Merrell*, the legislature purported to delegate to a committee the authority to change the purpose of an appropriation after it was passed. In *Merrell* this court held that “the general assembly cannot constitutionally delegate to a committee or to the executive department or to both of them the power to amend a law.” *Id.* at 215 (Bardgett concurring). The Governor’s action here did not amend the appropriation.⁴ Moreover, nothing in the *Merrell* case even implies that the

⁴ The nursing homes imply in point II of their brief that the Governor has changed the purpose

Governor has an obligation to expend all the funds authorized in an appropriation. The Governor's actions here are not what occurred in *Merrell*. Once he realized that revenues would be less than estimated, the Governor did, however, execute the laws of the state and reduce expenditures to balance the state's budget. And he was authorized to do so by a specific provision in the Constitution.

The Governor's ability to exercise a line item veto is virtually plenary, subject only to over-ride after the fact. Mo. Const. Art. IV, Sect. 26; Mo. Const. Art. III, Sect. 32. In contrast, Section 27 makes clear that the Governor may not exercise the authority to reduce state expenditures unless revenues are less than the estimates upon which the appropriations were based. Significantly, the Constitution does not specify the revenue estimates upon which the appropriation must be based. The General Assembly has the authority to control which budget estimate would trigger the Governor's authority to exercise his power. It could do so by taking a page from U.S. Congressional practice and passing a budget resolution that specifies a revenue estimate upon which appropriations should be passed. But it has not done so. It could come up with its own separate budget estimates and make a

of an appropriation by "redirecting money" contrary to its purpose. App. Br. at 71. But there is no allegation here, and certainly no evidence, that the funds at issue were spent without express authorization in an appropriation.

record of the basis for its decisions for the courts to consider, but it has not done so (except through the consensus revenue estimate as discussed below).

Allowing the Governor to exercise both the line item veto and his full powers under § 27 does not defeat the purpose of separation of powers which is to prohibit arbitrary and unilateral exercise of power. *Mo. Coalition for the Environment v. Joint Comm. on Admin Rules*, 948 S.W.2d 125, 135 (Mo. 1997). Again, the Governor's authority to balance the state's budget when state revenues fall short is by no means unilateral or subject to his unilateral decision. The Constitution sets limits on the Governor's ability and the legislature can take steps to further limit his exercise of power. Appellants concede as much when they argue that the amount appropriated is "the implicit revenue estimate of the General Assembly and the Governor." App. Br. at 40. The General Assembly can also prevent the Governor from reducing an expenditure by providing an artificially low estimate of revenue. Conversely, by over estimating revenue (appropriating above reasonable anticipations of revenue) the General Assembly makes it more likely that the Governor can later reduce expenditures. In short, if the General Assembly wants to limit the Governor's authority to reduce expenditures, it can do so unilaterally by exercising a conservative approach to the appropriations process. In this way, Article IV, Section 27 promotes sound public policy by providing an incentive to the legislature to appropriate only as much as it truly believes will be available for expenditure.

Moreover, the separation of powers doctrine only prohibits one branch of the Government from exercising the authority granted to another. This is why courts have held that if a Constitutional provision allows one branch of Government to exercise the power of another branch, the provision should be strictly construed. *See, e.g. State Ex. inf. Danforth v. Cason*, 507 S.W.2d 405, 419

(Mo. 1957). But Article IV, Section 27 is not such a provision. Only the executive branch has the power to expend money (subject of course to authorization by the legislative branch) and only the executive branch has the authority to reduce expenditures after an appropriation bill has been passed. Appellants can point to no other branch of Government that would have the authority to reduce expenditures. In a state that values a balanced budget, the only branch that can meet the challenge is the executive branch. There is no separation of powers issue.⁵

⁵Appellants cite federal cases such as *State Hwy Comm'n of Mo. v. Volpe*, 479 F.2d 1099 (8th Cir. 1973), for the proposition that the executive branch must expend all money that is appropriated, otherwise the executive engages in unlawful “impoundment.” App. Br. at 64. *Volpe* is inapposite because it addressed whether the federal Secretary of Transportation had statutory authority to reduce the State of Missouri’s ability to contract within the amount appropriated by Congress for highways. The court specifically said “[r]esolution of the issue before us does not involve analysis of the

Executive's constitutional powers.” *Id.* at 1107. It should also be noted that the federal government does not share Missouri’s dedication to a balanced budget.

