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

REPLY BRIEF

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INTRODUCTION

The statutory reference in § 11.800 of HB 2011 does not "fix the amount or purpose" of any appropriation, and thus it is valid under Article IV, § 23 of the Constitution. Both the "amount" and "purpose" of the appropriation are evident from the face of the bill. The statutory reference merely clarifies the scope of the appropriation; it does not "fix" the appropriation's "purpose." Just as in related provisions, the word "purpose" in Article IV, § 23 does not include every detail of scope or implementation.

Section 11.800 is also constitutional under Article III, § 23. Respondents urge this Court to adopt a novel, aggressive interpretation of the single-subject rule for appropriation bills that has no basis in the plain language of the Constitution and lacks support in this Court's case law. This Court has clarified that an appropriation bill is valid under the single-subject rule so long as it does not "directly amend" any substantive legislation. Section 11.800 does not directly amend any general statutes, because it merely declines to provide funding to reimburse certain Medicaid providers for a single appropriation cycle. No statute purports to confer on Medicaid providers an irrevocable entitlement to future reimbursement. If any statute did so, it would conflict with Article III, § 36 and Article IV, § 23 of the Constitution, which hold that general statutes cannot mandate future appropriations.

ARGUMENT

I. The Statutory Reference in § 11.800 of HB 2011 Does Not "Fix the Amount or Purpose" of Any Appropriation. (Supports Appellants' Point I)

Article IV, § 23 of the Constitution provides that "[e]very appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law *to fix the amount or purpose*." MO. CONST. art. IV, § 23 (emphasis added). "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 861 (2002). The word "amount" means "the total number or quantity: aggregate." *Id.* at 72. And the word "purpose" means "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.

Thus, Article IV, § 23 prohibits only those statutory cross-references that "determine" or "define" the "total amount or quantity" of an appropriation, and those that "determine" or "define" the "end or aim to be kept in view" by the appropriation.

Id. Section 11.800 does neither of those things. Respondents offer several arguments to defeat the plain meaning of Article IV, § 23, but none is convincing.

First, Respondents heavily emphasize language in the preamble of HB 2011 that states: "Any clarification of purpose in Part 2 shall state the section or sections in Part 1 to which it attaches and shall, together with the language of said section(s) in Part 1, *form the complete statement of purpose of the appropriation*." D7, at 2 (HB 2011, Part 1, § 11.000) (emphasis added); *see* Resp. Br. 3, 7. But this language directly contradicts Respondents' argument. Respondents contend that § 11.800 in *Part 3* of the bill unconstitutionally "fix[es] the . . . purpose" of an appropriation. Resp. Br. 9-11. But as the preamble notes, Parts 1 and 2 provide "the complete statement of purpose of the appropriation," *id.*, and thus the "purpose" is "fixed" by Parts 1 and 2, not by Part 3. As Respondents concede: "According to the unambiguous language of the bill itself, Part 3 is not part of 'the complete statement of purpose' for the appropriation," and this Court should not "ignore what the legislature wrote in Section 11.000 and treat Part 3 as if it is . . . a statement of purpose." Resp. Br. 7.

Second, Respondents contend that "the State's argument proceeds from the wholly untenable position that Section 11.800 is *itself* an appropriation – an appropriation of zero dollars." Resp. Br. 7. Respondents urge that the affirmative "appropriation" occurs in § 11.455 in Part 1, while Section 11.800 in Part 3 merely

limits § 11.455's appropriation. Resp. Br. 7-8. This semantic quibble is beside the point. What matters under Article IV, § 23 is not whether § 11.455 or § 11.800 provides the relevant "appropriation," but whether the *statutory reference* in § 11.800 "fix[es] the amount" of an appropriation. It plainly does not. The statutory reference does not "determine" or "define" either how much money is allocated for family planning and physician services (approximately $400 million), or how much money is allocated for abortion facilities and their affiliates and associates ($0). Either way, the "amount" is fixed by the appropriation bill itself, not by the statutory reference. MO. CONST. art. IV, § 23.

Third, Respondents argue that the reference to the statutory definition of "abortion facility" in § 188.015, RSMo, "fixes the purpose" of the appropriation because that definition clarifies that hospitals are not included in the definition of "abortion facility." Resp. Br. 9-10; *see also* § 188.015(2), RSMo (defining "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortion are performed or induced other than a hospital"). Once again, this argument supports the State, not Respondents. As used in analogous provisions, the "purpose" of legislation "means 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 the Dep't of Elem. and Secondary Educ.*, 584 S.W.3d 310, 317 (Mo. banc 2019) (quoting *State ex rel. McCaffrey v. Mason*, 55 S.W. 636, 640 (Mo. banc

1900)). Specifying whether any particular entity constitutes an "abortion facility" constitutes a "detail[] through which and by which that purpose is manifested and effectuated," *id.*, not a statement of overarching purpose.

