SC98020

IN THE SUPREME COURT OF MISSOURI

PLANNED PARENTHOOD OF ST. LOUIS REGION, et al.,

Respondents,

v.

DEPARTMENT OF SOCIAL SERVICES, et al.,

Appellants.

Appeal from the Circuit Court of the City of St. Louis, Missouri
The Honorable David L. Dowd, Circuit Judge

BRIEF OF APPELLANTS

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JURISDICTIONAL STATEMENT

Jurisdiction lies with this court under Article V, § 3 of the Missouri Constitution because this direct appeal is about the constitutionality of a state appropriations statute. *Schweich v. Nixon*, 408 S.W.3d 769, 773 (Mo. banc 2013) (citing *Shipley v. Cates*, 200 S.W.3d 529, 534 (Mo. banc 2006)).

STATEMENT OF FACTS

House Bill 2011 is the Department of Social Services' appropriations bill for Fiscal Year 2019. LF7 (HB 2011) at 2-41. Section 11.800, contained in Part 3 of the bill, states: "No funds shall be expended to any abortion facility as defined in Section 188.015, or any affiliate or associate thereof." LF7 at 41. The Missouri Medicaid Audit and Compliance Unit notified Planned Parenthood of St. Louis Region (PPSLR) and Reproductive Health Services of Planned Parenthood of St. Louis Region (RHS) (collectively, "Providers") by letter that their Fiscal Year 2019 claims were denied. LF6 at 2-5. RHS is "licensed . . . as an Abortion Facility." *Id.* at 4. PPSLR is an "affiliate" and "associate" of RHS. *Id.* at 2. Because both Providers fall within Section 11.800, DSS did "not have appropriation authority to pay the claims under HB 2011" and it was "prohibited by law from spending any funds in excess of the assigned amount and/or outside the assigned purpose of the appropriation." *Id.* at 2-5.

Providers filed individual appeals to the Administrative Hearing Commission challenging the denial of their claims and claiming their MO HealthNet provider numbers had been suspended. LF3 at 4-58; LF4 at 1-56. Providers both moved for summary decision, but did not dispute the fact that RHS is an "abortion facility" or that PPSLR is an "affiliate" and "associate" of RHS. LF3 at 76-78; LF4 at 74-76. The State responded requesting that Providers' motions for summary decision be denied and asking for a summary

decision in its favor. LF3 at 146-163; LF4 at 141-158. The AHC issued decisions denying Providers' motions for summary decision and granting the State's requests for summary decision. LF8 at 2-17 & 18-33, A23-54. The AHC concluded that the State's denials of Providers' claims were proper because it was required to follow the language in § 11.800 of House Bill 2011 and that the State had not sanctioned Providers. LF8 at 14-16 and 30-32, A35-37 and A51-53. The AHC did not address Providers' constitutional claims because it did not have jurisdiction to decide constitutional issues. LF8 at 15 & 31, A36 & A52.

Providers then sought consolidated review in the Circuit Court for the City of St. Louis of the AHC's decisions and the unresolved constitutional questions. LF5. They named the Department of Social Services, MoHealthNet Division, and the Missouri Medicaid Audit and Compliance Unit (the "State"). After briefing and hearing, the circuit court entered judgment in favor of Providers for their claims that portions of House Bill 2011 violated Article IV, § 23 (Count IV) and Article III, § 23 (Count V). LF17 at 22, A22. Judgment was entered against Providers on all other counts. *Id.* Costs were taxed against the State. *Id.*

POINTS RELIED ON

I. The trial court erred in ruling that Section 11.800 of House Bill 2011 violates Article IV, § 23 of the Missouri Constitution because the statutory cross reference to § 188.015 does not fix the appropriation's amount or purpose, in that the amount and purpose can be ascertained from the face of the bill.

State ex inf. Danforth v. Merrell, 530 S.W.2d 209 (Mo. 1975).

Attorney General's Opinion No. 56-1976.

II. The trial court erred in ruling that Section 11.800 violates Article III, § 23 of the Missouri Constitution because Section 11.800 does not violate the Single Subject Provision, in that Section 11.800 does not contravene or amend any substantive law.

Rolla 31 Sch. Dist. v. State, 837 S.W.2d 1 (Mo. banc 1992).

Opponents of Prison Site, Inc. v. Carnahan, 994 S.W.3d 573 (Mo. App. W.D. 1999).