In fact, an analysis of the separation of powers issues highlights the importance of allowing the Governor to balance the entire state's budget based on a shortfall in state revenues, not just based on a fund-by-fund approach. If appellants are right and the Governor can only reduce expenditures from a fund when revenues are less than estimated for that fund, the legislature would have an incentive to unilaterally manipulate the process and defeat Section 27's purpose of balancing the budget.

The facts of this case provide a good example. It is undisputed that overall state revenues were significantly short of the total amount appropriated for state operations. L.F. at 115, 116. The Governor had no choice but to reduce expenditures somewhere. Under the nursing homes' theory, the Governor would only have been allowed to reduce expenditures from any "fund" -- be it an administrative, statutory or constitutional fund -- unless a revenue attributable to that fund was less than a revenue estimate for that particular fund. This approach holds harmless "funds" for which an agency or the General Assembly mistakenly or intentionally under-estimated revenues. It reserves its severe impact for funds for which an agency artificially inflated anticipated revenues or from which the legislature -- perhaps intentionally -- severely over-appropriated.

II. The Governor had the authority to reduce the state's expenditures because the state's budget was based on the consensus revenue estimate and revenues for FY2002 were well below that estimate.

If this court interprets Article IV, Section 27 as articulated in *Sikeston*, giving the Governor "broad" authority to "balance the state's budget," the court must then determine the revenue estimate upon which the state budget was based. Overall state revenue expectations for fiscal year 2002 were articulated in two ways – through the consensus revenue estimate and through the total amount recommended for appropriation or actually appropriated. Actual revenues were less than either expectation, but the state's budget was based on the consensus revenue estimate.

There is no dispute that the revenue sources that make up the consensus revenue estimate were less than estimated. App. Br. at 10-11. The evidence below was that the consensus revenue estimate is the lynchpin estimate upon which the state's budget is based. L.F. 115, Tr. 371-374.. Although it does not purport to estimate every dollar of available state revenue, it is the estimate that has been agreed upon jointly by the General Assembly and the Governor. It is featured prominently in the Governor's executive budget, which begins the legislative process and it is the only figure in the Governor's budget that is specifically identified as a revenue estimate. E.F. 499.

Constitutional provisions must be construed in harmony with related provisions. *Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. 1991). When construing a section of the Constitution, the Constitution should be read as a whole considering other sections that may shed light on meaning. *State ex rel. Mathewson v. Board of Election Commissioners*, 841 S.W.2d 301 (Mo. 1992).

Article IV, Section 24 requires the Governor to submit his budget to the General Assembly and to include an estimate of revenue available to the state. Mo. Const., Article IV, Section 24. The only figure that is specifically identified in the Governor's budget as a revenue estimate is the consensus revenue estimate. E.F. 499. The consensus revenue estimate is an estimate arrived at jointly by the General Assembly and the Governor. L.F. at 99, 114. Although it does not estimate all revenues that may come in to the state treasury, it is the lynchpin estimate upon which the state's budget is based. L.F. 115. It is the estimate that the legislature has in front of it when making appropriation decisions. The inference that any given appropriation is based on an expectation concerning the consensus revenue estimate is just as strong, if not stronger, than the inference that an appropriation decision is based on a form prepared by a state agency.

Appellants argue that the "implicit revenue estimate" is the amount appropriated by the General Assembly and that appropriated amounts are the estimate upon which appropriations are based. App. Br. at 40. If the amount appropriated to the state, or the amount recommended for appropriation, is an implicit estimate of the revenues available to the state, there is again no dispute that Section 27 was triggered. Actual revenues for the whole state were significantly less than the total amount recommended for appropriation by the Governor or the amount actually appropriated by the General Assembly and signed into law by the Governor. App. Br. at 11, L.F. 115, 116.

III. The individual appropriation at issue in this case was not based on revenue estimates for the IGT fund, but was based on broader expectations of state revenues.

