IN THE SUPREME COURT OF MISSOURI

NO. SC99185

STEPHANIE DOYLE, ET AL.,

Appellants,

v.

JENNIFER TIDBALL, ET AL.,

Respondents.

APPEAL FROM THE CIRCUIT COURT

OF COLE COUNTY, MISSOURI

Division Number 1

The Honorable Jon E. Beetem

AMICI CURIAE BRIEF OF 33 HEALTH ORGANIZATONS, PROVIDERS, RESEARCHERS, AND SCHOLARS SUPPORTING APPELLANTS

FILED WITH CONSENT OF ALL PARTIES

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CONSENT OF ALL PARTIES TO THE FILING OF THE AMICI CURIAE BRIEF

Pursuant to Missouri Supreme Court Rule 84.05(f)(2), *Amici Curiae* certify that all parties have consented to the filing of this brief.

IDENTITY OF *AMICI CURIAE* AND STATEMENT OF INTEREST

Stephanie Doyle, Melinda Hille, and Autumn Stultz, through their Counsel, and Jennifer Tidball, Missouri Department of Social Services, Kirk Mathews, MO HealthNet Division, Kim Evans, and Family Support Division, through the Missouri Attorney General, have graciously consented to *Amici* filing a friend of the court brief with the Court. The *Amici* submit this brief to offer reasons in addition to those advanced by Appellants Stephanie Doyle, Melinda Hille, and Autumn Stultz as to why the decision of the circuit court should be reversed.

While each *Amicus* has particular interests, they collectively bring to the Court a deep understanding of the research regarding the effects of Medicaid expansion and how Medicaid expansion has benefitted the health access and health status of the expansion population and the economies of expansion states. The *Amici Curiae* are:

The National Health Law Program is a non-profit legal and policy organization working to improve access to quality health care for low-income and underserved people. NHeLP educates, researches, advocates, and litigates at the federal and state levels.

The American Cancer Society Cancer Action Network empowers advocates to make cancer a top priority for government officials, including supporting Medicaid expansion in Missouri. More than two million lower income Americans with a history of cancer rely on Medicaid.

The American Diabetes Association's mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes. It ensures the 122 million Americans living with diabetes and prediabetes, along with the millions more who are at

high risk for diabetes—no matter their race, income, zip code, age, education or gender—get equal access to the most basic of human rights: their health.

Cancer*Care* is the leading national organization helping people manage the emotional, practical, and financial challenges of cancer. Cancer*Care* supports Medicaid expansion to increase access to health care including cancer screening and treatment.

Cancer Support Community is the largest nonprofit provider of social and emotional support services for people impacted by cancer. CSC believes that all patients should have access to comprehensive, high-quality, timely, and affordable medical and psychosocial care, including those who rely upon Medicaid for their health care coverage.

The Cystic Fibrosis Foundation's mission is to cure cystic fibrosis (CF) and to provide all people with CF the opportunity to lead long, fulfilling lives by funding research and drug development, partnering with the CF community, and advancing high-quality, specialized care. CFF advocates for policies that promote affordable, adequate, and available health care coverage for all people with CF, including the 50 percent of children and one third of adults with CF who rely on Medicaid.

The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of the approximately 3.4 million living with epilepsy and seizures. The Foundation fosters the wellbeing of children and adults affected by seizures through research programs, educational activities, advocacy, and direct services.

Gateway Hemophilia Association is a non-profit, community-based organization, dedicated to the advocacy, education, and support of families affected by bleeding disorders.

Gilda's Club Kansas City is the nonprofit leader of social and emotional support services for people impacted by cancer in the greater Kansas City area. GCKC believes that all patients should have access to comprehensive, high-quality, timely, and affordable medical and psychosocial care, including those who rely upon Medicaid for coverage.

Hemophilia Federation of America is a community-based, grassroots advocacy organization that educates, assists, and advocates on behalf of people with hemophilia, von Willebrand disease, and other rare bleeding disorders. HFA supports Medicaid expansion in Missouri and across the country, recognizing the program's vital role in providing coverage and care for people with bleeding disorders.

March of Dimes is the nonprofit organization leading the fight for the health of all moms and babies. Medicaid covers nearly half of all births nationwide, including coverage of prenatal care, labor and delivery, and 60 days of postpartum care to pregnant women, enabling millions of women to have healthy pregnancies and preventing instances of preterm birth, low birthweight, and other complications in infants.

The Midwest Hemophilia Association's mission is to improve the quality of life for those affected by bleeding disorders through advocacy, education, and support. Medicaid plays a vital role in providing affordable health care coverage to our

community members so it is important for us to advocate for Medicaid expansion in Missouri.

NAMI Missouri's mission is to improve the quality of life and recovery for children and adults with mental illness and their families. NAMI Missouri accomplishes this through support and education and is committed to advocating at the local, state, and national levels for non-discriminatory access to quality health care, housing, education and employment for people with mental illness.

