IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT

STEPHANIE DOYLE, et al.,	)	
Plaintiffs,	)	
vs.	)	Case No.: 21AC-CC00186
JENNIFER TIDBALL, et al.,	)	
Defendants.	)	

FINAL JUDGMENT

This action, which challenges the State's decision to refuse to enroll eligible individuals in the MO HealthNet program, came before this Court for trial on June 21, 2021. Plaintiffs allege that the State's decision is unlawful because Plaintiffs and similarly situated individuals are entitled under Amendment 2 to enroll in the MO HealthNet program on July 1, 2021, and there is existing appropriation authority for the MO HealthNet program to allow such individuals to enroll. The State opposes these claims.

This matter was tried on stipulated facts and exhibits. Having fully considered the parties' pleadings, evidence, and written and oral arguments, the Court concludes that the State's refusal to enroll Plaintiffs and other eligible individuals in the MO HealthNet program is not unlawful. Notwithstanding a majority vote of the people, an initiative which does not comply with the limits of constitution can not stand[1]. Accordingly, the Court will enter judgment in favor of Defendants on all claims.

[1]While courts should act with restraint to avoid preventing the initiative process from taking its course, the people's limitations on the initiative are clearly and explicitly mandatory. *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990).

ANALYSIS

If Amendment 2[2] was validly enacted, the Plaintiffs are absolutely right. Any appropriation for Medicaid services would be available for **all** eligibles including the Medicaid Expansion class of eligibles, not just those who are eligible prior to July 1, 2021. Existing case law makes it excrutiatingly clear that the General Assembly cannot, via the appropriations process, exclude the class of eligibles created by Amendment 2 and the subsequent payment of Medicaid benefits to them. The Court rejects the semantic and legal gymnastics offered by the State on the issue of intent and whether or not Medicaid Expansion was actually funded, but considers the State's argument that this is an "end-around" the requirements of Article III, section 51 of the Missouri Constitution[3].

It is this clear legal result which illustrates the problem with Amendment 2. It does, albeit indirectly, affect the General Assembly's control over appropriations. This issue was not resolved by *Cady* as assumed by the parties. It is instructive to look at what *Cady* actually said.

In *Cady, et al., v. Ashcroft, et al.,* 606 S.W.3d 659 (Mo App, June 8, 2020), the Court of Appeals for the Western District of Missouri examined the pre-election challenges to Amendment 2, the "Proposed Measure". Point I in *Cady* challenged the facial constitutionality on the basis that it appropriated monies without creating or providing for any new revenues in violation of Article III, § 51 of the Missouri Constitution. The *Cady* court "agree[d] with the

---

[2] Amendment 2 will be used to refer to Article IV, section 36(c) of the Missouri Constitution, commonly referred to as Medicaid Expansion.

[3] Article III, section 51 - **Appropriations by initiative** . . . The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution . . .

circuit court that the substantive challenge to the Proposed Measure (Point I) is not ripe for judicial determination. *Cady* at 666. The *Cady* court further agreed that "the circuit court properly rejected [the] invitation to 'delve into the hypothetical interaction between the [Proposed Measure](if passed), Missouri appropriations law, and substantive Medicaid law'" and that "such review is appropriate only *after* the election should the Proposed Measure pass."(emphasis in original) *Id.* at 667. Thus the *Cady* court declined to adjudicate the Article III, section 51 challenge on the merits.

The *Cady* court then went on to consider if the Proposed Measure facially violated Article III, section 51, by clearly and unavoidably purporting to appropriate previously existing revenues. Relying upon the lack of direction such as "stands appropriated" language within the text of the Proposed Measure, the *Cady* court found that the measure did not create an irreconcilable conflict which would preclude its submission on the ballot.

Both *Boeving v. Kander*, 496 S.W.3d 498 (Mo. banc 2016) and *Comm. for a Healthy Future, Inc.* 201 S.W.3d 503 (Mo. banc 2006) addressed the high standard for striking an initiative from the ballot. However, the measure has now passed and the test is now different. The question is now does Amendment 2 actually require an appropriation of funds?[4] As noted in *Boeving* such challenges are better addressed in the context of actual (rather than hypothetical) application. *Boeving* at 509-10.

The merits of the question, does Amendment 2 directly or indirectly require the appropriation of monies, is now ripe for ruling. The Missouri Supreme Court in *City of Kansas*

---

[4]It is undisputed that Amendment 2 does not create any new revenues, so the question collapses to "does Amendment 2 require an appropriation?".

City v. Chastain, 420 S.W.3d 550 (Mo banc 2014) tells us that "[w]hat is prohibited is an initiative that, either expressly or through **practical necessity** requires the appropriation of funds to cover the costs associated with the [initiative] proposal" (emphasis added) *Chastain* at 555. Amendment 2 does just that which is prohibited. Plaintiff's argument that we don't need an appropriation because we already have one does not avoid this issue. Were there no Medicaid program currently funded, Amendment 2 would require the creation of one for its beneficiaries. It clearly provides that adults between the ages of 19 and 65 with income at or below the 135% of poverty level "**shall** be eligible for medical assistance under MO HealthNet and **shall** receive coverage for the health benefits package."(emphasis added). *Mo. Const.* Art. IV, section 36(c).1

The effect of the actual application of Amendment 2 is as follows: 1) Amendment 2 creates a class of 275,000 new eligibles for MO HealthNet Benefits; 2) The State will bear at least 10% of the cost of those benefits; and 3) The estimated cost for such expansion is 1.8 million dollars. The Missouri Constitution provides that state revenues may not be expended without an appropriation. The Plaintiffs admit that a supplemental appropriation would be required to fully fund expansion and implicitly request (in their proposed judgment at page 9) such an appropriation when they ask this Court to order that" [p]laintiffs and similarly situated individuals shall be provided MO HealthNet benefits described in Article IV, Section 36(c) beginning July 1, 2021." The Court lacks the authority to order such relief as the legal effect would be a court ordered appropriation.

The non-appropriation language in Article III, section 51 of the Missouri Constitution provides that the people, by initiative, may only spend or appropriate the revenues that they raise in the initiative. If the Court allows them to spend other state revenues by initiative, such action

would deprive the General Assembly of its constitutional right to appropriate revenues in all other non-initiative circumstances.

As Plaintiffs readily admitted at argument, under existing law, the choice of the General Assembly is either to fund the expansion **or** not have a Medicaid program at all. Without addressing the multiple and serious consequences of terminating the Medicaid program as a whole, given the choices above, Amendment 2 does direct or restrict the General Assembly's ability to change the appropriation. This result cannot be harmonized to avoid striking down the initiative.

Having considered the interaction between Amendment 2, Missouri appropriations law, and substantive Medicaid law which the *Cady* court declined to do, this Court concludes that Amendment 2 indirectly requires the appropriation of revenues not created by the initiative and is therefore unconstitutional under Article III, section 51 of the Missouri Constitution. Accordingly, this Court declines to order the implementation of Medicaid Expansion as requested in Count I.

Having found that the initiative adopted by the people violates the Article III, section 51 of the Missouri Constitution and therefore is unconstitutional, the Court denies Count II as moot.

CONCLUSION

Judgment is hereby entered against Plaintiffs and in favor of Defendants on Counts One and Two of the Petition. Any and all other claims for relief not expressly ruled on above are denied. Plaintiffs' requests for declaratory and injunctive relief are denied with prejudice. The parties are to bear their own costs.

SO ORDERED this 23rd day of June, 2021.

Jon E. Beetem, Circuit Judge - Division I