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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0661**

In the Matter of a Petition for Decertification of an Exclusive Representative

Certain Employees of the State of Minnesota,
Minnesota Management and Budget, St. Paul, Minnesota,
Relators,

vs.

SEIU Healthcare Minnesota, St. Paul, Minnesota,
Respondent,

State of Minnesota, Minnesota Management and Budget, St. Paul, Minnesota,
Respondent,

Bureau of Mediation Services,
Respondent.

**Filed February 19, 2019
Affirmed; motions denied
Halbrooks, Judge
Concurring in part, dissenting in part, Schellhas, Judge**

Bureau of Mediation Services
File No. 18PDE0254

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Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relators Kristina Greene, Paula Fleming, Patrick Fleming, Cindy Lindbloom, Linda Brickley, Sharon Schmit, and Catherine Hunter challenge an order by respondent Bureau of Mediation Services (BMS) dismissing as untimely relators' October 2017 petition to decertify respondent SEIU Healthcare Minnesota (SEIU) as the exclusive bargaining representative for certain personal-care assistants. Because BMS did not err in determining that relators' petition was untimely and because relators have not otherwise demonstrated a basis for reversal, we affirm.

FACTS

In 2013, the legislature passed, and the governor signed into law, a law treating individual providers of direct-support services as state employees for collective-bargaining purposes. See 2013 Minn. Laws ch. 128, art. 2, § 1, at 2173-78, *codified at* Minn. Stat. § 179A.54 (2018). In 2014, SEIU was certified under Minn. Stat. § 179A.54 as the exclusive representative for certain personal-care assistants (PCAs). SEIU and respondent Minnesota Management and Budget (MMB) negotiated an initial collective-bargaining agreement (CBA) that was effective July 1, 2015 through June 30, 2017. In the summer

of 2016, a number of PCAs initiated efforts to decertify SEIU as the exclusive representative, resulting in multiple appeals to this court.

After encountering difficulties getting a list of the members of the bargaining unit represented by SEIU, the PCAs initiated an action in Ramsey County District Court, seeking relief under the Minnesota Government Data Practices Act (MGDPA). The district court granted temporary injunctive relief that this court affirmed in the first appeal. *Greene v. Minn. Bureau of Mediation Servs.*, No. A16-1863, 2017 WL 3122343, at *1 (Minn. App. July 24, 2017).¹

In December 2016, the PCAs filed with BMS a petition for a decertification election (first petition). After requiring DHS to submit an updated list of bargaining-unit members, BMS dismissed the first petition, ruling that the PCAs had not submitted signatures reflecting the requisite level of interest to obtain a decertification election. This court affirmed dismissal of the first petition in the second appeal, and the supreme court denied further review. *See In re Decertification of an Exclusive Representative for Certain Emps. of the State of Minn.*, No. A17-0798, 2018 WL 414363, at *1 (Minn. App. Jan. 16, 2018), *review denied* (Minn. Apr. 17, 2018).

During the pendency of the first and second appeals, the legislature passed, and governor signed, an omnibus bill that included provisions allowing SEIU and MMB to enter into a second CBA within certain parameters. *See* 2017 Minn. Laws 1st Spec. Sess.

¹ Currently pending before this court is an appeal (No. A18-1981) from the Ramsey County District Court's summary-judgment determination that both the Minnesota Department of Human Services (DHS) and MMB violated the MGDPA.

ch. 6, art. 18, § 2, subd. 15(b), at 2149-50. A second CBA was successfully negotiated to be effective July 1, 2017, through June 30, 2019.

