Summary of SC98020, *Planned Parenthood of St. Louis Region, et al. v. Department of Social Services, Division of Medical Services, et al.*

Appeal from the St. Louis circuit court, Judge David L. Dowd
Argued and submitted December 10, 2019; opinion issued June 30, 2020

Attorneys: The state was represented by Solicitor General D. John Sauer, Deputy Solicitor General Peter T. Reed, Caleb M. Lewis and Ian Hauptli of the attorney general's office in Jefferson City, (573) 751-3321. Planned Parenthood was represented by Charles W. Hatfield, Alixandra S. Cossette and Alexander C. Barrett of Stinson LLP in Jefferson City, (573) 636-6263.

The ACLU of Missouri, which submitted a brief as a friend of the Court, was represented by Anthony E. Rothert and Jessie Steffan of the ACLU of Missouri Foundation in St. Louis, (314) 652-3114, and Gillian R. Wilcox of the ACLU of Missouri Foundation in Kansas City, (816) 470-9933.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals the circuit court's judgment declaring a provision of an appropriation bill unconstitutional and taxing costs against the state. In a 6-1 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the circuit court's judgment declaring the provision unconstitutional and severing it from the remainder of the bill. As an appropriation bill, its provision purporting to change the substantive law defining what services are covered and which providers are entitled to payment for delivering them necessarily violates the state constitutional prohibition against bills containing multiple subjects. The portion of the circuit court's judgment declaring a statutory cross-reference in the provision unconstitutional is vacated as unnecessary. The portion of the judgment taxing costs against the state was not authorized by statute and is reversed.

Judge Zel M. Fischer dissents. He would hold the provision is constitutional. The state constitution allows appropriation bills to embrace various subjects for which money is appropriated, and this provision is connected to the appropriation of money for family planning.

Facts: Missouri's Medicaid program is known as MO HealthNet and is administered by the department of social services' MO HealthNet division. Section 208.152.1, RSMo, provides MO HealthNet payments "shall be made on behalf of" Medicaid-eligible persons who received physicians' services or certain family planning services. The statute further provides the Medicaid-eligible person may obtain services from "any provider" with an agreement authorized by the division. Those authorized providers include Planned Parenthood of the St. Louis Region and Reproductive Health Services of Planned Parenthood (collectively, Planned Parenthood). Under the statute, payments for covered services are made to the authorized provider "on behalf of" the eligible person. The legislature appropriated funds for fiscal 2019 to the department through House Bill No. 2011. In the bill, section 11.800 prohibited the expenditure of funds to any abortion facility as defined in section 188.015, RSMo, or any such facility's affiliate or

associate. As a result, the division notified Planned Parenthood it was prohibited from making any payments to Planned Parenthood for physician or family services to Medicaid-eligible individuals during fiscal 2019. Planned Parenthood filed complaints with the administrative hearing commission, which ruled in the state's favor. Planned Parenthood sought consolidated review in the circuit court, which declared section 11.800 of HB 2011 unconstitutional, severed the section from the rest of the bill and taxed costs against the state. The state appeals.

AFFIRMED IN PART; VACATED IN PART; REVERSED IN PART.

Court en banc holds: (1) Section 11.800 of HB 2011 is unconstitutional. A bill purporting to combine appropriations with the enactment or amendment of substantive law necessarily contains more than one subject in violation of article III, section 23 of the state constitution. Sections 208.152 and 208.153 plainly and unambiguously specify what MO HealthNet payments will cover and to whom those payments must be made; therefore, there is no basis to conclude the legislature intended section 11.800 of HB 2011 as a mere interpretive aid to resolve an ambiguity. Instead, language in section 11.800 seeking to disqualify certain authorized providers based on services they provide outside the MO HealthNet program directly conflicts with the substantive law in sections 208.152 and 208.153. This clearly and unmistakably violates article III, section 23's proscription against bills with multiple subjects.

(2) The circuit court properly severed section 11.800 from HB 2011 Although the circuit court improperly relied on section 1.140, RSMo, severance of bills enacted in violation of the constitution's procedural mandates is still proper if a court is assured, beyond a reasonable doubt, the bill would have become and would remain law absent the procedural violation. Section 11.800 is the only section included in part 3 of HB 2011. The legislature expressly noted part 2 shall not be severed from part 1. There is no similar prohibition against severing part 3, and nothing in section 11.800 is essential to the efficacy of the bill's appropriations.

(3) The circuit court had no statutory authority to tax costs against the state in this action.

Dissenting opinion by Judge Fischer: The author would hold section 11.800 is constitutional. The plain and unambiguous language of article III, section 23 exempts from its purview appropriation bills, which expressly allows appropriation bills to "embrace the various subjects and accounts for which moneys are appropriated." This Court cannot disregard or add words to the constitution's clear and unambiguous language. But even if article III, section 23 applied to appropriation bills, the challenged language in HB 2011 is constitutional. It embraces one of the various subjects for which money is appropriated and has a natural connection to the legislature's appropriation of money for family planning; therefore, it does not violate the constitution.