STATE OF MINNESOTA
IN SUPREME COURT

Minnesota Gun Owners Caucus,

Cross-Appellant,

vs.

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

Appellants,

Mary Moriarty, Hennepin County Attorney, in her official capacity,

Cross-Respondent.

Appellate Court File No.: A25-1507

CROSS-APPELLANT'S CROSS-PETITION FOR ACCELARATED REVIEW

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Cross-petitioner the Minnesota Gun Owners' Caucus (MGOC) conditionally seeks accelerated review by this Court to determine the validity, under the Minnesota Constitution's Single Subject Clause, of the 1400-page omnibus bill enacted in the final moments of the legislature's 2024 session.

The State's petition does not warrant this Court's review—not at any time, and certainly not on an expedited basis. The State cannot present any question of the 2024 Omnibus Bill's constitutionality, because the State agrees that the portion of the Bill struck down by the District Court ***is*** unconstitutional. Instead, the State asks that this Court completely abandon judicial enforcement of the Single Subject Clause. But that request presents no opportunity to clarify or develop the law, because it is already entirely foreclosed by this Court's clear and consistent precedents and by Minnesota's long legal tradition.

On the other hand, the 2024 Omnibus Bill's overall constitutionality *is* presented by this conditional cross-petition, and by the related conditional petition filed by UnitedHealth Group. Although that question likely will eventually warrant this Court's review, there is nothing to suggest that it needs to come on an accelerated basis.

Nevertheless, if this Court does grant the State's petition for accelerated review, it should also grant this conditional cross-petition and UnitedHealth's conditional petition. One way or another, this litigation is likely to be a turning point in the Court's decades-long effort to get the legislature to respect our Constitution's Single Subject Clause. The State is asking the Court to give up, and to let the legislature ignore the single-subject rule. If the Court decides to consider that, it should also grant the other petitions to consider the alternative: to start striking down statutes, in whole or in significant part, when they egregiously violate the single-subject rule.

STATEMENT OF THE ISSUE

Under the Minnesota Constitution's Single Subject Clause, if the legislature passes a statute combining so many subjects that it is impossible to discern any single main subject, should the courts strike down the statute in full? If not, how should they discern what the permissible single subject of the bill is?

The District Court concluded that the 2024 Omnibus Bill lacks any single subject, and that striking down the entire Bill is warranted. But out of deference to the appellate courts, the District Court struck only the narrowest possible portion of the Bill. Pet'rs' Add. 24-25.

STATEMENT OF THE CASE

A. Background.

Article IV, Section 17 of the Minnesota Constitution states: "**Laws to embrace only one subject.** No law shall embrace more than one subject, which shall be expressed in its title." As this Court has explained, this serves at least two important purposes: "to prevent 'log-rolling,' a legislative process by which a number of different and disconnected subjects are united in one bill, and to prevent surprise and fraud upon the people and the legislature." *Otto v. Wright Cty.*, 910 N.W.2d 446, 456 (Minn. 2018) (cleaned up).

Over many cases in recent decades, this Court and its members have repeatedly warned Minnesota's legislature that the ever-expanding scope of its bills risks running afoul of this constitutional requirement. The Court has "publicly warn[ed] the legislature that if it does hereafter enact legislation … which clearly violates Minn. Const. art IV, § 17, we will not hesitate to strike it down regardless of the consequences." *Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 301-02 (Minn. 2000) (quoting *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 785 (Minn. 1986) (Yetka, J., concurring)). Most recently,

a mere seven years ago the Court emphasized that "we remain firmly committed to our constitutional duty to" enforce the single-subject requirement. *Otto*, 910 N.W.2d at 459 (cleaned up).

To these extraordinary warnings, the legislature has responded with extraordinary indifference.

This case is about a 1400-page omnibus bill that the legislature created and passed in the final moments of the 2024 legislative session. The last day to pass legislation in that session was Sunday, May 19. *See* Minn. Const. Art. IV, §§12, 21. At 9:54 PM on that final day, a legislative conference committee considering taxation bills reported out an enormous 1300-section, 1400-page amendment that eventually became the statute challenged here. This gargantuan last-minute proposal triggered chaos and confusion on the floors of both the House and the Senate. About 74 minutes after the committee report, the House voted amidst an uproar to adopt the amendments and pass the bill.[1] The Senate then took it up at 11:34 PM—with just 26 minutes left to pass legislation. Amidst an unintelligible din of Senators shouting for recognition, the Senate adopted the amendments and passed the bill in a bare five minutes.[2]