NAMI believes that all people with mental health conditions deserve accessible, affordable, and comprehensive health care. NAMI supports state efforts to expand Medicaid, as indicated in the Affordable Care Act, to provide important mental health services and supports to more low-income adults.

The National Coalition for Cancer Survivorship advocates for quality cancer care for all people touched by cancer. It represents millions of Americans who share a common experience—the survivorship experience—living with, through, and beyond a cancer diagnosis.

The National Hemophilia Foundation is dedicated to finding cures for inheritable blood disorders and to addressing and preventing the complications of these disorders through research, education, and advocacy enabling people and families to thrive. NHF's mission is to ensure that individuals affected by inherited bleeding disorders have timely access to quality medical care, therapies, and services, regardless of financial circumstances or place of residence.

National Multiple Sclerosis Society's vision is a world free of MS, and we will cure MS while empowering people affected by MS to live their best lives. Access to affordable, high quality health care—including through Medicaid—is essential in ensuring people with MS in Missouri receive the care and treatment they need.

National Organization for Rare Disorders, a 501(c)(3) organization, is a patient advocacy organization dedicated to individuals with rare diseases and the organizations that serve them. NORD, along with its more than 300 patient organization members, is committed to the identification, treatment, and cure of rare disorders through programs of education, advocacy, research, and patient services.

National Patient Advocate Foundation is dedicated to elevating patient and caregiver voices as part of improving equitable access to affordable quality care, particularly for underserved populations. NPAF is the advocacy affiliate of Patient Advocate Foundation, a national organization that provides direct assistance to families coping with complex and chronic health conditions to help meet their needs for financial and social services advocacy and support.

The Prostate Network supports prostate cancer survivors in the greater Kansas City area and enables men to educate the public on the importance of early detection to help save men's lives.

The AIDS Institute advocates for increased access to health care and other supports for people living with and at risk for HIV and viral hepatitis. Medicaid expansion is a critical step to end the HIV and viral hepatitis epidemics because it increases access to HIV and viral hepatitis testing, prevention, and treatment.

The Leukemia & Lymphoma Society is the world's largest voluntary health agency dedicated to fighting blood cancer and ensuring that the more than 1.3 million blood cancer patients and survivors in the United States have access to the care they need. LLS and its network of more than 100,000 advocacy volunteers promote policies that ensure access to high-quality, affordable insurance coverage and reduce barriers to vital cancer care.

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ARGUMENT

Effective January 1, 2014, Congress expanded Medicaid to include adults who are under 65 years of age, not pregnant, not entitled to Medicare or otherwise eligible for Medicaid, and whose incomes do not exceed 133 percent of the federal poverty level. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII). In *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the U.S. Supreme Court allowed states to decide whether to take up this Medicaid expansion. To date, 38 states and the District of Columbia have extended Medicaid coverage to the expansion population; 12 have not. *See Status of State Medicaid Expansion Decisions*, Kaiser Family Found. (June 29, 2021), https://www.kff.org/medicaid/issue-brief/status-0of-state-medicaid-expansion-decisions-interactive-map. Missouri residents have voted to expand Medicaid, setting July 1, 2021 as the effective date for that expansion. *See* Mo. Const. art. IV, § 36(c).

The effects of Medicaid expansion have been heavily studied, with researchers often comparing expansion and non-expansion states. As discussed below, the research findings are highly consistent: Medicaid expansion has increased health care coverage and improved access to and use of necessary services. This increased access has in turn improved certain health outcomes and reduced the financial burdens of health care and a range of health disparities. Medicaid expansion has also produced wide-ranging, positive effects on states' economies. Passage of the American Rescue Plan Act has made it quite clear that Missouri can accomplish Medicaid expansion without additional state expenditures.

I. Medicaid Expansion Positively Affects Health Access and Outcomes and Reduces Health Disparities.

A. Medicaid Expansion Reduces the Rate of Uninsured Individuals.

In a review of over 600 studies conducted between January 2014 and March 2021, the Kaiser Family Foundation found that Medicaid expansion is linked to gains in coverage, and consequently, to improvements in access to care, financial security, and certain health outcomes. *See* Madeline Guth et al., Kaiser Family Found., *The Effects of Medicaid Expansion Under the ACA: Studies from January 2014 to January 2020* (2020), https://files.kff.org/attachment/Report-The-Effects-of-Medicaid-Expansion-under-the-ACA-Updated-Findings-from-a-Literature-Review.pdf; Madeline Guth & Meghana Ammula, Kaiser Family Found., *Building on the Evidence Base: Studies on the Effects of Medicaid Expansion, February 2020 to March 2021* (2021), https://www.kff.org/medicaid/report/building-on-the-evidence-base-studies-on-the-effects-of-medicaid-expansion-february-2020-to-march-2021/. Similar findings were made by the U.S. Department of Health and Human Services in 2017. *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Impacts of the Affordable Care Act's Medicaid Expansion on Insurance Coverage and Access to Care* (2017), https://aspe.hhs.gov/system/files/pdf/255516/medicaidexpansion.pdf.

