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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Minnesota Gun Owners Caucus,

Plaintiff,

vs.

Tim Walz, Governor of Minnesota, in his official capacity; Keith Ellison, Attorney General of Minnesota, in his official capacity; Mary Moriarty, Hennepin County Attorney, in her official capacity; Drew Evans, Superintendent of the Minnesota Bureau of Criminal Apprehension, in his official capacity,

Defendants.

Case Type: Civil Other/Misc.

The Honorable Leonardo Castro
Court File No. 62-CV-25-1083

**STATE DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

## INTRODUCTION

The Minnesota Gun Owners Caucus ("MGOC") has sued multiple state officials (collectively, the "State Defendants"), alleging that a law amending the definition of a trigger activator (the "Binary Trigger Amendment") passed at the end of the last legislative session violates the single-subject clause of the Minnesota Constitution.[1] MGOC now brings a premature motion for summary judgment, before this Court has ruled on State Defendants' motion to dismiss and before the parties have had the opportunity to conduct any discovery, asking the Court to strike the entirety of the omnibus bill. The Court should deny MGOC's motion for summary judgment because MGOC has not supported its standing allegations with sufficient, admissible evidence and because caselaw does not support its request that the Court strike the entire bill. Alternatively, the

[1] The State Defendants are Tim Walz, Governor of Minnesota, in his official capacity; Keith Ellison, Attorney General of Minnesota, in his official capacity; and Drew Evans, Superintendent of the Minnesota Bureau of Criminal Apprehension, in his official capacity.

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Court should defer its consideration of the motion until after deciding the State Defendants' motion to dismiss and until State Defendants have had the opportunity to conduct jurisdictional discovery.

## STATEMENT IN RESPONSE TO UNDISPUTED FACTS[2]

### I. LEGISLATIVE HISTORY OF THE BINARY TRIGGER AMENDMENT.

MGOC[3] correctly sets forth the basic legislative history of the 2024 Omnibus, but it leaves out crucial context surrounding the Binary Trigger Amendment.

First, Minnesota has long regulated guns that fire multiple bullets with only one trigger press. Indeed, since 1933, Minnesota has banned machine guns, which release multiple bullets with one trigger press, and it has also banned trigger activators (which increase a gun's rate of fire to that of a machine gun) since 1993. H.F. 189, 48th Leg., Reg. Sess. 231–33 (Minn. 1933)[4]; H.F. 1585, 78th Leg., Reg. Sess. 1988 (Minn. 1993)[5]. The legislature amended the definition of a trigger activator to include devices that allow firearms to shoot multiple bullets with a single trigger pull. S.F. 2909, 93d Leg., Reg. Sess. 8920–21 (Minn. 2023).[6]

2024's Binary Trigger Amendment was also not so hastily considered as MGOC's factual recitation implies. Language banning binary triggers was first proposed in the House and Senate

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[2] For a more fulsome recitation of the facts relevant to this dispute, State Defendants refer the Court to the factual background set forth in the State Defendants' motion to dismiss. Rather than recount that background extensively herein, State Defendants provide facts here only as necessary to contradict or provide necessary context directly responsive to MGOC's Statement of Undisputed Facts. (Pl.'s Br. 4-15.)

[3] State Defendants use the same abbreviations here that they used in their brief in support of their motion to dismiss. (Index # 18.)

[4] https://www.revisor.mn.gov/laws/1933/0/Session+Law/Chapter/190/pdf/.

[5] https://www.revisor.mn.gov/laws/1993/0/Session+Law/Chapter/326/1993-05-17%2000:00:00+00:00/pdf.

[6] https://www.revisor.mn.gov/bills/bill.php?b=senate&f=sf2909&ssn=0&y=2023.

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in March 2024 – just one month after the 93rd Legislature was convened. H.F. 2609, 93d Leg., Reg. Sess. (Minn 2024)[7]; S.F. 5153, 93d Leg., Reg. Sess. 12529 (Minn. 2024).[8] Multiple committees in both the House and Senate held hearings on the Binary Trigger Amendment. [9] Those committees heard testimony in opposition to the Amendment by both the National Rifle Association and the National Shooting Sports Foundation (among others). *Id.* The committees also heard testimony in support and on technical matters. *Id.* After all that, the majority of each committee in each body to consider the Binary Trigger Amendment recommended that the Binary Trigger Amendment become law. Hearing on H.F. 2609 before the H. Pub. Safety Fin. & Pol'y Comm., 93rd Leg., Reg. Sess. (Minn. Mar. 21, 2024)[10]; Hearing on S.F. 5153 before the S. Judiciary & Pub. Safety Comm., 93rd Leg., Reg. Sess. (Minn. Mar. 22, 2024)[11]; Hearing on H.F. 2609 before the H. Pub. Safety Fin. & Pol'y Comm., 93rd Leg., Reg. Sess. (Minn. Apr. 4, 2024)[12]; Hearing on S.F. 5153 before the S. Fin. Comm., 93rd Leg., Reg. Sess. (Minn. Apr. 18, 2024).[13]

