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**Amreya Rahmeto SHEFA,
Respondent/Cross-Appellant,
v.
Attorney General Keith ELLISON, in his official capacity, Appellant/Cross-Respondent,**

**Governor Tim Walz, in his official capacity, Respondent/Cross-Appellant,
and
Chief Justice Lorie Gildea, in her official capacity, Appellant/Cross-Respondent.**

A21-0830

Supreme Court of Minnesota.

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OPINION

ANDERSON, Justice.

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This appeal requires us to interpret the language of the Board of Pardons provision found in Article V, Section 7, of the Minnesota Constitution. We must then determine whether the Legislature violated either that section, or the separation-of-powers provision in Article III, Section 1, of the Minnesota Constitution, when it enacted the unanimity requirement in Minn. Stat. § 638.02, subd. 1 (2020).

Respondent/cross-appellant Amreya Rahmeto Shefa was convicted of first-degree manslaughter. She later filed an application for a pardon absolute, which was denied because the members of the Board of Pardons did not unanimously agree that she was entitled to a pardon. Appellant/cross-respondent Attorney General Keith Ellison and respondent/cross-appellant Governor Tim Walz voted to grant her application, and appellant/cross-respondent Chief Justice Lorie Gildea[1] voted to deny it. Following the denial of her application, Shefa filed an action for declaratory and injunctive

relief against the three members of the Board of Pardons. The parties filed motions for summary judgment. The district court concluded that, under Article V, Section 7, of the Minnesota Constitution, the governor retains a sufficient and separate power to grant pardons. Based on that conclusion, the court declared that the unanimity requirement violates Article V, Section 7, of the Minnesota Constitution.[2] In contrast, the court concluded that the unanimity requirement does not violate Article III, Section 1, of the Minnesota Constitution because the Minnesota Constitution explicitly provides for the chief justice's participation in the pardon process. The parties appealed. While those appeals were pending, we granted the Chief Justice's petition for accelerated review. On September 16, 2021, we filed an order that reversed in part and affirmed in part the decision of the district court, concluding that the statutory provisions do not violate Article V, Section 7, or Article III, Section 1, of the Minnesota Constitution. Our opinion explains the reasons for our decision.

FACTS

On December 1, 2013, Shefa fatally stabbed her husband Habibi Tesema. Following a police investigation, the State charged her with second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2020). Shefa asserted a self-defense claim, waived her right to a jury, and asked the district court to consider the charge of first-degree manslaughter, Minn. Stat. § 609.20(1) (2020), which treats an intentional killing less severely when it is committed in the heat of passion.

After considering the evidence presented at trial, the district court found that, although Shefa credibly testified that Tesema had engaged in extensive sexual abuse, the force Shefa used greatly exceeded the degree of force required to defend herself.[3] As part of its analysis, the

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court emphasized the number of sharp-force injuries inflicted and Tesema's level of intoxication. Ultimately, the court concluded that when Shefa intentionally killed Tesema, she was acting in the heat of passion because the sexual assault, when coupled with the proven history of extensive abuse, would have provoked a person of ordinary self-control under like circumstances.[4] At the sentencing hearing, the court said, "This case has been one of the most difficult of my legal career." Addressing Shefa personally, the court said, "[The] evidence proved that [you] acted in the heat of passion[,] ... but it also proved that you ... had ... options that you did not take. Instead, you brutally stabbed Habibi Tesema and ended his life." The court convicted Shefa of first-degree manslaughter and imposed a presumptive prison sentence.

Shefa appealed her conviction, arguing that the State presented insufficient evidence. The court of appeals concluded that the record supported the district court's finding that the force Shefa used greatly exceeded the degree of force required to defend herself. She filed a petition for review, which was denied.[5]

In February 2017, while Shefa was still in prison, the United States Department of Homeland Security alleged that she was removable to Ethiopia based on her conviction of first-degree manslaughter. Shefa filed an application for asylum and withholding of removal under the Convention Against Torture. In her application, she alleged that if she were removed to Ethiopia, Tesema's family would try to hurt or kill her. Shefa also filed applications for U and T Visas.[6] Following an evidentiary hearing, the immigration judge found that, although the concept of retaliatory killings might be culturally accepted in some Ethiopian communities, Shefa's expert testified that there is no acceptance of the practice in the formal legal system and that retaliatory killings would be unlikely in highly populated areas with a strong police presence such as Addis Ababa, the capitol of Ethiopia. The immigration judge also found that two of Shefa's siblings have moved from rural Ethiopia to Addis Ababa and they have not been harmed. She found that nothing would prevent Shefa from living in Addis Ababa.

Based on these findings, the immigration judge denied Shefa's asylum application and directed

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that she be removed from the United States to Ethiopia.

On appeal, the Board of Immigration Appeals concluded that the record supported the findings of the immigration judge and issued a final order for her removal. Shefa sought judicial review. The Eighth Circuit ordered a remand to the Board of Immigration Appeals. The Eighth Circuit observed that its remand would have the incidental effect of enabling Shefa to continue to pursue relief in the form of T and U Visas before the United States Citizenship and Immigration Services.

Meanwhile, Shefa filed an application for an absolute pardon.[7] In her application, she acknowledged that, unlike a pardon extraordinary, a pardon absolute is rarely granted.[8] According to Shefa, a pardon absolute was warranted in her case for two main reasons. First, although her conviction is lawful based on the number of wounds inflicted on Tesema, it is unjust because when victims of abuse and rape are prosecuted for their resistance, questions of reasonableness and intent become murky. Second, returning to Ethiopia will likely be life-threatening because Tesema's family has sworn an oath to kill her if she returns to Ethiopia.

