

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
CASE TYPE: CIVIL – OTHERDon Samuels, Sondra Samuels, and  
Bruce Dachis,

Court File No. 27-CV-21-11047

Petitioners,

v.

**INTERVENOR’S RESPONSE TO  
PETITIONER’S MOTION TO CORRECT  
BALLOT AND FOR 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,

and

Yes 4 Minneapolis,

Applicant for Intervention.

**INTRODUCTION**

This motion is not about the merits of the proposed ballot amendment. It is about the Ballot Question language. Because the petitioners cannot sustain the burden of proving that the city is trying to evade its obligation to present the question to the voters, their motion must be denied.

Petitioners complain that the ballot question is insufficient because it fails to explain all of the potential effects of the amendment. However the Minnesota Supreme Court has made it clear that ballot questions are not required to explain the effects of an amendment. *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 651 (Minn. 2012).

The Minnesota Supreme Court clearly describe the Court’s role here.

The proper role for the judiciary, however, is not to second-guess the wisdom of policy decisions that the constitution commits to one of the political branches. The people are the sole judge of the wisdom of such matters. Our precedent provides us with a much more limited role in reviewing the constitutionality of the manner in which the Legislature submits proposed constitutional amendments to the people.

*League of Women Voters* 819 N.W.2d at 651, *citing Breza*, 723 N.W.2d at 636.

“[T]he form and manner of submitting the question of a constitutional amendment to the people “are left to the judgment and discretion of the legislature, subject only to the implied limitation that they must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006)(*citations omitted*). See also *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d at 647-49.

Here, the imperfections about which Petitioners complain do not meet the high standard required for the judiciary to intercede into a matter that is constitutionally committed to the legislative branch. The Ballot Question satisfies all legal requirements and does not represent an attempt by the city to evade its constitutional obligation. Petitioners have failed to sustain their burden and the request for relief must be denied.

### **FACTUAL BACKGROUND**

The Court is well aware of the facts of this case. Intervenor hereby incorporates its statements of fact and the record in the related cases brought before this Court regarding the Ballot Question, as if fully set forth herein.

Two key facts bear repeating here. First, it is undisputed that the proposed amendment is constitutional, is legally valid and that a ballot question is required to be submitted to the voters.

The proposed charter amendment must be placed on the upcoming election's ballot after the City Council decides on and approves the ballot question. (August 13, 2021 Order at p. 7) ("It is undisputed that the City Council has express authority to fix the ballot's form"); August 19, 2021 Order at p. 8 ¶ 10 ("[I]t is uncontested that Respondents have a legal obligation to submit a ballot question regarding the proposed charter amendment to the qualified voters at the next general election"). These holdings are correct under the law of Minnesota. This case is about the language of the Ballot Question only, not the merits of the proposed charter amendment.

Second, the Ballot Question currently under consideration, which was approved by the Minneapolis City Council on September 7, 2021, reads as follows:

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 \_\_\_

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.

## ANALYSIS

### A. THE PETITION MUST BE DENIED

## 1. Legal Standard

In examining a Ballot Question, the Court must answer one question: Is the language “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006); *See also League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 648 (Minn. 2012) 647-49. Petitioners bear the burden of demonstrating that the ballot question meets this rigorous standard and that therefore an error exists that must be corrected *See Breza v. Kiffmeyer*, 723 N.W.2d at 636 (Minn. 2006); *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d at 648. Petitioners wrongly propose that the Ballot Question be struck if it is merely ambiguous, but this is not the test. Identification of some ambiguity in the language is not enough to strike the Ballot Question. This Court must determine whether the City has put forth language that palpably demonstrates it is trying to evade its obligation to submit the question to the voters. If a petitioner does not meet this rigorous standard, the language will be upheld.

Further, The Supreme Court does not require, as a condition of upholding the ballot question, that the effects of the proposed amendment be included on the ballot. *League of Women Voters*, 819 N.W.2d at 650–51. “Rather, [the Supreme Court’s] reference to the “meaning and effect” of the amendment was made in the context of ensuring that voters were able to understand the “essential purpose” of the proposed constitutional amendment. *Id.*; *see also Duluth Railway*, 102 Minn. at 30, 112 N.W. at 898.

“Ballots shall be prepared in a manner that enables voters to understand which questions are to be voted on...*Minn. Stat. Sec. § 204B.35, Subd. 2*. A ballot question is required to “be sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” *Minn. Stat. Sec. § 410.12*. Under the holding in *League*

of *Women Voters*, it is clear that these statutes do” not require that the effects of the amendment at issue be included on the ballot.” *League of Women Voters*, 819 N.W.2d at 650–51.

Petitioners’ entire claim is that “The new ballot language cannot stand because it deprives voters of critical information about the effects of their vote” (*Pet. Par 80*). Because the effects are not required to be explained in the Ballot Question, the petition fails.