The House and Senate each passed a version of the bill including the Binary Trigger Amendment separately, and the differences between those bills were resolved by a Conference Committee. H.F. 2609, 93d Leg., Reg. Sess. 16416, 17328 (Minn. 2024).[14] The House passed the Conference Committee's version of the bill containing the Binary Trigger Amendment on

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[7] https://www.house.mn.gov/committees/minutes/93020/100747.

[8] https://www.revisor.mn.gov/bills/bill.php?f=SF5153&y=2023&ssn=0&b=senate.

[9] *See* State Defs.' Mt. to Dismiss Br. [Index # 18] at 4-5.

[10] https://www.house.mn.gov/committees/minutes/93020/100747.

[11] https://www.senate.mn/schedule/committee/3128/20240322.

[12] https://www.house.mn.gov/committees/minutes/93020/100919.

[13] https://www.senate.mn/schedule/senate/20240418.

[14] https://www.revisor.mn.gov/bills/bill.php?f=HF2609&b=house&y=2023&ssn=0.

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May 17, 2024, *id.* at 17332 – just two days before the end of the 2024 legislative session. (*See also* State Defs.' Mot. to Dismiss Br. [Index # 18] at 3-6.)

With the session winding down, Legislative leadership exercised its discretion and determined that the Binary Trigger Amendment should be folded into the 2024 Omnibus, which was passed on May 19, 2024. Minn. Laws. ch. 127, art. 36, § 2.

MGOC also attempts to rewrite the title and subject of the 2024 omnibus. (Pl's Br. 6-10.) MGOC adopts the position that the actual subject of the 2024 Omnibus is "relating to taxation" because the title of H.F. 5247 purportedly still read as "[a] bill for an act relating to taxation" before the fourth engrossment occurred the following day. (*E.g.*, Pl.'s Br. 22.) MGOC's position confuses the various stages of how a bill becomes a law, as engrossment is simply the process of incorporating amendments into a bill; it does not turn a bill into law.[15] A bill does not become a law until signed by the Governor,[16] and the Single Subject and Title Clause provides that "[n]o *law* shall embrace more than one subject, which shall be expressed in its title." Minn. Const. art. IV, § 17 (emphasis added).

Presentment of the fourth engrossment of H.F. 5247 undisputedly containing the title and subject of "[a] bill for an act relating to the operation and financing of state government" occurred on May 23rd.[17] At no point in the legislative process did the legislature enroll[18] and present the Governor with a bill containing the title and subject of "relating to taxation." The Governor signed the 2024 Omnibus into law on May 24th.[19]

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[15] https://www.revisor.mn.gov/office/duties/legis.

[16] https://www.leg.mn.gov/leg/howbill.

[17] https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF5247&y=2024&ssn=0.

[18] Enrollment is the process of making a bill into an act of the legislature and is performed by the Revisor of Statutes. https://www.revisor.mn.gov/office/duties/legis.

[19] https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF5247&y=2024&ssn=0.

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## II. MGOC'S EVIDENCE REGARDING ITS ACTIVITIES AND MEMBERS.

MGOC claims that the factual allegations regarding harm to the organization and members A, B, and C are undisputed. (Pl's Br. 12-15.) But these facts are not "undisputed." The State Defendants have not had the opportunity to conduct any jurisdictional discovery. As discussed below, MGOC's summary judgment motion is premature for that reason. Moreover, as discussed further below, the "facts" regarding harm to its members are based on inadmissible hearsay and should not be considered by the Court.

## SUMMARY JUDGMENT STANDARD

Summary judgment may be granted if the pleadings, depositions, records submitted to the Court, and any affidavits submitted show that there is no "genuine issue as to any material fact" and the moving party is entitled to judgment under applicable law. Minn. R. Civ. P. 56.03. Material facts are those that affect the outcome of the case. *Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438, 450 (Minn. Ct. App. 2013). A party moving for summary judgment must prove material facts by pointing to facts in the record or presented by affidavit that would be admissible in evidence. Minn. R. Civ. P. 45.03(b), (d).