In the states that have expanded, there was a sharp uptick in insurance coverage, especially among lower-income individuals, directly attributable to the Medicaid expansion. Guth et al., *supra*, at 5-6. Studies also found larger coverage gains in

expansion states among certain high-risk populations, including cancer patients, individuals with substance abuse disorders, people with HIV, people with a history of cardiovascular disease, and adults with diabetes. *Id*. at 6.

In addition, research suggests that Medicaid expansion has helped to reduce disparities in access to health care coverage. *Id*. (noting that studies have found expansion helped decrease disparities in coverage "by age, marital status, disability status, and in some studies, race/ethnicity"). A 2017 study found that the gap in coverage between households with an annual income below $25,000 and those above $75,000 fell from 31 percent to 17 percent (a relative reduction of 46 percent) in Medicaid expansion states, twice the relative reduction in non-expansion states. Kevin Griffith et al., *The Affordable Care Act Reduced Socioeconomic Disparities in Health Care Access*, 36 Health Aff. 1503, 1507–08 (2017), https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.0083?journalCode=hlthaff.

Increasing coverage for adults through Medicaid expansion also led to increased coverage for children. *See* Genevieve M. Kenney et al., Urban Inst., *Children's Coverage Climb Continues: Uninsurance and Medicaid/CHIP Eligibility and Participation Under the ACA*, 7 (2016), https://www.urban.org/sites/default/files/publication/80536/2000787-Childrens-Coverage-Climb-Continues-Uninsurance-and-Medicaid-CHIP-Eligibility-and-Participation-Under-the-ACA.pdf; *see also* Maya Venkataramani et al., *Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services*, 140 Pediatrics e20170953 (2017), https://pediatrics.aappublications.org/content/pediatrics/140/6/e20170953.full.pdf

(finding that when a parent is enrolled in Medicaid, their children are 29 percent more likely to receive an annual well child visit). Other studies have shown that access to Medicaid coverage provided both short- and long-term benefits for children's health, educational achievement, and long-term earnings. *See* Alisa Chest & Joan Alker, Georgetown Univ. Health Pol. Inst., Ctr. for Children and Families, *Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid* 1 (2015), https://ccf.georgetown.edu/wp-content/uploads/2015/08/Medicaid-at-50_final.pdf.

B. Medicaid Expansion Increases Access to and Use of Health Services.

Medicaid expansion is associated with improved access to care and increased utilization of health care services. *See*, *e.g.*, Guth et al., *supra*, at 8-9; Benjamin D. Sommers et al., *Three-Year Impacts of the Affordable Care Act: Improved Medical Care and Health Among Low-Income Adults*, 36 Health Aff. 1119, 1124 (2017), https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2017.0293 (finding that Medicaid expansion "was associated with significant improvements in access to primary care and medications, affordability of care, preventive visits, screening tests, and self-reported health"). This trend is not surprising, as research evaluating the effects of Medicaid coverage even prior to expansion found that enrollment in Medicaid led to greater access to care. *See*, *e.g.*, Andrea S. Christopher et al., *Access to Care and Chronic Disease Outcomes Among Medicaid-Insured Persons Versus the Uninsured*, 106 Am. J. Pub. Health 63, 63–69 (2015), https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2015.302925 (finding that, compared to uninsured individuals, individuals enrolled in Medicaid are more likely to

have at least one outpatient physician visit annually); Katherine Baicker & Amy Finkelstein, *The Effects of Medicaid Coverage–Learning from the Oregon Experiment*, 365 New Eng. J. Med. 683 (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3321578/pdf/nihms-366643 (finding that Medicaid coverage raised the probability of using outpatient care by 35 percent and prescription drugs by 15 percent).

Numerous studies have found that Medicaid expansion is associated with increased utilization of a variety of preventive services, and in turn, increased diagnoses of diseases and health conditions. *See* Guth et al., *supra*, at 8-9. In one study, the improvement in screening rates for colorectal cancer (CRC) in early expansion states translated to an additional 236,573 low-income adults receiving recent CRC screening in 2016. Stacey A. Fedewa et al., *Changes in Breast and Colorectal Cancer Screening After Medicaid Expansion Under the Affordable Care Act*, 57 Am. J. Preventive Med. 1, 3 (2019). If the same absolute increases were experienced in non-expansion states, 355,184 more low-income adults would have had CRC screening as of 2019. *Id.*

Similarly, compared with non-expansion states, states that implemented the expansion saw greater improvement in breast cancer screening rates among lower-income women. Yoshiko Toyoda et al., *Affordable Care Act State-Specific Medicaid Expansion: Impact on Health Insurance Coverage and Breast Cancer Screening Rates*, 230 J. Am. Coll. Surg. 5 (2020), https://www.journalacs.org/article/S1072-7515(20)30213-1/fulltext. *See also* Nicolas Ajkay et al., *Early Impact of Medicaid Expansion and Quality of Breast Cancer Care in Kentucky*, 226 J. Am. Coll. Surg. 498 (2018),

https://doi.org/10.1016/j.jamcollsurg.2017.12.041 (finding that Medicaid expansion in Kentucky led to a higher incidence of early detection and treatment).

