STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Tyler Vasseur, Rosheeda Credit,
Joshua Rea and Devon Jenkins,

Petitioners,

v.

City of Minneapolis,

and,

Casey Joe Carl, in his official capacity
as City Clerk, City of Minneapolis;
Grace Wachlarowicz, in her official capacity
as Director of Elections, City of Minneapolis;
and Ginny Gelms, in her official capacity
as Elections Manager, Hennepin County;

Respondents.

ORDER GRANTING PETITION

Court File No. 27-CV-16-11794

This matter came duly on before the Honorable Susan M. Robiner by petition on August 9, 2016. Petitioners are represented by Bruce D. Nestor, Esq., and Paul J. Lukas, Esq.; Respondents are represented by Brian S. Carter, Esq., Tracey N. Fussy, Esq. and Lindsey E. Middlecamp, Esq. Based upon the argument of counsel and all the files, records, and proceedings herein, the Court makes the following:

ORDER

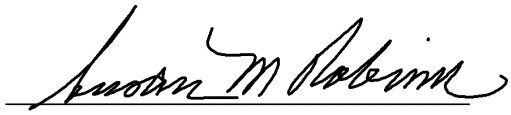
1. Petitioner's Petition is GRANTED and Respondents are ordered to prepare a ballot for the November 8, 2016 election that includes Petitioners' proposed amendment.

2. The attached memorandum is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: August 22, 2016



Susan M. Robiner
Judge of District Court

MEMORANDUM

Procedural Posture

A coalition of Minneapolis residents, "Vote for 15 MN," proposed an amendment to the City of Minneapolis Charter to establish a $15.00 per hour minimum wage for persons employed within the City of Minneapolis. The proposal states:

> (g) Minimum Wage. The City of Minneapolis is dedicated to improving its residents' quality of life. Income inequality, low wages, and a high cost of living relative to other parts of the state are serious economic and social problems facing the City. Many City residents work long hours but cannot afford housing, food, medical care, and other basic necessities. The City has an interest in promoting the health, safety, and welfare of workers, their families, and their communities by ensuring they can support themselves through work. When workers in the City earn decent wages, such wages can also boost the local economy. Therefore, the City chooses to establish a minimum wage to better enable workers to afford the minimum necessities. This minimum wage will be phased in gradually.
>
> (1) Definitions. Terms used in this section 4.1(g) have the same meaning as in the Minnesota Fair Labor Standards Act except as modified herein.
>
> (A) For the purposes of subsection (2) of this section 4.1 (g), the number of employees employed by an employer includes the total number of employees (full-time or part-time) working for the employer anywhere in the United States, including, in the case where the employer is a franchisee, all employees employed by other franchisees of the same franchisor.
>
> (B) "Cost of living" shall be measured by the percentage increase, if any, of the non-seasonally adjusted consumer price index (Urban Wage Earners and Clerical Workers, U.S. City Average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, for the most recent twelve-month period for which data is available at the time the cost of living adjustment is calculated.
>
> (2) Minimum Wage.
>
> (A) Employers with 500 or more employees shall pay each employee expected to work 25 or more hours in a calendar year within the geographic boundaries of the City for each hour worked within the geographic boundaries of the City an hourly minimum wage of no less than:
>
> (I) Starting August 1, 2017: $10.00,
>
> (II) Starting August 1, 2018: $11.75,
>
> (III) Starting August 1, 2019: $13.50,
>
> (IV) Starting August 1, 2020: $15.00,
>
> (V) Starting August 1, 2021 and each August 1 thereafter, the hourly minimum wage shall be adjusted to keep pace with the rising cost of living.
>
> (B) Employers with fewer than 500 employees shall pay each employee expected to work 25 or more hours in a calendar year within the geographic boundaries of

the City for each hour worked within the geographic boundaries of the City an hourly minimum wage of no less than:

(I) Starting August 1, 2017: $10.00,

(II) Starting August 1, 2018: $11.00,

(III) Starting August 1, 2019: $12.00,

(IV) Starting August 1, 2020: $13.00,

(V) Starting August 1, 2021: $14.00,

(VI) Starting August 1, 2022: $15.00,

(VII) Starting August 1, 2023 and each August 1 thereafter, the hourly minimum wage will not be less than the minimum wage set by subsection (2)(A)(V) of this section 4.1(g).

(C) Gratuities not applied. No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage set by this section 4.1(g).

(D) Sharing of gratuities. The Minnesota Fair Labor Standards Act will govern the sharing of gratuities under this section 4.1(g).