To successfully oppose summary judgment (if the moving party has met its burden of production), the non-moving party must present specific facts showing that there is a genuine issue for trial. Minn. R. Civ. P. 56.06; *see also Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001). But, if material facts are unavailable to the nonmovant at summary judgment, a court may defer consideration of or deny the motion for summary judgment and order that discovery into those facts be taken. Minn. R. Civ. P. 56.04.

## ARGUMENT

The Court should deny MGOC's motion for summary judgment because it has not supported its standing to bring claims with admissible evidence, which is necessary at the summary

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judgment stage. That failure would deprive the Court of subject matter jurisdiction. At minimum, the Court should defer consideration of MGOC's motion to allow State Defendants to conduct the jurisdictional discovery necessary to assure the Court it has jurisdiction over this case.

But even putting aside that threshold and dispositive issue, MGOC's motion is premised on faulty legal and factual premises. Furthermore, MGOC provides only outdated authority for its extraordinary request to invalidate the entire 2024 Omnibus and no argument as to why the Remedies Clause provides it an avenue to bring its challenge. For those reasons, too, MGOC's motion should be denied.

## I. MGOC HAS NOT ESTABLISHED STANDING FOR SUMMARY JUDGMENT PURPOSES.

Standing is a threshold matter in every lawsuit, and without it, the Court lacks subject matter jurisdiction to decide the claims before it. *Clapp v. Sayles-Adams*, 15 N.W.3d 648, 652 (Minn. 2025). So, before the Court can even consider the merits of MGOC's single-subject claims, it must assure itself that MGOC has standing to assert those claims. *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014). And at the summary judgment phase, MGOC carries the burden of not just alleging, but demonstrating – with admissible evidence – that it has standing to bring its claims. *Id.*; Minn. R. Civ. P. 56.03(b), (d); *see also Do No Harm v. Pfizer Inc.*, 96 F.4th 106, 114 (2d Cir. 2024) (a plaintiff's burden to demonstrate standing increases over the course of litigation and standing must be supported "with the manner and degree of evidence required at the successive stages of the litigation") (cleaned up), *vacated and superseded on reh'g on other grounds*, 126 F.4th 109 (2d Cir. 2025).

For an organization like MGOC to possess standing, it must have a direct stake in the litigation that is different from the general public. *Minn. Ass'n of Pub. Sch. v. Hanson*, 178 N.W.2d 846, 850 (1970) (holding association consisting of members and representatives of school boards did not have standing to challenge statute based upon their interest in promoting the educational

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interests of children). MGOC may establish standing two ways: by demonstrating either a direct injury to the organization or an injury to its members defending by the organization on their behalf. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 497 (Minn. 1996). MGOC has not produced evidence establishing either form in support of its summary judgment motion.

**A. MGOC Does Not Establish Standing on Its Own Behalf.**

First, MGOC does not establish that the Binary Trigger Amendment directly injures it. Standing requires an injury-in-fact or that the plaintiff is a beneficiary of a legislative enactment granting standing. *Id.* at 493. An injury-in-fact is a concrete and particularized "invasion of a legally protected interest." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). The injury must be both "actual or imminent, not conjectural or hypothetical" and fairly traceable to the conduct challenged. *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005); *see also In re Trade Secret Designations of 2019 Cogenerations and Small Power Prod. Reports*, A20-0827, 2021 WL 1247948, at *5 (Minn. Ct. App. Apr. 5, 2021) (hereinafter "*Trade Secret Designations*") (courts conduct the same inquiry for organizational standing as for an individual) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982)).

Organizational standing requires more than "simply a setback to the organization's abstract social interests." *Havens Realty v. Coleman*, 455 U.S. 363, 379 (1982); *see also Sierra Club v. Morton*, 405 U.S. 727, 740 (1972) (stating that organizations that "seek to do no more than vindicate their own value preferences through the judicial process" do not have standing). But a "setback" is the only direct injury that MGOC claims. MGOC specifically asserts that "MGOC itself is specifically harmed by the binary Trigger Amendment because of MGOC's opposition to the Binary Trigger Amendment, the criminalization of previously lawful firearm component ownership that is contrary to MGOC's mission[.]" (Strawser Aff. ¶ 35.) This setback to MGOC's mission alone is insufficient to establish an actual concrete injury. *See Trade Secret Designations*,

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2021 WL 1247948 at *5 (organizational standing requires injury to an organization's activities, not just their mission) (citing *W. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 183 (4th Cir. 2013) and *Abigal All. for Better Access to Development Drugs v. Eschenbach*, 469 F.3d 129, 133 (D. C. Cir. 2006)). The logical conclusion of such a position is that every unsuccessful lobbyist would have standing to challenge a statute once enacted.[20]

Nor are the two guiding questions of direct organizational standing implicated here: (1) if the organization is denied standing, would any potential plaintiff have standing to challenge the law, and (2) for whose benefit was the statute enacted? *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 915 (Minn. Ct. App. 2003). Here, any citizen in possession of a binary trigger would have standing to bring MGOC's challenge, so the first concern weighs against organizational standing. And the Binary Trigger Amendment was certainly not enacted to benefit MGOC or its members.