Appellants cannot prevail here even if the court determines that the Governor does not have the authority to reduce all the state's expenditures when state revenues are less than estimates upon which the state's budget was based. Under that interpretation of Section 27 the court must identify the particular appropriation at issue and determine the revenue estimate upon which that appropriation was based. At the heart of the nursing homes' argument is an illogical and unsupported assumption that the General Assembly passed, and the Governor signed, an appropriation of \$133,000,000 to the state's nursing homes based solely on estimates of revenue for the IGT sub-account of the General Revenue fund. But no appropriation decision can be made in a vacuum: each one is dependent on other appropriations and upon expectations of total revenues available to appropriate.

Section 27 does not inquire as to the revenue estimate for a particular fund from which the General Assembly ultimately chose to draw for the particular appropriation at issue. It inquires as to the estimate of funds from which the legislature could choose when deciding whether and in what amounts to appropriate a particular line item. Under then plain language of Section 27, the court must decide whether actual revenues to the IGT fund and the Title XIX Fund were less than the revenue estimates upon which the appropriation from those funds was based. Appellants gloss over this requirement and simply assume that an appropriation from a fund is based on the revenue estimate for that fund.⁶ In so

⁶ The trial court mistakenly followed the nursing homes' lead and found that the appropriation

doing, appellants again urge the court to read the requirements of §33.290 (“if it shall appear that revenue estimates for the fiscal year will fall below the estimated revenues for such fund”) into the constitution rather than following the plain language of the constitution (“estimates upon which the appropriations were based”).

There is no provision of law that requires the General Assembly or the Governor to base appropriations on any particular revenue estimate. Except in the case of constitutionally or statutorily dedicated funds, it would make no sense to do so. The legislature sits in front of a buffet of revenue sources. When it decides how much to put on each line-item plate, it cannot and does not focus myopically on one serving dish, ignoring the absence or abundance in other dishes on the buffet.

For State Fiscal Year 2002, the evidence was that the appropriations were based not on some isolated fund, nor even on a combination of funds. Rather, the appropriations were based on the consensus revenue estimate. L.F. 115, Tr. 371-374. The consensus revenue estimate is the lynchpin for the whole state budget and all of the decisions concerning the budget are driven by that estimate. *Id.* When the Governor signed the SFY2002 budget, taking the final step necessary to give appropriations

“was based upon the SFY2002 IGT fund revenue estimate.” This finding was wholly unsupported.

There was no evidence to that effect before the trial court and therefore that finding should be disregarded. *Burkholder ex rel. Burkholder v. Burkholder*, 48 S.W.3d 596, 597 (Mo. 2001).

the force and effect of law, he based his decision to sign the budget, vetoing or not vetoing individual lines within the budget, on the consensus revenue estimate. Tr. 372-374. Most importantly he also based his decision to sign H.B. 11 without vetoing the line item appropriating \$133,000,000 for one time quality and efficiency grants based on the consensus revenue estimate. Tr. 373-374. Because no appropriation has the force of law until the Governor signs it, the appropriation at issue was based on the consensus revenue estimate as a factual matter.

The nursing homes argue that the court should not consider evidence concerning what revenue estimate the Governor relied on in signing the appropriation bill. They cite cases indicating that legislative intent cannot be derived from the subjective intent of individual legislators. App. Br. at 36. Of course it is correct that an individual legislator cannot establish legislative intent. But the nursing homes improperly minimize the Governor's role in the appropriation process. He does have line item veto authority. Article IV, Section 28. If the Governor had vetoed Section 11.445 it would not have become law. Therefore, evidence of what estimate the Governor actually relied on in signing an appropriations bill is highly relevant.