On June 12, 2020, the Board of Pardons considered Shefa's application for a pardon absolute. The Governor and the Attorney General voted to grant her application, and the Chief Justice voted to deny it. Lacking unanimous support, Shefa's application was denied under Minn. Stat. § 638.02, subd. 1, which provides:

> The Board of Pardons may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. Every pardon or commutation of sentence shall be in writing and shall have no force or effect *unless granted by a unanimous vote* of the board duly convened.

(Emphasis added.)

In July 2020, Shefa filed a civil action against the Attorney General, the Governor, and the Chief Justice, seeking declaratory and injunctive relief. Shefa sought three primary forms of relief. First, she requested a declaration that the unanimous vote required to grant a pardon under Minn. Stat. § 638.02, subd. 1, is unlawful and invalid. Second, she requested an order requiring the Governor to reconsider her application for a pardon absolute without

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the unconstitutional unanimity requirement. Third, she requested an order requiring the Attorney General to take steps to ensure all future pardon applications are assessed under the framework set out by the Minnesota Constitution, which empowers the governor to grant clemency "in conjunction with" the Board of Pardons.

The parties stipulated to the relevant facts and filed motions for summary judgment. The attorney representing Shefa argued that the unanimity requirement violates Article V, Section 7, of the Minnesota Constitution (the pardon provision), which provides:

> The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment.

According to the attorney representing Shefa, the pardon provision vests the power to pardon with the governor, not the Board of Pardons, and therefore the unanimity requirement

impermissibly thwarts the governor's power to grant her a pardon. He also argued that the unanimity requirement violates Article III, Section 1, of the Minnesota Constitution (the separation-of-powers provision), which provides:

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

According to the attorney representing Shefa, the unanimity requirement impermissibly allows the chief justice to unilaterally veto the exercise of an executive function in a manner not expressly provided by the Minnesota Constitution. The attorneys representing the Governor argued that the unanimity requirement is unconstitutional for similar reasons. In contrast, the attorneys representing the Attorney General and the Chief Justice argued that the unanimity requirement is constitutional, maintaining that the pardon provision does not give the governor any power or duty separate and distinct from the governor's position as a member of the Board of Pardons.

The district court concluded that the unanimity requirement violates the pardon provision. The court reasoned that the pardon provision names the governor "separate and apart from the Board of Pardons, of which he is a member," and that this plain language—along with the canon against surplusage language—meant that the governor has some pardon power distinct from the Board, and that the unanimity requirement violated this constitutional dictate. On that basis, the court granted in part and denied in part the motions for summary judgment filed by Shefa and the Governor and denied the motions for summary judgment filed by the Attorney General and the Chief Justice. Having declared the unanimity requirement unconstitutional, the court determined that it lacked the authority to rewrite the board of pardons statutes to allow pardons based on a majority vote. As a result, it neither ordered the Governor to reconsider Shefa's pardon application nor granted Shefa a pardon absolute *nunc pro tunc*.[9]

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On July 6, 2021, the district court entered judgment. The parties appealed. While those appeals were pending, we granted the Chief Justice's petition for accelerated review.

ANALYSIS

This appeal presents three main questions. First, whether the language of the pardon provision is unambiguous as to who has pardon power, and if not, whether the ambiguity can be resolved using extrinsic sources. Second, whether the Legislature violated the pardon provision when it enacted the unanimity requirement in Minn. Stat. § 638.02, subd. 1. Third, whether the Legislature violated the separation-of-powers provision when it enacted the unanimity requirement. We consider each question in turn.

I.

We first consider who has the pardon power under the pardon provision, examining whether its language is unambiguous on that score, and if not, whether the ambiguity can be resolved using extrinsic sources.

We need not defer to the district court's interpretation of the pardon provision because "[i]ssues of constitutional interpretation are questions of law," which we review de novo. *State v. Brooks* , 604 N.W.2d 345, 348 (Minn. 2000). "The rules applicable to the construction of statutes are equally applicable" to the construction of the Minnesota Constitution. *Clark v. Ritchie* , 787 N.W.2d 142, 146 (Minn. 2010). When interpreting a constitutional provision, we begin by determining whether the language of the provision is unambiguous. *See Brooks* , 604 N.W.2d at 348.

Language is unambiguous when "it is not susceptible to more than one reasonable interpretation." *State v. Schmid* , 859 N.W.2d

816, 820 (Minn. 2015) (citation omitted) (internal quotation marks omitted). In determining whether the language is susceptible to more than one reasonable interpretation, "we consider the canons of interpretation listed in Minn. Stat. § 645.08 (2014)." *State v. Riggs* , 865 N.W.2d 679, 682 (Minn. 2015). One relevant canon provides that "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2020). In addition, the canon against surplusage dictates that we "avoid interpretations that would render a word or phrase superfluous, void, or insignificant." *State v. Thompson* , 950 N.W.2d 65, 69 (Minn. 2020).

When we determine that the language of a constitutional provision is unambiguous, the language is "effective as written and we do not apply any other rules of construction." *Kahn v. Griffin* , 701 N.W.2d 815, 825 (Minn. 2005). But when the language of a constitutional provision is subject to more than one reasonable interpretation, we try to resolve the ambiguity by "look[ing] to the history and circumstances of the times and the state of things existing when the constitutional provisions were framed and ratified in order to ascertain the mischief addressed and the remedy sought by the particular provision."[10] *Id.*

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A.

