

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Don Samuels; Sondra Samuels;
Bruce Dachis,

Case No.: 27-CV-21-11047
Hon. Jamie L. Anderson

Petitioners,

v.

**MEMORANDUM IN SUPPORT OF
PETITIONERS' MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND INJUNCTION**

City of Minneapolis; Casey Joe Carl, in his
official capacity as City Clerk of the City of
Minneapolis; Minneapolis City Council;
Mark V. Chapin, in his official capacity as
Hennepin County Auditor,

Respondents,

INTRODUCTION

This Court has found that the ballot question approved by the Minneapolis City Council on August 20, 2021 (the "Prior Ballot Language") was erroneous based on the Court's factual finding that it is incapable of implementation. (*See* Sept. 7, 2021 Order at 9-10, Case No. 27-CV-21-10650.) That factual finding is *res judicata* now that judgment has been entered. The same factual finding that made the Prior Ballot Language "unjust" to voters is true of the ballot question passed on September 7, 2021 (the "New Ballot Language"). This problem was completely avoidable. It has always been obvious that the proposed Charter amendment could not be implemented within thirty days after being adopted as required under Minnesota law, unless there was a plan of implementation already in place. This Court recognized that flaw and called it out in its September 7 Order.

Yes 4 Minneapolis (“YES”) could have avoided this problem by including in its proposed amendment language extending the 30-day period mandated by Minn. Stat. § 410.12, subd. 4, for a reasonable amount of time after a vote adopting the amendment in order to give the City Council an opportunity to craft a plan of implementation. It did not do so. Failing that, the City Council could, and should, have adopted a plan of implementation contingent upon the amendment being adopted so that the amendment could be implemented within 30 days. It did not do so. That is not the fault of Petitioners or other Minneapolis voters.

In a brief emergency meeting called during a religious holiday the City Council adopted hastily drafted language that did almost nothing to correct the ambiguities identified by the Court and will, if presented to voters, lead to the very type of “chaotic situation” that this Court warned would occur if the prior ballot question was presented to voters. Indeed, since that hastily called meeting, Respondents and YES have continued to offer mixed messages as to what, precisely, the proposed amendment will do and how the changes (whatever they are) will be implemented within thirty days of the election. If Respondents and YES cannot publicly agree on what the Charter amendment will do, how can ordinary voters be expected to understand what they are being asked to decide?

For these reasons, and for the reasons discussed below, Petitioners move the Court pursuant to Minn. R. Civ. P. 65 to enjoin the City and the County Auditor from proceeding with the New Ballot Language, and to immediately hold a hearing on the issues presented in this motion. Voters have a right to know what they are being asked to decide so they can make an intelligent, informed decision about how to vote. This Court should again issue an appropriate injunction to ensure that happens.

BACKGROUND

This Court is already familiar with the history of the proposed Charter amendment and the City Council's multiple attempts at drafting an appropriate ballot question. Petitioners therefore incorporate by reference the Petition, the Petition filed in Case No. 27-CV-21-10650, declarations, the Court's prior orders, and other matters already in the record, and include only a summary of additional relevant events.

I. THE COURT ENJOINS THE COUNTY AUDITOR FROM DISTRIBUTING BALLOTS CONTAINING THE VAGUE AND MISLEADING PRIOR BALLOT LANGUAGE.

The Court initially heard Petitioners' motion for an injunction on Thursday, September 2, 2021. The Court issued a thoughtful and comprehensive order on Tuesday, September 7, 2021 after presumably working over a holiday weekend. The Court granted Petitioners' Petition to correct the ballot and granted Petitioners' motion for a temporary restraining order enjoining the County Auditor from placing the ballot question then being proposed on the November 2, 2021 ballot, and enjoining the City of Minneapolis from allowing Minneapolis residents to vote on that question. (Sept. 7 Order at 17.)

As the Court explained, the Prior Ballot Language was "vague to the point of being misleading" because it was "missing essential information that would accurately inform voters" about what they were being asked to decide. (Sept. 7 Order at 9.) The Court identified several examples of confusion surrounding the ballot, including whether the Minneapolis Police Department would cease to exist as of December 2, 2021, whether the position of police chief would be eliminated, or a funding mechanism that may exist for the new Department of Public Safety. (*Id.*)

As the Court explained, the ambiguities made the proposed ballot question "incapable of implementation." (*Id.* at 10.) In particular, the Court found that there was a lack "of any plan the

City Respondents have as to what the proposed Department of Public Safety would look like, other than the vague statement that the department would have ‘administrative authority to be consistent with other city departments to fulfill its responsibilities for public safety.’” (*Id.*) The Court noted that, with all the outstanding questions, “the essential purpose of the proposed amendment is not clear in the Current Ballot Language, therefore requiring the judiciary to intercede.” (*Id.*) If the Court did not, then it would likely “create a chaotic situation in Minneapolis” and “dangerous situations in neighborhoods within the City.” (*Id.*)

