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NO. A25-1507

State of Minnesota

In Court of Appeals

Minnesota Gun Owners Caucus, *Respondent/Cross-Appellant,*

v.

Tim Walz, et al., *Appellants/Cross-Respondents,*

and

Mary Moriarty, *Defendant.*

RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF

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The State's brief is a remarkable exercise in ignoring the central issue on appeal. The Supreme Court has been clear that, under the Single Subject Clause, a portion of a statute should be severed and struck down "[w]here the common theme of the law is clearly defined" and the challenged provision is not germane to it. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 307 (Minn. 2000); *Otto v. Wright Cty.*, 910 N.W.2d 446, 456, 458 (Minn. 2018). No one disagrees about that rule. The question in this case is: what happens when a plaintiff claims that the common theme of a law is *not* clearly defined? How should the courts assess such a claim? And if the law does lack a common theme—making it logically impossible to analyze whether the directly challenged provision is "germane to" anything—what is the proper Single Subject Clause remedy? And, how do these principles apply to the 2024 Omnibus Bill at issue in this case?

The State evidently cannot bring itself even to acknowledge these questions, let alone try to answer them. As best we can tell, its brief says not a word addressing these issues. Although the State baldly declares that "[s]everance is the only proper remedy to a single-subject violation" (State's Resp. Br. at 9), it wholly fails to explain how the severance analysis should (or could) work for a law that has no common theme for any particular provision to be germane *to*. Nor does the State explain how the courts should go about deciding whether a statute, or its title, actually do have a common theme. And although the State appears to *assume* that the 2024 Omnibus Bill somehow

has a common theme for these purposes, nowhere does the State explain why or how the Court should reach that conclusion.

It is not hard to see why the State refuses to address these doctrinal questions: because the Supreme Court has already answered them, and the State does not like the answer. When a "law contain[s multiple] distinct subjects"—such that a court could choose a single subject "to survive" only by "engag[ing] in a balancing of importance between the" subjects—that is where "[p]recedent leading to … invalidating the entire law" still applies. *Assoc. Builders*, 610 N.W.2d at 306-07. Under that precedent, "the whole act must be treated as void." *State v. Women's & Children's Hosp.*, 173 N.W. 402 (Minn. 1919).

As we have explained—and as the State says nothing to contest—that is the situation here. Both the text and the title of the 2024 Omnibus Bill disclose multiple disparate subjects, not just one. It therefore is invalid in full, and the Court should so hold.

I. Extreme Single Subject Clause Violations Should Be Invalidated in Full.

As MGOC has explained, the Supreme Court has articulated clear principles regarding severability under the Single Subject Clause. For an ordinary Single Subject Clause violation, where a minority of a statute's provisions are not germane to the "common theme" of the rest of the law, the remedy is to sever and strike only the non-germane provisions. But for an extreme Single Subject Clause violation where there simply is no common

theme to be found in the statute, the remedy is to strike down the entire statute.

A. In the Extreme Case Where a Statute Lacks Any "Common Theme," Precedent Requires Striking It Down in Full.

As the State concedes, the Supreme Court has actually struck down an entire statute pursuant to these principles. *Women's & Children's Hosp.*, 173 N.W. at 402. And the Supreme Court has never said it was overturning that precedent. Instead, the Court has re-articulated these and related principles in the year 2000, *Assoc. Builders*, 610 N.W.2d at 307, and the year 2018, *Otto*, 910 N.W.2d at 456, 458-59.

The State nonetheless insists that "[s]everance is the *only* proper remedy to a single-subject violation." (State's Resp. Br. at 9) (emphasis added). It can do this only by making several decidedly awkward arguments against the Supreme Court's and this Court's decisions.