As explained above, we must begin our analysis by considering the language of the pardon provision, which reads:

> The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. *The governor in conjunction with the board of pardons has power to grant reprieves and pardons* after conviction for an offense against the state except in cases of impeachment.

Minn. Const. art. V, § 7 (emphasis added).

The parties claim that the plain language of the pardon provision supports their position as to who has the pardon power. The attorney representing Shefa contends that the governor retains an independent power to pardon that is both sufficient and separate from the Board of Pardons because the plain language of the pardon provision names the governor twice—once as a board member and once in the phrase "[t]he governor in conjunction with the board of pardons has power to grant ... pardons." In contrast, the attorneys representing the Governor, the Chief Justice, and the Attorney General contend that the phrase "in conjunction with," as used in the pardon provision, plainly requires the governor and the Board of Pardons to exercise the pardon power together as a joint association or body. The attorneys representing the Governor argue that the governor and the Board of Pardons work together as a joint association when the governor acts with one other member of the Board of Pardons. In response, the attorneys representing the Chief Justice and the Attorney General argue that the power to pardon is effectively vested in the Board of Pardons alone because the governor is a member of the Board of Pardons.

We are neither bound by the parties' claims that the language is unambiguous nor bound by their proffered claims as to its meaning. As explained below, we conclude that the arguments of the attorneys representing the Governor and the Chief Justice are unpersuasive. And after reviewing the language of the pardon provision, we conclude that more than one reasonable interpretation applies to this constitutional provision, rendering it ambiguous.

The attorneys representing the Governor observe that "the action of the entity" is commonly understood (both now and when the constitutional provision was adopted) to mean "a majority of its members." As an example of how a contrary rule would lead to an absurd result, they cite Article VI, Section 5, of the Minnesota Constitution, which provides that "[t]he compensation of all judges shall be prescribed by the legislature and shall not be diminished

during their term of office." The attorneys representing the Governor claim that "[n]o one would read the term 'legislature' in that provision" to require full unanimity from all members of the Senate and House of Representatives to set judicial compensation. Although we agree that it might be unreasonable to require a unanimous vote of all legislators in such a context, the argument is inapt in that it fails to acknowledge that in this example, the Legislature is acting as a single body, not in conjunction with another body, as is the case here. Moreover, injecting the meaning proffered by the attorneys representing the Governor into the pardon provision would effectively amend the provision to read: "The governor in conjunction with ['another member' or 'part of'] the board of pardons has power to grant reprieves and pardons." This interpretation is unreasonable because "we cannot[ ] add words or meaning

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... that were intentionally or inadvertently omitted." *State v. Jorgenson* , 946 N.W.2d 596, 607 (Minn. 2020) (citation omitted) (internal quotation marks omitted).

The attorney representing the Chief Justice argues that the language of the pardon provision vests the power to pardon in the Board of Pardons alone, citing *State ex rel. Gardner v. Holm* , 241 Minn. 125, 62 N.W.2d 52, 62 (1954). That reliance on *Gardner* is overstated. In *Gardner* , the issue was not the governor's pardon power, but rather whether the governor's signature was necessary to validate an act prescribing the salaries of judges. *Id.* at 53. As part of our analysis, we discussed the general reluctance of the framers of the Minnesota Constitution to grant unlimited powers to the executive branch. *Id.* at 62. After quoting a constitutional delegate's objections to giving the governor *unrestricted* power to pardon, we stated: "The objection apparently persisted, for by amendment in 1896 the pardoning power was vested in a board of pardons consisting of the governor, attorney general, and chief justice of the supreme court." *Id.* But this was dicta, and therefore the attorney representing the Chief Justice overstates the significance of this statement. *See Carlton v. State* , 816 N.W.2d 590, 614 (Minn. 2012) (indicating that a statement "was dicta because the resolution of that question [was] not necessary to our ultimate holding" (alternation in original) (citation omitted) (internal quotation marks omitted)).

Significantly, the insistence of the attorney representing the Chief Justice that the power to pardon rests *solely* with the Board of Pardons creates the surplusage problem that underlays the district court's analysis. The attorney representing the Chief Justice tries to overcome the surplusage problem by observing that sometimes drafters repeat themselves. He also contends that it is unsurprising that the governor is mentioned twice because the governor has procedural and administrative duties relating to granting pardons that differ from the other two members of the Board of Pardons. For example, the governor appoints and supervises the Commissioner of Corrections, Minn. Stat. § 241.01, subd. 1 (2020), who serves as the Secretary of the Board of Pardons, Minn. Stat. § 638.07 (2020).

These attempts to overcome the surplusage problem are unpersuasive.[11] Although it is true that drafters sometimes repeat themselves, the common usage of the phrase "in conjunction with" reflects a joining or combining of two entities, not a repetitive reference to a single entity. It is also unreasonable to interpret the phrase "[t]he governor in conjunction with" as a reference to the governor's procedural and administrative *duties* because the sentence in question focuses on the *power* to pardon.[12]

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We next consider the sufficient and separate power to pardon argument made by the attorney representing Shefa. According to Shefa's attorney, that the pardon provision names the governor twice—both as a member of the Board of Pardons and individually—reasonably suggests that the governor has a power to grant a pardon that is sufficient and separate from the power granted to the Board of Pardons.