As the State noted in its opening brief, the statutory cross-reference "does not 'fix' the appropriation's purpose," but it does "provide more detailed guidance about the appropriation's implementation." App. Br. 19. In ordinary parlance, no one would describe a hospital as an "abortion facility," whether or not abortions are performed at the hospital. For example, no one would say, "after the car accident, the injured passenger was rushed to the nearest abortion facility for treatment."[1] But in case of any doubt about whether hospitals are covered, the statutory reference clarifies the scope of the appropriation and eliminates such doubt. The definition also clarifies whether doctors' offices where abortions are performed constitute "abortion facilities." *See* § 188.015(2), RSMo. Accordingly, the cross-reference serves a useful clarifying function without actually "fixing" the "purpose" of the

[1] Respondents argue that the plain and ordinary meaning of "abortion facility" includes hospitals, Resp. Br. 10, but that argument is incorrect. A "facility" is "something . . . that is built, constructed, installed, or established *to perform some particular function*." WEBSTER'S THIRD, at 812-13 (emphasis added). Thus, in ordinary parlance, an "*abortion* facility" is something constructed or established for the "particular function" of performing abortions. A facility where many health-care services are performed—such as a hospital—is ordinarily described as a "health-care facility," not an "abortion facility."

appropriation—*i.e.*, without "determining" or "defining" the "end or aim to be kept in view" by the funding restriction. WEBSTER'S THIRD, at 861, 1847.

Fourth, Respondents argue that, on the State's view, the statutory cross-reference is "mere surplusage." Resp. Br. 15-16. But the statutory reference usefully clarifies the scope of the funding restriction, without fixing the purpose of the restriction. Respondent's argument to the contrary assumes that *any* determination of the scope of the restriction necessarily "fixes" the "purpose" of it, which contradicts the plain meaning of those terms. *See supra*. In fact, it is Respondents' interpretation that violates the rule against interpreting constitutional language as "mere surplusage," because Respondents' interpretation entails that virtually *any* statutory cross-reference in an appropriation bill—even one that merely provides details or clarifies scope, like § 11.800—would be unconstitutional. On Respondents' view, the phrase "to fix the amount or purpose" in Article IV, § 23 means little or nothing. *See Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016) ("This Court must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage.") (citation omitted).

Fifth, Respondents argue that Article IV, § 23 states that an appropriation bill must "distinctly specify" the purpose of the appropriation without referring to any other statute. Resp. Br. 13, 14. This argument fails for several reasons. The argument is inconsistent with Respondents' explicit concession, earlier in their brief,

that Part 1 and Part 2 "form the complete statement of purpose of the appropriation," as stated in HB 2011's preamble. D7, at 2; *see* Resp. Br. 3, 7. In addition, this argument overlooks the plain meaning of *what* must be "distinctly specif[ied]" – *i.e.*, the "purpose" and "amount" of the appropriation. MO. CONST. art. IV, § 23. As discussed above and below, the "purpose" that must be "distinctly specified" does not include every exhaustive detail of the law's implementation. Rather, "purpose" refers to the "end or aim to be kept in view" by the appropriation, the "object, effect, or result aimed at" by the appropriation." WEBSTER'S THIRD, at 1847.

Furthermore, Respondents' argument directly contradicts the interpretation of "distinctly specify" that this Court adopted in *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209 (1975). *Merrell* involved an appropriation bill that appropriated funds to state agencies for certain "purposes" identified at a very high level of generality—including "(1) personal service; (2) equipment purchase and repair; and (3) operation." 530 S.W.2d at 213. This Court held that, by identifying the purposes of these appropriations at this high level of generality, the General Assembly had satisfied Article IV, § 23's directive to "distinctly specify" the purpose of the appropriation in the bill: "We hold that it did so specify." *Id.* By providing that funds would be used for "personal service," "equipment purchase and repair," and "operation," the legislature "specified three separate general purposes for which

each amount specified is to be used." *Id.* The level of specificity provided in HB 2011 is far greater than in the bills addressed in *Merrell*.