MGOC also points to the Declaratory Judgment Act as its basis for standing. (Pl.'s Br. 17.) But even under the Declaratory Judgment Act, a plaintiff must have more than just a "direct interest" in the validity of a statute to bring suit. *Minn. Voters All. v. State*, 955 N.W.2d 638, 641-42 (Minn. Ct. App. 2021) (holding that direct interest in election integrity was not enough). A plaintiff must *also* still establish injury-in-fact. *Hanson*, 701 N.W.2d at 262. And MGOC has pointed to no harm it has suffered, or imminently will suffer, from the Binary Trigger Amendment.

[20] Nor can MGOC successfully argue that its opposition to, tracking of, and/or advocacy regarding the Binary Trigger Amendment is sufficient to confer it standing – the United States Supreme Court has closed that door. *Food & Drug Admin. v. All. for Hippocratic Medicine*, 602 U.S. 367, 394 (2024) ("[A]n organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action.").

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MGOC's apparent reliance on *Arens v. Village of Rogers* is misplaced because *Arens* is a taxpayer standing case. 61 N.W.2d 508 (Minn. 1953); Pl.'s Br. 17. Taxpayer standing is a narrow exception to the injury-in-fact requirement. *Clapp*, 15 N.W.3d at 652. Through this exception, "'[t]axpayers *without* a direct or personal injury may still have standing to bring an action to restrain the unlawful use of public funds.'" *Id.* (quoting *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024)). *Arens* is an example of such a case: the central dispute was about the use of public funds, so taxpayer standing was appropriate. *Hunt*, 10 N.W.3d at 168-69 (discussing *Arens*); *Clapp*, 15 N.W.3d at 653-54 (citing *Arens*). This case has nothing to do with allegations of improper public spending, so *Arens* does not support MGOC's standing in any way.

Finally, MGOC cites the Remedies Clause, Article I, section 8 of the Minnesota Constitution as a basis for standing because "[i]t provides a remedy to 'rule on the Legislature's noncompliance with a constitutional mandate.'" (Pl's Br. 19) (quoting *Cruz-Guzman v. State*, 916 N.W.2d 1, 10 (Minn. 2018)). But the Remedies Clause does not eliminate a party's obligation to establish standing as a prerequisite for a court's jurisdiction. In fact, the cited portion of *Cruz-Guzman* does not discuss standing at all. Moreover, the Remedies Clause has no application to this matter because, as explained in State Defendants' memorandum in support of their motion to dismiss, the "Remedies Clause does not guarantee redress for every wrong, but instead enjoins the legislature from eliminating those remedies that have *vested at common law* without a legitimate legislative purpose." *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 497 (Minn. 1997).

In sum, MGOC does not demonstrate that the Binary Trigger Amendment harms or threatens to harm MGOC directly, so it does not establish direct standing sufficient to allow the Court to consider its summary judgment motion.

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### B. MGOC Provides No Admissible Evidence to Establish Its "Injured Members'" Existence.

An organization may also demonstrate associational standing, suing on behalf of its members if: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members. *Hunt*, 10 N.W.3d at 170.

Here, MGOC's summary judgment motion fails the first prong because it has not provided admissible evidence that it has members who would have standing to sue in their own right. True, MGOC alleges the existence of three particular "members/supporters" who own binary triggers in violation of the Binary Trigger Amendment. But those allegations are unverified and insufficient to carry MGOC's burden at summary judgment. Minn. R. Civ. P. 56.03(a).

To bolster those allegations, MGOC submitted one factual affidavit in support of its motion: from Bryan Strawser, the Chairman of MGOC. (*See* Affidavit of Bryan Strawser ¶ 2, Index # 23.) But Mr. Strawser does not allege that he owns a binary trigger. (*See generally* Strawser Aff.) Instead, Mr. Strawser alleges that he "ha[s] been informed and now believe[s]" that the broadly described pseudonymous MGOC members/supporters listed in the complaint own binary triggers. (*Id.* at ¶¶ 25-27.) But that is quintessential hearsay and is not admissible in evidence. Minn. R. Evid. 801(c) (defining hearsay as an out-of-court statement offered for the truth of the matter asserted). And inadmissible hearsay in an affidavit may not be used to support a motion for summary judgment. Minn. R. Civ. P. 56.03(d).