First, the State contends (*id.* at 8) that the Supreme Court "implicitly abrogated" *Women's & Children's Hospital* in its 2000 *Associated Builders* decision. That is badly mistaken, twice over. For one thing, the *Associated Builders* Court expressly said that it was distinguishing *Women's & Children's Hospital*—which of course is *not* overturning or abrogating it. According to the *Associated Builders* Court, the relevant "circumstances" in *Women's & Children's Hospital* were that "the law contained [multiple] distinct subjects and if [any of them] was to survive, the court would be required to engage in a balancing of importance between" them. *Assoc. Builders*, 610 N.W.2d at 306. By contrast, *Associated Builders* involved an isolated statutory "provision that clearly is not germane to the subject of otherwise massive legislation." *Id.* at

305-06. The rule of *Associated Builders* therefore is that severance is the remedy in the latter situation, but that striking the entire statute is appropriate in the former—just as MGOC contends here.

For another thing, and more generally, the notion that this Court can declare Supreme Court precedents "implicitly abrogated" is untenable, and the State cites nothing to support it. It is extraordinarily well settled that this Court cannot "overturn established supreme court precedent." *State v. Ward*, 580 N.W.2d 67, 74 (Minn. Ct. App. 1998). But declaring Supreme Court precedents "implicitly abrogated" would be effectively the same thing. If this Court had authority to do that, then clever lawyers faced with adverse Supreme Court precedent would always be able to argue that a later Supreme Court opinion "implied" the contrary. In all likelihood, this Court would be inundated with requests to ignore, or to declare obsolete, Supreme Court decisions. That prerogative belongs to the Supreme Court alone. This Court should and must apply the rule of *Women's & Children's Hospital*, as clarified in *Associated Builders*, unless and until the Supreme Court expressly says otherwise.

The State's second argument against the Supreme Court is that *Associated Builders*' rule requiring a "common theme of [a] law" is somehow "limited to its facts—as judicial decisions should be," and does not apply to any future case with "a different set of facts." (State's Resp. Br. at 4.) The State does not explain why it thinks *Associated Builders* is essentially a non-precedential opinion in this way, and it is hard to discern how that could

possibly be so. The Supreme Court itself, in its *Otto* decision, approvingly cited the "common theme" rule from *Associated Builders*. 910 N.W. at 456.

And the *Associated Builders* Court itself certainly did not indicate that it was issuing a this-case-only ruling. Indeed, the State's argument depends on ripping the phrase "on these facts" from *Associated Builders* in a way that completely inverts the plain meaning of the Court's words. What the Court actually said was that it would not "**hold[], on these facts, that an unrelated provision in a law should bring the whole law down**." 610 N.W.2d at 307. The clear ruling of *Associated Builders,* therefore, is exactly what MGOC has been contending: "bring[ing] the whole law down" *can* be the proper remedy for an extreme Single Subject Clause violation, depending on what the particular statute says.

The State's third distortion of Supreme Court precedent is its attempt to simply delete a major portion of the *Otto* Court's analysis—namely, the Court's consideration of whether the statute in that case had a valid subject. On the State's telling, *Otto* means that the only inquiry in a Single Subject Clause case is germaneness—that is, whether the part of a statute that most directly affects the plaintiff is germane to its subject. (*See* State's Resp. Br. at 5.) But the State simply ignores that germaneness was only the *second* part of the *Otto* Court's Single Subject Clause analysis. Before the *Otto* Court could get to the germaneness test, it recognized that it had to consider whether "the subject" of the statute "is … too broad to pass constitutional muster." 910 N.W. at 457. It was only after spending several paragraphs on this analysis—and concluding that the statute in that case had a valid subject—that the *Otto* Court turned

to assess whether the directly-challenged provision was germane to that subject. *See id.*

So the State is simply wrong to declare (State's Resp. Br. at 5) that "the *Otto* Court's direction and example" require the courts to unquestioningly accept that every bill has a valid single subject and limit their role to determining whether any given provision is germane to that subject. Quite the contrary, the *Otto* Court clearly showed that courts must determine *whether* a bill has a valid single subject *before* asking whether any particular provision is germane to it. That, of course, is just what MGOC asks the Court to do here.