Sixth, Respondents' interpretation also creates a direct conflict between the meaning of "purpose" in Article IV, § 23, and the meaning of the very same word "purpose" in Article III, § 23. Just as in *Calzone*, "'[p]urpose' is the key word of this constitutional provision." 584 S.W.3d at 317. Respondents contend that the "purpose" of an appropriation bill encompasses every detail of its implementation. *Calzone* rejected precisely this argument with regard to the word "purpose" in Article III, § 23: "Purpose means the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated." 584 S.W.3d at 317 (quoting *McCaffrey*, 55 S.W. at 640). "The general purpose is often interpreted as the overarching purpose." *Id.* (quotation omitted). Thus, under Respondents' view, the word "purpose" would mean something radically different in Article IV, § 23 than the same word means in Article III, § 23, even though both words are used in a similar context. This grammatically awkward result counsels against their interpretation. *See, e.g.*, *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

Seventh, Respondents' interpretation contradicts the fundamental purpose of the procedural limitation in Article IV, § 23. The purpose of procedural limitations on the enactment of bills, like that in Article IV, § 23, is to "prevent[] the legislature from employing tactics that mislead fellow legislators or the public regarding the

purpose, subject, or effect of the proposed legislation." *Calzone*, 584 S.W.3d at 315 (citing several cases). Respondents do not contend that there was any confusion about the "purpose, subject, or effect" of § 11.800 when it was enacted, or that the statutory reference created any plausible risk of such confusion. On the contrary, Respondents concede that the purpose of the amendment was quite clear to all. Resp. Br. 29.

Eighth, Respondents' argument violates well-established standards for procedural challenges to bills. This Court has repeatedly emphasized that procedural limitations on legislative enactments are to be liberally construed. "Constitutional attacks based upon the procedural limitations" in the Constitution "are not favored." *Calzone*, 584 S.W.3d at 315. Procedural limitations on the enactment of bills were "not designed to inhibit the normal legislative processes." *Id.* at 317 (quoting *Blue Cross Hosp. Servs. Inc. of Mo. v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984)). "Were this otherwise, the process of legislation would be seriously hampered and embarrassed by every amendment which might be offered." *Id.* (quoting *McCaffrey*, 55 S.W. at 640 (alteration omitted). For this reason, "[t]his Court liberally interprets the procedural limitation of original purpose." *Id.* (quoting *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001)). By insisting on an

extremely *strict* interpretation of Article IV, § 23, Respondents flip this Court's principle of liberal interpretation for procedural limitations on its head.

For all these reasons, the Court should reject Respondents' arguments and hold that § 11.800 does not violate Article IV, § 23 of the Constitution.

II. Section 11.800 Does Not Violate the Single-Subject Rule of Article III, § 23 Because It Does Not "Directly Amend" Any Substantive Legislation. (Supports Appellants' Point II)

In their brief, Respondents concede: "[W]hile the legislature is free to enact general laws mandating funding, actual disbursements are always subject to appropriation of funds by future legislatures." Resp. Br. 26 (citing *State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 278 (Mo. App. 2010)). This concession fatally undermines their argument under Point II. Respondents contend that the General Assembly that passed HB 2011 was bound by preexisting statutes to appropriate funds for Respondents. *See* Resp. Br. 18-22, 27. But by admitting that "actual disbursements are always subject to appropriation of funds by future legislatures," Respondents concede that the General Assembly that passed HB 2011 was *not* bound to appropriate funds by its own prior enactments. Resp. Br. 26. When it comes to future appropriations, "one general assembly cannot tie the hands of its

successor." *State ex rel. Fath v. Henderson*, 60 S.W. 1093, 1097 (Mo. banc 1901) (quoted in *Kansas City Symphony*, 311 S.W.3d at 278).

Notwithstanding this concession, Respondents contend that § 11.800 of HB 2011 violates the single-subject rule of Article III, § 23 of the Constitution because it purports to "amend" substantive legislation by failing to appropriate funds to reimburse Respondents. *See* Resp. Br. 18, 22. This argument is unconvincing.

A. Respondents' expansive reading of the single-subject rule lacks any support in the plain language of Article III, § 23.

First and foremost, the plain language of Article III, § 23 contains no support for Respondents' expansive version of the single-subject rule for appropriation bills. Article III, § 23 provides: "No bill shall contain more than one subject which shall be clearly expressed in its title, except . . . general appropriation bills, *which may embrace the various subjects and accounts for which moneys are appropriated*." MO. CONST. art. III, § 23 (emphasis added). Under the plain language of this provision, an appropriation bill "may embrace . . . various subjects," provided only that each provision of the bill actually relates to the appropriation of money. *Id.* Here, § 11.800 merely specifies whether and to whom certain funds may be allocated, and thus it necessarily "embraces" one of the "various subjects and

accounts for which moneys are appropriated" in HB 2011. *Id.* Section 11.800, therefore, is fully consistent with the plain and ordinary meaning of Article III, § 23.

