

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL – OTHER

Yes 4 Minneapolis,

Court File No. _____

Petitioner,

**PETITION TO CORRECT BALLOT
UNDER MINN. STAT. § 204B.44**

v.

City of Minneapolis

and

Casey Joe Carl, in his official capacity as
City Clerk of the City of Minneapolis,

Respondents.

The Petitioner Yes 4 Minneapolis, through its counsel, brings this Petition under Minn. Stat. § 204B.44 (Errors or Omissions) to correct the errors, omissions, and wrongful acts of Respondents City of Minneapolis (the “City”) and Casey Joe Carl, in his official capacity as City Clerk and chief election official of the City of Minneapolis (“Mr. Carl” or “City Clerk”).

INTRODUCTION

On July 23, 2021, the Minneapolis City Council unlawfully added an “Explanatory Note” to a ballot question regarding a proposed amendment to the Minneapolis City Charter, for the City’s November 2, 2021 general election. If passed, the amendment would establish a Department of Public Safety. The “Explanatory Note” should be stricken from the ballot because it is not authorized by law and is also a misleading partial description of the impact of the proposed amendment.

To be clear, this Petition does not address the merits of the ballot question itself, but challenges the addition of the “Explanatory Note.” The ballot question fully and fairly explains the proposed amendment’s “essential purpose.”¹ The City Council exceeded its power by adding its own subjective version of what will happen if the amendment passes.

For proposed charter amendments, Minnesota law authorizes that a ballot question include only a description “sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” Minn. Stat. § 410.12, subd. 4. Therefore, the legislature only permits a statement of the *ballot question*. No Minnesota law give cities authority to include on the ballot its “explanation” of what the amendment would mean. Of course, such “explanations” are necessarily incomplete, easily misconstrued, and inevitably biased.

The City Council’s “Explanatory Note” is not permitted by the Minnesota Constitution, constitutes a governmental overstep in authority, and opens the floodgates to the inclusion of more politically motivated “explanations” on future ballots.

Further, the Explanatory Note here is unreasonable, unnecessary, and carries an implied bias. If such explanatory notes were allowed on ballots, every candidate, initiative, and referendum included would be subject to partisan “explanations” written by politicians with an ax to grind on the issue. Minnesota law and policy protects the integrity, fairness, and efficiency of its ballots by keeping them neutral and not permitting them to be used as “billboard[s] for political advertising.”²

¹ *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 651 (Minn. 2012).

² *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364-65 (1997).

For the reasons set forth below, the Petitioner respectfully requests that the Court sever the Explanatory Note and direct the Office of the City Clerk to certify the approved ballot question without the Explanatory Note.

PARTIES

1. Petitioner Yes 4 Minneapolis is a coalition campaign formed to support the establishment of a Department of Public Safety. Petitioner designed a proposed City Charter amendment and campaigned to have the amendment placed on the ballot through a citizen petition.

2. Respondent City of Minneapolis is a home rule charter city under the law of the State of Minnesota with the capacity to sue and be sued. The City, through its City Council, is the legal entity responsible for the passage of Resolution 2021R-209, which adopted the ballot question and “Explanatory Note” at issue in this matter, to be placed on the November 2, 2021 general election ballot.

3. Respondent Casey Joe Carl is the City Clerk and chief election official for the City of Minneapolis and is responsible for directing the election process in the City and preparing its ballot for the general election to be held on November 2, 2021.

JURISDICTION AND VENUE

4. This Court has original, personal, and subject matter jurisdiction and venue is appropriate under Minn. Stat. § 204B.44(a) and (b), which states, in pertinent part:

Any individual may file a petition . . . for the correction of . . . any wrongful act, omission, or error of any . . . municipal clerk . . . charged with any duty concerning an election. . . .
“The petition shall be filed with . . . any judge of the district court in that county in the case of an election for county, municipal, or school district office.”

Minn. Stat. § 204B.44(a)-(b).

FACTS

5. Petitioner Yes 4 Minneapolis advocates for implementing a Department of Public Safety that moves away from a “police-only model”—which has “failed to address the race-based harm and violence that continue to plague the Police Department”—to a model in which “police work alongside qualified professionals, like mental health responders and social workers, to make all our communities safer.” See YES 4 MINNEAPOLIS, *FAQ*, <https://yes4minneapolis.org/> (last visited July 29, 2021).