The expansion has also increased access to and utilization of prescription drugs. Expansion "is associated with increases in overall prescriptions for, Medicaid-covered prescriptions for, and Medicaid spending on medications to treat opioid use disorder and opioid overdose." Guth et al., *supra*, at 9. More generally, a 2019 study found that within 15 months after Medicaid expansion, Medicaid-paid prescriptions increased 19 percent, with the largest increases in generic drugs for chronic conditions like diabetes and heart disease, suggesting that Medicaid expansion reduced cost barriers that inhibit access to such medications for low-income adults with chronic conditions. *See* Ausmita Ghosh et al. *The Effect of Health Insurance on Prescription Drug Use Among Low-Income Adults: Evidence from Recent Medicaid Expansions*, 63 J. Health Econ. 64 (2019). Research also suggests that the expansion reduced racial disparities in access to medications. *See* Benjamin D. Sommers et al., *Changes in Self-reported Insurance Coverage, Access to Care, and Health Under the Affordable Care Act* 314 JAMA 366 (2015), https://jamanetwork.com/journals/jama/fullarticle/2411283; Lucy Chen et al., Harvard Univ., *Technical Memo on Coverage Expansion and Low-Income, Reproductive-Age Women* (2020), https://hcp.hms.harvard.edu/technical-memo-coverage-expansion-and-low-income-reproductive-age-women (finding that Medicaid expansion was associated with an increase of 2.8 prescription refills per year among non-pregnant, low-income women ages 18-44).

C. Medicaid Expansion Improves Health Outcomes.

By increasing access to and utilization of health care services, Medicaid expansion has led to a range of improved health outcomes. *See* Guth et al., *supra*, at 10-11; Guth & Ammula, *supra*, at 4-8. A 2019 study, updated in January 2021, concluded that near-elderly adults in expansion states experienced a substantial drop in mortality compared to near-elderly adults in non-expansion states. *See* Sarah Miller et al., *Medicaid and Mortality: New Evidence from Linked Survey and Administrative Data*, *NBER Working Paper Series No. 26081* (2019), https://www.nber.org/system/files/working_papers/w26081/w26081.pdf. The authors estimated that in the four years following Medicaid expansion, approximately 15,600 deaths could have been averted if the Medicaid expansions were adopted nationwide as intended by Congress. *Id*. at 3, 23. Additional research has shown that Medicaid expansion resulted in decreased overall mortality rates and decreased mortality rates associated with specific health conditions such as certain cancers, cardiovascular disease, and liver disease. S*ee* Guth & Ammula, *supra*, at 5.

Researchers have also found that Medicaid expansion is associated with a shift to early stage at diagnosis for cancer patients. *See, e.g.,* Xuesong Han et al., *Comparison of Insurance Status and Diagnosis Stage Among Patients with Newly Diagnosed Cancer Before vs After Implementation of the Patient Protection and Affordable Care Act*, 4 JAMA Oncology 1713, 1717 (2018), https://jamanetwork.com/journals/jamaoncology/articlepdf/2697226/jamaoncology_han_2018_oi_180065.pdf. Expansion is also associated with reduced disparities in stage at diagnosis. *See*, *e.g.*, Xu Ji et al.,

Association of Medicaid Expansion with Cancer Stage and Disparities in Newly Diagnosed Young Adults, J. Nat'l Cancer Inst. (2021), https://academic.oup.com/jnci/advance-article-abstract/doi/10.1093/jnci/djab105/6280550?redirectedFrom=fulltext (finding a narrowing of rural-urban and Black-white disparities among young adults diagnosed with cancer); Jose Wilson B. Mesquita-Neto et al., *Disparities in Access to Cancer Surgery After Medicaid Expansion*, 219 Am. J. Surg. 181 (2020), https://www.americanjournalofsurgery.com/article/S0002-9610(19)30688-9/fulltext (finding Medicaid expansion was associated with earlier cancer diagnoses and increased access to surgical care, especially among lower-income patients). In addition, a study including over 1.4 million patients with cancer found that those living in states with higher Medicaid income eligibility limits had better long-term survival rates. Jingxuan Zhao et al., *Association of state Medicaid income eligibility limits and long-term survival after cancer diagnosis in the United States*, 39 J. Clinical Oncology 15 (2021), https://ascopubs.org/doi/abs/10.1200/JCO.2021.39.15_suppl.6512.