On October 2, 2017, relators filed a second petition for a decertification election (second petition). They requested that the second petition be treated “as a supplement” to the first petition, and asserted that they had now demonstrated the requisite level of interest to obtain a decertification election. After requesting additional written submissions from the parties, BMS issued an order on December 12, 2017, dismissing the second petition as untimely. The order reasoned that the second petition could not “relate back” to the first petition and that the second petition was untimely because there was a labor contract in effect and the petition was not filed within the window allowed under Minn. Stat. § 179A.12, subd. 4 (2018). The board also rejected as untimely relators’ request for an investigation into alleged fraud in connection with the 2014 election that resulted in the certification of SEIU as the exclusive representative. BMS declined to address relators’ constitutional challenge to the legislation authorizing the second CBA or determine the validity of the signature cards relied on by relators. On March 5, 2018, BMS denied relators’ request for reconsideration. This certiorari appeal follows.²

² On November 30, 2018, relators filed with BMS a third petition for decertification. On December 6, 2018, relators filed a motion with this court to supplement the record in this appeal with the third petition and its attached exhibits, or in the alternative for this court to take judicial notice of the documents. And on January 4, 2019, relators filed a motion in this court to amend their reply memorandum in support of the motion to supplement to include reference to BMS’s December 21, 2018 order dismissing the third petition and relators’ December 28, 2018 request for reconsideration. The documents related to the third petition are not part of the appellate record because they were not before BMS when it denied the second petition. See Minn. R. Civ. P. 110.01, 115.04 (providing that the record in a certiorari appeal is composed of the documents submitted to the agency or

DECISION

“An appellate court may reverse an agency decision if the decision reflects an error of law, if it is arbitrary, or if its findings are unsupported by the record.” *In re Decertification of an Exclusive Representative of Certain Emps. of the Univ. of Minn.*, 730 N.W.2d 300, 303 (Minn. App. 2007). “Questions of statutory interpretation are subject to de novo review.” *Id.*

Under Minn. Stat. § 179A.12, subd. 4,

[t]he commissioner [of BMS] shall not consider a petition for a decertification election during the term of a contract covering employees of the executive or judicial branches of the state of Minnesota except for a period from not more than 270 to not less than 210 days before its date of termination.

The PCAs are considered executive-branch employees for purposes of the Minnesota Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01-.25 (2018). *See* Minn. Stat. § 179A.54, subd. 2. BMS applied Minn. Stat. § 179A.12, subd. 4, to dismiss relators’ second petition for a decertification election after determining that a labor contract was in effect and the petition was not filed within the window allowed by statute.

considered by the agency in reaching its decision); *Gustafson v. Comm’r of Human Servs.*, 884 N.W.2d 674, 684 (Minn. App. 2016) (declining to consider documents “created after the commissioner’s decision” and thus “not part of the appellate record”). Nor do the documents, which contain disputed subject matter, meet the requirements for judicial notice. *See* Minn. R. Evid. 201 (providing that the court may take judicial notice of adjudicative facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). Accordingly, although we may take judicial notice that a third petition has been filed and dismissed, we deny relators’ motion to supplement the record with, or take judicial notice of, documents related to that petition. And we deny relators’ motion to amend its reply memorandum.

On appeal, relators challenge (1) the constitutionality of the session law approving the 2017-2019 CBA; (2) BMS's refusal to allow the second petition to relate back to the first petition; (3) BMS's determination that it could not consider the petition in the interests of good labor relations under Minn. R. 5510.0510, subp. 1(C) (2017); and (4) BMS's failure to conduct an investigation into alleged fraud related to the 2014 certification election. We consider each argument in turn.³

I.

Relators assert that the BMS decision is based on an error of law because the legislation authorizing the second CBA violates the Title and Single Subject Clauses of the Minnesota Constitution, and, therefore, the second CBA is of no legal effect and the decertification petition is not barred under Minn. Stat. § 179A.12, subd. 4. BMS properly recognized that it does not have authority to address this constitutional issue. *Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998) (explaining that “an administrative agency lacks subject matter jurisdiction to decide constitutional issues because those

³ Relators raise two other issues that we decline to reach. First, relators assert that BMS erred by failing to determine the validity of signature cards submitted by relators. But relators cite no authority requiring BMS to consider this issue after determining that the petition was untimely, and we conclude that the argument is forfeited. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (inadequately briefed issues are not properly before appellate court); *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or citation). Second, relators assert that BMS erred by denying their request to stay BMS proceedings pending the litigation in Ramsey County District Court. An issue is moot if “an event occurs pending appeal that makes a decision on the merits unnecessary or an award of effective relief impossible.” *Farm Bureau Mut. Ins. Co. v. Schwan*, 687 N.W.2d 388, 391 (Minn. App. 2004) (quotation omitted). BMS denied relators' stay request and issued a final decision. The issue of whether BMS erred by declining to stay its decision is moot.

questions are within the exclusive province of the judicial branch”), *aff’d*, 588 N.W.2d 720 (Minn. 1999).