B. Respondents' argument conflicts with Article III, § 36 and Article IV, § 28 of the Constitution.

In addition, Respondents' interpretation creates a needless conflict with other provisions of the Missouri Constitution. Under Respondents' reasoning, §§ 208.152 and 208.153 effectively mandate that future legislatures *must* appropriate funds to reimburse Respondents for Medicaid services. *See* Resp. Br. 27 (arguing that § 11.800 "runs headlong into conflict with §§ 208.152, and 208.153, which *require* the State to reimburse" Respondents) (emphasis added). But if §§ 208.152 and 208.153 purported to mandate future appropriations, they would be unconstitutional under Article III, § 36 and Article IV, § 28 of the Constitution.

Both of those provisions expressly provide that the General Assembly cannot mandate the appropriation of money through a general statute. Article III, § 36 provides: "All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law." MO. CONST. art. III, § 36. Article IV, § 28 provides: "No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law." MO. CONST. art. IV, § 28. If §§ 208.152 and

208.153 mandated future appropriations, they would conflict with these constitutional provisions.

For this very reason, *Kansas City Symphony* held that a general statute cannot require the General Assembly to make future appropriations to fund the general statute's mandate. *Kansas City Symphony* involved a statute that purported to require future legislatures to allocate certain future tax revenues into the Missouri Arts Council Trust Fund. 311 S.W.3d at 274. The statute at issue, § 143.183, RSMo, stated that those tax revenues "shall be transferred" into the Fund. *Id.* When the legislature failed to appropriate money into the Fund, the Symphony sued, arguing that "the legislature, by enacting Section 143.183.5, ha[d] unequivocally committed itself to transfer funds to the Arts Trust Fund without the need for appropriation." *Id.* at 275.

Kansas City Symphony rejected the Symphony's argument, holding that this interpretation of the general statute would "create a constitutional conflict" with Article III, § 36 and Article IV, § 28. *Id.* at 277. Citing *Fath* for the proposition that "one general assembly cannot tie the hands of it successor," the Court held that an additional act of appropriation would be required to fund the putative commitment created by the general statute. *Id.* at 27-78. "The legislature is permitted to establish a special fund and allocate revenue to that fund, but *the actual disbursement of such funds is nonetheless subject to appropriation by future legislators*." *Id.* at 278

(emphasis added). "To otherwise interpret the statute as avoiding the appropriations process," and effectively mandating future appropriations of funds, "would render it unconstitutional under article III, section 36." *Id.* "Such an interpretation would also create a perpetual or automatic continuing appropriation . . . in violation of other constitutional provisions," including Sections 23, 26, and 28 of Article IV. *Id.*

So also here, even if the General Assembly had purported to commit the State to allocate funds to reimburse Respondents in §§ 208.152 and 208.153, "the actual disbursement of such funds is nonetheless subject to appropriation by future legislators." *Id.* To hold otherwise "would render [those statutes] unconstitutional under article III, section 36," and "would also create a perpetual or automatic continuing appropriation under [Sections 208.152 and 208.153], in violation of" Article IV, §§ 23, 26, and 28. *Id.*

C. Section 11.800 does not "amend" substantive legislation, and *Hueller*, *Davis*, and *Gaines* do not support Respondents.

Faced with this authority, Respondents rely heavily on three 80-year-old cases—*State ex rel. Hueller v. Thompson*, 289 S.W. 338 (Mo. banc 1926); *State ex rel. Davis v. Smith*, 75 S.W.2d 828 (Mo. banc 1934); and *State ex rel. Gaines v. Canada*, 113 S.W.2d 783 (Mo. banc 1937)—to argue that § 11.800 unconstitutionally "amend[s] existing legislation." Resp. Br. 17-18. Respondents'

reliance on these cases is misplaced, and their argument that § 11.800 supposedly "amends" §§ 208.152 and 208.153 is unconvincing, for several reasons.

First, as noted above, Respondents' argument rests entirely on the single-subject clause of Article III, § 23 of the Constitution, but it lacks any support in the plain language of Article III, § 23. *See supra* Part II.A. In pushing for an aggressive reading of *Hueller*, *Davis*, and *Gaines* to expand the single-subject rule, Respondents lose their mooring to the Constitution's text. Notably, this Court has not relied on the single-subject rule to invalidate any provision of an appropriation bill since 1937. *See* Resp. Br. 17-18. Rather, since 1937, both this Court and the Court of Appeals have adopted narrow interpretations to harmonize general statutes with appropriation bills. There are sound constitutional reasons for the Court's failure to accept Respondents' expansive reading of this doctrine over the past 82 years.