II. THE CITY COUNCIL QUICKLY ADOPTS LANGUAGE THAT FAILS TO RESOLVE THE AMBIGUITIES CITED BY THE COURT.

Following the Sept. 7 Order the City Council held a special meeting on September 7, 2021 to discuss new ballot language. The meeting was called at 1:30 p.m. and lasted approximately twenty minutes.¹ At the meeting, the City Council adopted a new ballot question and explanatory note, but failed to properly address many of the concerns raised in this Court’s Sept. 7 Order. As adopted by the City Council, the New Ballot Language is:

Department of Public Safety

Shall the Minneapolis City Charter be amended to **remove** the Police Department **and replace it** with a Department of Public Safety that employs a comprehensive public health approach to the delivery of functions **by the Department of Public Safety**, with those specific functions to be determined by the Mayor and City Council by ordinance; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could include licensed peace officers (police officers), if necessary, to fulfill its responsibilities for public safety, with the general nature of the amendments being briefly indicated in the explanatory note below, which is made a part of this ballot?

Yes

¹ The City Council has not yet issued minutes for the meeting; however, a video of the meeting has been made available via the City’s website and YouTube channel. (*See* Sept. 7, 2021 Special Emergency Minneapolis City Council, *available at* https://youtu.be/28VxS3hTh_8.) A vote on the motion was conducted at the 18-minute mark.

No ____

Explanatory Note:

This amendment would create a Department of Public Safety combining public safety functions through a comprehensive public health approach to be determined by the Mayor and Council. The department would be led by a Commissioner nominated by the Mayor and appointed by the Council. The Police Department, and its chief, would be removed from the City Charter. The Public Safety Department could include police officers, but the minimum funding requirement would be eliminated.

This language failed to address the numerous ambiguities previously identified by the Court that made the question “vague to the point of misleading” and “likely to create “chaotic” and “dangerous situations” in Minneapolis. (Sept. 7 Order at 8-9.)²

III. RESPONDENTS AND YES THEMSELVES APPEAR CONFUSED ABOUT WHAT THE CHARTER AMENDMENT ENTAILS.

Petitioners remain concerned regarding the ambiguities that remain in the proposed amendment. The New Ballot Language states that the Police Department will be “remove[d]” from the Charter. A fair reading of the ballot question in light of Minnesota law leads to the conclusion that if the ballot question passes, the Police Department will be “removed” (whatever that means) on the effective date of the amendment. Although reading the ballot question provides no clue as to the effective date, Minnesota statutes make the effective date December 2, 2021. *See* Minn. Stat. § 410.12, subd. 4. An equally fair reading of the newly created ballot question language is that the City will not have *any* police as of December 2, 2021—at least until the new Department of Public Safety creates its “public health approach to the delivery of

² It is noteworthy that it has been over fifteen months since nine members of the City Council announced their intention to defund the police and come up with something better. Yet in those fifteen months no plan for implementing either the “defund the police” or the proposed charter amendment has ever been considered, let alone adopted, by the City Council. There is no reason to think that the City Council could or would do so now, in time for a ballot to be printed for the November general election.

functions” and someone (it is unclear who) determines whether police are necessary to those functions.³

Reflecting this confusion, in a September 7, 2021 interview with local station KARE 11, Council Member Phillippe Cunningham stated that voting “Yes” “would remove the police department from the Charter, but would not remove police from our City.” (See KARE11, New Language Adopted for Minneapolis Policy Ballot Question after Judge’s Order (“KARE11 Report”), *video available at* <https://www.kare11.com/article/news/local/judge-minneapolis-policing-ballot-question/89-2c081121-8599-4ae9-879b-638ba5bdb9e4>.) Cunningham’s statements clearly contradict the text of the Charter amendment (and New Ballot Language), which explicitly states that Police Department will be removed and that a new department would hire police only “if necessary.” In the same interview, Cunningham called the changes “an extra layer of accountability” and “a common-sense structural reorganization,” further contradicting the “remove and replace” language in the ballot question. (*Id.* (emphasis added).) The basis for Cunningham’s comments is unclear, but is not found in the text of the Charter amendment.

Similar comments were made on YES’s Twitter page, in which it *disclaimed* that the amendment would remove police officers and even called the Department of Public Safety an “expanded” version of the Police Department. Yet, strikingly, on the same Twitter page, YES says that the amendment will replace the “inhumane, abusive and sometimes murderous MPD”, stating:

³ That appears to be how the Court understood the amendment. In the Sept. 7 Order, the Court observed that “if the Police Department ceases to exist on December 2, 2021 and the new Department of Public Safety is not fully created and functioning, the routine activities done to keep Minneapolis residents safe, including responding to 911 calls and making arrests of those charged with violent felonies, will be interrupted.” (Sept. 7 Order at 8–9.)

4. This expanded department doesn't remove police officers, police work, nor any one person or position from policing. It will – by necessity – replace the unaccountable, inhumane, abusive and sometimes murderous MPD and their armed police-only model – from the charter.

(Yes 4 Minneapolis, Sept. 7, 2021, 4:10 p.m., *available at* <https://twitter.com/Yes4Minneapolis/status/1435349663960420364?s=20>.) This type of circular rhetoric is also what has led to such confusion regarding the meaning and impact of YES's proposed Charter amendment language.