This Court's precedent in *Unity Church v. State*, 694 N.W.2d 585 (Minn. Ct. App. 2005), likewise squarely supports the Supreme Court's settled rule, not the State's attempted revision of it. *Unity Church* involved a statute that covered both "handgun permitting and firearm regulation" *and* "natural resources and the environment." *Id.* at 595 (cleaned up). The plaintiff's lawsuit challenged only the handgun-and-firearm regulations. *Id.* at 598. "[T]he district court found ascertaining a single subject in [this statute] to be an impossible task," and struck down the handgun-and-firearms regulations. *Id.* at 595, 597-99. The state appealed, arguing that the proper remedy would have been striking the natural-resources provisions—but the plaintiff did *not* appeal, and thus could not seek any greater relief than the district court had already entered. *See id.* In that context, this Court held that striking the firearms regulations was proper. That ruling makes perfect sense under MGOC's proposed rule here: when discerning a single subject from a statute is

"an impossible task," *see id.* at 595, the courts should strike down any portion of it that the plaintiff requests.

To sum up: precedent compels the conclusion that, when it is impossible to discern a single subject for a statute, the correct constitutional remedy is to strike down the whole thing, or however much of it a plaintiff requests. The State may think that the current Supreme Court would depart from that precedent and adopt a different rule. But if that is to be done, it is the job of the Supreme Court, not of this Court.

B. All Other States Agree with the Minnesota Courts' Settled Approach, Not the State's Radical Departure From It.

Our principal brief explained that Minnesota's settled rule—severance for ordinary single-subject violations and full invalidation for extreme violations—is the same one followed by every other American jurisdiction we are aware of. (MGOC's Principal and Response Br. at 33-36.) The State says not a word in contradiction. The "common theme" rule of *Associated Builders*, therefore, is part of the unanimous consensus of American jurisdictions: "[a]n act that violates the single subject rule is void in its entirety," *Ariz. Sch. Bds. Ass'n v. Arizona,* 501 P.3d 731, 740 (Ariz. 2022), unless the non-germane pieces are "only one section" of the statute, *Douglas v. Cox Ret. Props.,* 302 P.3d 789, 793-94 & n.5 (Okla. 2013), or just "minor ancillary provisions," *Pennsylvania v. Neiman*, 84 A.3d 603, 615 (Pa. 2013) (cleaned up). (*See also* MGOC's Principal and Response Br. at 33-36 (citing and quoting many other cases.)) And the *Associated Builders'* Court's conclusion that this rule is necessary to avoid engaging in "a legislative process," 610 N.W.2d at 306, is also the nationwide consensus: where a statute lacks a clearly predominating subject,

"identifying and assembling what we believe to be key or core provisions of the bill would constitute a legislative exercise wholly beyond the province of this court." *Ohio ex rel. Ohio Acad. of Trial Lawyers v. Sheward,* 715 N.E.2d 1062, 1102 (Ohio 1999) , *overruled on other grounds*, *Ohio ex rel. Martens v. Findlay Mun. Court*, 262 N.E.3d 304, 310 (Ohio 2024).

C. The Settled Rule Makes Perfect Sense.

MGOC's principal brief explained why complete invalidation is necessary to forestall the worst instances of legislative "logrolling." The State says nothing to contradict this.

Instead, the State's proposal would compound the problems by reducing the Single Subject Clause to a sort of optional drafting convention for the Legislature. According to the State, the Legislature can choose whatever extremely broad or vague title it wants for a bill, and the courts are forced to accept it and simply ask whether each provision of the bill is germane to that subject. So on the State's view, the Legislature could essentially opt out of Single Subject Clause scrutiny simply by choosing to entitle every bill something like "a bill for an act relating to the laws of the State of Minnesota." According to the State's apparent position, the courts would be forced to accept that title, and thus no single-subject clause violation would ever occur again. The courts should not be in the business of neutering constitutional provisions in this way. Indeed, the State's hollowed-out version of the Single Subject Clause bears no resemblance to the one that the Supreme Court "remain[s] firmly committed to our constitutional duty" of enforcing. *See Otto*, 910 N.W.2d at 459.

Against this, the State suggests that "standing" principles somehow compel automatic severance of statutory provisions (*see* State's Resp. Br. at 9-10), and that subsequent amendments to a statute somehow shield it from judicial scrutiny of its constitutionality (*id.* at 12-14). But these contentions are plainly mistaken.