Moreover, as Respondents concede, to create a single-subject problem, an appropriation bill must "*amend*" existing legislation—not merely decide whether to allocate funding for particular projects or purposes. *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 5 (Mo. banc 1992); *see also* Resp. Br. 18. In *Rolla 31*, this Court clarified that an appropriation bill that declines to fund a mandate in a previously enacted general statute is constitutional unless it "directly amend[s] the general statute." *Id.* "If the conflict between the two statutes is less than direct," then "the appropriation need not be viewed as an amendment to the general statute and the constitutional

provision limiting the subject of an appropriation bill does not apply." *Id.* at 4. Here, for the reasons stated in the State's opening brief, there is no direct conflict between § 11.800 and §§ 208.152 and 208.153, RSMo. App. Br. 20-23.

Respondents contend that § 11.800 "amends" §§ 208.152 and 208.153, Resp. Br. 28, but this argument contradicts plain English. To "amend" a statute means "to change the wording of; specif., to formally alter (a statute, constitution, motion, etc.) by striking out, inserting, or substituting words." BLACK'S LAW DICTIONARY 89 (8th ed. 2004); *see also* WEBSTER'S THIRD, at 68 (defining "amend" as "to alter (as a motion, bill, or law) formally by modification, deletion, or addition"). Respondents do not and cannot contend that § 11.800 of HB 2011 "change[d] the wording" of §§ 208.152 or 208.153 "by striking out, inserting, or substituting words" in those two sections, BLACK'S, at 89; or that § 11.800 "formally alter[ed]" those two sections "by modification, deletion, or addition," WEBSTER'S THIRD, at 68. On the contrary, § 11.800 imposes no direct, formal, or lasting change on those two sections.

Indeed, § 11.800 could not do so. Unlike general statutes, appropriations are necessarily time-limited under Article IV. Article IV, § 23 provides that "[t]he general assembly shall make appropriations for one or two fiscal years." MO. CONST. art. IV, § 23. Article IV, § 28 provides that "every appropriation shall expire six months after the end of the period for which made." MO. CONST. art. IV, § 28. By declining to allocate funds for Medicaid reimbursements to abortion facilities for

a given fiscal year, § 11.800 does not "amend" any general statute—all it does is decline to appropriate funds for a particular purpose for a single appropriation cycle. The general statutes themselves remain unchanged and in full effect. Each future legislature remains free to fund, or not fund, Medicaid reimbursements for abortion facilities in each future appropriation cycle.

For these reasons, this Court's unanimous opinion in *Rolla 31* forecloses Respondents' expansive interpretation of *Hueller*, *Davis*, and *Gaines*. In *Rolla 31*, the challengers relied on *Davis* and *Gaines* to make the very same argument that Respondents make here—that an apparent funding mandate in a general statute compelled the General Assembly to make future appropriations in accordance with that perceived mandate. *Rolla 31*, 837 S.W.2d at 4-5 & n.3. This Court rejected that argument and clarified that an appropriation bill runs afoul of the single-subject rule only when it "directly amends" the general statute, as discussed above. *Id.* at 5.

In addition, though both Respondents and their supporting *amici* rely on *Gaines*—*see* Resp. Br. 18; ACLU Amicus Br. 5-6, 11 & n.3—this Court should not do so. As noted in the State's opening brief, *Gaines* was one of the most notorious cases in the tradition of *Plessy v. Ferguson*, 163 U.S. 537 (1896). See The State Historical Society of Missouri, *Historic Missourians: Lloyd Gaines*, *at* https://historicmissourians.shsmo.org/historicmissourians/name/g/-gaines/. *Gaines* relied on the single-subject rule to provide a contrived justification to uphold state-

mandated racial segregation at the University of Missouri. *Gaines*, 113 S.W.2d at 136-37. *Gaines* upheld racial segregation at the University of Missouri's Law School as "separate but equal" under *Plessy*, even though Missouri offered no law school opportunities for black students. *Id.* Instead, Missouri offered a scholarship fund for aspiring black law students like Lloyd Gaines to attend state law schools in neighboring States *outside* Missouri. *Id.* The Missouri legislature had limited this separate "opportunity" by placing funding restrictions on this scholarship fund through an appropriation bill. *Id.* at 16. To uphold Missouri's segregationist policy under *Plessy* and maintain the fiction that Missouri offered Gaines an "equal" educational opportunity, *Gaines* held that the funding restriction in the appropriation bill violated the single-subject rule of *Davis* and *Hueller*. *Id.*

This Court should treat Missouri's opinion in *Gaines* as discredited and should not rely on it for any purpose. *Gaines* reflects the distortion of legal doctrines to justify the indefensible practice of state-mandated racial segregation. 113 S.W.2d at 136-37. The U.S. Supreme Court overruled *Gaines* in a landmark decision that helped pave the way for the repudiation of *Plessy*. *See State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 352 (1938); *see also Brown v. Board of Education of Topeka*, 347 U.S. 483, 491 (1954).