III. The trial court erred in ruling that Part 2 of House Bill 2011 violates Article III, § 23 of the Missouri Constitution because the State did not rely on Part 2 in its briefing below, in that only Section 11.800 provides direction regarding payments to facilities rather than to programs.

Rolla 31 Sch. Dist. v. State, 837 S.W.2d 1 (Mo. banc 1992).

IV. The trial court erred in taxing costs against the state of Missouri because the taxing of costs against the State was improper, in that, absent statutory

authority, costs cannot be recovered in state court from the state of Missouri or its agencies and there was no such statutory authority in this case.

> *Richardson v. State Highway & Transp. Comm'n*, 863 S.W.2d 876 (Mo. banc 1993).

ARGUMENT

House Bill 2011, including Section 11.800's mandatory prohibition against expending Fiscal Year 2019 funds to Providers, does not violate either Article IV, § 23 (the "Appropriation Provision") or Article III, § 23 (the "Single Subject Provision") of the Missouri Constitution. Section 11.800 complies with the Appropriation Provision because a reader can ascertain the amount ("No funds") and purpose ("No funds shall be expended to any abortion facility" or "affiliate or associate thereof") of the appropriation from the face of the bill without following Section 11.800's statutory cross-reference. LF7 (HB 2011) at 41. Section 11.800 complies with the Single Subject Provision because appropriations bills are exempt from the single-subject requirement, and Section 11.800 does not contravene or amend any substantive law.

Providers face a high burden in challenging the constitutional validity of HB 2011. "Attacks against legislative action founded on constitutionally imposed procedural limitations are not favored." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). Courts are to "interpret[] procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation." *Id.* "'A statute is presumed to be constitutional and will not be invalidated unless it clearly and undoubtedly violates some constitutional provision and palpably affronts fundamental law embodied in

the constitution.'" *Sch. Dist. of Kan. City v. State*, 317 S.W.3d 599, 604 (Mo. banc 2010) (citation omitted). "Doubts will be resolved in favor of the constitutionality of the statute." *Id.* "The person challenging the validity of the statute has the burden of proving the act clearly and undoubtedly violates the constitutional limitations." *Id.* Providers failed to meet this burden.

I. The trial court erred in ruling that Section 11.800 of House Bill 2011 violates Article IV, § 23 of the Missouri Constitution because the statutory cross reference to § 188.015 does not fix the appropriation's amount or purpose, in that the amount and purpose can be ascertained from the face of the bill.

Providers contend—and the circuit court found—that Section 11.800 of House Bill 2011 violates the Appropriation Provision because it cross-references a definition in § 188.015, RSMo. Section 11.800, however, does not violate the Appropriation Provision, because its statutory reference does not fix the amount or the purpose of the appropriation. This issue is fully preserved. LF14 at 13-18; 23-26. It is reviewed *de novo*. *Williams v. Mercy Clinic Springfield Communities*, 568 S.W.3d 396, 406 (Mo. banc 2019).

The Appropriation Provision states: "Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or the purpose." Mo. Const. art. IV, § 23. Section 11.800 states: "No funds shall be expended to any abortion facility *as defined in Section 188.015*, or any affiliate or associate thereof." *Id.* (emphasis added). A reader can ascertain the amount and purpose of this

appropriation from the face of the bill without following the cross reference to § 188.015, RSMo.

This Court starts with the presumption that the General Assembly has "complied with" the Appropriation Provision. *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209, 213 (Mo. 1975). "Absent a prohibition, the general assembly's legislative power is plenary." *Fust v. Attorney Gen. for the State of Mo.*, 947 S.W.2d 424, 430 (Mo. banc 1997).

Article IV, § 23 is "unambiguous" and "require[s] no construction." *State ex inf. Danforth*, 530 S.W.2d at 213. "When a term [in the Constitution] is undefined, the Court looks to its plain and ordinary meaning as found in the dictionary." *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 902 (Mo. banc 2006). Here, the word "fix" means to "settle on: determine, define." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, at 861 (1986). The word "amount" is defined as "the total number or quantity: aggregate." *Id.* at 72. And the word "purpose" is defined as "an end or aim to be kept in view in any plan, measure, exertion, or operation: design," or "an object, effect, or result aimed at, intended, or attained." *Id.* at 1847.