Start with the State's apparent contention that standing principles mandate automatic severability in every case, lest a plaintiff be able to invalidate provisions that do not affect her. (*Id.* at 9.) To put it mildly, that would be a striking innovation in the law of severability. The Supreme Court and the Legislature have clearly articulated the general rules in this area: statutory provisions are *in*severable, and must stand or fall together, when they are interrelated such that either (1) "the court cannot presume the legislature would have enacted the remaining valid provisions without the void one," or (2) "the remaining valid provisions, standing alone, are incomplete and are incapable of being executed." *Chapman v. Comm'r of Revenue*, 651 N.W.2d 825, 836 (Minn. 2002) (quoting Minn. Stat. § 645.20); *accord, e.g., State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014). So far as we are aware, the Court has never even hinted at an additional requirement that provisions must always be severed unless each of them independently has a direct effect on the plaintiff in any given case. Indeed, the whole point of severability doctrine would seem to be the courts' recognition that, sometimes, striking down a provision that a plaintiff *can* challenge requires also striking down other provisions that she would not have been able to challenge independently. The State's proposal would defeat that purpose in many cases.

And while single-subject severability principles flow from the Constitution rather than any statute, they are closely analogous to these more general severability principles. *See Assoc. Builders*, 610 N.W.2d at 305-07. Thus, when an isolated portion of a statute is unconnected to the common theme of the rest of the law, the courts can sever it *precisely because* the legislature likely would have validly enacted the bulk of the statute even without the stray offending portion. (*See* MGOC's Principal and Response Br. at 36-39.) By contrast, when a statute mixes so many disparate subjects that it lacks any common theme, courts nationwide recognize that they must strike the whole thing precisely because they *cannot* say with confidence that the legislature would have enacted any valid subset of its provisions. (*Id.* at 38-39.) Thus, the nationwide caselaw permitting total invalidation for single-subject violations is equally devoid (to our knowledge) of any requirement that all invalidated provisions must affect the plaintiff.

We note finally that the State's attempt to fragment judicial review of a massive single-subject violation (like this one) is a very poor fit with the State's professed concern, in its own appeal, that single-subject litigation be completed extremely quickly after a statute's enactment. As the District Court described it, the State's view would require "hundreds of lawsuits" to be filed against this kind of statute. (Appellants' Add. 24.) That is hardly a prescription for prompt or efficient litigation. And the problem would only be magnified if the courts were to adopt the "codification rule" that the State is pressing in its own appeal. If that were the law, then the passage of every questionable omnibus bill would loose a mad rush of hundreds of lawsuits over a few months in the summer,

leaving the courts to sort them out over the following months and years. That again would be senseless, and artificially cumbersome and slow. Since the foremost question in each of those lawsuits would be whether the challenged bill lacks any common theme, it makes far more sense for the courts to decide that controlling issue all at once.

The State's purported "standing" concerns thus are wholly unsupported by either law or logic.

The State does even worse in suggesting (State's Resp. Br. at 12-14) that the Legislature's later amendments to portions of the 2024 Omnibus Bill somehow immunize them from constitutional scrutiny by the courts. This is hardly the first case in which the courts have addressed a constitutional challenge to a statute that had been amended in the meantime. Although there is little Minnesota caselaw on the effects of such amendments, multiple courts elsewhere have held that amendments to an invalid statute are themselves invalid.[1] But this Court need not rule on that issue here: even assuming that later amendments to 2024 Omnibus provisions might (depending on what the amendments say) have the effect of readopting those provisions and validly enacting them, that would present no barrier to the Court striking down and enjoining enforcement of the 2024 Omnibus Bill itself. If the State wishes to

[1] *E.g., Allied Health & Chiropractic, LLC v. Ohio*, 244 N.E.3d 694, 709 (Ohio Ct. App. 2024) (after "an unconstitutional violation of the one-subject rule … all the subsequent amendments are void because they amend provisions that were not constitutionally enacted"); *In re R.A.S.*, 290 S.E.2d 34, 35 (Ga. 1982) ("[O]nce a statute is declared unconstitutional and void, it cannot be saved by a subsequent statutory amendment, as there is … nothing to amend.").

continue enforcing *the amendments*, which of course are not challenged in this case, their legal effect could be litigated in a later case.