The constitutionality of a statute is reviewed de novo, “‘proceed[ing] on the presumption that Minnesota statutes are constitutional.’” *Otto v. Wright County*, 910 N.W.2d 446, 451 (Minn. 2018) (alteration in original) (quoting *Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 298-99 (Minn. 2000)). “Because the power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary, the party challenging the constitutionality of a statute bears a heavy burden.” *Id.* (quotation omitted).

Article IV, section 17 of the Minnesota Constitution states: “No law shall embrace more than one subject, which shall be expressed in its title.” The first clause is referred to as the Single Subject Clause, and the second clause as the Title Clause. The two clauses “serve independent though interrelated purposes.” *Wass v. Anderson*, 252 N.W.2d 131, 134 (Minn. 1977).⁴

The Single Subject Clause “should be interpreted liberally and the restriction [is] met if the bill [is] germane to one general subject.” *Assoc. Builders*, 610 N.W.2d at 299; *see also Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891) (“The term ‘subject,’ as used in the constitution, is to be given a broad and extended meaning All that is necessary is that the act should embrace . . . some one general idea, be so connected with or related

⁴ MMB argues that relators assert only a single-subject challenge. Although relators do not expressly assert a title challenge in their opening brief, they do make arguments about the title and, as noted above, single-subject and title challenges are interrelated. Thus, we address them together as relators have.

to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.”), *cited with approval in Otto*, 910 N.W.2d at 458 n.11. The Single Subject Clause thus “ensures that each piece of legislation receives separate and individual consideration on the merits by prohibiting insertion of wholly unrelated matters.” *Unity Church v. State*, 694 N.W.2d 585, 592 (Minn. App. 2005), *review dismissed* (Minn. June 9, 2005). But it is “not intended to preclude the enactment of comprehensive legislation addressing *related* topics within a general subject area.” *Id.* A lack of germaneness is the dispositive characteristic of a law that violates the Single Subject Clause; the bundling of popular and unpopular provisions is permissible when the provisions are germane to one another. *Id.* at 592 n.3.

The Title Clause is “intended to prevent fraud or surprise upon the legislature and the public by prohibiting the inclusion of provisions in a bill whose title gives no intimation of the nature of the proposed legislation.” *Assoc. Builders*, 610 N.W.2d at 300 (quotation omitted). The Title Clause should be accorded “the same liberal construction as the single subject provision” and “[e]very reasonable presumption should be in favor of the title.” *Id.* (alteration in original) (quotation omitted). “[T]he generality of the title of an act is not grounds for invalidation as long as the title gives notice of the general subject because the title was never intended to be an index of the law.” *Id.* (quotation omitted).

Just last year in *Otto*, the supreme court rejected a single-subject challenge to legislation authorizing counties to choose between an annual audit by the state auditor or a private auditing firm. 910 N.W.2d at 455-59. The supreme court emphasized that the clause has been given a liberal construction and that the operative test is “germaneness.”

Id. at 456; *see also id.* at 458 (rejecting reliance on references to filaments and figments in previous caselaw: “While filaments and figments may have been helpful concepts in light of the facts [of past cases], neither term replaced the only test we have applied: germaneness.”). The supreme court reasoned that “[a] provision that allows counties to choose between the State Auditor and a private CPA firm for the annual audit required by statute, overseen by the State Auditor and subject to the State Auditor’s review and further audit, is clearly germane to the subject of state government operations.” *Id.* at 457. The supreme court contrasted the case with *Assoc. Builders*, in which it had held violative of the Single Subject Clause an amendment requiring prevailing wages for certain school-related construction projects that was passed as part of an omnibus tax relief and reform bill. *Id.* at 456-57; *see Assoc. Builders*, 610 N.W.2d at 302 (“While the amendment may have a tax impact by affecting construction costs, clearly that is not its purpose and nowhere is consideration of tax relief and reform mentioned in its very short text.”).