In support of this argument, the attorney representing Shefa relies on *State v. Meyer* , 228 Minn. 286, 37 N.W.2d 3 (1949).[13] In *Meyer* , the defendant challenged the constitutionality of the Youth Conservation Act, asserting several claims, including that the act infringed on the constitutional power to pardon because it allowed the Youth Conservation Commission to set aside the conviction of certain offenders and restore their civil rights. 37 N.W.2d at 7, 12–14. In rejecting that claim, we stated: "The act does not prevent the governor or the state board of pardons from granting a pardon or a reprieve. We therefore hold that the act, insofar as its constitutionality is now before us, does not violate" the pardon provision in the Minnesota Constitution. *Id.* at 14.

Our decision in *Meyer* , however, does not support the proposition that no statute may prevent the governor from granting a pardon. First, when viewed in context, the language in *Meyer* does not support such a proposition. Earlier in our opinion, we specifically said: "Neither is it necessary now to determine whether the power to pardon is vested exclusively in the board of pardons under our constitution." *Id.* at 12. Second, any discussion regarding the nature of the constitutional power to pardon in *Meyer* is dicta because it is not necessary to our ultimate holding. *See Carlton* , 816 N.W.2d at 614.

Nevertheless, focusing solely on the language of the pardon provision, naming the governor twice reasonably suggests that the governor has a power to grant pardons that is sufficient and separate from the power granted to the Board of Pardons. In other words, it is reasonable to read the pardon provision as saying that the governor has authority to grant pardons independent of any action of the Board of Pardons.

There is, however, a second reasonable interpretation of the language in the pardon provision, as the attorney representing Shefa acknowledged at oral argument. Specifically, the language can be reasonably interpreted as the governor and the Board of Pardons both have an *insufficient* but *necessary* power to grant a pardon. Under this second interpretation, the pardon power granted by the pardon provision is divided in a manner that is readily understood when one considers a military protocol made part of movie images—the simultaneous turning of two different keys to launch an intercontinental ballistic missile;

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both keys are necessary but neither key by itself can launch the missile. This second interpretation is consistent with the common and accepted usage of the phrase "in conjunction with" because under this interpretation, the governor and the Board of Pardons both have an insufficient but necessary power to grant a pardon, which requires them to work together.[14] Even if both the governor and the Board of Pardons have an insufficient but necessary role to play in granting pardons, use of the third-person singular verb "has" in the sentence, "The governor in conjunction with the board of pardons has power to grant reprieves and pardons," is grammatically correct.[15] *See The Chicago Manual of Style* §§ 5.142 (explaining that the subject of a sentence is singular when a singular noun is followed by a "phrasal connective such as *along with* , *as well as* , *in addition to* , *together with* , and the like"), .153 (stating that "[h]as" is the third-person singular of the verb "have," which denotes possession) (17th ed. 2017).

Admittedly, the governor, the attorney general, and the chief justice are members of the Board of Pardons as a consequence of their constitutional offices.[16] Minn. Const. art. V, § 7. But it is readily apparent that, as they sit as members of the Board of Pardons, they are not acting as the chief executive of the state, the head of the state's legal department, or the head of the judicial branch.[17] Rather, they are acting as members of a constitutionally created board, which has powers and duties that are defined and regulated by law. When so viewed, the two references to the governor (once as the person who holds the constitutional office of governor

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and once as a member of the Board of Pardons)

makes sense.

Finally, the second interpretation is reasonable because it does *not* render any part of the pardon provision meaningless. Identifying the two entities, both of which have an insufficient but necessary power to grant a pardon, is meaningful. Striking the words "the governor in conjunction with" would alter the meaning of the pardon provision because it would eliminate one of the entities that possesses an insufficient but necessary power to grant a pardon—the person who holds the constitutional office of governor. Under this second interpretation then, the Board of Pardons may not act without the governor, and the governor may not act without the Board of Pardons. Stated another way, if the pardon provision simply read, "[t]he board of pardons has power to grant reprieves and pardons," the Legislature could enact a statute (when defining the powers and duties of the Board of Pardons) that allows a pardon to be granted based on a majority vote. The chief justice and attorney general (as Board of Pardon members) could then grant a pardon over the objection of the governor. By including the reference to the person who holds the constitutional office of governor, the language of the pardon provision ensures that any statute adopted by the Legislature defining the powers and duties of the Board of Pardons maintains the mutual checks and balances that exist when the necessary power of the Board of Pardons (launch key one) is insufficient without the equally necessary but insufficient power of the person who holds the constitutional office of governor (launch key two).

In other words, under the pardon provision, a pardon will not be granted when the attorney general and the chief justice vote to grant the pardon but the governor votes to deny the pardon. In addition, the governor, acting alone, cannot grant a pardon. Acting within these constitutional limitations, the Legislature may choose any voting scheme that it deems appropriate. Minn. Const. art. V, § 7 ("[The Board of Pardons'] powers and duties shall be defined and regulated by law."). Thus, under this second interpretation, the Legislature could adopt a voting scheme that allowed a pardon to be granted under any of the following circumstances: the governor and attorney general vote to grant the pardon; the governor and chief justice vote to grant the pardon; or the governor, attorney general and chief justice all vote to grant a pardon.

In sum, the fact that the governor is named twice in the pardon provision supports at least two reasonable interpretations as to who has pardon power. Under the first interpretation, the governor retains a unilateral power to grant a pardon that is independent from the power granted to the Board of Pardons. Under the second interpretation, the governor and the Board of Pardons each have a necessary but insufficient power to grant a pardon, which requires them to work together.

B.

Having concluded that the language of the pardon provision is susceptible to more than one reasonable interpretation, we must try to resolve the ambiguity using extrinsic sources. Those sources demonstrate that it is unreasonable to interpret the language in the pardon provision as providing the governor a unilateral power to pardon that is sufficient and separate from the power granted to the Board of Pardons.