Substantively, this 1400-page statute covers every subject under the sun. It defies summarization: the nonpartisan Minnesota House Research Department's summary is 260 pages long.[3] To give just a few examples, the Bill regulates compensation for rideshare drivers; requires private health-insurance plans to cover various procedures (including abortion); requires drastic revisions to residential building codes to address climate change;

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[1] https://www.house.mn.gov/hjvid/93/898728 (beginning at 1:33:06).
[2] https://mnsenate.granicus.com/player/clip/12609?view_id=5&redirect=true (beginning at 2:27:55).
[3] *Act Summary: Supplemental Appropriations Bill, H.F. 5247* (May 29, 2024), https://www.house.mn.gov/hrd/as/93/as127.pdf.

creates comprehensive rules for classifying workers as employees or independent contractors; allows motorcyclists to ride between lanes of car traffic; and even regulates food samples in grocery stores.

Two plaintiffs sued claiming that this bill violates the Single Subject Clause. MGOC (in this case) and UnitedHealth Group (in the companion case, No. A25-1398) both advance the same primary argument: that the Omnibus Bill lacks any predominating common theme, and therefore is invalid in its entirety under the Single Subject Clause.

The two plaintiffs' secondary arguments, however, focus on the separate provisions of the Omnibus Bill that affect each of them most directly. MGOC argues that, if the Bill *does* have a predominating common theme, that theme does not embrace its regulations of firearms—and in particular, its prohibition on binary triggers—and therefore those provisions are not germane and should be struck down. UnitedHealth makes similar arguments about the Bill's worker-classification regulations and its requirement that state-funded health plans be administered by nonprofit entities.

B. The District Court Strikes Down a Narrow Portion of The Omnibus Bill, But Urges This Court to Strike the Rest.

In response, the State conceded that the 2024 Omnibus Bill violates the Single Subject Clause. Specifically, the State admitted at oral argument in this case that the binary-trigger ban "was a step too far" and is not "germane to" the Bill's subject. Cross-Pet'r's Add. 28. The State argues, however, that the courts should not enforce the Single Subject Clause—either because it is a political question, or because the Revisor has already published this Omnibus Bill in the Revised Statutes.

The District Court rejected the State's proffered defenses. It noted that "[t]he Minnesota Supreme Court has considered dozens of [S]ingle Subject and Title Clause challenges since 1857," and has never "intimated that these challenges present a nonjusticiable

political question." Pet'rs' Add. 12. As to the State's proposed 'codification rule,' the court similarly noted that such a rule "would have caused many of the [previous] Single Subject and Title Clause challenges" that this Court decided on the merits "to be dismissed," that "the rule … does not translate well to Minnesota's legislative process," and that "extending existing law" in this way is not the task of a district court. Pet'rs' Add. 13.

Turning to the merits, the District Court observed that "the parties agree" that "the Binary Trigger Amendment is not germane to the subject of the 2024 Omnibus Bill," but "disagree about whether the 2024 Omnibus Bill ***has*** a prevailing subject which the Binary Trigger Amendment could be fairly severed from." Pet'rs' Add. 20 (emphasis added). The merits question for the court's decision, therefore, was whether to strike only the binary-trigger ban (as the State requested), or to strike the entire Omnibus Bill or at least all its firearms regulations (as MGOC requested).

On that question, the District Court first concluded that this Court's single-subject "[p]recedent" recommends striking only the directly challenged portion of a statute—but only in the ordinary case where "at least a meaningful portion … of the bill's contents" address a single "common theme." Pet'rs' Add. 21-22. The court indicated that this Omnibus Bill lacks a common theme and should be struck down in full. It noted that the Bill has "one of the broadest titles conceivable: the operation and financing of state government," "[a]nd yet it is difficult to say that even that very broad subject can fairly be called the common theme of the gargantuan bill." Pet'rs' Add. 22-23. In concluding, the District Court stated in emphatic terms, quoting this Court's *Associated Builders* opinion:

> if there has ever been a bill without a common theme and where 'all bounds of reason and restraint seem to have been abandoned,' this is it; and if there has ever been a time for the 'draconian result of invalidating the entire law,' that time is now.

Pet'rs' Add. 25.