Medicaid expansion has also led to improved health outcomes for people with conditions other than cancer. For example, compared with patients with diabetes in non-expansion states, those in expansion states were treated earlier and reported better health outcomes. *See* Harvey W. Kaufman, *Surge in Newly Identified Diabetes Among Medicaid Patients in 2014 Within Medicaid Expansion States Under the Affordable Care Act*, 38 Diabetes Care 833, 835 (2015), https://care.diabetesjournals.org/content/38/5/833; Jusung Lee, *The Impact of Medicaid Expansion on Diabetes Management*, 43 Diabetes Care

1094, 1097–98 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7171935/pdf/dc191173.pdf.

Research also indicates that Medicaid expansion has led to improved maternal health outcomes and a reduction in maternal and infant health disparities. A recent study found that Medicaid expansion is significantly associated with lower maternal mortality, and the effect "was concentrated among non-Hispanic Black mothers, indicating that Medicaid expansion could be contributing to a reduction in the large racial disparity in maternal mortality faced by Black mothers." Erica Eliason, *Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality*, 30 Women's Health Issues 147, 150 (2020), https://doi.org/10.1016/j.whi.2020.01.005. Similarly, a 2019 study found that expansion was associated with improvements in relative health disparities for Black infants compared with white infants. *See* Clare Brown et al., *Association of State Medicaid Expansion Status with Low Birth Weight and Preterm Birth*, 321 JAMA 1598 (2019), https://jamanetwork.com/journals/jama/fullarticle/2731179. *See also* Chintan B. Bhatt & Consuelo M. Beck-Sague, *Medicaid Expansion and Infant Mortality in the United States*, 108 Am. J. Pub. Health 565 (2018), https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2017.304218 (suggesting that expansion may have contributed to a decline in infant mortality rates, especially among African-American infants).

D. Medicaid Expansion Makes Care More Affordable.

Medicaid expansion has been associated with an increase in health care affordability and financial security, as well as a reduction in disparities by income or race

across measures of affordability. *See* Guth et al., *supra*, at 13-14; *see also* Sommers et al., *Three-Year Impacts of the Affordable Care Act, supra*, at 1124-26 (finding that expansion led to an average of $337 in annual savings on medical out-of-pocket spending among those who gained coverage).

A 2017 study investigated in detail the effects of Medicaid expansion on households' financial health and found direct as well as substantial indirect financial benefits. *See* Kenneth Brevoort, Daniel Grodzicki, & Martin B. Hackman, *Medicaid and Financial Health, NBER Working Paper No. 24002* (2017), https://www.nber.org/system/files/working_papers/w24002/w24002.pdf. In its first two years, expansion not only reduced unpaid medical bills sent to collection by $3.4 billion, it also reduced the likelihood of becoming delinquent on a debt obligation, improved credit scores, prevented about 50,000 bankruptcies among subprime borrowers, and led to better terms for available credit valued at $520 million per year. *Id*. at 3. The study concluded that the financial benefits of Medicaid double when considering these indirect benefits in addition to the direct reduction in out-of-pocket expenditures. *Id.* at 4. *See also* Kyle J. Caswell & Timothy A. Waidmann, *The Affordable Care Act Medicaid Expansions and Personal Finance*, 76 Med. Care Res. & Rev. 538, 562 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6716207/pdf/10.1177_1077558717725164.pdf (finding that Medicaid expansion "significantly reduced the likelihood of new medical collections and, more generally, the flow of new and large derogatory debt balances").

Other research has concluded that Medicaid expansion helps low-income individuals stay employed and stay in school, further improving their financial security. *See* Krystin Racine, *More Evidence that Medicaid Expansion Linked to Employment and Education Gains*, Geo. U. Health Pol'y Inst., Ctr. for Child. and Families: Say Ahhh! (Mar. 3, 2021), https://ccf.georgetown.edu/2021/03/03/more-evidence-that-medicaid-expansion-linked-to-employment-and-education-gains/. A study in Michigan found that after being enrolled in Medicaid for one year, the proportion of enrollees who were working or in school rose from 54 percent to 60 percent; Black enrollees had even larger gains. *See* Renuka Tipirneni et al., *Association of Medicaid Expansion with Enrollee Employment and Student Status in Michigan*, 3 JAMA Network Open e1920316 (2020). Medicaid expansion coverage has also been linked to lower eviction rates, *see* Heidi L. Allen et al., *Can Medicaid Expansion Prevent Housing Evictions?* 38 Health Aff. 1451, 1454-56 (2019), https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05071,and fewer payday loans, *see* Heidi Allen et al., *Early Medicaid Expansion Associated with Reduced Payday Borrowing in California*, 36 Health Aff. 1769, 1772-75 (2017), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0369 .

In sum, Medicaid expansion has led to increased access to health care and better health outcomes on a wide range of metrics. Missouri residents will not see these gains if the expansion approved by Missouri voters is nullified.

II. Medicaid Expansion Would Benefit Missouri's Budget and Its Economy, Particularly After Enactment of the American Rescue Plan Act.