II. The 2024 Omnibus Bill Manifestly Lacks Any Common Theme.

The Court, therefore, should clearly understand the nature of the State's contentions. On the merits of this appeal, the State relies exclusively on its insistence that "[s]everance is the only proper remedy to a single-subject violation." (State's Resp. Br. at 9.) But, as we have explained above, that rule has never been announced by Minnesota's Supreme Court. It has been rejected by the supreme court of every other State that has considered the question. And adopting it would require overturning at least one Minnesota Supreme Court decision (*Women's & Children's Hospital*), contradicting the Supreme Court's plain statements in a second (*Associated Builders*), and deviating sharply from the Supreme Court's actual approach in a third (*Otto*). So this Court should not, indeed cannot, adopt that rule.

And without that rule, the State loses. The State insists that the courts simply must accept whatever a statute's title declares to be its subject, and proceed to "germaneness" analysis. But if that is wrong—if the courts must first assess whether a statute has a valid single subject at all—the State does not even try to argue that the 2024 Omnibus Bill can pass the test.

The District Court held, and we agree, that the 2024 Omnibus Bill covers at least 13 distinct subjects. (Appellants' Add. 5.) Out of the Bill's 73 Articles, each of these many subjects covers 18 or fewer Articles. (*Id.*) Although there is no way to list and categorize every provision (or even most provisions) of this

nearly-1500-page statute in a legal brief, our detailed review of the 2024 Omnibus Bill confirms that it has no single predominating subject.

And the State questions none of this. It does not propose any different categorization of the provisions or articles in the 2024 Omnibus Bill. It does not contend that we or the District Court mis-counted the number of subjects, or mis-calculated the proportion of the 2024 Omnibus Bill that is covered by any particular subject.

The State does ask the Court to look for a single subject in the 2024 Omnibus Bill's title, rather than its contents. But as we have also explained, the Bill's title also fails to identify any common theme for the Omnibus Bill. (MGOC's Principal and Response Br. at 42-44.) The title's opening phrase is compound, addressing both the operation *and* financing of government—and that by itself is broader than any subject that the courts have ever approved. (*Id.*) The State does not contest that point, either. And the rest of the Omnibus Bill's title identifies a raft of *additional* subjects, such as "combative sports," "construction codes," "employee misclassification, "earned sick and safe time," "broadband and pipeline safety," "transportation network companies," "firearms," and "paid leave provisions." The State makes no attempt to argue that all, most, or even *any* of these can be shoehorned together into a valid single subject.

Instead, the State apparently asks the Court to hold that the courts simply should not inquire about whether the subject identified in a bill's title is single or not. Instead, the State seems to assert that the courts must simply

accept whatever the title of a statute says as its subject, no matter how vague, compound, or improper the title may be.

We close, therefore, by emphasizing that this approach is wholly incompatible with what the Supreme Court did in *Otto*, and would give all future Legislatures a green light to simply opt out of the Constitution's single-subject requirement. The first step of the *Otto* Court's single-subject analysis was to determine whether the bill's "subject" was "too broad to pass constitutional muster." 910 N.W.2d at 457. The State recognizes that the 2024 Omnibus Bill has no hope under that standard—so it asks the Court to simply ignore this step of the test. But no authority supports such a drastic change in the law. Neither do logic or sound policy. The State's approach would allow future legislatures to simply draft around the Single Subject Clause by making sure that every bill had a vague or all-encompassing title. The law does not, and should not, allow that.

*

As the District Court held, and as the State does not seriously contest, the 2024 Omnibus Bill is one of the most extreme violations of the Single Subject Clause imaginable. If striking an entire statute is ever a permissible remedy under the Single Subject Clause—and the Supreme Court has expressly held that it is—it must be appropriate in cases like this one.

CONCLUSION

The Court should reverse the judgment below insofar as it leaves the 2024 Omnibus Bill intact, and remand for the District Court to enter declaratory and injunctive relief invalidating the 2024 Omnibus Bill.

Respectfully submitted,

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Dated: February 3, 2026

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CERTIFICATE OF COMPLIANCE

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