(3) Interpretation. Nothing in this charter shall discourage or prohibit ordinances, rules, or policies providing for higher or supplemental wages or benefits or extending such protections to persons not covered by this section 4.1 (g). Case law and standards developed under the Minnesota Fair Labor Standards Act shall guide the construction of this section 4.1 (g) and any implementing ordinances or rules.

(4) Enforcement. The City shall enforce this section 4.1(g) and any implementing ordinances or rules. Where an employee or person has been paid less than the hourly minimum wage required under this section 4.1 (g), or been subject to any other violation of their rights under this section 4.1 (g) or implementing ordinances or rules, including, but not limited to, retaliation for asserting or attempting to assert their rights, the employee or person may bring an administrative complaint with the City, or the employee, person, or City may bring a civil action in a court of competent jurisdiction, and, upon prevailing in either proceeding, shall be awarded the full amount of any back wages unlawfully withheld and an additional two times that amount as damages, together with reasonable attorney's fees and costs, as well as interest on all amounts due and unpaid, and may be awarded an administrative penalty and any additional appropriate legal or equitable relief. Implementing legislation is not required to enforce this section 4.1 (g). The City shall enact penalties designed to effectively deter violations of this section 4.1 (g), including, but not limited to, penalties that will increase for repeat offenses and will deter employers from engaging in any form of retaliation against persons asserting or attempting to assert rights under this section 4.1(g).

(5) Public Outreach and Education. The City shall implement multilingual and culturally-specific outreach and education programs, including collaboration with and grants to community organizations, to educate employees regarding rights under this section 4.1 (g) and any implementing ordinances or rules, or to provide assistance or support to employees or the City in filing and resolving complaints or pursuing other enforcement actions.

(6) Severability. If any portion of this section 4.1(g) is held invalid, in whole or in part, or in its application, by a court of competent jurisdiction, such portion or application shall be severable, and such invalidity shall not affect the validity of the remaining portions or applications of this section 4.l(g).

The coalition obtained the requisite number of signatures to place the proposed amendment on the ballot. The proposal was submitted to the Minneapolis Charter Commission, properly transmitted to the City Clerk and delivered to the City Council. The Council met on August 5, 2016 and approved the ballot language but voted to not place the proposed amendment on the ballot.

Petitioners have brought this action pursuant to Minn. Stat. § 204B.44 (a) which provides that individuals may petition district court to correct an error with regard to the preparation of a ballot.

Analysis

The Minnesota Constitution vests the state with power to create, organize, consolidate, divide and dissolve local units of government. Minn. Const., art. XII, § 3. It further states that "[a]ny local government unit when authorized by law may adopt a home rule charter for its government." Minn. Const. art. XII, § 4. The state legislature, through Minn. Stat. Ch. 410 has provided further guidance regarding the adoption and amendment of home rule charters. Minneapolis is a home rule city.

The state constitution mandates that home rule charters provide for amendments proposed by "a petition of five percent of the voters of the local government unit as determined by law." Minn. Const. art. XII, § 5. The state constitution does not identify what matters may be included in a charter amendment. The only express guidance found in either the constitution or statutes on the proper content of a charter is set forth at Minn. Stat. § 410.07 which states:

> . . . . Subject to the limitations in this chapter provided, it [the Charter] may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896. . . .

Minn. Stat. § 410.07 (2015).

Home rule cities may also allow for citizens to propose *ordinances* for consideration on the ballot. Minn. Stat. § 410.20 (2015). This power to propose municipal ordinances by placement on a ballot is referred to as initiative and referendum power. *St. Paul Citizens for Human Rights v. City Council of City of St. Paul*, 289 N.W.2d 402, 404–05 (Minn. 1979). The Minneapolis Charter does not provide for citizens to propose ordinances through initiative or referendum. Minneapolis vests the power to propose municipal ordinances solely with the City Council. The parties appear to agree on these points.

There is copious case law establishing that a proposed charter amendment may be enjoined by a district court where it is unconstitutional or directly conflicts with state law. *See, e.g.*, *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995); *Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn. 1982); *Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972); *State ex rel. Andrews v. Beach*, 191 N.W. 1012 (Minn. 1923); *Haumant v. Griffin*, 699 N.W.2d 774, 777 (Minn. Ct. App. 2005); *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347 (Minn. Ct. App. 2002). The City is not arguing that the proposed amendment is unconstitutional or that it directly conflicts with state law.[1]

This dispute centers upon what can be the subject of a charter amendment. The City interprets the language of Minn. Stat. § 410.07 "regulation of all local municipal functions" as limiting charter amendments to matters related to the "form, structure or distribution of municipal powers." City's Response to Petition at 8. It primarily relies on three arguments: 1) the language