These examples, taken from the Respondents and YES themselves, concern only the first line of the current ballot question. As these comments demonstrate, confusion abounds as to what, exactly, Minneapolis voters are being asked to approve in the entire question. Are voters being asked to approve the removal of the entire Police Department? Or just the “inhumane, abusive and sometimes murderous” members of the Police Department? Because the new ballot question approved by the City Council fails to describe what voters are being asked to approve, the Court should enjoin the City or County Auditor from presenting the new, equally vague language to Minneapolis voters.

ARGUMENT

I. THE COURT SHOULD ENJOIN THE HENNEPIN COUNTY AUDITOR FROM PREPARING OR DISTRIBUTING BALLOTS CONTAINING THE NEW BALLOT LANGUAGE AND BARRING THE CITY FROM ALLOWING RESIDENTS TO VOTE ON THE NEW BALLOT LANGUAGE.

This Court already addressed the *Dahlberg* factors in its Sept. 7 Order, and for nearly the same reasons the Court should now enjoin the Hennepin County Auditor from preparing and distributing ballots with the new ballot language on them.⁴

⁴ The *Dahlberg* factors regarding the relationship of the parties, whether there is an adequate remedy at law, and any administrative burden, are unchanged from the Court's Sept. 7 Order.

Likelihood of success on the merits. Here, Petitioners are likely to succeed on the merits of their request because this Court has already identified the components necessary to create a ballot question that meets the standard required by Minn. Stat. § 410.12, subd. 4, and, as addressed above, the new ballot language cannot meet that standard. The new ballot language does not reveal to voters that there is no plan to implement the new public safety department, and that “it cannot be implemented after it is passed but before [the Charter amendment] goes into effect a month later[.]” (Sept. 7 Order at 9.) Further, the new ballot language does not make clear whether the Police Department will continue to exist, or, more candidly, that it is unknown whether a Police Department will actually exist, but that it could. The new ballot language also does not offer *any* information to the voter about the administrative oversight of the public safety department, instead only identifying the oversight that will *not* exist: the mayor no longer has exclusive power over the Police Department. Voters are thus left to guess about what, if any, oversight authority exists and who will exercise it. In short, Petitioners are likely to succeed on the merits of this request because the new ballot language does not address the critical issues identified by this Court when it granted Petitioners’ Petition and motion for an injunction on September 7.

Irreparable harm. Next, Petitioners—and Minneapolis voters—will suffer the same irreparable harm that the Court identified in its Sept. 7 Order. Specifically, if voters are presented with the new ballot language in November but “do not comprehend its meaning or Minneapolis does not employ peace officers as a result, or the new Department of Public Safety does not fulfill the duties required of the current Police Department” the harm to Petitioners will be “irreparable.” (Sept. 7 Order at 14.) As this Court noted “[i]t would be nearly impossible, if not impossible, to rectify or reverse a vote of the electorate in favor of the [Prior Ballot

Question]. Therefore, if an ambiguous and misleading question is put on the ballot and it passes” Petitioners “will suffer irreparable harm.” (*Id.*) That analysis is the same for the New Ballot Language. That language still says that the Police Department will be “replace[d] by the Public Safety Department, and confusingly implies a process by which that process could occur (via ordinance). But it still does not reveal that there is no existing plan to do so, and that the implementation of that non-existent plan would have to occur within thirty days.

Similarly, the Court’s analysis of the potential limited harm to Respondents also is the same. The Court observed that Respondents (and YES) will not be “substantially harmed” if an injunction is ordered, because the underlying petition is not affected, and the issue could be put to voters “in a future election” if the City Council cannot develop appropriate ballot question language in time for the November 2, 2021 general election. (Sept. 7 Order at 14.) Petitioners do not here challenge *whether* the proposed Charter amendment may appear on a ballot. Instead, Petitioners only seek to ensure that when voters are presented with a question about whether to vote to approve the proposed Charter amendment, that they understand what they are voting for. The new ballot language is not “sufficient to identify the amendment clearly” and thus cannot and should not be presented to voters on the November 2, 2021 general election ballot.

Public policy considerations. Finally, “it is not good public policy to ask voters to vote, either in favor of or against, an ambiguous, insufficiently identified and misleading question on the ballot.” (Sept. 7 Order at 14-15.) That is as true today as it was yesterday. Because the new ballot language is also “vague, ambiguous and incapable of implementation” it is “bad public policy” and weighs in favor of granting Petitioners’ request for injunctive relief. (Sept. 7 Order at 16.)

CONCLUSION

For these reasons, and for the reasons previously articulated to the Court and further explained here, the Court should set a hearing to address the issues raised in this motion, and should enjoin the Hennepin County Auditor from preparing or distributing ballots containing the New Ballot Language, order that all ballots with the New Ballot Language be destroyed, and stop Respondents from presenting Minneapolis voters with their misleadingly vague ballot question.

**ANTHONY OSTLUND
BAER & LOUWAGIE P.A.**

Dated: September 10, 2021

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