Moreover, the nursing homes have never offered evidence factually establishing what revenue estimate the appropriation here was based on. They urge this court to infer that the appropriation was based on the amount appropriated from the IGT sub-account of the General Revenue Fund. They base this inference on statutes discussing revenue estimates for each fund. App. Br. at 36. But it makes no sense to assume that an appropriation from a fund is based on a revenue estimate for that fund. At times it might be, as when the legislature makes an appropriation wholly from federal funds that require no state match and may not be used for other purposes. At other times appropriations are clearly

based on expectations of revenue to other funds. For example, when the state is required to fund 40% of funds for a program, with the federal government providing the other 60%, the appropriation of state funds is based on an expectation about revenues of federal funds, and vice versa. To the extent the court chooses to disregard the factual issue and make an inference, the court should not infer that the appropriation was based on an estimate for the IGT sub-account. The contrary inference, that the appropriation was based on the consensus revenue estimate, fits much better into the Constitutional scheme.

The inference is particularly strong in this case. All funds that are not required “by statute or constitutional provision to be deposited in some other specifically named fund” must be deposited in the General Revenue Fund. §33.543 RSMo. There is no statutory or constitutional requirement that any funds be deposited to the “IGT fund.” Therefore, any “IGT fund” would be part of the General Revenue fund as a matter of law. *Id.* The “IGT fund” is not a separate fund from a legal standpoint, it is an “account” within General Revenue, created by OA pursuant to §33.372 RSMo. L.F. 112. The fact that the appropriation item here referred to the “IGT fund” does not create the fund or give it character separate and apart from what section 33.372 requires. Compare App. Br. at 30. In fact, the appropriation “from the IGT fund” in House Bill 11, is wholly consistent with the idea that IGT funds are within the General Revenue Fund as a matter of law. Pursuant to section 33.571.2 the legislature is required to say which account within the General Revenue Fund it is appropriating from. That is what they did in this case. The legislature’s compliance with §33.571.2 does not change the legal state of IGT money held in the General Revenue Fund.

Section 33.571.2 allows the Office of Administration and the State Treasurer to establish “accounts” within the State Treasury. The Office of Administration used that authority to administratively create the IGT account. L.F. 112. But the IGT account is – by statute – a part of the General Revenue Fund.

And the IGT sub-account is part of the General Revenue Fund, there are no restrictions on how these funds may be used. Compare the “State Institutional Gift Trust Fund,” §33.563 RSMo. and “gaming revenues,” Article III, Section 39(d) for just two examples of funds with restricted uses. *See also President Riverboat Casino v. Mo. Gaming Commission*, 13 S.W.3d 635, 638 (Mo. 2000)(admission fees were deposited “in the general revenue fund to support the entire budget”). In FY2002, “IGT funds” were appropriated for the Lewis and Clark Centennial, Legal Aid grants, administrative costs, etc.. E.F. 328. Appellants correctly point out that the consensus revenue estimate primarily estimates revenue to the General Revenue Fund. App. Br. at 10. It is reasonable to infer that the General Assembly’s decision to appropriate General Revenue funds to nursing homes for one time quality and efficiency grants was based on an estimation that the state would have a certain level of other General Revenue funds for other priorities. Conversely it is unreasonable to assume that the General Assembly made the appropriation of \$133,000,000 without regard to the revenue estimate for the General Revenue Fund, but instead focused solely on the estimated revenues to the IGT sub-account of the General Revenue Fund. Again, there is no dispute that the actual revenue from the categories that

make up the consensus revenue estimate -- the estimate upon which the appropriation was based -- were less than the consensus revenue estimate.⁷ L.F. 116-117.

When the Governor sent his budget to the General Assembly, he was required by Article IV, Section 24 to estimate available revenue. The law presumes that “public officials have rightly and lawfully discharged their official duties.” *Abrams v. Ohio Pacific Express*, 819 S.W.2d 338, 342 (Mo. 1991). Respondents believe the Governor complied with Section 24 by providing the consensus revenue estimate. The nursing homes’ argument that the appropriations themselves implicitly suggest that the Governor’s real estimate under Section 24 was instead the \$19,000,220,633 the Governor recommended for appropriation. L.F. 114. The presumption must be that the Governor lawfully fulfilled his duty under Article IV, Section 24 by providing either the consensus revenue estimate or an estimate of the total amount available to the state as embodied in his recommendations to the General Assembly to appropriate \$19,000,220,633 for the state budget. Appellants have offered nothing to refute this presumption and there is no dispute that actual revenue to the state was \$17.997 billion, significantly less than estimated. L.F. 116.