Federal case law shows how organizations seeking associational standing must meet their burden at summary judgment. Specifically, an organization cannot just describe the characteristics of members with cognizable injury: they must identify at least one *by name*. *Do No Harm*, 96 F.4th

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at 115 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 498-99 (2009)). And at summary judgment the organization must submit declarations from those named members establishing harm to them. *Summers*, 555 U.S. at 495; *Do No Harm*, 96 F.4th at 117; *Assoc. General Contractors of America, San Diego Chapter, Inc. v. Calif. Dep't of Transp.*, 713 F.3d 1187, 1194-95 (9th Cir. 2013) (associational standing not met at summary judgment because the organization had not submitted declarations of any members attesting to harm). This is because associational standing requires that a member would have standing to sue in their own right – and vaguely described anonymous individuals may not bring suit. *Do No Harm*, 96 F.4th at 117 (citations omitted).

MGOC has done nothing close to sufficiently identifying members who allegedly have standing for the purposes of their summary judgment motion. It offers no affidavits from Members A, B, or C; it does not provide specific identifying information about Members A, B, or C. It relies entirely on unverifiable hearsay and general descriptions of purported harms to those unidentified members to establish associational standing. At summary judgment, that is not enough.

Of course, MGOC indicates that Members A, B, and C "do not wish to be identified by name for fear of reprisal." (Strawser Aff. ¶ 24.) But there are well-established methods to preserve the public confidentiality of individuals with legitimate fears who nevertheless are involved in lawsuits. *See, e.g.*, *Do No Harm*, 96 F.4th at 118-19 (citing *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. 2008)); Minn. R. Civ. P. 26.03. MGOC has not attempted to avail itself of any procedure to protect the confidentiality of its members while still providing the Court the information it needs to assure itself of jurisdiction. That lack of action cannot alleviate MGOC of its burden to demonstrate standing in support of its own motion for summary judgment.

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Because MGOC does not establish it has direct or associational standing, the Court lacks jurisdiction and cannot consider the merits of MGOC's claims on summary judgment. *Williams v. Smith*, 820 N.W.2d 807, 812-13 (Minn. 2012).

### C. At Minimum, the Court Must Defer Consideration of MGOC's Motion and Allow Jurisdictional Discovery.

MGOC brought its summary judgment motion after State Defendants properly noticed their motion to dismiss, prior to an answer, and prior to any discovery. (Veit-Carter Dec. ¶¶ 2-4.) Because State Defendants have not had the opportunity to conduct discovery on MGOC's standing – a prerequisite to this Court's jurisdiction – MGOC's motion is at least premature, and the Court should delay its consideration.

Rule 56.04 provides that the Court may defer consideration of a summary judgment motion, and State Defendants request that the Court exercise that discretion here. *See CenTra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008) ("Typically, when the parties have no opportunity for discovery, denying the Rule 56(d) motion and ruling on a summary judgment motion is likely to be an abuse of discretion."). As discussed above MGOC's standing allegations are insufficient at the summary judgment stage. And any facts potentially supporting MGOC's standing, both direct and associational, are not within the State Defendants' possession. (Veit-Carter Dec. ¶ 5.) Even if MGOC tenders affidavits from the anonymous members on reply, State Defendants have not had any opportunity to cross-examine or otherwise test the veracity of those affidavits. (*Id.* at ¶ 4.) Indeed, the State Defendants intend to seek discovery from members A, B, and C (through document requests, interrogatories, and depositions), within any confidentiality parameters established by the Court. (*Id.* at ¶¶ 6-7.) Because the State Defendants do not have facts available to them to defend against MGOC's summary judgment motion, State Defendants ask the Court to defer considering the motion under Minn. R. Civ. P. 56.04.

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## II. ON THE MERITS, MGOC'S MOTION FOR SUMMARY JUDGMENT IS FACTUALLY AND LEGALLY FLAWED.