Aside from *Gaines*, Respondents cite only two opinions of this Court to support their interpretation of the single-subject rule—*Hueller*, 289 S.W. 338, and

Davis, 75 S.W.2d 828. *See* Resp. Br. 17-18. But these cases do not support Respondents' argument. First, as noted above, this Court has since clarified that the single-subject rule in these cases should be applied only to appropriation bills that purport to "directly amend" substantive legislation—not to bills that merely decline to fund purposes previously authorized by statute. *Rolla 31*, 837 S.W.2d at 5.

Second, neither of these cases considered or addressed the provisions of the Missouri Constitution that prevent general statutes from mandating future appropriations—such as Article III, § 36 and Article IV, § 28—and neither case discussed the separate problem created by holding that preexisting general statutes can effectively mandate future appropriations. *See Fath*, 60 S.W. at 1097; *Kansas City Symphony*, 311 S.W.3d at 278; *supra*, Part II.B. Because these cases never considered or discussed the issues raised by Article III, § 36 and Article IV, § 28, they do not provide binding precedent on those questions. *See, e.g., United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (holding that, when an issue "was not . . . raised in the briefs or argument nor discussed in the opinion of the Court," then "the case is not a binding precedent on this point").

Third, both *Davis* and *Hueller* addressed a particular narrow and specific question—*i.e.*, whether the General Assembly can *fix salaries* of state officials through appropriation bills. *Hueller* held that the General Assembly lacked authority to "fix and regulate all salaries" of state officials "which . . . have not been fixed by

statute" through an appropriation bill, because such regulation of state salaries was the proper subject of "general legislation." 289 S.W. at 341. Likewise, in one short paragraph, *Davis* cited *Hueller* for the proposition that "legislation of a general character cannot be included in an appropriation bill" relating to the payment of salaries of the Board of Barber Examiners. 75 S.W.2d at 1073. Moreover, because the *Davis* Court had already concluded that there was no conflict between the appropriation in *Davis* and the preexisting statute regulating the payment of salaries, *see id.* at 1072-73, *Davis*'s reliance on this proposition constituted dicta. *Davis* interpreted the statute narrowly to avoid a conflict with the appropriation provision, which this Court should also do here.

Both cases, therefore, related to the narrow question whether the General Assembly can fix salaries of state officials through appropriation bills. *State ex rel. Igoe v. Bradford* aptly summarized the holdings of these cases as follows: "The legislature cannot fix salaries by appropriation acts but must do so by general statutes." 611 S.W.2d 343, 350 (Mo. App. 1980). This principle is much narrower than the sweeping proposition that Respondents seek to extract from these cases, and it has no application here.

Finally, Respondents offer no principled basis to distinguish this case from any situations in which the General Assembly chooses to allocate funds for certain purposes and not others. Although this Court has not invalidated any provision of

an appropriation bill under the single-subject rule since *Gaines* in 1937, Respondents' overbroad interpretation of the single-subject rule would call for scrutiny of innumerable provisions in yet-unidentified appropriation bills—as Respondents openly admit. *See* Resp. Br. 16. Yet Respondents offer this Court no principled basis to distinguish permissible appropriations from impermissible appropriations. *See id.* Because the decision to allocate funds for certain purposes and not others is central to every provision in any appropriation bill, Respondents effectively urge this Court to engage in far-reaching scrutiny of innumerable funding decisions made by the General Assembly.

Yet Respondents offer no judicially manageable standard for this increased scrutiny. For example, Respondents do not dispute that the General Assembly can make very specific policy decisions through appropriation bills. Resp. Br. 25 (citing *Opponents of Prison Site v. Carnahan*, 994 S.W.2d 573 (Mo. App. 1999)). Indeed, *Opponents of Prison Site* establishes that the General Assembly can effect very particular policy choices by choosing to fund certain specific projects and purposes but not others. *See Opponents of Prison Site*, 994 S.W.2d at 580-81. *Opponents of Prison Site* involved a far more specific policymaking decision—*i.e.*, the selection of a particular site for a new prison—than the decision at issue here. *See id.* The Court held that this specific policy decision did not violate the single-subject rule because the appropriation bill did not "amend substantive legislation." *Id.* at 580.

Yet Respondents never explain why some funding decisions are *too* specific while others are not.