The supreme court rejected an argument in *Otto* that “state government operations” is too broad a subject for purposes of determining germaneness. 910 N.W.2d at 457 (quotation omitted). “Consistent with our precedent, the subject—‘the operation of state government’—is not too broad to pass constitutional muster in a challenge to legislation that addresses the roles and responsibilities of state entities.” *Id.*

In relevant part, the title of the legislation at issue here is:

An act relating to state government; establishing the health and human services budget; modifying provisions governing community supports, housing, continuing care, health care, health insurance, direct care and treatment, children and families, chemical and mental health services,

*Department of Human Services operations, Health Department, health licensing boards, opiate abuse prevention, managed care organizations, and child care development block grant compliance; making technical changes; modifying terminology and definitions; establishing licensing fix-it tickets; requiring reports; establishing moratorium on conversion transactions; modifying fees; making forecast adjustments; appropriating money; . . .*⁵

2017 Minn. Laws 1st Spec. Session. ch. 6, at 1651. Article 2 of the act approves appropriations for DHS for the 2018-2019 biennium, and includes the following language at issue here:

(b) Self-Directed Workforce Collective Bargaining Agreement. (1) This appropriation includes money to implement a collective bargaining agreement between the state and the Service Employees International Union Healthcare Minnesota (SEIU). This appropriation is not available until the collective bargaining agreement between the state of Minnesota and the Service Employees International Union Healthcare Minnesota under Minnesota Statutes, section 179A.54, is approved as provided in clause (3).

(2) The commissioner of management and budget is authorized to negotiate and enter into a collective bargaining agreement with SEIU under Minnesota Statutes, section 179A.54, subject to clause (1), and subdivision 7, paragraph (f). The economic terms of the collective bargaining agreement may include wage floor increases for direct support workers, paid time off, holiday pay, wage increases for workers serving people with complex needs, training stipends, and training for direct support workers and for implementation of the registry as outlined in the collective bargaining agreement.

(3) Notwithstanding Minnesota Statutes, sections 3.855, 179A.22, subdivision 4, and 179A.54, subdivision 5, upon approval of a negotiated collective bargaining agreement by the SEIU and the commissioner of management and budget,

⁵ The balance of the title identifies statutory provisions amended or added by the act.

the commissioner of human services is authorized to implement the negotiated collective bargaining agreement.

2017 Minn. Laws 1st Spec. Sess. ch. 6, art. 18, § 2, subd. 15(b), at 2149-50.

BMS argues that subdivision 15(b) is germane to the general topics of state government, the health and human services budget, and department of human services operations, all of which are identified in the title of the act, and that this is sufficient to defeat relators' constitutional challenge. We agree. Subdivision 15(b) provides funding to DHS to implement a CBA approved by MMB and authorizes MMB to approve the CBA if it falls within certain parameters. These provisions broadly relate to state government and DHS budget and operations.

Relators and SEIU make a variety of arguments about the events leading to adoption of subdivision 15(b). But the legislative history of subdivision 15(b) is not a relevant consideration in determining whether the requirements of the Single Subject and Title Clauses are met. *See Otto*, 910 N.W.2d at 457-58 n.10 (instructing that if germaneness test is met, court need not consider legislative history); *see also Unity Church*, 694 N.W.2d at 597 (“What the Minnesota Constitution requires is germaneness. It does not require the absence of legislative maneuvering to enact unpopular, but germane, bills.”).

Relators also allude to a variety of allegedly nongermane provisions other than subdivision 15(b). But *Otto* makes clear that we should “not strike down a germane provision of a law simply because other provisions in the law are not germane” because “[t]o do so would undermine the presumption of constitutionality that we afford to

legislation and risk overstepping our judicial bounds.” 910 N.W.2d at 458 (quotation omitted).