A fundamental concern in this case has been whether expanding Medicaid would increase the State's general revenue spending, necessitating additional state appropriations. When Missouri Constitutional Amendment 2 was presented to voters as a ballot initiative in 2020, the fiscal note shown to voters, drafted by the State Auditor, explained: "State government entities are estimated to have one-time costs of approximately $6.4 million and an unknown annual net fiscal impact by 2026 ranging from increased costs of at least $200 million to savings of up to $1 billion." Mo. Sec'y of State's Office, 2020 Ballot Measures: *August 4, 2020 Primary Ballot, Amendment 2*, https://www.sos.mo.gov/elections/petitions/2020BallotMeasures (last visited Jun. 29, 2021). The Auditor's official estimate of $6.4 million was much lower than the $120 million given by Governor Parson in his January 2021 budget and later cited by state legislators who opposed expansion. *See* Rudi Keller, *Gov. Parson's Budget Funds Missouri Medicaid Expansion Without Cuts to Other Needs*, Missouri Independent (Jan. 27, 2021), https://missouriindependent.com/2021/01/27/gov-parsons-budget-funds-missouri-medicaid-expansion-without-cuts-to-other-needs/.

Notably, the Auditor determined that there was reasonable evidence that Medicaid expansion could save the State money. The Auditor's conclusions were largely based on a detailed fiscal analysis by the independent, non-partisan Center for Health Economics and Policy at Washington University, as well as data provided by state agencies. *See* Ctr. for Health Econ. & Policy, Wash. Univ., *Analysis of the Fiscal Impact of Medicaid*

Expansion in Missouri (2019), https://publichealth.wustl.edu/wp-content/uploads/2019/02/Analysis-of-the-Fiscal-Impact-of-Medicaid-Expansion-in-Missouri-IPH. The Center's best estimate concluded that Medicaid expansion would save $38.9 million in FY2020. *Id.* at 7. The State could find substantial savings to offset the required 10 percent match for expansion when certain high-need individuals enrolled through the Medicaid expansion category (earning a 90 percent match rate) rather than through other Medicaid eligibility categories, such as medically needy or section 209(b) categories, which earn the regular match rate of roughly 66 percent. *Id.* at 3-4.

This analysis was consistent with the experiences from expansion states, which have offset many of the expansion costs by finding savings. Medicaid expansions did not create fiscal harm to those states. Matt Powers et al., *Medicaid Expansion in Missouri – Economic Implications for Missouri and Interviews Reflecting Arkansas, Indiana, and Ohio Experiences* 2-3 (2020), https://www.mhanet.com/mhaimages/HMAReport.pdf; Jonathan Gruber & Benjamin Sommers, *Paying for Medicaid—State Budgets and the Case for Expansion in the Time of Coronavirus*, 382 New Eng. J. Med. 2280, 2280-82 (2020) (finding Medicaid expansion a "win-win" for states—providing health insurance to low-income adults and offering financial support to safety-net hospitals, without adverse effects on state budgets); Bryce Ward, The Commonwealth Fund, *The Impact of Medicaid Expansion on States' Budgets* (2020), https://www.commonwealthfund.org/publications/issue-briefs/2020/may/impact-medicaid-expansion-states-budgets (concluding that studies examining fiscal impact of Medicaid expansion on specific states or the effects across all states consistently find that

expansion leads to significant budget savings and revenue increases without imposing additional taxes).

Any doubts that might have existed about additional state costs became completely irrelevant after March 11, 2021, when President Biden signed the American Rescue Plan Act into law. *See* American Rescue Plan Act of 2021, Pub. L. No. 117-2 (2021), https://www.congress.gov/bill/117th-congress/house-bill/1319/text. Under section 9814 of that law, any non-expansion state that implements Medicaid expansion after March 11, 2021 will receive bonus federal payments for eight quarters (*i.e.*, two years) equal to five percentage points of its regular Medicaid expenditures (excluding the expansion costs and certain other expenditures like disproportionate share hospital payments). Based on projected Medicaid expenditures for 2022 (without expansion, as reported by the Missouri Department of Social Services to the federal government in February 2021), the State could receive $656 million in Fiscal Year 2022 in additional federal funds under the American Rescue Plan Act if it expands Medicaid, with slightly more earned in Fiscal Year 2023, thereby *lowering* State costs. *See* Leighton Ku & Erin Brantley, The Commonwealth Fund, *The Economic and Employment Effects of Medicaid Expansions Under the American Rescue Plan* (2021), https://www.commonwealthfund.org/publications/issue-briefs/2021/may/economic-employment-effects-medicaid-expansion-under-arp (noting also that Missouri would gain billions more in federal funds under the regular 90 percent matching rate formula). This subsidy would far exceed even the $120 million additional cost for Medicaid expansion that was cited by the Governor and state legislators, cancelling the need for any

additional appropriations and providing a *surplus* that the State could carry forward. Another analysis estimated that Missouri could gain $1.47 billion over the two years under the American Rescue Plan Act. *See* Manatt Health, *Assessing the Fiscal Impact of Medicaid Expansion Following the American Rescue Plan Act of 2021* at 5 (2021), https://www.manatt.com/Manatt/media/Documents/Articles/ARP-Medicaid-Expansion.pdf. Again, even using the Governor's $120 million cost estimate, these additional federal funds would offset any potential State costs for 2021, 2022, and many future years, during which time the State could find even more offsetting savings (due, for instance, to cost savings from the health improvements described above).