Even if the Court has jurisdiction to reach the merits of MGOC's motion, it rests on several faulty factual and legal premises that undermine that motion. First, MGOC blatantly mischaracterizes the legislative history of the Binary Trigger Amendment in advancing its argument that the entirety of the 2024 Omnibus should be stricken. Second, MGOC attempts to rewrite the title and subject of the 2024 Omnibus to better suit its position. Third, MGOC does not allege any kind of legislative fraud or unfair surprise in its Complaint and should not be permitted to advance this issue for the first time at summary judgment. In any event, the Binary Trigger Amendment's actual legislative history makes it clear that it did not work any kind of fraud or unfair surprise on the people or the legislature. The factually and legally flawed nature of MGOC's motion further supports the conclusion that MGOC's request to strike the entire 2024 Omnibus contradicts Minnesota Supreme Court precedent and should be rejected by this Court.

### A. This Suit Should Be Dismissed as a Matter of Law.

First, MGOC's entire suit should be dismissed as a matter of law, as State Defendants argued in their motion to dismiss. (Index #18, St. Defs.' Br.) The State Defendants' motion raises threshold issues: whether single-subject claims are non-justiciable political questions and whether MGOC's claim is time-barred by the codification rule. (*Id.* at 8-14.) Specifically, after decades of experience attempting to police the Legislature's core function, the Court can and should hold that it is, indeed, "well-nigh impossible" for Courts to police the single-subject rule and get out of the business of doing so. *State ex rel. Nash v.* Madson, 45 N.W. 856, 856 (Minn. 1890). That decision would be well-justified by separation of powers principles, the text, history, and structure of the single-subject clause, and the increased complexity of the modern legislative process. (St. Defs.'s Br. at 9-11.)

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Likewise, the codification rule prohibits single-subject challenges that come after a bill's individual provisions have been codified into statute. *State v. Mabry*, 460 N.W.2d 472, 475 (Iowa 1990). That is because single-subject claims are about the *process* of how a bill was passed, not about the substance of the law. *Id.* at 471. It stands to reason, then, that once the substance of the law is codified into statute, the process complaint has been cured. *Id.* That rule would bar MGOC's claim here, which came well after the Binary Trigger Amendment was codified into law. *See* Chapter 609 Versions, Minnesota Statutes, https://www.revisor.mn.gov/statutes/cite/609/versions (noting that the current version of chapter 609 was codified and published on November 1, 2024). And applying that rule here would aid in de-politicizing single-subject claims, upholding the constitutionality of substantively proper legislation.

Those arguments equally apply in response to MGOC's motion for summary judgment and serve as independent reasons the Court should deny its motion. But, as a matter of logistics, the resolution of either or both of those issues could foreclose the need for this Court to decide MGOC's summary judgment motion entirely and the need for any discovery (including jurisdictional discovery). For that reason, too, the Court should deny as premature or defer consideration of MGOC's summary judgment motion until after it has decided State Defendants' motion to dismiss.

### B. MGOC Mischaracterizes the Binary Trigger Amendment's Legislative History to Support Claims of Legislative Fraud or Unfair Surprise.

MGOC correctly notes that the Single Subject Clause is designed to prevent legislative fraud and unfair surprise. (Pl.'s Br. 3.) The Complaint, however, is entirely devoid of allegations of legislative fraud or unfair surprise, regarding either the 2024 Omnibus broadly or, of greater importance, the Binary Trigger Amendment. As a result, MGOC cannot argue for the first time at summary judgment that the entirety of the 2024 Omnibus should be struck down due to purported

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legislative fraud and unfair surprise. *E.g.*, *WireCo WorldGroup, Inc. v. Liberty Mut. Fire Ins. Co.*, 897 F.3d 987, 992–93 (8th Cir. 2018) (affirming district court refusal to consider new theories at summary judgment that were not alleged in the complaint).

To support these new claims of fraud and unfair surprise, MGOC grossly mischaracterizes the Binary Trigger Amendment's legislative history by focusing solely on May 19, 2024, at the expense of all other relevant history. Both the Complaint and MGOC's brief make much of the fact that the legislature passed the 2024 Omnibus on the last day of the legislative session, yet conveniently ignore the fact that both chambers had been considering the Binary Trigger Amendment for nearly two months.[21] Further, MGOC focuses exclusively on a bill relating to taxation and state government operations (i.e., the Tax Omnibus),[22] and not at all on the relevant bills containing the Binary Trigger Amendment[23] (both of which were introduced weeks before the Tax Omnibus). In doing so, MGOC creates a disingenuous narrative that the Binary Trigger Amendment suddenly came into being late at night on the final day of the legislative session, with the legislature and public none the wiser. This is not accurate.