Such standardless, endless judicial scrutiny of appropriations would violate the separation of powers and encroach upon the Legislature's traditional authority over appropriations. *See, e.g.*, *Rebman v. Parson*, 576 S.W.3d 605, 610 (Mo. banc 2019) (observing that the General Assembly "has the undoubted power to make or to refuse to make an appropriation authorized by the Constitution") (quoting *State ex rel. Tolerton v. Gordon*, 139 S.W. 403, 410 (Mo. 1911)). Indeed, the power of appropriation lies at the very heart of the legislative power vested in the General Assembly by Article III, § 1 of the Constitution. *Opponents of Prison Site*, 994 S.W.2d at 578. When it comes to such matters of core legislative competence, "except for the restrictions imposed by the state constitution, the power of the state legislature is unlimited and practically absolute." *State ex inf. Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Envtl. Improvement Auth.*, 518 S.W.2d 68, 72 (Mo. 1975). This Court should decline Respondents' invitation to depart from 80

years of consistent practice and undertake aggressive scrutiny of appropriations bill under an overbroad reading of the single-subject doctrine.[2]

D. The plain language of §§ 208.152 and 208.153 mandates reimbursement only for "eligible needy persons," not providers like Respondents.

Further, the fundamental statutory premise of Respondents' argument—*i.e.*, that §§ 208.152 and 208.153 create an entitlement for *them* to be reimbursed—is not convincing. *See* Resp. Br. 18-22. As the circuit court correctly observed, "nothing in §§ 208.152 or 208.153, RSMo, establishes that [Respondents] are entitled to participate in MO HealthNet. Furthermore, nothing in §§208.152 or 208.153, RSMo, establishes that [Respondents] are entitled to payment for furnishing services to MO HealthNet eligible individuals." App. A13; D17, at 13. On the contrary, "the statutes only promise the *eligible individuals* that their bill will be paid. But no

[2] On December 2, 2019, Respondents belatedly filed a motion to take judicial notice of a handful of Governor's veto statements. Respondents provided only excerpts of veto statements, and not the bills they addressed, so context is lacking. But the veto statements submitted do not appear to support Respondents. Most of the veto statements do not address the single-subject rule at all, but provide different grounds for the line-item veto, and thus they have no application here. *See* Resp. Suppl. Auth. at 1 (FY1990, § 7.580); *id.* at 2 (FY1991, § 3.090); *id.* at 3 (FY1991, § 7.560); *id.* at 4 (FY1991, § 7.582); *id.* at 5 (FY1991, § 18.260). The remaining veto statements address instances where the General Assembly went far beyond allocating or not allocating funds for specified projects and purposes, and instead purported to establish ongoing legislative oversight mechanisms for the Executive Branch's use of appropriated funds. *See id.* at 6 (FY1994, §§ 7.010, 7.095); *id.* at 7 (FY1995, § 22.105); *id.* at 8 (FY1998, § 6.369). Section 11.800 does not purport to create a legislative oversight committee to oversee ongoing Executive Branch expenditures, so these latter situations are distinguishable from the present case.

eligible individuals are plaintiffs in this matter, and so, that matter is not before the Court." App. A13; D17, at 13 (emphasis added).

The plain language of the statutes supports the circuit court's interpretation. Section 208.152 provides 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." § 208.152.1, RSMo (emphasis added). Section 208.153 provides: "Any *person entitled to MO HealthNet benefits* may obtain it from any provider of services with which an agreement is in effect under this section and which undertakes to provide the services, as authorized by the MO HealthNet division." § 208.153.1, RSMo (emphasis added). Both statutes provide for reimbursement on behalf of Medicaid *recipients*, not Medicaid providers like Respondents. But no Medicaid recipients have challenged § 11.800 here, as the circuit court noted. App. A13; D17, at 13. Because the statutes provide for funding on behalf of "eligible needy individuals," not health-care providers, they simply do not confer the entitlement to reimbursement that Respondents urge.

In fact, if they did so, they would violate Article III, § 36 and Article IV, § 28 of the Constitution, for the reasons discussed above. Moreover, even if there were any doubt about the plain meaning of these statutes, the Court should resolve that doubt by interpreting them to harmonize with § 11.800. *See Rolla 31*, 837 S.W.2d at 4-5; *Kansas City Symphony*, 311 S.W.3d at 278; *Davis*, 75 S.W.2d at 1072-73. In

all three of these cases, the Court adopted a narrower reading of the statute to avoid creating a needless conflict with an appropriation bill, and this Court should do the same here. "Because there is no 'direct' conflict, there is no constitutional violation." App. Br. 23.