But the District Court shied away from that remedy. It stated that, "[o]ut of respect and deference for Minnesota Supreme Court precedent favoring severance wherever possible, this Court will go no further than severing the Binary Trigger Amendment from the 2024 Omnibus Bill." *Id.* The court noted the deficiency of this approach: the "burden" of "bring[ing] the 2024 Omnibus Bill into constitutional compliance *** will be shifted to the people and businesses of Minnesota who will be forced to bring hundreds of lawsuits … to hack off, piece by piece, its many offending portions." Pet'rs' Add. 24.

C. The District Court in *UnitedHealth* Upholds the Provisions Challenged There.

In UnitedHealth's separate challenge, Judge Ireland of the Ramsey County District Court adopted a different approach. He did not address the State's political-question argument. But he held that the provisions of the Omnibus Bill most directly affecting UnitedHealth were germane to the Bill's title of "the operation and financing of state government." First, he concluded that the Bill's requirement that state-funded health plans be administered by nonprofits was germane, because "this provision prohibits a state agency … from entering into contracts with for-profit HMOs for *state* employees and *state* programs." Pet'rs' Add. 29. Turning to the portions of the Omnibus Bill that classify workers as employees or independent contractors of private companies, the court concluded that those "[p]rovisions are also germane to the operation of state government" because "*state* government agencies" would "enforce" them. *Id.*

ARGUMENT

I. The State's Far-Fetched Legal Theories Have Already Been Emphatically Rejected by This Court's Precedents and History.

A. The State's Political-Question Argument Does Not Warrant Review.

The State requests that the Court consider whether the Single Subject Clause is judicially enforceable. But the Court has already emphatically answered that question. The Court stated just stated a few years ago that "**we remain firmly committed to**" enforcing the Single Subject Clause—and in doing so, it reaffirmed a similar line of consistent, strongly-worded statements stretching over many cases and several decades. *See supra* at 2-3. The lower courts have gotten the message and applied the Single Subject Clause here without hesitation. So it would not materially develop or clarify the law for the Court to give the same answer to this question yet again. The State's arguments can be disposed of just as well by a simple denial of review.

Nor does the State offer any persuasive reason for the Court to consider *changing* its answer and abandoning enforcement of the Single Subject Clause. The State cites no opinion from the last 130 years in which any Minnesota court expressed any struggle or difficulty with applying the Single Subject Clause. *Compare* Pet. 3 *with* Pet. 9-10. To the contrary, this Court has responded to the modern rise of omnibus bills by repeatedly emphasizing the *importance* of applying the Single Subject Clause**.** *See supra* at 2-3. If the State believes that our Constitution's requirements are "ill-suited to modern legislative 'complexity,'" *see* Pet. 10, then, its choices are either to simplify its legislative practices or else to ask the people to amend the Constitution to legitimize them. Asking this Court to simply ignore repeated constitutional violations is not one of the legitimate options.

The State's feeble arguments from the constitutional text reinforce that conclusion. It notes only that the Single Subject Clause "appear[s] in the 'Legislative department' article" of the Constitution" and "applies to … lawmaking." Pet. 8. But that is true of practically every constitutional provision specifying how laws are made—many of which the courts enforce. What this Court held about the Quorum Clause a few months ago (at the State's behest) is equally true here:

> It is emphatically the province and duty of the judicial department to say what the law is. The judiciary can rule on the Legislature's noncompliance with a constitutional mandate, especially in as much as the interpretation of the constitution's language is a judicial, not a legislative, question.

Simon v. Demuth, 17 N.W.3d 753, 758 (Minn. 2025) (cleaned up).

Finally, there are other weighty reasons why this Court should not reconsider its steadfast enforcement of the Single Subject Clause. The State identifies no other American jurisdiction that applies its requested approach. And in a remarkable piece of irony, the State asks this Court to consider whether there are no discernible limits on the Single Subject Clause in a case where ***even the State agrees*** that it has overstepped the limits of the Single Subject Clause. Cross-Pet'r's Add. 28.

In sum, this Court has already made overwhelmingly clear that it does and will enforce the Single Subject Clause. There is no reason to do anything other than reiterate that conclusion by denying review.