In sum, we conclude that relators have not met their “heavy burden” to show that subdivision 15(b) is unconstitutional. Accordingly, we reject relators’ arguments for reversal on this ground.

II.

Relators assert that BMS erred by concluding that the second petition could not relate back to the first petition. BMS reasoned that it issued a final decision on the first petition that was affirmed on judicial review and could not be reopened. Relators urge that BMS should have applied relation-back principles recognized in civil litigation; but they cite no authority supporting BMS’s ability to do so. Moreover, the civil-litigation case cited by relators is distinguishable because relation back is authorized by Minn. R. Civ. P. 15.03. *See Save Our Creeks v. Brooklyn Park*, 682 N.W.2d 639, 646 (Minn. App. 2004) (applying rule 15.03), *aff’d*, 699 N.W.2d 307 (Minn. 2005). Relators also cite a number of decisions from the National Labor Relations Board for the proposition that a new CBA does not bar consideration of a petition for decertification timely filed during a previous CBA. *See, e.g., In Re Truserv Corp.*, 349 NLRB 227 (2007); *Nat’l Carloading Corp.*, 167 NLRB 801 (1967). These case are distinguishable because they do not address situations where, as here, a petition for decertification was dismissed for failure to demonstrate the requisite level of interest and a second petition was filed after a new CBA took effect. Because relators have identified no authority authorizing or requiring BMS to apply relation-back principles, we reject their arguments for reversal on this ground.

III.

Relators assert that BMS erred by concluding that it could not consider the second petition in the interests of good labor relations under Minn. R. 5510.0510, subp. 1(C). BMS rejected this argument, citing the supreme court's decision in *Special Sch. Dist. No. 1 v. Dunham*, 498 N.W.2d 441, 445 (Minn. 1993), for the proposition that, "It is elemental that when an administrative rule conflicts with the plain meaning of a statute, the statute controls." Noting the mandatory temporal limit to consideration of decertification petitions in Minn. Stat. § 179A.12, subd. 4, BMS determined that the statute controlled. BMS did not err in this regard.

Relators argue that Minn. R. 5510.0510 (2017) was adopted as an exception to the statute, that it post-dates the statute, and that it would be a nullity if not so construed. *See, e.g.*, Minn. Stat. §§ 645.17(2) (providing that legislature intends entire statute to be effective); .26, subd. 1 (providing that a more specific statutory provision controls over a general provision and that the later passed statute controls) (2018). But these canons of statutory construction do not apply in the context of applying a rule that is contrary to a statute. *See Dunham*, 498 N.W.2d at 445; *see also Berglund v. Comm'r of Revenue*, 877 N.W.2d 780, 784-85 (Minn. 2016) (explaining that, although promulgated rules generally have force of law, when a "rule conflicts with a statute, the statute controls"); *Dumont v. Comm'r of Taxation*, 154 N.W.2d 196, 199 (Minn. 1967) (holding that, "if the legislature has acted in a specific area, the administrative agency may not adopt a rule in conflict with the statute"). Accordingly, we reject relators' arguments for reversal on this ground.

IV.

Relators assert that BMS erred by failing to conduct an investigation into alleged fraud related to the 2014 certification election that resulted in SEIU becoming the exclusive representative for the PCAs. BMS reasoned that relators' allegations were not timely asserted within ten days of certification of the 2014 certification election, as required by Minn. R. 5510.2110, subp. 2 (2017).

Relators argue that BMS is required to investigate charges of unfair labor practices under Minn. Stat. § 179A.13 (2018). As BMS notes, however, the version of that statute currently in effect provides for a civil action in district court to challenge unfair labor practices. *See* Minn. Stat. § 179A.13, Note (2018); 2014 Minn. Laws ch. 211, §§ 5, at 501-02; 10, at 503-07 (creating new Public Employee Relations Board, allowing complaints to be made to *board* (not BMS)); 2017 Minn. Laws ch. 94, art. 12, § 1, at 910 (postponing effective date of 2014 amendments until July 1, 2020). Even after the 2014 amendments to the law take effect in 2020, the recourse for unfair-election practices under Minn. Stat. § 179A.13 will be to the newly created Public Employee Relations Board, not to BMS.