The American Rescue Plan Act payments became available on March 11, 2021. However, the changed fiscal landscape was not accounted for when the Missouri House Budget Committee voted on this issue on March 25, when the Missouri Senate voted on April 28, or when the Governor announced he was withdrawing the Medicaid expansion plan on May 13. Ballotpedia, *Missouri Amendment 2, Medicaid Expansion Initiative (August 2020)*, https://ballotpedia.org/Missouri_Amendment_2,_Medicaid_Expansion_Initiative_(August_2020) (last visited June 29, 2021) (describing these actions and dates).

Amendment 2 requires "state agencies to take all actions necessary to maximize federal financial participation in funding medical assistance under Medicaid expansion." Importantly, the federal funds from the American Rescue Plan Act will flow into Missouri automatically when it expands coverage, there are no other conditions for their receipt beyond implementation of the Medicaid expansion provision in Amendment 2.

See Am. Rescue Plan Act, *supra*, sec. 9814. By cancelling its application to expand Medicaid, Missouri failed to take the required action to secure hundreds of millions of dollars in federal funding and so left a substantial federal financial windfall on the table.

Finally, two recent economic analyses have examined the broader implications of Medicaid expansion on overall economic and employment growth in Missouri. These studies applied the well-established fiscal "multiplier effect." As described by the Executive Office of the President in *The Economic Impact of the American Recovery and Reinvestment Act Five Years Later: Final Report to Congress* 16-24 (2014), the multiplier effect is triggered by the large influx of federal funds, which increase revenues earned by hospitals, physicians' offices, pharmacies, and other health providers who care for the newly eligible Medicaid beneficiaries. These federal funds represent a new economic resource for Missouri (and without expansion, federal taxes paid by Missouri residents support Medicaid expansions in other states). With new Medicaid revenue, health care providers can hire more staff and purchase additional goods and services, such as medical equipment and construction. The health care staff and construction workers use their incomes to purchase consumer goods like food, transportation, rent or mortgage, and to pay state and local taxes. Businesses that sell more goods to health care providers can also hire more staff as well as purchase goods and services from other vendors. Thus, under the multiplier effect, as the new federal expansion funds flow into Missouri, they will prompt further economic and employment growth that ripples out beyond the health care sector into other parts of the State's economy, including industries like construction, retail, and finance.

The first economic impact report assessing the multiplier effect from Medicaid expansion, conducted prior to the American Rescue Plan Act, estimated that expansion would create an average of 16,330 additional jobs per year in Missouri, as well as bolster the state economy (gross domestic product) by an average of $1.6 billion per year in the first five years. *See* Regional Econ. Models, Inc., *Economic Impacts of Increased Federal Funding in Missouri Associated with an Expansion of Its MO HealthNet Program* 8 (2020), http://mochamber.com/wp-content/uploads/2020/06/MFH-MOHN-Expansion-Federal-Funding-Impact-Report-Final.pdf. A more recent report factored in the additional funds from the American Rescue Plan Act expansion incentive in projecting the employment and financial effects of Medicaid expansion in Missouri (as well as in the other states that have not implemented expansions). Missouri stands to increase employment by 50,100 jobs in 2022, split between health care and other industries. *See* Ku & Brantley, *supra*. While the two studies differ in the size of the estimated economic benefits (in part because of the American Rescue Plan Act), both demonstrate that Medicaid expansion would create substantial economic growth in Missouri and permit tens of thousands more people to gain employment, as well as *increasing* state and local tax revenues. The Governor's budget estimates did not account for these beneficial economic impacts.

III. Medicaid Expansion Would Have Positive Effects for Missouri's Health System.

Without expansion, Missouri has among the most restrictive Medicaid eligibility criteria in the nation. Currently, custodial parents only qualify if their incomes are below

21 percent of the federal poverty level, while nonelderly adults without children are not eligible even if they have no income at all (unless they qualify as disabled). Only two other states, Texas and Alabama, have more restrictive Medicaid eligibility. *See Medicaid Income Eligibility Limits for Adults as a Percent of the Federal Poverty Level*, Kaiser Family Found. (Jan. 1, 2021), https://www.kff.org/health-reform/state-indicator/medicaid-income-eligibility-limits-for-adults-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D. Expanding Medicaid eligibility to 133 percent of poverty would raise Missouri up to parity with most states in the nation.