In determining the meaning of an ambiguous constitutional provision, we may consider a variety of extrinsic sources, including "the history and circumstances of

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the times and the state of things existing when the constitutional provisions were framed and ratified in order to ascertain the mischief addressed and the remedy sought by the particular provision." *Kahn v. Griffin* , 701 N.W.2d 815, 825 (Minn. 2005) ; *see also Reed v. Bjornson* , 191 Minn. 254, 253 N.W. 102, 104 (1934) (explaining that the intent of the framers of the Minnesota Constitution can be ascertained from "[t]he necessities which gave rise to the provision, the controversies which preceded, as well as the conflicts of opinion

which were settled by its adoption" (citation omitted) (internal quotation marks omitted)). "Whenever reasonably possible, we resolve ambiguity in the state constitution in a way that advances the apparent purpose for which the provision was adopted." *Clark v. Pawlenty* , 755 N.W.2d 293, 304 (Minn. 2008). When interpreting the language of the Minnesota Constitution, we may consider "official representation[s] made to the voters." *City of Golden Valley v. Wiebesick* , 899 N.W.2d 152, 159 (Minn. 2017). In addition, contemporaneous legislative enactments provide evidence of the framer's intent. *See id.* at 160 n.9.

The parties adopt different approaches regarding the pardon provision's purpose. The attorneys representing the Chief Justice and the Attorney General appropriately focus their arguments on the history and circumstances surrounding the adoption of the 1896 constitutional amendment that created the Board of Pardons. In contrast, the attorneys representing Shefa and the Governor focus their arguments on the history of pardon power generally. But focusing on the history of pardon power generally, rather than the adoption of the constitutional provision in question, Minn. Const. art. V, § 7, is inconsistent with our caselaw. *See, e.g.* , *Clark* , 755 N.W.2d at 304 ("Whenever reasonably possible, we resolve ambiguity in the state constitution in a way that advances the apparent purpose for which *the provision* was adopted." (emphasis added)). Moreover, construing a constitutional provision that *limits* the governor's previously unrestricted power to pardon based on the purposes underlying the previously unrestricted power is unsound.

We turn, then, to the pertinent history and circumstances surrounding the adoption of the 1896 constitutional amendment that created the Board of Pardons. In Minnesota's original constitution, the power to pardon rested solely with the governor. More specifically, Article V, Section 4, of the Minnesota Constitution of 1857, which addressed the powers of the governor, provided, in part, "and he shall have power to grant reprieves and pardons after conviction for offenses against the state, except in cases of impeachment."

In 1895, the Legislature proposed an amendment that would strike the words "and he shall have power to grant reprieves and pardons after conviction for offenses against the state" and insert the following words:

> And he shall have power in conjunction with the board of pardons, of which the governor shall be ex-officio a member, and the other members of which shall consist of the attorney general of the state of Minnesota and the chief justice of the supreme court of the state of Minnesota, and whose powers and duties shall be defined and regulated by law, to grant reprieves and pardons after conviction for offenses against the state.

Act of Apr. 26, 1895, ch. 2, § 1, 1895 Minn. Laws 6, 6. In accordance with statutory requirements, voters were provided with the following statement of the purpose and effect of the proposed amendment, which had been drafted by the attorney general:

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> The effect of the adoption of the aforesaid proposed amendment will be to deprive the governor of the power to *alone* grant pardons and reprieves, which he now enjoys, and to create a board of pardons, consisting of the governor, the attorney general and the chief justice of the supreme court.
>
> The proposed amendment contemplates that its adoption will be followed by the enactment of a suitable law defining and regulating the powers and duties of such board of pardons in granting reprieves and pardons.

The proposed amendment passed in 1896.[18]

The following year, the Legislature enacted the Board of Pardons statute, which included the unanimity provision.[19] Act of Feb. 26, 1897, ch. 23, § 2, 1897 Minn. Laws 18, 18 ("Every pardon or commutation of sentence shall be in writing and shall have no force or effect unless the same was granted by a unanimous vote by said board convened as such.").[20]

If we view the ambiguous language of the pardon provision in light of the provision's purpose (depriving the governor of the power to *alone* grant pardons and reprieves), and the Legislature's contemporaneous enactments, the interpretation proposed by the attorney representing Shefa—that the governor has a power to grant a pardon that is sufficient and separate from the power granted to the Board of Pardons—is no longer reasonable. In contrast, the purpose of the constitutional provision and the Legislature's contemporaneous enactments are consistent with the second interpretation—that the governor and the Board of Pardons each have an insufficient but necessary power to grant a pardon, which requires them to work together.[21]

In sum, after considering the relevant extrinsic sources, we conclude that the language

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of the pardon provision cannot be reasonably interpreted in a manner that provides the governor a unilateral power to grant pardons that is sufficient and separate from the power granted to the Board of Pardons. Consequently, the district court erred by determining that Article V, Section 7, of the Minnesota Constitution grants the governor such power.

II.

Having clarified that the pardon provision does not provide the governor a pardon power that is sufficient and separate from the power granted to the Board of Pardons, we consider whether Shefa and the Governor have satisfied their heavy burden of proving that the unanimity requirement violates the pardon provision. We conclude that they have not satisfied their heavy burden.