The "amount" and "purpose" of the appropriation in Section 11.800 of House Bill 2011 are apparent from the face of the bill. The relevant "amount" of appropriation is "determined" by the first phrase in Section 11.800, which provides: "*No funds* shall be expended to any abortion facility." LF7 at 41

(emphasis added). The "amount" of appropriated funds is zero dollars, and that "amount" is "fixed" by the language of the appropriation bill, not by the statutory cross-reference. Similarly, the cross-reference to the definition of "abortion facility" in § 188.015 also does not "fix . . . the purpose" of the appropriation bill. Here, the "end or aim" of, and the "result aimed at," by Section 11.800 is perfectly clear from the text of the statute itself—its purpose is to prevent funds from being appropriated to abortion facilities and their affiliates and associates. Notably, Providers do not assert that *they* were confused about Section 11.800's purpose. At no point in this litigation have they contested the fact that they are an abortion facility (RHS) or affiliates or associates of an abortion facility (PPSLR).

The Court should reject three contrary argument made by the circuit court and by the Providers.

Providers' first error is to assume that Article IV § 23 bars *all* statutory cross-references in an appropriation's bill. Article IV, § 23 does not say that. It simply bars the use of a statutory reference *in lieu of* stating the appropriation's amount and purpose. This is consistent with the language of similar provisions in other states. *Comp., e.g.*, N.Y. Const. art. VII, § 7 ("every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; *and it shall not be sufficient for such law*

to refer to any other law to fix such sum") (emphasis added). Providers' reading of Article IV, § 23 proves too much. *Many* sections of *many* appropriations bills contain statutory cross-references. *See, e.g.*, H.B. 2011, §§ 11.005, 11.050, 11.125, 11.250, 11.305, 11.435, 11.436, 11.505, 11.530, 11.555, 11.600; *see also, e.g.*, H.B. 2006, §§ 6.005, 6.015, 6.050, 6.060, 6.140, 6.200, 6.250, 6.340; H.B. 2007, §§ 7.005, 7.035, 7.055, 7.065, 7.070, 7.075, 7.080, 7.090, 7.095, 7.100, 7.105, 7.155, 7.181, 7.450, 7.535, 7.540, 7.800, 7.815, 7.840, 7.855, 7.870, 7.900, 7.910; H.B. 2008, §§ 8.005, 8.025, 8.105, 8.140, 8.167. 8.185, 8.295, 8.300. The constitution prohibits using statutory references *instead of* stating the purpose. But using statutory references *in addition to* stating the purpose is not only constitutional but also a good practice—linking up substantive litigation and the appropriations meant to implement them.

The second error is to assume that an appropriation must include detailed guidance about the appropriation's use in order to "completely know" or "fully understand" its purpose. *See* LF17 (Op.) at 18, A18. Adjectives like "completely" and "fully" show the circuit court's movement away from the plain text. Prior Attorney General's Opinions say the amount and purpose must simply be capable of ascertainment from the face of an appropriations bill. "Section 23, Article IV, Constitution of Missouri, does not require that an appropriation must be stated as a specific dollar amount but only requires that the amount be capable of ascertainment." Attorney General's Opinion No. 56-

1976. So-called "open ended" appropriations, for example, sufficiently specify the amount of the appropriation. *Id.* ("[I]t has been held in numerous states that such appropriations are valid" for "[t]here is no situation where the recipient of the appropriation has discretion as to maximum amount from a general fund"). Later Attorney General Opinions discourage "descent into minute detail" when establishing the purpose of the appropriation. *See* Attorney General's Opinion No. 23-1985. Appropriations bills also commonly contain estimated amounts. *See Schweich*, 408 S.W.3d at 772 n.1 ("[I]n areas where the exact dollar figure that will be needed cannot be specified, [the legislature] approves the spending of funds in excess of an estimated or "E" amount for the stated purpose"). The Court should adopt the same approach as these A.G. Opinions. *Mesker Bros. Indus. v. Leachman*, 529 S.W.2d 153, 158 (Mo. 1975) ("an opinion of the Attorney General is not binding upon the courts or the citizenry, but it may be, and often is, persuasive"). If the "amount" may be specified at a higher level of generality, then certainly an appropriation's "purpose" can be stated without spelling out every detail.