6. Yes 4 Minneapolis timely submitted signed petitions for a proposed charter amendment to the City Clerk, the liaison for the Charter Commission, on April 30, 2021.

7. The Charter Commission maintains the home rule charter for the City of Minneapolis. CITY OF MINNEAPOLIS, *Charter Commission*, <https://www.minneapolismn.gov/government/boards-and-commissions/charter-commission/> (last visited July 29, 2021).

8. On May 14, 2021, the City Clerk advised the City Council that the petition meets the technical requirements of Minn. Stat. § 410.12 (2020) and is therefore a valid proposed charter amendment. A true and correct copy of the City Clerk’s Certification is attached as **Exhibit A**.

9. On or around May 22, 2021, the City Council directed the City Attorney to conduct a legal analysis of the petition and recommend draft ballot language for the proposal.

10. The City Attorney determined that the charter amendment satisfies the legal standard to be placed on the ballot. A true and correct copy of the City Attorney’s July 13, 2021 memorandum analyzing the proposed amendment is attached as **Exhibit B**.

11. The City Attorney recommended language for the ballot question, including an Explanatory Note. See Ex. B.

12. On July 23, 2021, the City Council adopted the Resolution setting the title and language of the ballot question and including the Explanatory Note. A true and correct copy of the Resolution adopted by the City Council is attached as **Exhibit C**.

13. The ballot title and question approved by the City Council reads as follows:

Department of Public Safety

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would 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 part of this ballot?

Yes _____

No _____

Explanatory Note:

This amendment would create a new Department of Public Safety, which would:

(1) Combine public safety functions of the City of Minneapolis into a comprehensive public health approach to safety, with the specific public safety functions to be determined.

(2) Include licensed peace officers (police officers) if necessary to fulfill the responsibilities of the Department of Public Safety

(3) Be led by a Commissioner of Public Safety. The appointment process for the Commissioner would include a Mayor nomination and a City Council appointment. The Mayor would not have complete power over the establishment, maintenance, and command of the Department of Public Safety.

This amendment would also do the following:

(1) Remove from the Charter a Police Department, which includes the removal of its Police Chief, and the removal of the Mayor's complete power over the establishment, maintenance, and command of the Police Department.

[Continued on next page]

(2) Remove the City Council requirement to fund a police force of at least 1.7 employees per 1,000 residents.

(3) Remove City Council authorization to impose additional taxation on taxable property in the City of Minneapolis of up to 0.3 percent of its value annually to fund the compensation of employees of the police force.

14. On July 28, 2021, the resolution was approved by default because the Mayor did not take any action on the resolution. *See Ex. C.*

ANALYSIS

15. This Court has the duty to correct errors, omissions, and/or wrongful acts that have occurred, or are about to occur, with respect to questions presented on a ballot. Minn. Stat. § 204B.44.

16. The Petitioner bears the burden of proof by a preponderance of the evidence. *Weiler v. Ritchie*, 788 N.W.2d 879, 882-83 (Minn. 2010).

A. The inclusion of the Explanatory Note is wrongful because the City Council does not have authority to include “explanations” of ballot questions on the actual ballot.

17. For purposes of Minn. Stat. § 204B.44, an act is “wrongful” when it is unjust, unfair, or unlawful. *Butler v. City of Saint Paul*, 923 N.W.2d 43, 51 (Minn. Ct. App. 2019).

18. The Minnesota Constitution is clear that “municipalities, like the City of [Minneapolis], possess no inherent powers and are purely creatures of the legislature.” *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006) *citing* Minn. Const. art. XII, § 3. “Municipalities possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers.” *Id.* (citations omitted). No law gives a city the power to include on the ballot its own interpretation of a ballot question, so cities do not have the power to do so.

19. Under Minn. Stat. § 410.12, subd. 4, the City Council in this matter is responsible for the ministerial task of determining only the “form of the ballot” that will be presented to the voters.

20. The language used for “[t]he statement of the question on the ballot shall 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. § 410.12, subd. 4.

21. Ballots are to be “prepared in a manner that enables the voters to understand which questions are being voted upon....and to designate their choices clearly and accurately.” Minn. Stat. § 204B.35, subd. 2.

22. The legislature requires that, “when a question is to be submitted to a vote, a concise statement of the nature of the question shall be printed on the ballot....” Minn. Stat. § 204B.36, subd. 3. The legislature does not authorize cities to explain questions in a ballot. *Id.*

23. The City Council, whose role is purely ministerial, exceeded the powers granted to it by the legislature by including the Explanatory Note.