Here is what happened. The legislature acted on the heels of a tragic February 2024 incident in Burnsville, Minnesota, which involved a firearm equipped with a binary trigger.[24] On March 6, 2024, the House introduced a bill modifying the regulation of machine guns and referred it to the

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[21] *See supra* pp. 2-4.

[22] H.F. 2609, 93d Leg., Reg. Sess. 12869 (Minn. 2024).

[23] H.F. 2609, 93d Leg., Reg. Sess. 1349 (Minn. 2024); S.F. 5153, 93d Leg., Reg. Sess. 12529 (Minn. 2024).

[24] Griffith, Michelle, "DFL lawmakers propose increased straw purchase penalty, trigger ban after Burnsville shooting," Mar. 20, 2024, *Minnesota Reformer*, https://minnesotareformer.com/2024/03/20/dfl-lawmakers-propose-increased-straw-purchase-penalty-trigger-ban-after-burnsville-shooting/ (last accessed Apr. 4, 2025).

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Public Safety Finance and Policy Committee.[25] At a public hearing on March 21st, roughly two months before the end of the legislative session, the committee adopted amended language that included a prohibition on binary triggers.[26] The Senate introduced a companion bill on March 21st and referred it to the Judiciary and Public Safety Committee.[27] The very next day, the committee considered an amended bill that included a prohibition on binary triggers, recommended its passage, and referred it to the Finance Committee.[28]

Over the next several weeks, both bills received extensive debate across numerous committees with testimony for and against the Binary Trigger Amendment.[29] On May 2nd, the House passed its version of the bill, and on May 9th, the Senate passed an amended version of H.F. 2609 and returned it to the House.[30] A conference committee reconciled the differences and, on May 17th, the House repassed the bill as amended by the conference committee.[31]

Only after nearly two months of consideration and debate, in both chambers and across several committees, did the legislature then fold the Binary Trigger Amendment into the session's final bill—the 2024 Omnibus. It is only at this endpoint that MGOC begins its summary of the legislative history. (Pl's Br. 6.) But it is disingenuous for MGOC to ignore the considerable debate that occurred regarding the Binary Trigger Amendment and focus solely on the May 19th passage of the 2024 Omnibus to claim legislative fraud and unfair surprise.[32] The Court, however, should

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[25] *See supra* pp. 2-3.
[26] *See supra* p. 3.
[27] *See supra* pp. 2-3.
[28] *See supra* p. 3.
[29] *See supra* p. 3.
[30] *See supra* p. 3.
[31] *See supra* p. 3.
[32] MGOC claims that it "tracks all current legislation related to gun rights and related issues" (Strawser Aff. ¶ 5) and yet strangely provides no details about its lobbying activities during the two months of debate on the binary trigger amendment.

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consider the *entirety* of the legislative history of the Binary Trigger Amendment, not just the final hours of the legislative session as suggested by MGOC. And when doing so, it is clear that the Binary Trigger Amendment did not work any kind of fraud or unfair surprise upon the people or the legislature.

### C. MGOC's Request to Invalidate the Entire 2024 Omnibus Contradicts the Minnesota Supreme Court.

Next, MGOC ignores the plainest, most recent statement from the Minnesota Supreme Court regarding the "proper remedy" in a single-subject challenge: to sever the (allegedly) offending provision without pre-judging other provisions that the parties before it do not—and could not properly—challenge. That directive comes from *Otto v. Wright County*. 910 N.W.2d 446, 456 (Minn. 2018). *Otto* is directly on point: there, a plaintiff challenged a wide-ranging omnibus bill that addressed such varied topics as county audits, cosmetology, pari-mutuel horse racing, railroad condemnation powers, the requirements for reinstating foreign corporations, and the "Honor and Remember Flag" for military members. 2015 Minn. Laws ch. 77, art. 2, § 3 (county audits), § 28 (cosmetology), § 53 (foreign corporations), § 76 (railroad condemnation powers), art. 3, § 7 (Honor and Remember Flag), art. 4, §§ 1-23 (pari-mutuel horse-racing). With such varied topics, the challengers exclaimed, that omnibus bill certainly did not address a "single subject" and must be unconstitutional. *Otto*, 910 N.W.2d at 456.

Despite those varied provisions and that argument, the *Otto* court laser focused on the germaneness of the provision the plaintiff challenged. *Id.* at 457. The Supreme Court then explained why that approach was the proper one: "Those [other] provisions are not before us in this constitutional challenge, and we will not strike down a germane provision of law simply because other provisions in the law are not germane. To do so would undermine the presumption of constitutionality that we afford to legislation and risk 'overstepping our judicial bounds.'" *Id.*

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at 458 (quoting *Assoc. Builders & Contractors*, 610 N.W.2d 293, 305 (Minn. 2000)). MGOC asks this Court to reject that instruction and do exactly what the *Otto* court cautioned against, prejudging as unconstitutional hundreds of provisions that are not before the Court, without separately analyzing whether each is germane to the subject of the 2024 Omnibus.