Missouri's constitutional history—and the similar provision in Article III, § 21—also confirm that "purpose" serves a more general signaling function. This Court recently referred back to the framers of the 1875 Constitution for the policy behind the first original-purpose provision: "'[t]o afford security against hasty legislation and guard against the possibility of bills becoming

laws, which have not been fairly and considerately passed upon, wholesome restrictions are thrown around the law makers and greater particularity required in the enactment of laws than heretofore.'" *Calzone v. Interim Comm'r of Dep't of Elementary & Secondary Educ.*, No. SC 97132, 2019 WL 4784803, at *5 (Mo. Oct. 1, 2019) (quoting *Address to Accompany the Constitution*, Vol. II, Journal Missouri Constitutional Convention of 1875, 878 (Loeb-Shoemaker 1920)). Against this background, this Court read "purpose" in Article III, § 21 to mean "'the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated.'" *Calzone v. Interim Comm'r of Dep't of Elementary & Secondary Educ.*, No. SC 97132, 2019 WL 4784803, at *5 (Mo. Oct. 1, 2019) (quoting *State ex rel. McCaffery v. Mason*, 55 S.W. 636, 640 (Mo. 1900)); *see also id.* at *6 (defining bills' purposes as "to promote education" and "to promote Missouri's agricultural industry").

The appropriations provision serves the same signaling function, so its use of the term "purpose" should be given a comparable meaning. As with substantive bills, individual appropriations must state their purpose with enough specificity that "members of the legislative body . . . each may determine whether he will approve or disapprove" of it from the face of the bill. *State ex inf. Danforth*, 530 S.W.2d at 211. Stating the "purpose" serves a similar signaling function in both contexts. Even if "purpose" may mean

something a little broader in the original-purpose context, the term should at least be given a comparable meaning in the Appropriations Provision. *See Brinker Mo., Inc. v. Dir. of Revenue*, 319 S.W.3d 433, 437 (Mo. banc 2010) ("provisions are 'not read in isolation but are construed together'") (citation and brackets omitted). Here, Section 11.800's purpose is to prevent funds from being appropriated to abortion facilities and their affiliates and associates. That purpose is plain from the appropriations bill on its face. The cross-reference to § 188.015, RSMo clarifies the "details through which and by which that purpose is manifested and effectuated." *Calzone*, 2019 WL 4784803, at *4. But the cross-reference does not fix the purpose itself.

Finally, the State's reading does not make Section 11.800's reference to § 188.015, RSMo, mere surplusage. *See* LF17 at 18, A18. The statutory cross-reference has meaning, it just does not "fix" the appropriation's purpose. It provides more detailed guidance about the appropriation's implementation. Because the purpose of Section 11.800 is to restrict appropriations to abortion facilities and their affiliates and associates, and that purpose is plainly fixed by the language of the appropriation itself, the reference to Section 188.015 does not "fix the purpose" of that provision. Invalidating House Bill 2011 because the General Assembly referenced a statute for a definition, as opposed to merely restating the definition in the appropriation bill, would be an absurd result.

II. The trial court erred in ruling that Section 11.800 violates Article III, § 23 of the Missouri Constitution because Section 11.800 does not violate the Single Subject Provision, in that Section 11.800 does not contravene or amend any substantive law.

The circuit court also found that Section 11.800 of House Bill 2011 violated the Single Subject Provision. This issue is fully preserved. LF14 at 26-27. It is reviewed *de novo*. *Williams*, 568 S.W.3d at 406.

The Single Subject Provision explicitly exempts "general appropriation bills" from its purview, noting that such bills "may embrace the various subjects and accounts for which moneys are appropriated." Mo. Const. art. III, § 23. "[A]n appropriation that contravenes general statutory law," however, "is unenforceable." *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 4 (Mo banc 1992). Here, Section 11.800 does not violate the Single-Subject Provision because it does not contravene or amend general statutory law, including §§ 208.152 or 208.153. "Constitutional attacks based upon the procedural limitations contained in article III, sections 21 and 23 are not favored." *Calzone*, 2019 WL 4784803, at *2.