We need not defer to the district court's determination that the unanimity requirement violates the pardon provision because "[t]he constitutionality of a statute presents a question of law, which we review de novo." *State v. Johnson* , 813 N.W.2d 1, 4 (Minn. 2012). "We presume Minnesota statutes are constitutional and will strike down a statute as unconstitutional only if absolutely necessary." *In re Welfare of M.L.M.* , 813 N.W.2d 26, 29 (Minn. 2012). "[T]he party challenging the constitutionality of a statute bears a heavy burden." *Otto v. Wright Cnty.* , 910 N.W.2d 446, 451 (Minn. 2018).

The language of the challenged statute provides:

> The Board of Pardons may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. Every pardon or commutation of sentence shall be in writing and shall have *no force or effect unless granted by a unanimous vote* of the board duly convened.

Minn. Stat. § 638.02, subd. 1 (emphasis added).

The requirement of unanimity in the statute ensures that the governor and the Board of Pardons *always* work together. Because the governor does not have a pardon power that is sufficient and separate from the power granted to the Board of Pardons, requiring the governor to always work with the full Board of Pardons to grant a pardon, does not violate the pardon provision. To be clear, the issue here is not whether the Legislature chose the best voting rule.[22] Rather, the issue is whether the pardon provision *prohibits* a unanimous-vote requirement. Because it does not, we conclude that Shefa and the Governor failed to meet their heavy burden of proving that the unanimity requirement violates the pardon provision. Consequently, the district court erred by declaring that the unanimity requirement violates Article V, section 7, of the Minnesota

Constitution.[23]

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III.

Having concluded that Shefa and the Governor failed to satisfy their heavy burden of proving that the unanimity requirement violates the pardon provision, we turn next to whether the requirement violates Article III, Section 1, of the Minnesota Constitution. We conclude that they have not satisfied their heavy burden.

The separation-of-powers provision provides:

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Minn. Const. art. III, § 1. We have previously explained that the separation-of-powers provision includes three elements: a distributive clause that identifies the three branches; a prohibitive clause that prevents one branch from exercising the powers of another branch; and *an exceptions clause* that allows one branch to exercise another type of power when the Minnesota Constitution expressly provides for it. *See State ex rel. Patterson v. Bates* , 96 Minn. 110, 104 N.W. 709, 712 (1905). The separation-of-powers provision "forbids judicial interference with the exercise of the powers which [the Minnesota Constitution] places with the Governor as the chief executive officer of the state." *State ex rel. Decker v. Montague* , 195 Minn. 278, 262 N.W. 684, 689 (1935).

The attorney representing Shefa argued before the district court that the unanimity requirement violates the constitutional guarantee of separation of government power by allowing the chief justice to unilaterally block the exercise of a purely executive function. The court rejected this argument, concluding that the chief justice's participation in the pardon process as a Board of Pardons member is clearly not a violation of the separation of powers because the chief justice's participation is explicitly provided for in the Minnesota Constitution. In reaching that conclusion, the district court relied on the exceptions clause of the separation-of-powers provision.

On appeal, the attorney representing Shefa argues that the district court's reliance on the exceptions clause was misplaced because the unanimity requirement improperly provides the chief justice with "unilateral authority of executive function," which is not expressly provided in the pardon provision. Quoting *State ex rel. Young v. Brill* , 100 Minn. 499, 111 N.W. 639, 647 (1907), the attorney representing Shefa contends that any legislation "conferring upon the judiciary the exercise of powers belonging to [the executive branch], cannot be regarded as valid." Shefa's attorney also quotes from a 1973 report in which Chief Justice Oscar R. Knutson personally opined that the pardon power should be returned to "the governor *alone* ," and if anyone should be eliminated from the Board of Pardons, "it should be the chief justice of the supreme court, as pardoning power is really not a judicial function." *See* Minn. Const. Study Comm'n, *Final Report and Committee Reports* , *Executive Branch Committee Report* , 21 (1973) (emphasis added). The attorneys representing the Governor make similar arguments. They argue that the unanimity requirement violates the separation-of-powers

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provision "by granting the judiciary a unilateral veto over pardons" and through legislative "encroachment onto executive-branch powers."

These separation-of-powers arguments are unavailing. The actions in *Brill* were not expressly authorized by a provision in the Minnesota Constitution. Moreover, as the attorney representing the Chief Justice observes, the attorneys representing Shefa and the Governor fail to cite any other case or legal authority in which a provision in the Minnesota

Constitution expressly authorized the actions that were being challenged on general separation-of-powers grounds, and they "repeatedly mischaracterize as a 'veto' the requirement that the board act unanimously."

The attorneys representing the Attorney General further observe that the attorneys representing Shefa and the Governor "make no effort to explain why it violates the separation-of-powers doctrine when the Chief Justice votes to deny a pardon under the unanimity rule, but it does not violate the separation-of-powers doctrine when she and the Attorney General vote to deny a pardon," even though the Chief Justice "could still be the deciding vote." They also point out that the pardon provision prevails over the separation-of-powers provision because it is the more specific constitutional provision. *See Cnty. of Sacramento v. Lewis* , 523 U.S. 833, 842, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) (explaining that when the Constitution provides "an explicit textual source," the analysis is guided by that source and not a "more generalized notion of substantive due process"); *Connexus Energy v. Comm'r of Revenue* , 868 N.W.2d 234, 242 (Minn. 2015) (applying the canon that a specific provision prevails over a general provision).