To avoid the defeat that is inevitable in that conclusion, the nursing homes leap past every step at which revenue is actually estimated, and go directly to the ultimate product of the appropriations

⁷For fiscal year 2002, the consensus revenue estimate was revised as actual revenues declined.

Actual revenue was less than any version of the consensus revenue estimate. L.F. 117.

process, the appropriations bills that the constitution addresses – separately from both Art. IV, Section 24 and Section 27 – in Art. III sections 23, 25, 29, and 36. Instead, the nursing homes urge the court to compare actual revenues for the IGT sub-account to the amounts finally appropriated from that account and to allow the Governor to exercise his authority only if actual revenues for the IGT account of the General Revenue Fund were less than the amount appropriated from that account. They have no evidence that this appropriated amount was a revenue estimate – it might be the exact amount expected or it might not be (see Tr. at 218) – much less the estimate upon which the appropriation was based. There is no constitutional nor statutory requirement that any particular appropriation exactly match the estimated revenue from any particular revenue stream.

Nor is it logical to suppose that a particular appropriation or fund from general revenue can be considered in isolation. The budget cannot be segregated into the patchwork appellants urge. The decision to appropriate an individual line item within an appropriation is not made in a vacuum, it is interdependent upon other appropriations. This case provides a good example. The state budget director testified that the line item at issue here – an appropriation drawn from federal Title XIX funds and the IGT account of the state’s General Revenue Fund, for quality and efficiency grants to nursing homes – would not have been recommended or signed had the Governor known that overall state revenue, or the revenue to the components of the consensus revenue estimate, were not going to meet projections. Tr. 374-375. Had he known that revenue would have been less, his priorities would have been different. *Id.* If this court accepts the nursing homes’ invitation to make assumptions about the revenue estimate upon which this appropriation was based, it is most logical and workable to assume that the appropriation was based on expectations about the revenues available for such an

appropriation, not just upon an estimate of particular stream of revenue that the legislature ultimately matched with this appropriation – particularly when that revenue is defined by a merely administrative account subject to unilateral revision by the executive at any time, that makes up only a tiny portion of the state budget.⁸

⁸ The Office of Administration has created accounts other than IGT within the General Revenue Fund, such as several Health Families Trust Fund accounts. *See* appendix A25-A29. When the General Revenue Fund does not have sufficient revenue to meet appropriations, the Governor must cut somewhere. If, as the nursing homes argue, the Governor does not have the authority to make reductions from the administrative accounts, his cuts will have a disproportionate and devastating impact on programs like state schools, state universities and state agency operations that are funded with the remaining General Revenue funds (also known as administrative account 101). L.F. 122. *See* Appendix A1-A25.

IV. If this Court adopts the nursing homes' legal theory and reads the word "fund" into the constitution, the trial court's decision should still be upheld because the facts do not support that legal theory.

(Responds to Appellants Points I.A and D and Point II)

The nursing homes acknowledge that the trial court did not consider the issues raised in their second point. App. Br. p. 68. Thus, there is no specific ruling or conclusion of law by the trial court that they claim is erroneous. Their entire argument is based upon an assumption that the trial court approved the Governor's use of his authority under Art. IV, § 27 of the Constitution on an appropriation of federal funds. But it is not at all clear that he did so. The uncontested testimony at trial was that the State reached the upper payment limit of Medicaid and could not secure any further federal funds for the fiscal year.⁹ Tr. 99-100. Thus, there is no evidence that any federal money was withheld or impounded, i.e. unspent.

The nursing homes cannot succeed on this point at any rate. The appropriation at issue came from two funds, the General Revenue Fund and the Title XIX fund. Actual revenues to for each of these funds were less than revenue estimates for each fund.

⁹ The nursing homes complain about the reasons the state hit the upper Medicaid payment limit, implying that the state's payments to other non-state governmental nursing homes was inappropriate. App. Br. 72. But they have never raised or preserved a claim that the state made expenditures in violation of any law, they have only pled that the state should make additional expenditures.

A. The Governor’s authority under Section 27 was triggered by inadequate revenues.

i. Revenues to the General Revenue Fund were less than estimates for the General Revenue Fund.