24. The City Council’s only authority here is to include a question that clearly identifies the amendment and helps voters distinguish it from other questions on the ballot. *See* Minn. Stat. § 410.12, subd. 4. The ballot question, without the Explanatory Note, identifies the amendment and clearly describes to voters the purpose of the proposed amendment. The Explanatory Note is not needed to identify the amendment, and so it is neither expressly nor impliedly permitted by the legislature. *See Weiler*, 788 N.W.2d at 889; Minn. Stat. §§ 204B.36 and 410.12, subd. 4. In *Weiler*, the Minnesota Supreme Court analyzed Minn. Stat. § 204B.06³ and found that petitioner met her

³ Requiring a candidate to use only true or commonly/generally known nickname in an affidavit of candidacy.

burden to show the use of the nickname “Doc” was not “necessary to enable voters to identify” the candidate and, therefore, granted the petition requiring the nickname to be omitted from the ballot. The Explanatory Note in this matter does not “identify the amendment clearly” or “distinguish the question from every other question on the ballot at the same time.” *See* Minn. Stat. § 410.12.

25. There are no other questions on the ballot that address the issues in the proposed charter amendment.

26. By including the separate Explanatory Note, the City Council exceeded its statutory authority.

27. By including the Explanatory Note on the ballot in November of 2021, the City Clerk will exceed its statutory authority.

B. It would be an error to permit the inclusion of the Explanatory Note on the ballot because it is unreasonable and misleading.

28. Since a) the Explanatory Note is separate from the ballot’s statement of the question; and b) the City Council is not the Legislature, the “high standard” set forth in *League of Woman Voters Minnesota v. Ritchie*, 819 N.W.2d 636, (Minn. 2012) does not apply. That high standard was applied in *League of Woman Voters* because the issue was “whether the *ballot question* is so misleading that it violates the Minnesota Constitution.....” *Id.*, 644 (emphasis added). And Minnesota precedent has a “high standard....for finding a proposed constitutional amendment to be misleading” because there is a “high degree of deference [given] to the *Legislature.*” *Id.*, 648. Here, the ballot question is not misleading, the Explanatory Note is.

29. The “Explanatory Note,” and future ones like it, inevitably omits important contextual information and would reflect an author’s inherent bias. *See Weiler*, 788 N.W.2d at 888

(holding “[t]he purpose of the ballot is not to provide a forum for candidates to campaign or advertise”).

30. The Explanatory Note states that the proposed charter amendment will “[c]ombine public safety functions of the City of Minneapolis into a comprehensive public health approach to safety, with the specific public safety functions to be determined.” This Explanatory Note misleads voters by suggesting that the proposed charter amendment would eliminate certain public safety functions. The proposed charter amendment does not propose to eliminate any public safety functions, but instead, seeks to combine those functions which are part of the responsibility of the City of Minneapolis and identified by the City Council into a comprehensive approach.

31. Further, the Explanatory Note states that the proposed charter amendment would prohibit the mayor from having complete power over the Department of Public Safety and would not have the sole discretion to hire its Commissioner. But the mayor currently does not have complete discretion to hire the Police Chief. In fact, the mayor would retain the same power to “nominate” the Commissioner of the Department of Public Safety, subject to council approval under the proposed amendment.

32. The Explanatory Note also falsely implies that the proposed charter amendment, if passed, would eliminate the ability of the City Council to provide funding for peace officers. The proposed charter amendment does not eliminate the authority for the City Council to fund peace officers. In fact, the proposed charter amendment envisions that peace officers would be a part of the Department of Public Safety, if necessary.

Prayer for Relief

Petitioner respectfully requests this Court for an entry of judgment in its favor against the Respondents:

- a. Finding that the City Council acted wrongfully and exceeded its authority by including the Explanatory Note with the ballot question;
- b. Finding that the Explanatory Note is an error that must be removed from the ballot;
- c. Ordering the Respondents to omit the Explanatory Note from the November 2, 2021 ballot and certifying ballot language without the Explanatory Note as follows:

Department of Public Safety

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers (police officers) if necessary, to fulfill its responsibilities for public safety?

Yes _____

No _____

and

- d. Any other relief this Court deems just and proper.

HELLMUTH & JOHNSON

Date: July 30, 2021

By: /s/Terrance W. Moore

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**ATTORNEYS FOR PETITIONER
YES 4 MINNEAPOLIS**

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
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