**2. As a matter of law, the proposed charter amendment must be submitted to the voters at the November 2 General Election. Presenting it at a special election is not a legal option.**

Minnesota law requires that the Ballot Question be submitted to the voters at the November 2 General Election. “Amendments shall be submitted to the qualified voters at a general or special election and published as in the case of the original charter”. Minn. Stat. Sec. 410.12. Subd. 4. The required process is set forth in Minn. Stat. Sec. 410.10, as follows:

The council or other governing body of the city shall cause the proposed charter to be submitted at the next general election thereafter occurring in the city within six months after the delivery of such draft, and if there is no general city election occurring in the city within six months after the delivery of such draft, then the council or other governing body of the city shall cause the proposed charter to be submitted at a special election.

Minn. Stat. Sec. § 410.10, subd. 1.

Only if there is no general city election occurring within six months does a special election come into play. Where, as here, there is a general election within six months “the city shall cause the proposed charter to be submitted at the next general election” *Id.* Because there is a City General Election on November 2, 2021, there is no Special Election option. The City must submit the amendment to the voters at that General Election. The City has done so.

**3. The Police Department will not suddenly disappear on December 2, but will remain in force under its enabling ordinance, allowing time to implement a smooth transition.**

As a matter of law, the Police Department will continue to exist under its enabling ordinance<sup>1</sup>, which is not eliminated by the proposed amendment, until the City Council makes the transition required by the amendment. Petitioners make the erroneous assertion that the proposed amendment is impossible to implement because the transition must take place within 30 days, but they are wrong. Petitioners rely on the legally false premise that, if the amendment passes, the police department will automatically disappear on December 2, 2021 or at least that its legal status would be in doubt. Because this is not true, Petitioners' entire argument fails and their petition must be denied.

It is important to examine what will legally happen on December 2, if the proposed amendment passes. Language regarding the Police Department will be deleted from the City Charter, but the Police Department's enabling City Ordinance will remain in place. The amendment would remove the Charter *requirement* of a Police Department. It would not affect the City's *option* to continue to support a Police Department during the transition. The City Council can keep the Police Force in place as long as is necessary in order to make an orderly transition. How the City Council chooses to make that transition will be left to the political process. No one can predict exactly how the future City Council will decide to proceed in this respect and certainly the Ballot Question is not required to do so. In any event, there is absolutely no evidence to prove there will be transitional "chaos."

As stated in the Ballot Language, if the amendment is approved, the City Charter would be amended, meaning the City Council will then need to institute the correlating changes, "...with those specific functions to be determined by the Mayor and City Council by ordinance;..." Minn.

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<sup>1</sup> [Mini TOC: Title 9 - FIRE AND POLICE PROTECTION | Code of Ordinances | Minneapolis, MN | Municode Library](#)

Stat. § 410.07 makes it clear that any department omitted from the charter continues in force if “...contained in special or general laws then operative in the city...”

Here, the Minneapolis Police Department is contained in the Minneapolis Municipal Code Title 9, Chapters 171 and 172.<sup>2</sup> Therefore, the Police Department will not automatically expire on December 2. It remains in force as long as the Police Department is contained in the ordinances. The Police Department would expire when the City Council repeals the ordinance in which the Police Department is contained and enacts new ordinances that apply to the Department of Public Safety. The City can take the time necessary to smoothly implement the requirements of the amendment.

As a matter of law, the City will have enough time to implement a smooth transition. Petitioners, who bear a rigorous burden here, do not actually provide evidence that the transition will be impossible to implement. Legally, the Police Department will exist while the city takes the necessary time to comply with the amendment. Whether the City Council can be expected to effectively implement the transition is a political question, not a legal one. Under *League of Women Voters*, the Ballot Question is not required to explain the effects of the proposed Amendment. See *League of Women Voters*, 819 N.W.2d at 650–51. Petitioners fail to meet their burden and their petition should be denied.

**4. The Ballot Question is not unreasonable or misleading, and is not a palpable attempt by the City to evade its obligation to submit the question to the voters.**

It is undisputed here that the City has a constitutional obligation to present the proposed amendment to the voters. The City has complied with this obligation, most recently on September 7, 2021. On that date, the City Council gathered on a religious holiday, just hours after this Court struck prior language, and approved new language in time to meet the County Auditor’s printing

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<sup>2</sup> [Mini TOC: Title 9 - FIRE AND POLICE PROTECTION | Code of Ordinances | Minneapolis, MN | Municode Library](#)

deadline. It cannot seriously be argued that the conduct of the City Council indicates intent to evade its constitutional obligation to submit this question to voters. That said, the Court must examine the actual Ballot Question and determine whether Petitioners have met their burden of proving that the language is “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006); *See also League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 648 (Minn. 2012) 647-49. Petitioners have not met this burden.

The Ballot Question is not “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” Petitioners do not allege that the Ballot Question contains any actual false or misleading statements. Rather, they rely on the legally unsupportable premise that “The new ballot language cannot stand because it deprives voters of critical information about the effects of their vote” *Pet. Par 80*. However, Minnesota law does “not require, as a condition of upholding the ballot question, that the effects of the amendment at issue be included on the ballot.” (*citations omitted*). *League of Women Voters*, 819 N.W.2d at 650–51. Therefore, failing to explain the effects of a proposed amendment in a ballot question is *not* grounds for striking the language. Petitioners lay out a whiteboard list of things that could happen if the amendment passes, which they claim are possible effects of the amendment. Even if these speculative assertions were true (most are not), Petitioner’s argument fails as a matter of law.