A. House Bill 2011 does not contravene or amend substantive law.

An appropriations bill can provide legislative guidance or direction about the use of an appropriation without contravening or amending substantive law. *Rolla 31 School Dist.,* 837 S.W.2d at 4. Indeed, when reading a statute,

the General Assembly's guidance in an appropriation bill constitutes "strong evidence of the legislature's intention in adopting the general statute." *Id.*

Rolla 31 School District shows that an appropriations bill may direct how appropriations are used. There, the General Assembly had passed substantive legislation newly mandating certain special education services. 837 S.W.2d at 3. But when the legislature later appropriated money to fund the new legislation, they directed that a large part of the appropriation "shall be used to continue support for existing programs." *Id.* The Court rejected the argument that the appropriation bill amended the new statute by re-directing funds to pre-existing programs. *Id.* So long as the appropriation and the statute could be read together, the Court reasoned, they had to be read together. *Id.* at 4-5. The purported conflict was "less than direct" so the guidance in the appropriations bill did not contravene or amend the substantive statute. *Id.*

The General Assembly also used an appropriations bill to give legislative guidance in *Opponents of Prison Site, Inc. v. Carnahan*, 994 S.W.3d 573 (Mo. App. W.D. 1999). There, the General Assembly appropriated funds for building a new prison and specified that it was "for the prison at Bonne Terre, Missouri." 994 S.W.3d at 579-80. This constituted binding "legislative action" directing that the prison had to be built at Bonne Terre. *Id.* But, the Court concluded, this legislative action simply dictated how the appropriation could be used, it

did not "amend substantive legislation." *Id.* at 580. "[A]ppellants cite no authority, and we can find none, for their assertion that a substantive legislative act was required of the General Assembly in order for it to 'select the Bonne Terre prison site.'" *Id.* (citation omitted). Legislative action "include[s] appropriations," and those appropriation can give guidance limiting how an agency may spend them. *Id*.

Like the appropriations in *Rolla 31 School District* and *Opponents of Prison Site*, Section 11.800 directs the appropriated funds toward some uses and not others. It directs the Department of Social Services to expend "[n]o funds" to any abortion facility, or any affiliate or associate thereof. Section 11.800 contains no legislation of general character, nor does it amend §§ 208.152 or 208.153, RSMo. MO HealthNet payments will still be made on behalf of eligible participants for approved services. Participants are still able to receive all approved services, including physicians' services and family planning services. Therefore, there is no impermissible amendment of substantive legislation and Section 11.800 does not violate the Single Subject Provision.

The circuit court concluded that Section 11.800 "effectively" amended the language of §§ 208.152 and 208.153, RSMo. *See* LF17 at 20, A20. But "effectively" amending a statute is not the standard for a violation of Article III, § 23—if it were, *Rolla 31 School District* and *Opponents of Prison Site*

would have turned out differently. To be unconstitutional, the appropriation must *directly* amend the general legislation at issue. *See Rolla 31 School Dist.*, 837 S.W.2d at 4. "If the conflict between two statutes is *less than direct* . . . the appropriation need not be viewed as an amendment of the general statute and the constitutional provision limiting the subject of an appropriation bill does not apply." *Id.* (emphasis added). Here, the circuit court should have read the guidance in Section 11.800 as "strong evidence of the legislature's intention in adopting" §§ 208.152 and 208.153, RSMo. *Id.* The opinion in *Rolla 31 School District* dictates that conclusion unless it is impossible to read the statutes and the appropriations bill in harmony. *Id.* Because there is no "direct" conflict, there is no constitutional violation. *Id.*

The circuit court relied on two very early decisions that are distinguishable from the present case. LF17 at 19-20, A19-20. In *State ex rel. Hueller v. Thompson*, 316 Mo. 272, 275-76 (Mo. 1926), the substantive statute authorized a state board to appoint as many "watchmen" as it deemed appropriate, but made no provision as to the compensation of those watchmen. *Id.* The Court struck down an appropriation provision that filled this gap by setting the maximum compensation for the watchmen. *Id.* at 277-78. *Hueller*'s reasoning contradicts the Court's later approach in *Rolla 31 School District* because the appropriation in *Hueller* clarified an ambiguity unaddressed by the statute—namely, the salaries of the watchmen. *See Rolla 31 School Dist.*,

837 S.W.2d at 4. So *Hueller* should be limited to its holding, *i.e.*, that fixing salaries is a substantive legislative act that must be done by general statute. This reading aligns with the narrower approach the Court has taken since *State ex rel. Davis v. Smith*, 75 S.W.2d 828, 830 (Mo. 1934) (reading statute narrowly in light of later appropriation). *See also State ex rel. Igoe v. Bradford*, 611 S.W.2d 343, 350 (Mo. App. W.D. 1980) (citing *Hueller* for the proposition that "The legislature cannot fix salaries by appropriation acts").