*Otto* does not stand alone in its rejection of MGOC's requested approach. *Associated Builders* holds the same.[33] After extensively considering the "draconian" option of invalidating the entire bill at issue because the challenged provision violated the single-subject clause, the Supreme Court rejected that option. 610 N.W.2d at 305-306. Instead, it held that severance of the challenged provision was the appropriate remedy. *Id.* at 305. As in *Otto*, that court cautioned that invalidating an entire bill because of one problematic provision would "disregard [] the constitutional principles of separation of powers." *Id.* And the Court of Appeals in *Unity Church* used this same remedy, even though the severed, offending portion was larger and more substantive than the pieces of the bill left intact. *Unity Church of St. Paul v. State*, 694 N.W.2d 585, 597-98 (Minn. Ct. App. 2005). It did so specifically because the role of courts is to judge the provisions challenged in the litigation, not parts of a bill no party has contested are constitutional. *Id.* at 598-99. That reasoning – reaffirmed by *Otto* – must also govern here. The Court should not take MGOC's extraordinary invitation to ignore 25 years of stare decisis and the presumption of constitutionality afforded to Minnesota's statutes to strike down the entire 2024 Omnibus because of MGOC's challenge to one 35-word provision.

[33] MGOC implies that *Associated Builders* leaves open the door for full invalidation as a remedy to a single-subject violation. (Pl.'s Br. 27, 31.) But that is not how the Supreme Court described *Associated Builders*' holding: it declared that *Associated Builders* "held that the proper remedy is simply to sever that [offending] provision from the rest of the bill." *Otto*, 910 N.W.2d at 456 (citing *Associated Builders*, 610 N.W.2d at 307). Of course, it is the Minnesota Supreme Court's interpretation of *Associated Builders* that governs this Court, not MGOC's.

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The hundred-year-old precedent on which MGOC relies for its extraordinary ask has already been abrogated by the Minnesota Supreme Court or is itself an outlier from the rule. *Associated Builders*, 610 N.W.2d at 306 (declaring *State v. Women's & Children's Hospital*, 173 N.W. 402 (Minn. 1919), "not particularly useful" on the question of the proper remedy in a single-subject violation); *id.* at 305-06 (recounting prior precedent holding that severance is the proper remedy); *Anderson v. Sullivan*, 75 N.W. 8, 9-10 (Minn. 1898) ("The *familiar rule* on the subject is that, while a part of the statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also.") (emphasis added). The Supreme Court has likewise already rejected MGOC's invalidation argument based on the text of section 17. *Associated Builders*, 610 N.W.2d at 305 ("By the plain words of the article, it does not prohibit a bill from becoming law if it does embrace more than one subject.").

MGOC's request to invalidate the entire 2024 Omnibus when it challenges only the Binary Trigger Amendment in this lawsuit amounts to a request that this Court ignore the Minnesota Supreme Court. Because this Court is bound by that precedent, and must provide all Minnesota laws a presumption of constitutionality, it cannot do so. MGOC's request must be denied.

**D. MGOC's Remedies Clause Claim Is Precluded by Black-Letter Law.**

Finally, MGOC does not provide any argument that its single-subject claim vested at common law. That is the only situation in which the Remedies Clause actually provides a remedy. *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 497 (Minn. 1997) (original emphasis removed); *see also State v. Lindquist*, 869 N.W.2d 863, 873–74 (Minn. 2015) ("We normally interpret the Remedies Clause as preventing the Legislature from abrogating recognized common-law causes of action."). As the Court of Appeals put succinctly, the Remedies Clause "is not a separate and independent source of legal rights on which to base a declaratory judgment action." *Hoeft v. Hennepin Cnty.*, 754 N.W.2d 717, 726 (Minn. Ct. App. 2008). So, MGOC's claim under the

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Remedies Clause is foreclosed by black-letter law, and its summary judgment motion on that claim must be denied.

## CONCLUSION

As explained in the State Defendants' memorandum in support of its motion to dismiss, MGOC's single-subject challenge should be dismissed as a non-justiciable political question and because its challenge is untimely. For those reasons and those provided herein, the Court should deny MGOC's motion for summary judgment.

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