B. The State's Codification-Rule Argument Does Not Warrant Review.

The State also asks the Court to consider whether the Revisor of Statutes can foreclose Single Subject Clause lawsuits simply by publishing a new version of the Revised Statutes. Pet.11-12. As the District Court noted, there is no hint of support for that rule in the 165-plus-year history of Minnesota's Single Subject Clause. In fact, MGOC brings this

claim on the exact same timeframe as the plaintiff in *Otto*. *See* 910 N.W.2d at 449-50 (challenge filed in February to act passed the previous May); *see also, e.g.*, *Metro. Sports Facilities Com v. Cnty. of Hennepin*, 478 N.W.2d at 488-89 ("The case now before us involves the 1985 amendment and is based on petitions filed in 1987 and 1988").

Not only is the State's proposal unprecedented in our constitutional history, it also is downright bizarre and nonsensical. Why should the Revisor of Statutes have the power to convert a non-law into a law just by publishing it? The State has never offered any legal rationale for this, and understandably so—there simply is no plausible reason for it.[4]

Instead, the State points to other jurisdictions that apply a much more modest version of the rule, which *does* have a coherent rationale. Many states periodically re-enact their entire statutory code (or entire volumes of it) into law: the legislature votes on, and the governor signs, the whole thing at once. *E.g., State ex rel. Griffith v. Davis,* 229 P. 757, 758 (Kan. 1924); *see* Ga. Code 1-1-10 (1981). And in many of these states, "**[a]fter a statute has been reenacted** as part of the Code, it is no longer subject to assault because of a claimed defect in the title to the original Act." *State v. Matteson*, 205 N.W.2d 512, 514 (S.D. 1973) (emphasis added; cleaned up). Such re-codification "is a wholly independent enactment" by the legislature, so its "constitutionality … depends upon its own title and not upon the titles of prior enactments embodied therein." *State v. Czarnicki*, 10 A.2d 461, 462 (N.J. 1940).

[4] Nor can the State articulate any coherent boundaries for the power it proposes to give the Revisor. If a statute banned political speech or established a state church, could the Revisor bar challenges to it by publishing it? If the Revisor simply made up and published a 'statute' that the legislature had never approved, would challenges to *that* be barred? If not, why should publication by the Revisor bar single-subject challenges? The State does not and cannot say.

But while that double-enactment version of the codification rule makes sense, it is not what the State asks the Court to consider here. Such a rule could not save the 2024 Omnibus Bill, because Minnesota's legislature has not voted on a recodification of our laws since 1945. Instead, the State argues that the Revisor can make a law out of language that was ***never*** enacted as required by the Constitution, simply by publishing it in the codebooks. That overgrown version of the codification rule has rarely even been proposed in other States—but when it has, the courts have largely rejected it. *See People v. Reedy*, 708 N.E.2d 1114, 1120 (Ill. 1999); *Netzer Law Office, P.C. v. State*, 520 P.3d 335, 340 (Mont. 2022). Out of all the States, it appears that only Iowa follows this rule, *see State v. Mabry*, 460 N.W.2d 472 (Iowa 1990)—and the Iowa courts do not appear to have articulated any legal basis for it, either.

Similarly, the State gives no practical reason for the Court to consider any codification rule. It maintains that constitutional challenges should be brought promptly, to avoid lengthy "uncertainty" over whether statutes are invalid. Pet.12. But that argument applies to every constitutional challenge to any statute—and the law has long addressed such concerns through statutes of limitations and the doctrine of laches. The State gives no reason to think those tools are inadequate here. The legislature is fully capable of shortening the limitations period for constitutional challenges in general, or for Single Subject Clause challenges in particular, if it wants to hasten their resolution. There is no need for the Court to consider taking over that task. There *certainly* is no need for the Court to do so by inventing a codification rule with no coherent legal grounding, and irreversibly politicizing the office of the Revisor of Statutes in the process.

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Since the State lacks any legal arguments that merit consideration by the Court, its policy concerns about "an epidemic of gun violence," Pet. 4, should instead be addressed to the legislature. The State agrees that the binary-trigger ban was not enacted as the Constitution requires. Cross-Pet'r's Add. 28. So if the State thinks further action is needed, it should ask the legislature to try again in compliance with the Constitution. It should not ask this Court to stop enforcing the Constitution.