All funds that are not required “by statute or constitutional provision to be deposited in some other specifically named fund” must be deposited in the General Revenue Fund. §33.543 RSMo. There is no statutory or constitutional requirement that any funds be deposited to the “IGT fund.” Therefore, any “IGT fund” would be part of the General Revenue fund as a matter of law. *Id.* The “IGT fund” is not a separate fund from a legal standpoint; it is an “account” within General Revenue, created by OA pursuant to §33.372 RSMo. L.F. 112. The fact that the appropriation item here referred to the “IGT fund” does not create the fund or give it character separate and apart from what section 33.372 requires. See App. Br. at 30. In fact, the appropriation “from the IGT fund” in House Bill 11 is wholly consistent with the idea that IGT funds are within the General Revenue Fund as a matter of law. Pursuant to section 33.571.2 the legislature is required to say which account within the General Revenue Fund it is appropriating from. That is what they did in this case. The legislature’s compliance with §33.571.2 does not change the legal state of IGT money held in the General Revenue Fund.

OA has long interpreted the system consistent with the statutes as interpreted above. Jim Carder, Director of Accounting for OA for more than 20 years, testified that the “IGT fund” is simply a sub-account of General Revenue and that OA has never considered it anything other than General Revenue as defined in the statutes. Tr. 121-122.

The nursing homes would erase the distinction between a statutorily created fund and an account in General Revenue created pursuant to §33.571. But one result of that conclusion would be to convert the General Assembly's passage of §33.571 into a pointless act. It should never be presumed that the legislature performed a useless act. *Stiffelman v. Abrams*, 655 S.W.2d 522, 531 (Mo. 1983). By using the term "account," the General Assembly must have intended that such "accounts" be treated differently than "funds." Thus, assuming that Section 27 applies on a fund by fund basis and that the General Assembly intended the creation of funds to limit the Governor's discretion under Section 27, there is nothing to indicate that either theory applies to the facts of this case which involve an account within the General Revenue Fund, not a separate, statutorily created fund.

The nursing homes do not even argue that actual revenues for the General Revenue fund were less than estimated, and they put on no evidence to that effect below. Official acts are presumed to be in accordance with the law and it is the burden of those challenging the action to prove they were done illegally. *Sturdevant v. Fisher*, 940 S.W.2d 21, 24 (Mo. App. 1997). The nursing homes have not met their burden of proof. In fact, respondents established that actual revenues for the General Revenue Fund were less than revenue estimates for the general revenue fund.¹⁰ Tr. 299-300.

¹⁰ Although actual revenues for the Title XIX and General Revenue funds was less than the

revenue estimates for those funds, respondents do not concede that the appropriation was based on those estimates, rather the better holding is that it was based on estimates of funds available to the state as discussed above.

In a curious departure from their otherwise consistent fixation on the ultimate appropriations bills, the nursing homes briefly discuss a very early step in the appropriations process, the “form 9’s,” suggesting that if the appropriations bills do not constitute estimates of the General Revenue Fund for purposes of Art. IV, Section 27, there is an alternative estimate source. But they are wrong, both in suggesting that these documents are the constitutionally-recognized basis for appropriations and in the claim that even if they were considered, the “form 9’s” would not support the nursing homes’ conclusions.

Agencies sometimes use a “form 9” to indicate to the Governor resources they project to be in a particular fund. The nursing homes argued below, as they do here, that appropriation decisions are based on form 9 revenue estimates. App. Br. at 40. But these forms do not purport to be revenue estimates. And there is no evidence that the General Assembly or the Governor actually base appropriation decisions on the these form 9’s. Indeed, there is no evidence that the General Assembly ever saw the FY2002 form 9 for the IGT account.

Moreover, the undisputed evidence was that the sum of all of the form 9’s for the various accounting categories in the General Revenue Fund was more than the actual revenues for the sum of those accounts. Tr. 299-300. In other words, the actual revenues for the Fund from which the efficiency grants were appropriated – the General Revenue fund – were less than the Form 9 estimates for that fund.