There is no doubt that expansion would help hundreds of thousands of low-income Missourians gain health care coverage. The Center for Health Economics and Policy at Washington University estimated that expansion would provide Medicaid coverage to 231,000 adults and an additional 40,500 children (who are already eligible but not participating) for a net increase of 271,500. Ctr. for Health Econ. & Policy, *supra*, at 4. Governor Parson estimated expansion would increase Medicaid enrollment by about 275,000. Michael L. Parson, *State of the State Address* 10 (Jan. 27, 2021), https://governor.mo.gov/state-of-the-state-2021. Another respected research organization, the Urban Institute, estimated that even more (379,000) could enroll. Michael Simpson, Urban Inst., *The Implications of Medicaid Expansion in the Remaining States: 2020 Update* at 5 (2020). As described earlier in this brief, evidence drawn from numerous studies consistently indicates that Medicaid expansions increase insurance coverage,

improve access to health care, improve health and mental health, lower racial and ethnic disparities in health care, and reduce financial stress.

Research has also demonstrated that Medicaid expansions strengthen the health care safety net, in large measure by reducing uncompensated medical care costs incurred by uninsured and underinsured patients. As more patients have Medicaid to cover their bills, health care providers' financial well-being improves. *See* Matt Broaddus, *Uncompensated Care Costs Well Down in ACA Medicaid Expansion States*, Ctr. on Budget & Pol'y Priorities: off the charts (Oct. 21, 2020), https://www.cbpp.org/blog/uncompensated-care-costs-well-down-in-aca-medicaid-expansion-states.

A comparison of states that expanded Medicaid against those that did not found that Medicaid expansions improved rural hospitals' finances and helped avert closures. *See* Richard C. Lindrooth et al., *Understanding The Relationship Between Medicaid Expansions and Hospital Closures*, 37 Health Aff. 111 (2018). This finding is quite relevant in Missouri: between 2014 and 2020, eight rural hospitals in Missouri closed due to financial troubles, eliminating over 300 hospital beds for rural residents. *See Rural Hospital Closures Since January 2005*, Cecil G. Sheps Ctr. for Health Servs. Res., Univ. of N.C., https://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/ (last visited June 29, 2021). A recent report found that rural Missouri hospitals are particularly at risk financially and are vulnerable to closure, with 11 considered at the greatest risk. *See* Chartis Ctr. for Rural Health, *The Rural Health Safety Net Under Pressure: Rural Hospital Vulnerability* (2020), https://www.ivantageindex.com/wp-

content/uploads/2020/02/CCRH_Vulnerability-Research_FiNAL-02.14.20.pdf. Rural hospital closures not only reduce access to care in their communities, but also lead to higher unemployment rates and lower per capita incomes. George Holmes et al., *The Effect of Rural Hospital Closures on Community Economic Health*, 41 Health Servs. Res. 467, 477-81 (2006), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1702512/pdf/hesr041-0467.pdf.

Similarly, Medicaid expansions have helped increase the patient care capacity of non-profit community health centers, which provide primary care in medically underserved areas. Xinxin Han et al., *Medicaid Expansions and Increases in Grant Funding Increased the Capacity of Community Health Centers*, 36 Health Aff. 49 (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0929. Helping to support community health centers both preserves health care access for Medicaid and uninsured patients and also helps sustain health care access for others living in these areas, including Medicare and privately insured patients. As of 2019, Missouri had 29 community health centers which served over 600,000 patients across the State, who were disproportionately low-income and minority. *See* U.S. Dep't. of Health & Hum. Servs., Health Res. & Servs. Admin, *Health Center Program Data: Missouri*, https://data.hrsa.gov/tools/data-reporting/program-data?type=AWARDEE&state=MO (last visited June 29, 2021). It is estimated that Medicaid expansion in Missouri would insure an additional 36,000-42,000 health center patients and increase health center revenue statewide by $34 to $40 million, which is six to seven percent. *See* Sara Rosenbaum et al., *Missouri's Historic Medicaid Expansion Will Produce Major Gains*

for that State's Community Health Centers, their Patients and the Communities They Serve 2 (2020), https://publichealth.gwu.edu/sites/default/files/Missouri%20Medicaid%20Expansion%20Blog%20FINAL%208.19.20.pdf. Medicaid expansion would help health centers expand care for patients in rural, urban, and suburban communities.

CONCLUSION

WHEREFORE, *Amici* ask that the Court reverse the opinion of the circuit court in its entirety or, in the alternative, in so far as that opinion failed to account for the zero state expenditures that would, without question, be required as a result of enactment of the American Rescue Plan Act.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 7,648 words, not including the cover, signature block, and this this certification as performed by Microsoft Word software;

2. That the attached brief includes all the information required by Supreme Court Rule 55.03; and

3. That this brief was served by the electronic filing system upon Counsel of Record for the Appellant and Respondent.

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