The circuit court also cited *State ex rel. Gaines v. Canada*, 113 S.W.2d 783, 790 (Mo. 1937), but that case is inapposite and should not be relied on. *Gaines* held that the University of Missouri law school did not have to admit an African-American student because admission at the school was limited to whites. *Id.* To justify its conclusion, the Court explained that the student could instead attend an out-of-state law school and cited a statute saying Missouri would pay the reasonable tuition and fees for such attendance. *Id.* at 786-87. Problem was, the appropriation for that statute assumed African-American students *could* attend the University of Missouri, so it only authorized payment of the difference between the fees charged by the University of Missouri to resident students and the cost of the out-of-state school. *Id.* at 790. This conflicted with the Court's racially-charged reading of the statute, so it found the appropriation bill unconstitutional. *Id.* The U.S. Supreme Court rejected the court's statutory reading and reversed, ordering

the University of Missouri to admit the student. *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

The holdings in *Hueller* and *Gaines* are inapposite here. Section 11.800 does not purport to set salaries as in *Hueller*. Nothing in Section 11.800 creates the kind of direct conflict that purportedly existed between the appropriation and the statute in *Gaines*. Providers "cite no authority, and we can find none, for their assertion that a substantive legislative act was required of the General Assembly" before it could choose not to appropriate funds for payments to any abortion facilities or any affiliate or associate thereof. *Opponents of Prison Site, Inc.*, 994 S.W.3d at 580. That appropriation decision does not directly conflict with the plain text of §§ 208.152 and 208.153, RSMo. *Rolla 31 Sch. Dist.*, 837 S.W.2d at 4.

Therefore, House Bill 2011 does not violate Article III, § 23 of the Missouri Constitution.

B. Sections 208.152 and 208.153, RSMo, do not confer any entitlement on Providers or any other health-care provider.

The fundamental premise of Providers' argument is that §§ 208.152 and 208.153, RSMo, mandate that a MO HealthNet provider "is entitled to payment" for services provided to MO HealthNet participants *even if* it is an

abortion provider or affiliate or associate thereof. LF11 at 6. But Providers never cite any statutory language in §§ 208.152 or 208.153 that says as much.

Under its plain language, § 208.152 requires MO HealthNet to make payments on behalf of eligible participants for certain categories of services, not on behalf of Medicaid providers. § 208.152.1, RSMo (directing that "MO HealthNet payments shall be made on behalf of those eligible needy *persons* as described in section 208.151 who are unable to provide for it in whole or in part") (emphasis added). In fact, Providers effectively concede this point by stating that "MO HealthNet is a program serving '*eligible needy persons*'" and that "[t]hose *persons* are entitled to health care services." LF11 at 5-6 (emphasis added). Likewise, § 208.153 allows *participants* to obtain benefits from any MO HealthNet provider. § 208.153, RSMo (directing that "any *persons* entitled to MO HealthNet benefits may obtain it from any provider of services with when an agreement is in effect under this section . . .") (emphasis added). Both statutes confer benefits on *patients*, but they do not purport to guarantee that any individual *provider* will be eligible for reimbursement.

In effect, Providers argue that §§ 208.152 and 208.153 confer a broad guarantee on any health-care provider that provides Medicaid-eligible services that it will be allowed to participate in the State's Medicaid program, and that any statutory restriction on the participation of any provider in the program constitutes a "repeal by implication" of §§ 208.152 and 208.153, RSMo. LF11

at 13. This argument leads to absurd conclusions. The State imposes many restrictions on the participation of various providers to participate in the program for many reasons, and none of these "conflict" with or "repeal by implication" §§ 208.152 and 208.153, RSMo.

For this reason, Providers' attempt to manufacture a conflict between §§ 208.152 and 208.153 and the funding restrictions in HB 2011 fails. The General Assembly's refusal to appropriate funds to reimburse services provided by Providers does not create any conflict with §§ 208.152 or 208.153, because the plain language of the statutes the Providers rely on simply do not guarantee that Providers will be allowed to participate as a provider in the State's programs.