[1] The City asserts for the first time in its reply brief that the proposed amendment conflicts with Minn. Stat. § 410.20 which empowers home rule cities to pass ordinances and to restrict that power to a city council. The Court will not address arguments made for the first time in a reply brief. Additionally, this is a recast of arguments made elsewhere by the City and is addressed fully in the Court's memorandum.

of § 410.07; 2) claimed differences between initiative and referendum and the right to amend a charter; and 3) the Minnesota Court of Appeals decision in *Haumant v. Griffin*, 699 N.W.2d 774 (Minn. Ct. App. 2005).[2]

Petitioners argue that the "regulation of all local municipal functions" is not limiting language and that charter amendments may provide for the broad exercise of the city's general welfare legislative power. They contend that the city is relying on non-binding dicta from *Haumant* that is not supported by legal authority.

This Court's analysis will first consider whether there is binding precedent dictating the outcome.

The City insists that *Haumant* determines the outcome. In *Haumant*, the petitioner proposed an amendment to Minneapolis's City Charter authorizing medical marijuana distribution centers for patients who were prescribed medical marijuana. The district court held that the proposed amendment was unconstitutional, preempted, and an improper use of the charter amendment procedure. The Court of Appeals affirmed. First, it analyzed preemption and concluded that state regulation occupied the field and therefore that field preemption barred the proposal. 699 N.W.2d at 779. It also rejected the petitioner's argument that "manifestly unconstitutional" met something more than unconstitutional and went on to find the proposal unconstitutional. *Id.* at 779-80. It also analyzed whether there was a supremacy clause issue with the proposal given the significant federal regulation of marijuana, although it expressly stated that "this topic need not be reached in light of the analysis above." *Id*. at 780. Finally, it spoke to the improper legislation argument as follows:

> . . . while appellant failed to directly address this issue, the district court's finding that "the proposed charter amendment is an initiative cloaked as a charter

[2] The City also conducted a textual analysis of Minn. Stat. § 410.12 which the Court is not addressing in the interest of issuing a timely order. The Court was not persuaded by the analysis.

> amendment" has merit. As respondent points out, the City of Minneapolis elected not to include initiative powers as part of its home rule charter. Minneapolis residents are not permitted to directly implement legislation by petition. By his actions, appellant is furthering a cause that his elected representatives, so far, have refused to: namely, to lay the groundwork for the use of marijuana for medicinal purposes in Minnesota.

Haumant, 699 N.W.2d at 781.

If this passage is an alternate holding, then it is binding. *Riverview Health Inst. v. UnitedHealth Grp. Inc.*, 153 F. Supp. 3d 1032, 1035 (D. Minn. 2015) (a second, independent reason for a ruling is equally binding). If, however, it is dicta, it is not binding. Dicta is defined as "a court's expressions that 'go beyond the facts before the court'." *Dahlin v. Kroening*, 784 N.W.2d 406, 410 (Minn. Ct. App. 2010), *aff'd*, 796 N.W.2d 503 (Minn. 2011), citing *Foster v. Naftalin*, 74 N.W.2d 249, 266 (Minn. 1956). They are expressions of opinion on "a question directly involved and argued by counsel though not entirely necessary to the decision." *Brink v. Smith Companies Const., Inc*., 703 N.W.2d 871, 877 (Minn. Ct. App. 2005) (citation omitted).

Here, there is no analysis at all; no independent reasoning that would convert the appellate court's comment on the lower court's reasoning into an alternative holding. In fact, it appears that the opinion simply states what the "respondent points out" and comments that the district court's finding "has merit." Moreover, the comments about the power given to citizens by the Minneapolis Charter extend beyond the facts that the court needed to consider in its preemption and constitutionality analyses – both of which were based solely on the language of the proposed amendment. Finally, the comment is not incorporated at all in the Court's "Decision" which states in its entirety: "Appellant's proposed charter amendment would be deemed preempted by Minnesota and federal laws. We conclude that appellant's proposed amendment is 'manifestly unconstitutional' as that phrase has been defined by Minnesota courts. Accordingly, we affirm the district court's denial of injunctive relief." *Haumant* at 781–82. This Court concludes that

Haumant, on its own, does not bar the proposed charter amendment. This conclusion is further supported by Minnesota Supreme Court precedent discussed *infra* at 10 (discussing *Markely*).