Relators also assert that the ten-day period to assert an unfair-election charge should have been tolled under the discovery rule generally applied to civil fraud actions. But again, relators cite no authority to support their contention that BMS had authority to toll the period. *See In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) (“Administrative agencies are creatures of statute and they have only those powers given to them by the legislature.”); *see also* Minn. Stat. § 14.38, subd. 1 (2018) (stating properly promulgated administrative rules have the force and effect of law).

Because relators fail to cite any statute or rule that authorized or required BMS to address relators' fraud allegations in ruling on the second petition, we reject relators' arguments for reversal on this ground.

Affirmed; motions denied.⁶

⁶ BMS moved to strike pages 16-54 of relators' addendum as containing documents outside the appellate record. We have not considered these documents in rendering our decision, and therefore deny the motion to strike as moot. See *Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007).

SCHELLHAS, Judge (concurring in part, dissenting in part)

Respondent Bureau of Mediation Services (BMS) dismissed relators' second petition to decertify respondent SEIU Healthcare Minnesota (SEIU) as the exclusive representative on the ground that it was untimely filed during the term of a 2017-2019 collective-bargaining agreement (CBA) between SEIU and the State of Minnesota. *See* Minn. Stat. § 179A.12, subd. 4 (2018) (establishing window for consideration of petition to decertify during term of CBA). I concur with the majority's conclusion that BMS did not err by concluding that (1) relators' second petition could not relate back to their first petition, (2) BMS could not consider relators' second petition in the interests of good labor relations under Minn. R. 5510.0510, subp. 1(C) (2017), and (3) BMS need not conduct an investigation into alleged fraud related to the 2014 certification election that resulted in SEIU becoming the exclusive representative for personal care attendants.

But I respectfully dissent from the majority's conclusion that relators have not met their burden to show that 2017 Minn. Laws 1st Spec. Sess. ch. 6, art. 18, § 2, subd. 15(b) (subdivision 15(b)) is unconstitutional. I would conclude that this session law pre-approving the 2017-2019 CBA violates the Single Subject and Title Clauses of the Minnesota Constitution, Minn. Const. art. IV, § 17, and that BMS therefore dismissed relators' second petition based on an error of law. *See In re Decertification of an Exclusive Representative of Certain Emps. of the Univ. of Minn., Unit 9*, 730 N.W.2d 300, 303 (Minn. App. 2007) (stating that agency decision may be reversed if based on error of law).

"No law shall embrace more than one subject, which shall be expressed in its title." Minn. Const. art. IV, § 17. "The Single Subject Clause has been part of our state

government framework since the adoption of Minnesota’s Constitution.” *Otto v. Wright County*, 910 N.W.2d 446, 456 (Minn. 2018) (citing *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000)). The *Otto* court said:

We have identified two purposes of the Single Subject Clause: 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 by failing to provide notice of the nature of the proposed legislation and the interests likely to be affected by the legislation. . . . Laws passed by the Legislature will comply with this constitutional requirement when all of the provisions fall under one general idea. In other words, all provisions need to be so connected or related to each other that they are all parts of, or germane to, one general subject.

Id. at 456 (quotations and citations omitted); *see also Ventura*, 610 N.W.2d at 304 (“The purpose of the title provision is to prevent fraud or surprise on the legislature and the public—in essence to provide notice of the nature of the bill’s contents.”).

Minnesota law establishes a process for legislative approval of CBAs, under which the Commissioner of Minnesota Management and Budget negotiates CBAs on the state’s behalf. Minn. Stat. §§ 3.855, subd. 2(b), 43A.06, 179A.22 (2018). The commissioner of management and budget must submit negotiated CBAs to the legislature for acceptance or rejection. *See* Minn. Stat. § 3.855, subd. 2(b) (“If the commission approves a collective bargaining agreement, award, compensation plan, or salary, it shall submit the matter to the legislature to be accepted or rejected under this section.”). Negotiated CBAs are considered by the Minnesota Legislative Coordinating Commission Subcommittee on Employee Relations (SER) and may be accepted or rejected by session law. *Id.*, subds. 1a,

2(b) (2018); *see also, e.g.*, 2018 Minn. Laws ch. 102 (ratifying 2018 state-employee CBAs).