II. The Merits Questions Likely Warrant Review—But After a Court of Appeals Decision.

By contrast, the merits of MGOC's and UnitedHealth's claims likely will warrant this Court's review eventually. Both cases raise serious questions regarding the constitutionality of a major piece of legislation. Moreover, they present the opportunity to develop and clarify the law regarding the Single Subject Clause. This Court has made clear that, if a provision is not "germane" to the principal subject of the statute in which it appears, it should be severed and struck down. *Assoc. Builders,* 610 N.W. at 307; *Otto*, 910 N.W. at 457-58. But the Court has given less instruction recently on how to determine whether a law ***has*** an identifiable principal subject in the first place, or what to do if it does not. In other words, the Court has clearly articulated that the Single Subject Clause requires every statutory provision to be "germane," but uncertainty remains about the predicate question: Germane *to what*?

The Court's *Associated Builders* decision did strongly suggest the answer: there must be a "common theme of the law [that] is clearly defined by its other provisions," and if not, the courts may need to strike the whole statute, since assigning a single subject to such a law would require a "balancing of [policy] importance" of the statute's disparate subjects that is "clearly a legislative process" and outside the judicial role. 610 N.W.2d at 306-07. But the statute in *Associated Builders* did have a clearly defined common theme,

and the Court has not had occasion since then to apply this rule to a law that lacks one. Here, the District Court concluded that the 2024 Omnibus Bill lacks a common theme, so this case presents that important and unsettled question.

Still, it would be better to follow normal appellate procedure and let the Court of Appeals consider that question first. This is not a case where an impending election or other event will moot the claims and frustrate this Court's review if it does not occur immediately. Nor do the merits of the claims require considering brand-new legal doctrines that can come only from this Court. Rather, they involve the interpretation, harmonization, and application of the precedents this Court has already laid down—exactly the kind of inquiry that the Court of Appeals undertakes regularly.

Court of Appeals proceedings also are advisable because the State has yet to fully articulate its legal positions. In its district-court briefs, the State never said whether it believed the 2024 Omnibus Bill as a whole, or the binary-trigger ban in particular, complied with the Single Subject Clause. Only at oral argument before the District Court did the State concede unconstitutionality. Cross-Pet'r's Add. 28. Thus, the State has not yet explained how it can contend that the Single Subject Clause lacks enforceable boundaries, while simultaneously conceding that *this very statute* overstepped the Single Subject Clause's boundaries. Nor has any court had the opportunity to assess any explanation the State might give. Thus, even assuming that this Court's review will be warranted eventually, the record on these questions should not be developed in this Court in the first instance. The Court's review will be aided if these arguments are first articulated, assessed, and decided in the Court of Appeals.

III. If the Court Grants the State's Petition, It Should Grant UnitedHealth's Petition and This Cross-Petition.

If, however, the Court decides to grant accelerated review of the political-question and codification-rule issues presented by the State, it should also grant accelerated review of the merits questions presented by this cross-petition and UnitedHealth's conditional petition.

As described above, this Court has been warning the legislature for decades to take the Single Subject Clause seriously—and the legislature has markedly failed to do so, culminating in the 2024 Omnibus Bill. Any grant of review in this case, therefore, would set the stage for the denouement of this Court's multi-decade attempt to engage with the legislature on this issue. The State asks the Court to give up, and to abandon enforcement of the Single Subject Clause. If the Court is going to consider that, it should consider the alternatives as well. As this case vividly illustrates, Single Subject Clause violations are becoming ever more egregious. If the courts continue enforcing the Clause, therefore, the time for stern warnings has passed and stronger medicine will be needed. The District Court here identified one possibility: "hundreds of lawsuits" to "hack off, piece by piece," most of the provisions of a massive single-subject violation like the 2024 Omnibus Bill. Pet'rs' Add. 24. The other possibility would be for this Court to clarify that the worst single-subject violations—like this statute—should be invalidated all at once, in whole or in significant part, as suggested in *Associated Builders*.

The choice between these possibilities is the question presented by this cross-petition and by UnitedHealth's conditional petition. To repeat, the best time to take up this question would be after review by the Court of Appeals. But if the Court decides to grant review now, it should have the whole picture and all options before it. That would require also granting this petition and UnitedHealth's petition.

CONCLUSION

The Court should deny the State's petition. If it does so, it should also deny this cross-petition and UnitedHealth's conditional petition. If the Court does grant the State's petition, it should grant this cross-petition and UnitedHealth's petition as well.

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CERTIFICATE OF COMPLIANCE
WITH MINN. R. CIV. APP. P. 118, SUBD. 2

I hereby certify that this document was prepared using Microsoft Word 365, uses a proportional 13-point font; and conforms to the requirements of the applicable rules. This document is 4000 words in length.

/s/ Nicholas J. Nelson
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