Further, examination of the “effects” claimed by Petitioners in Par. 80 of the Petition reveals that, in fact, these are not actually possible effects of the amendment.

- Petitioners wrongly claim that “the city will be unable to dispatch licensed peace officers to respond to calls...” (Pet. Par. 80. As discussed above, the Police

Department will exist under its enabling ordinance through the transition, so this claim is false.

- Petitioners wrongly claim “any officers left working...would have no assurance that their salaries are funded.” Of course, whenever the City hires police officers (or fire fighters, truck drivers or anyone else), it is required to make arrangements to fund the position. *See Minneapolis City Code, Sec. 9.3(5) (A)* (City “must appropriate money for each board's, commission's, department's, and officer's operations”).
- Petitioners wrongly claim that the ballot question “entirely removes any description of the administrative authority that will exist (if any) over the new Public Safety Department, or any still existing police department...” This statement is not true. The Ballot Question, in the Explanatory Note, states specifically: “The department would be led by a Commissioner nominated by the Mayor and appointed by the Council.” In the Ballot Question section, it says:  
...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”. These are both concise descriptions of the administrative authority that will exist under the amendment.

The specific deficiencies claimed by Petitioners are not actual deficiencies. None of these alleged effects are supported by evidence. Petitioners cannot sustain their burden of showing the Ballot Question demonstrates an attempt by the City to evade its obligation to submit this matter to voters. Petitioners have failed to meet their burden of proving that the Ballot Language “is

so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006); *See also League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 648 (Minn. 2012) 647-49.

### **B. PETITIONER’S REQUEST FOR AN INJUNCTION MUST BE DENIED**

In the related case regarding the enjoined Ballot Question approved on August 20, 2021, Petitioner moved for expansion of the existing injunction to cover the Ballot Question approved September 7, 2021. In this case, Petitioner has requested temporary injunctive relief, but has made no argument on the issue and provided no record that would support granting an injunction. For that reason, this Court should not grant the injunctive relief.

However, given the extraordinary procedural posture of this case, Intervenor recognizes that the Court will be inclined to consider the request, based on the motion brought in the case on the previous petition. In that regard, Intervenor will rely on the arguments made in their brief on Petitioner’s motion in the related case and hereby incorporates that brief by reference.

The injunction in this matter will rise and fall with the merits of the Petition itself. A demonstration of irreparable harm with no adequate remedy at law is a threshold issue and carries great weight in deciding whether to grant temporary relief. *See Edin v. Josten’s, Inc.*, 343 N.W.2d 691, 694 (Minn. Ct. App. 1984). If the Ballot Question is upheld, Petitioners lose any hope of showing the required irreparable harm, because the only harm they claim is from distribution of incorrect ballots. If the ballots are found to be correct, there is no threat of irreparable harm, so they are not entitled to an injunction. They would also necessarily be unable to prove a likelihood of success on the merits. For these reasons, if the Court upholds the ballot language, it should also deny the request for injunctive relief.

On the other hand, if the Court strikes the Ballot Question, it follows that the Court would enjoin distribution of the ballots containing that language. In such case, Intervenor request that the Court permit printing of the ballots while the matter is reviewed on appeal, so that if the Supreme Court upholds the Ballot Question, the ballots can be mailed out on September 17, 2021 (this Friday) as required by statute. Doing so would enable the Court to prevent harm if the Supreme Court upholds the Ballot Question while at the same time preventing distribution of language that has been stricken.

### CONCLUSION

For all the foregoing reasons, Intervenor respectfully request that the petition and motion be denied.

Date: September 12, 2021

### HELLMUTH & JOHNSON

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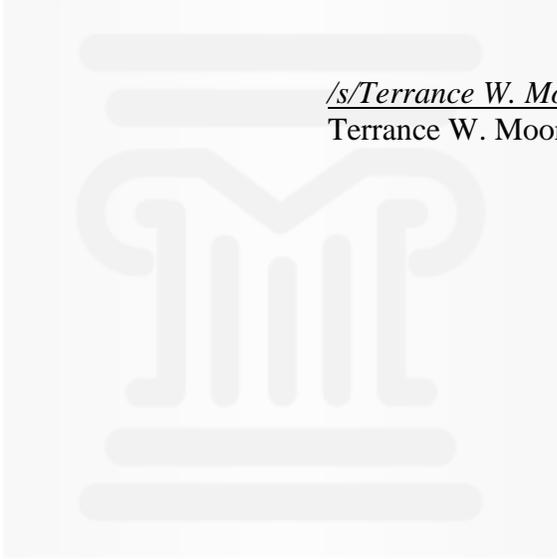
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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statutes § 549.211, to the party against whom the allegations in this pleading are asserted.



/s/Terrance W. Moore

Terrance W. Moore, #0194748

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