III. Respondents' Alternative Interpretation of § 11.800 as Providing "Simply Advice, or a Suggestion" Is Not Tenable. (Addresses Part III of Respondents' Brief)

In the alternative, Respondents propose that this Court could avoid the constitutional questions by interpreting § 11.800 of HB 2011 as providing "simply advice, or a suggestion, to the Department of Social Services." Resp. Br. 32. "As a principle of statutory construction, this court should reject an interpretation of a statute that would render it unconstitutional, when the statute is open to another *plausible* interpretation by which it would be valid." *Kansas City Symphony*, 311 S.W.3d at 278 (emphasis added) (citing *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838-39 (Mo. banc 1991)). Here, the interpretation proposed by Respondents is not "plausible," *id.*, because it violates the plain language of the statute and every applicable principle of statutory interpretation.

Section 11.800 states: "No funds *shall* be expended to any abortion facility as defined in Section 188.015, RSMo, or any affiliate or associate thereof." D7, at 41 (emphasis added). "Shall" unambiguously imposes an obligation, not a suggestion. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2085 (2002) (defining

"shall" as an auxiliary verb "used to express a command or exhortation," and "used in laws, regulations, or directives to express what is mandatory"). "'Shall' means 'shall.' It unambiguously indicates a command or mandate." *Frye v. Levy*, 440 S.W.3d 405, 408 (Mo. banc 2014).

Respondents argue that HB 2011's preamble states: "Part 3 of this act shall consist of *guidance* to the Department of Social Services in implementing the appropriations in Part 1 and Part 2 of this act." D7, at 3 (emphasis added). But the plain meaning of "guidance" in this context also denotes a command or obligation, not a suggestion. "Guidance" means "an act of guiding." WEBSTER'S THIRD, at 1009. To "guide" means to "direct in a way," "to regulate and manage," or "direct or supervise esp. toward some desirable end, course, way, or development." *Id.* Thus, "guidance" typically denotes an obligation, not a suggestion—especially when that "guidance" is provided by an entity with legally binding authority. *See Allcorn v. Allcorn*, 241 S.W.2d 806, 811 (Mo. App. 1951) ("To 'guide' means to 'direct,' 'regulate,' or 'order,' according to various definitions in Webster's New International Dictionary.").

Respondents' interpretation of "guidance" violates several other principles of statutory interpretation. First, it makes the statute internally self-contradictory by interpreting the word "guidance" in § 11.000 to change the unambiguous meaning of the word "shall" in § 11.800. *See S. Metro. Fire Prot. Dist. v. City of Lee's*

Summit, 278 S.W.3d 659, 666 (Mo. banc 2009) (holding that "a reviewing court must attempt to harmonize" statutory provisions "and give them both effect"). Second, by interpreting § 11.800 as a mere "suggestion," Respondent would make the phrase "No funds shall be expended" in § 11.800 to mean something quite different than the very same phrase in § 11.715 of the previous page of the same bill. Section 11.715 provides that "No funds shall be expended" on any program that performs abortions, and Respondents do not dispute that that language is mandatory. D7, at 50. Respondents' interpretation would thus run afoul of well-settled principles of interpretation. *See S. Metro Fire Prot. Dist.*, 278 S.W.3d at 666. Third, as the trial court recognized, by reading § 11.800 as mere "advice" or "suggestion" from the legislature, Respondents would deprive it of any independent legal effect, thus transforming it into "mere surplusage." App. A16; D17, at 16 (quoting *Middleton v. Mo. Dep't of Corr.*, 278 S.W.3d 193, 196 (Mo. banc 2009)).

Respondents concede that their proposed interpretation of § 11.800 is "odd." Resp. Br. 34. That is an understatement. In fact, their interpretation is untenable. For all these reasons, the trial court correctly rejected Respondent's proposed interpretation. App. A14-A16; D17, at 14-16.

IV. There Was No Legal Authority For the Award of Costs. (Addresses Appellants' Point IV).

In a footnote, Respondents argue that the circuit court had "statutory authority to award costs" under § 536.087, RSMo. Resp. Br. 29 n.9. But § 536.087 authorizes

an award of "fees and expenses" only if the circuit court determines that the State's position was not "substantially justified" or that "special circumstances make an award unjust." § 536.087, RSMo. Respondents never asked the circuit court to make such findings, and it did not do so.

CONCLUSION

The Court should reverse the circuit court's judgment holding § 11.800 invalid on constitutional grounds, and deny Respondents' Counts IV and V.

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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 December 3, 2019, to all counsel of record.

I also certify that the foregoing brief complies with the limitations in Missouri Supreme Court Rule 84.06(b) and that the brief contains 7,274 words using the word-counting feature of Microsoft Word.

/s/ *D. John Sauer*