In this case, after the SER failed to approve a negotiated CBA between the state and SEIU during its regular session, the governor and legislature took a different approach described below. Notwithstanding the process established by the law referenced above, the legislature included, and buried, in an omnibus budget bill a provision *pre-approving* a CBA between the state and SEIU so long as it was negotiated within certain parameters, and then passed the bill during the 2017 special session. *See* 2017 Minn. Laws 1st Spec. Sess. ch. 6, art. 18, § 2, subd. 15(b). Neither the subject matter of the law (the health and human services budget and operations) nor its title provides any indication of the inclusion of a provision approving a CBA, and the title contains no reference to state employees, labor relations, or collective bargaining.

The irregularity of subdivision 15(b) is in stark contrast to the 2018 session law ratifying state-employee CBAs, which plainly complies with the requirements of the Single Subject and Title Clauses. That law is titled: “An act relating to state government; ratifying certain labor agreements and compensation plans,” and the bill contains two sections, one ratifying labor agreements and the other ratifying pay plans. 2018 Minn. Laws ch. 102. Indeed, each of the laws governing approval of state-employee CBAs was passed in a session law that includes the terms “labor” or “labor relations” in their title. *See* 1979 Minn. Laws ch. 332 (titled “An act relating to state government . . . ratifying certain collective bargaining agreements; making changes to public employment labor relations law; creating a legislative commission on employee relations; providing for a study of state employment

and labor relations practices”), *codified in part as amended at* Minn. Stat. § 3.855 (2018); 1981 Minn. Laws ch. 210 (titled “An act related to state government; improving the state’s personnel and labor relations functions”), *codified as amended at* Minn. Stat. § 43A.01–.47 (2018); 1984 Minn. Laws. ch. 462 (titled “An act relating to public employment labor relations”), *codified as amended at* Minn. Stat. §§ 179A.01–.25 (2018). So too, the session law adopting Minn. Stat. § 179A.54—pursuant to which SEIU was certified as the exclusive representative for the PCAs—included in its title words that revealed its impact on public-employee labor relations. *See* 2013 Minn. Laws ch. 128 (titled “An act relating to collective bargaining . . . authorizing collective bargaining for home and community-based long-term care services”), *codified in part at* Minn. Stat. § 179A.54 (2018).

In *Ventura*, the supreme court declined to “construe an amendment requiring prevailing wages that lack[ed] any express limitation to public funding as related to the subject of financing and operation of state and local government.” 610 N.W.2d at 303. This case is more comparable to *Ventura* than to cases in which the supreme court has rejected single-subject challenges. *Compare id. with Otto*, 910 N.W.2d at 457 (“A provision that allows counties to choose between the State Auditor and a private CPA firm for the annual audit required by statute, overseen by the State Auditor and subject to the State Auditor’s review and further audit, is clearly germane to the subject of state government operations.”); *Metro. Sports Facilities Comm’n v. County of Hennepin*, 478 N.W.2d 487, 491 (Minn. 1991) (“The title of Chapter 14 makes it clear, however, that the bill concerns taxation, so the inclusion of a property tax exemption provision would be germane and not

unexpected.”); *Blanch v. Suburban Hennepin Reg’l Park Dist.*, 449 N.W.2d 150, 155 (Minn. 1989) (holding that provisions of act “designed to make possible the utilization of funds appropriated in the preceding session of the legislature, [wa]s germane to the broad subject of appropriations for the operation of state government”).

Although courts must liberally construe both the Single Subject and Title Clauses, *Otto*, 910 N.W.2d at 456, I would conclude that, in this case, the legislature exceeded its bounds and subverted the purpose and intent of the Single Subject and Title Clauses. I therefore would hold subdivision 15(b) unconstitutional, and I would reverse BMS’s dismissal of the petition to decertify and remand for further proceedings.