Based on the arguments of the parties, we conclude that Shefa and the Governor have not satisfied their heavy burden of proving that the unanimity requirement violates the separation-of-powers provision. Their efforts to characterize the unanimity requirement as a unilateral veto and Chief Justice Knutson's personal belief that the power to pardon should be returned to the governor alone fail to overcome the fact that the pardon provision explicitly sets forth the chief justice's participation in the pardon process. Consequently, the district court correctly concluded that the unanimity requirement does not violate Article III, Section 1, of the Minnesota Constitution.[24]

CONCLUSION

For the foregoing reasons, we reverse in part and affirm in part the decision of the district court.

Affirmed in part and reversed in part.

GILDEA, C.J., took no part in the consideration or decision of this case.

Notes:

[1] The Chief Justice took no part in the consideration or decision of this case.

[2] The district court declared the second sentence of Minn. Stat. § 638.01 (2020), and all of Minn. Stat. § 638.02, subd. 1, unconstitutional because these provisions were related to the "unanimity requirement." We use the phrase "unanimity requirement" as shorthand for the statutory provisions declared unconstitutional by the district court.

[3] The findings of the district court also included the following facts: In 2012, Tesema brought Shefa and their children to the United States from Ethiopia. A month later, he began verbally and sexually abusing Shefa. As part of the abuse, he forced her to have sex with another man. Shefa did not report the abuse because she was completely dependent on Tesema. On December 1, 2013, Tesema sexually assaulted Shefa, penetrating her anus with an object. In response to the assault, Shefa stabbed Tesema 30 times with two knives.

[4] Amici make several policy arguments, including an argument that the pardon process should provide a safety net for defendants whose prior victimization by abusers and sex traffickers is not fully addressed under the existing criminal justice system. They also discuss the transformative effect of pardons and perceived shortcomings in the postconviction statute, Minn. Stat. ch. 590 (2020). They further describe the historic and present pardon processes used by other jurisdictions. We do not address the important policy issues amici raise because those issues are best directed to the Legislature. *See Dahlin v. Kroening* , 796 N.W.2d 503, 508 (Minn. 2011) (explaining that "policy-related issues are best left to the Legislature").

[5] Shefa argues that it is significant that the Chief Justice signed the order denying review. This argument is unsound because the entire court considers the issue of whether review should be granted or denied, and as a matter of ordinary course, the chief justice signs the order reflecting the court's decision.

[6] Persons are eligible for U and T Visas when they satisfy certain requirements. *See* 8 C.F.R. §§ 214.11(b) (victims of sex trafficking), .14(b) (victims of domestic violence), (2020).

[7] Unlike a pardon extraordinary, which requires an applicant to satisfy the conditions specified in Minn. Stat. § 638.02, subd. 2 (2020), an absolute pardon is less well defined. The word "absolute" appears only once in Chapter 638. *See* Minn. Stat. § 638.02, subd. 1 ("The Board of Pardons may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted."). Although we have never discussed the precise contours of an absolute pardon, the term "absolute pardon" has been described as "a permanent and complete termination of penalty and remission of guilt [that] frees the criminal without any condition whatsoever." 59 Am. Jur. 2d *Pardon and Parole* § 2 (2012). Because Shefa could not satisfy the conditions for a pardon extraordinary, she applied for an absolute pardon in June 2018. During a standard prescreening process, the Secretary of the Board of Pardons recommended not placing the application on the calendar of the Board of Pardons. On December 1, 2018, Shefa filed a second application for an absolute pardon. Her second application passed the prescreening process and was placed on the calendar.

[8] In 2020, the Board of Pardons granted one pardon absolute and two commutations absolute out of 46 processed applications. Minn. Bd. of Pardons, 2020 Legislative Report, 2 (February 12, 2021). In contrast, the Board of Pardons granted 26 pardons extraordinary in 2020 out of 51 processed applications. *Id.*

[9] "*Nunc pro tunc* " is a Latin phrase meaning "now for then," which denotes an order having "retroactive legal effect through a court's inherent power." *Nunc Pro Tunc* , *Black's Law Dictionary* (9th ed. 2009).

[10] The "canons of statutory construction" listed in Minn. Stat. § 645.16 (2020), may be considered only when the language is susceptible to more than one reasonable interpretation. *Riggs* , 865 N.W.2d at 683 & n.4. These canons include the "necessity for the law" and "the consequences of a particular interpretation." Minn. Stat. § 645.16.

[11] The attorney representing Shefa contends that the Chief Justice forfeited any argument that the phrase "[t]he governor in conjunction with" is meaningful because the Chief Justice's attorney conceded before the district court that striking the phrase would not alter the meaning of the pardon provision. Because the challenged arguments are unavailing, we need not decide the forfeiture issue. We also observe that appellate courts have a duty to decide cases in accordance with law. *State v. Hannuksela* , 452 N.W.2d 668, 673 n.7 (Minn. 1990).

[12] In addressing the surplusage problem, the attorneys representing the Attorney General argue that the phrase "the governor in conjunction with" likely signaled to the voters that the drafters of the 1896 constitutional amendment intended to keep the governor involved in pardons. Although the argument is more persuasive than the arguments made by the attorney representing the Chief Justice, we need not definitively accept or reject the argument at this point in our analysis because, for the reasons discussed *infra* , the language of Article V, Section 7, of the Minnesota Constitution is susceptible to more than one reasonable interpretation as to who has pardon power.

[13] The attorney representing Shefa also renews an argument made in, but unaddressed by, the district court. Shefa's attorney contends that the phrase "advice and consent" is used in the Minnesota Constitution to signify that another branch of government has the power to veto executive action. *See* Minn. Const. art. V, § 3 (stating that the governor, "[w]ith advice and consent of the senate[,] ... may appoint" certain

officials). But it is unsurprising that the phrase "advice and consent" does not appear in the pardon provision because the Board of Pardons is not another branch of government, and an internal disagreement within an executive branch body is not a veto.