The nursing homes quickly return to their argument that no prelude matters, that the final appropriations bills are dispositive. But even that total -- what appellants call “the implicit revenue estimate” -- defeats the nursing homes’ case. The General Assembly appropriated \$8.214 billion from

General Revenue sub-accounts. *See* Appendix to this brief citing the court to the Bill and Section numbers for the FY2002 appropriations from all General Revenue sub-accounts. Actual revenue to those sub-accounts was \$6.7 billion, \$1.5 billion less than appropriated. L.F. 117. Therefore, revenues to the General Revenue Fund were less than either the combined form 9 estimates or the appropriated amount (implicit revenue estimate). Once the correct legal fund is identified -- the statutory General Revenue Fund, not the administrative sub-account of General Revenue called the IGT fund -- the trial court's decision must be upheld under these facts even if the nursing homes' legal theory is correct.

ii. Revenues to the Title XIX Fund were less than estimates for the Title XIX Fund.

The nursing homes' argument glosses over the fact that the appropriations bill drew revenue for the one-time grants not just from the IGT fund, but from the Title XIX fund. And they concede that revenue for the Title XIX Fund was less than estimated. App. Br. at 68-69.

The nursing homes discount the apparent impact of the deficiencies in the Title XIX fund by arguing that the Governor did not have the authority to reduce expenditures from the Title XIX fund. They say that he lacked such authority because he did not undertake an analysis of whether revenue for the Title XIX fund was less than estimates for the Title XIX fund, and argue that the Governor must expend Title XIX funds because they are held in trust for the federal government. Both of these arguments of course beg the question. They assume that Article IV, Section 27 only gives the Governor the authority to reduce expenditures on a fund-by-fund basis and that he must base his analysis on the

revenue estimate for each fund, not on the revenue estimate upon which an appropriation was actually based.

B. The Governor's decision cannot be challenged on the bases appellants assert.

i. The Governor had the authority to reduce expenditures from either the Title XIX fund or the IGT account of General Revenue.

Even assuming the nursing homes carry the day on their fund-by-fund theory, their arguments in Point II are incorrect as a matter of law. Once this court determines whether the Governor's authority under Article IV, Section 27 was triggered, the Governor's exercise of discretion is not subject to review by this court. Even if it were, the Governor's actions were not arbitrary, capricious or unreasonable. In addition, Article IV, Section 27 applies to federal funds just like any other funds held by the state because it allows the Governor to order that those funds not be spent.

ii. Once the provisions of Article IV, Section 27 are met, the Governor's exercise of his discretion is not reviewable by the Courts.

The nursing homes acknowledge that, even under their theory, the provisions of Article IV, Section 27 were met as those provisions relate to the Title XIX fund. Article IV, Section 27 assigns the Governor the right to reduce expenditures when certain conditions are met. It does not require the Governor to make any determinations prior to making his decision. It simply sets out an objective standard to trigger his authority. Once this court determines that the conditions have been met, the analysis ends. The judiciary may not control actions based upon powers assigned to the executive based upon his judgment and discretion. *Commission Row Club v. Lambert*, 161 S.W.2d 732

(Mo. Ct. App. 1942); *State ex rel Robb v. Stone*, 25 S.W. 376 (Mo. 1894)(court cannot substitute its discretion for that of the Governor); *State ex rel. Missouri Highway and Transportation Commission v. Pruneau*, 652 S.W.2d 281 (Mo. App. 1983)(court may not interfere with Governor who has sole discretion to act upon requests for emergency assistance); *State ex rel Donnell v. Osburn*, 147 S.W. 2d 1065, 1070 (Mo. banc 1941)(mandamus will not lie against the Governor where it would interfere with executive discretion). The nursing homes cannot avoid this result by naming other officials. *State ex rel. See v. Allen*, 79 S.W. 164 (Mo. banc 1904)(court could not interfere with Auditor when he was acting pursuant to the Governor exercising a power vested solely in him.) Thus, when the Governor exercises his constitutional power to withhold appropriations, this Court does not have jurisdiction to review that decision, either as to whether a withholding should have been made, how much should be withheld or from what agency.