C. Sections 208.152 and 208.153, RSMo, do not and cannot appropriate funds to reimburse Providers for Medicaid services.

Moreover, even if §§ 208.152 and 208.153 entitled Providers to participate as Medicaid providers (which they do not), those statutes do not and could not purport to *fund* Providers' participation in the Medicaid program. Appropriations, not general statutes, control the state's funding. The General Assembly has no power to divert money collected and received by the state, or to permit the withdrawal of money from the treasury, except by appropriations made by law. Mo. Const. art. III, § 36. Providers accurately note that § 208.152 states that MO HealthNet payments shall be made on

behalf of eligible persons for eligible services, including family planning. Sections 208.152 and 208.153, however, do not and cannot remove the overarching constitutional requirement for the General Assembly to appropriate the funds to make the payment. *See State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 278 (Mo. App. W.D. 2010).

Each session of the General Assembly has discretion to appropriate funds as it deems necessary without being restricted by the actions of previous sessions. *See id.* While the legislature can pass a general statute providing for payment of funds, "the actual disbursement of such funds is nonetheless subject to appropriation by future legislators." *Id.* (citing *State ex rel. Fath v. Henderson*, 60 S.W. 1093, 1097 (Mo. 1901)). "[O]ne general assembly cannot tie the hands of its successor." *Id.* (quoting *Fath*, 60 S.W. at 1097). Refusing to appropriate such funds is not an impermissible amendment of the statute; rather, it is simply the General Assembly exercising its appropriation authority under the Missouri Constitution. *Id.*

If Providers' position were correct, virtually every appropriations bill would violate the single-subject rule, because virtually every appropriations bill assigns various levels of funding to various programs. Because every provision of HB 2011 constitutes a valid exercise of the General Assembly's appropriations power and its discretion to decide what to fund and what not to fund, the bill does not contain more than one subject.

III. The trial court erred in ruling that Part 2 of House Bill 2011 violates Article III, § 23 of the Missouri Constitution because the State did not rely on Part 2 in its briefing below, in that only Section 11.800 provides direction regarding payments to facilities rather than to programs.

In finding a violation of Article III, § 23's "single subject" mandate, the circuit court occasionally cites Part 2 or Section 11.715 of HB 2011 in addition to Section 11.800. LF17 at 20-21, A20-21. This was in error. Part 2 and Section 11.715 are not at issue in this case: the Providers' claims were to be denied under Section 11.800 not under Section 11.715. LF6 at 2.

Section 11.715 applies when expending funds to certain "*programs*" of the Department of Social Services. LF7 at 40. Section 11.800 applies when expending funds to certain *facilities*. LF7 at 41. Here, claims submitted by PPSLR had to be denied because it "is an affiliate of" and "associate" to RHS, which is a "licensed abortion facility." LF6 at 2, 4 (letters to providers). Thus, this suit is properly about Section 11.800, which directs DSS to expend "no funds" to "abortion *facilities*" and affiliates of abortion *facilities*. LF7 at 41.

The State's briefing in the circuit court did not rely on Section 11.715 either. LF14 at 1-2. The only time the State's briefing mentioned Section 11.715 at all was to explain why Section 11.800 *by itself* "imposes obligations, not suggestions." LF14 at 17. To be clear, the State does not rely on Part 2 or Section 11.715 as a basis for the decision to deny funding in this case. The State relies only on Section 11.800 as the basis for that decision.

To the degree it is in front of the Court, Section 11.715 does not violate the Single Subject Provision for all the reasons explained above as to Section 11.800. To the extent the Court concludes Section 11.715 is unconstitutional, that conclusion should be limited only to that section, as the circuit court found. LF17 at 21, A21; § 1.140, RSMo.

IV. The trial court erred in taxing costs against the state of Missouri because the taxing of costs against the State was improper, in that, absent statutory authority, costs cannot be recovered in state court from the state of Missouri or its agencies and there was no such statutory authority in this case.

The circuit court's judgment taxed costs against the State. This was improper. "Absent statutory authority, costs cannot be recovered in state courts from the state of Missouri or its agencies or officials." *Richardson v. State Highway & Transp. Comm'n*, 863 S.W.2d 876, 882 (Mo. banc 1993) (noting "general prohibition of assessing costs against the state"). There is no statutory authority for costs to be taxed against the State at this stage of litigation. Therefore, the State requests that the judgment be reversed.

CONCLUSION

For these reasons, the Court should reverse the circuit court's order and judgment, and deny Counts IV and V.

October 30, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on October 30, 2019, to all counsel of record.

I also certify that the foregoing brief complies with the limitations in Rule No. 84.06(b) and that the brief contains 6,302 words.

/s/ *D. John Sauer*