[14] As discussed above, the common and accepted usage of the phrase "in conjunction with" is "in combination with" or "together with." In Conjunction With, *Merriam-Webster Online Dictionary* , http://www.merriam-webster.com (last visited Nov. 29, 2021); *see also In Conjunction With* , *Black's Laws Dictionary* (6th ed. 1990) (defining the phrase as "[i]n association with"). The common and accepted usage of the word "conjunction" is "[a] joining or meeting of individuals or distinct things; union; connection; combination; association." 2 *The Century Dictionary* , 1197 (1895); *see also* 1 *Webster's International Dictionary of English Language* , 304 (1890) (defining "conjunction" as "[t]he act of conjoining, or the state of being conjoined, united, or associated; union; association; league").

[15] Although the subject of this sentence is singular from a purely grammatical perspective, its verb communicates an idea that applies to more than its singular subject. An example from the *Chicago Manual of Style* illustrates this point. It lists the following sentence as grammatically correct: "The **bride** as well as her bridesmaids **was** dressed in mauve." *See Chicago Manual of Style* , *supra* , at § 5.142. Even though the subject of this sentence is the singular noun "bride," this sentence communicates that the bride and her bridesmaids wore mauve. *See id.* Moreover, the word "has" was added to the board of pardons provision in 1974 as part of a proposed amendment to reform the structure and style of the Minnesota Constitution. Act of Apr. 10, 1974, ch. 409, 1974 Minn. Laws 787, 797. The 1974 amendment did not reflect a substantive change. *City of Golden Valley v. Wiebesick* , 899 N.W.2d 152, 159 (Minn. 2017) (explaining that the 1974 restructuring of the Minnesota Constitution was intended "only to make the Constitution more readable and stylistically correct" (citation omitted) (internal quotation marks omitted)).

[16] When persons serve on the Board of Pardons as a result of holding another office or position, the term "ex officio" is sometimes used to describe their membership on the Board of Pardons. *See State ex rel. Hennepin Cnty. v. Brandt* , 225 Minn. 345, 31 N.W.2d 5, 10 (1948).

[17] "The Governor is the head of the executive department and the chief executive of the state." *State ex rel. Birkeland v. Christianson* , 179 Minn. 337, 229 N.W. 313, 314 (1930). The attorney general is "the head of the state's legal department." *State ex rel. Peterson v. City of Fraser* , 191 Minn. 427, 254 N.W. 776, 778 (1934).

[18] In 1974, the provision addressing pardons was moved into the newly enacted Article V, Section 7, of the Minnesota Constitution. Act of Apr. 10, 1974, ch. 409, 1974 Minn. Laws 787, 797–98. The 1974 amendments were comprehensive amendments to the Minnesota Constitution that did not reflect substantive changes. *City of Golden Valley v. Wiebesick* , 899 N.W.2d 152, 159 (Minn. 2017) (explaining that the 1974 restructuring of the Minnesota Constitution was intended "only to make the Constitution more readable and stylistically correct" (citation omitted) (internal quotation marks omitted)).

[19] The language of the unanimity requirement has remained virtually unchanged during the last 134 years. Obviously, the passage of time, by itself, is not a guarantor of constitutionality; the mere fact that a law has been on the books for a long time does not make it constitutional. *See, e.g.* , *Miss. Univ. For Women v. Hogan* , 458 U.S. 718, 731, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982) (holding that 1884 statute providing for female-only enrollment violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution).

[20] In addition to the documents directly related to the adoption of the 1896 amendment, the attorney representing the Chief Justice relies on contemporaneous newspaper editorials. The attorney representing Shefa argues that reliance on newspaper editorials is improper because

they are neither part of the record nor the type of public record that is subject to judicial notice. Because the editorials simply provide cumulative evidence of the purpose for the amendment, we need not resolve this dispute.

[21] The purpose of the constitutional provision and the Legislature's contemporaneous enactments are also consistent with an interpretation of the pardon provision that resolves the surplusage problem based on the argument advanced by the attorneys representing the Attorney General—the phrase "the governor in conjunction with" likely signaled to the voters that the drafters of the 1896 constitutional amendment intended to keep the governor involved in pardons.

[22] As discussed above, under the interpretation we have adopted, the Legislature could have provided, consistent with the Minnesota Constitution, that a majority vote of the Board of Pardons was sufficient to grant a pardon, as long as the governor was one of the affirmative votes. We need not consider the advantages or disadvantages of this alternative voting scheme because these policy questions must be left to the Legislature. Minn. Const. art. V, § 7 ; *Dahlin v. Kroening* , 796 N.W.2d 503, 508 (Minn. 2011).

[23] The district court also struck down the second sentence of Minn. Stat. § 638.01, which reads: "The board may grant pardons and reprieves and commute the sentence of any person convicted of any offense against the laws of the state, in the manner and under the conditions and rules hereinafter prescribed, *but not otherwise.* " (Emphasis added.) This sentence was struck down because the "not otherwise" language effectively incorporated the unanimity requirement in Minn. Stat. § 638.02, subd. 2. The district court erred by striking this sentence from section 638.01.

[24] Because we have determined that the unanimity provision does not violate the pardon provision or the separation-of-powers provision, we need not address the Governor's argument that Shefa's pardon should be granted *nunc pro tunc* , without any further action of the Board of Pardons. Similarly, we need not consider Shefa's argument that the Governor should be required to reconsider her pardon application.