The nursing homes can cite no case in the history of Missouri jurisprudence holding that the courts have the right to review decisions made by the Governor once it is established that the Governor had the authority to act. If appellants were to prevail on this theory, the Governor's decision to exercise his veto authority, commute criminal sentences, or make appointments would all be subject to judicial review. Such a result would fundamentally change the courts' view of the separation of powers doctrine.

iii. The Governor's actions were not arbitrary, capricious, unreasonable, or otherwise illegal.

Even if this court chooses to review actions that the Governor had the authority to take, the Governor's actions were reasonable and based on a sound decision making process. As discussed above, the Governor was faced with a budgetary shortfall. He had before him indisputable evidence that state revenues were coming in well below appropriated amounts. He also had before him undisputed evidence that the state would not meet the consensus revenue estimate, the lynchpin of the entire state's budget. His actions were reasonable and wholly consistent with the state's "vital interest in having government live within its means." *See Sikeston*, 828 S.W.2d at 375.

iv. The Governor has the authority to stop the expenditure of federal funds.

Nothing in Article IV, Section 27 limits the Governor's authority so as to allow reduction of expenditures only when they are made from state funds. The Constitution is concerned with expenditures, not the nature of the funds that are used to make an expenditure. Therefore, the nursing homes' argument that Title XIX money is held in trust for the federal government has nothing to do with the underlying issues in this case. Appellants seem to argue that the state's share of the expenditure at issue here (the General Revenue portion) was somehow federal funds. App. Br. at 72. But they cite no case or statute to support their position.

Even if the state's share was actually federal funds, this does not mean that the nursing homes would be entitled to payment. At worst, it would mean that the state was not in compliance with its agreements with the federal government. *See* L.F. 117. But the federal government would make that

decision and they have not declared the state to be in violation of any laws or agreements. Tr. 82-83. Article IV, Section 27 gives the Governor the authority to reduce an expenditure. If he chose to reduce an expenditure that was entirely from federal funds, and thus restricted in its use, the decision might be a bad one, resulting in no net benefit to the state budget, but it is still his decision to make. At any rate, that was not the case here. The Governor's decision to withhold Title XIX expenditures did have a net fiscal benefit to the state because it allowed the Governor to balance the state's budget. In order to expend Title XIX funds, the state would have had to expend General Revenue Funds -- funds that were needed to meet budget.

The appropriation at issue here, §11.445 of H.B.11 came from two sources, the Title XIX fund and the IGT account of the General Revenue Fund. Under the nursing homes' theory, this court must look at each fund separately to determine whether Article IV, Section 27 was triggered. There is no dispute that the actual revenue for the Title XIX fund was less than estimated. App. Br. at 68. Therefore, even under the nursing homes' overly strict construction of the constitution, the actual revenue was less than the estimate upon which the appropriation was based and the Governor's authority to reduce the expenditure is evident without regard to the IGT sub-account. For the General Revenue portion, if the court finds that the IGT fund does not have separate legal status, the revenues for that fund were also less than estimated and the Governor's authority is evident without regard to Title XIX.

Moreover, Medicaid is "a jointly financed federal and state program." *Maples v. Department of Social Services*, 11 S.W.3d 869, 872 (Mo.App. 2000). "Under the Medicaid program, the federal government provides 60% of the funding and the states provide the other 40%."

Lexington Management Co., Inc. v. Missouri Department of Social Services, 656 F.Supp. 36, 37 (W.D.Mo. 1986). If the state General Revenue portion of the expenditure was properly withheld, the state could not access the federal funds, because it would have no money to make the match. In addition, the legislature must be assumed to know the law at the time it made the appropriation. The legislative intent must have been to expend state funds only if federal funds were available to make the match. Therefore if the Governor had the authority to withhold Title XIX, the state could not expend the General Revenue portion of the funds and maintain faith to legislative intent.

CONCLUSION

For the reasons stated above, the court should affirm the decision of the circuit court, thus upholding the Governor's decision to "reduce the expenditures of the state," (Art. IV, Section 27) including reducing the expenditures for one time quality and efficiency grants to nursing homes.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this _____ day of November, 2002, two true and correct copies of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 11,071 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

CHARLES W. HATFIELD