The City also relies on the language of Minn. Stat. § 410.07 in which the permitted contents of a home rule charter are set forth: the Charter "may provide for any scheme of municipal government . . . and may provide for . . . the regulation of all local municipal functions." Minn. Stat. § 410.07. It interprets this language as limiting charter amendment authority to matters of governmental structure and authority and procedure by relying on 2A McQuillin Law of Mun. Corp. § 9.3 (3d ed.) and by comparing the language to other parts of the Charter namely § 410.16, § 410.18, and § 410.19.

This narrow interpretation of the quoted language is fraught with problems. First, it renders superfluous the first part of the sentence in which the phrase is contained which states that a charter may "provide for the establishment and administration of all departments of a city government." This language empowers a charter to establish and regulate city government. By claiming that the second clause of the same sentence only addresses matters of municipal governance, the City is essentially urging that the two clauses in the sentence be construed to mean substantially the same thing – thereby violating basic rules of statutory construction. *See* Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions").

Second, and more importantly, the interpretation results in a narrow understanding of the reach of home rule. The City insists that Petitioners' argument "conflates" the reach of home rule power with the proper subject of a charter amendment. City Reply Memo. at 8. But the very language that it relies on to describe the proper subject of a charter amendment also governs what can be the subject of an ordinance. Why? Because the language "regulation of all local municipal functions" does not come from some technical statute dictating the parameters of a charter

amendment; it comes from the statute, Minn. Stat. § 410.07, that codifies the broad legislative reach of home rule: "Subject to the limitations in this chapter provided, it [the Charter] may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896." Minn. Stat. § 410.07 (2015). This language defines the legislative power of a home rule city within the enabling legislation, Minn. Chs. 410-414, that confers legislative authority from the state to cities. Put otherwise, this language defines what legislative powers can be included in a charter; a charter, in turn, distributes those legislative powers to a City Council (through enacting ordinances) and/or to citizens (through initiative and referendum) while itself all the while being constitutionally subject to citizen amendment. The language of § 410.07 limits what can be included in a charter amendment in the same way it limits what can be included in an ordinance, since the power to enact ordinances derives from the very same source – i.e. the charter, which must conform to the "limits" of § 410.07.

The fact that this language applies to all legislative acts by home rule cities, whether charter amendments or ordinances, highlights the untenable nature of the City's interpretation. And it explains why the City cannot locate any Minnesota case law that creates the distinction that it urges between the proper subjects of initiative and referendum legislation and the proper subject of charter amendment legislation[3]. It is all legislation, and it is all enabled by the same statutory language. *See Mitchell v. City of St. Paul*, 36 N.W.2d 132, 135 (Minn. 1949); *State ex rel. Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958).

[3] The City discusses three cases from sister jurisdictions; all are distinguishable due to materially different statutory schema and case law which are not addressed in detail in the interest if issuing a timely order.

Markely informs this point. *Markley v. City of St. Paul*, 172 N.W. 215, 216 (Minn. 1919). In *Markely*, a St. Paul fire fighter was injured on the job and sought worker's compensation relief pursuant to the St. Paul city charter beyond what was allowed for by the state workers' compensation statute that was enacted after the city charter. He was denied the additional benefits and sued to obtain the benefits. The court faced the issue of whether the city charter workers' compensation provisions were still valid in light of the enactment of the state workers' compensation statute. The Court held that they were, *relying upon the very same language that is the subject of the dispute at bar*:

> Subject to the limitations in this chapter provided, it [the charter] may provide for any scheme of municipal government not inconsistent with the Constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of local municipal functions as fully as the Legislature might have done before the adoption of sec. 33, art. 4, of the Constitution.'

Markley v. City of St. Paul, 172 N.W. at 216.

The *Markely* opinion contains the familiar analysis of whether the city charter and the state statute conflict. But it also speaks to the reach of the subject matter of a charter, holding that a home rule charter "embraces any subject appropriate to the orderly conduct of municipal affairs." *Id*. If a charter may contain "any subject appropriate to the orderly conduct of municipal affairs," then so to can a charter amendment. And this is the only time the Minnesota Supreme Court has spoken to this issue.

Additionally, reading the charter provides scant clues to support the City's distinction. Yes, the charter largely addresses matters of governmental structure and authority. Therefore, the claim that "generally speaking" charters are limited to municipal governmental organization is generally accurate. 2A McQuillin Law of Mun. Corp. § 9.3 (3d ed.). But Minneapolis's City Charter also regulates private persons in their private affairs: e.g. the charter contains detailed regulations

regarding the sale of liquor including rules regarding on and offsite consumption, ratios of food sales to liquor sales, and separate beer and wine licensure. Minneapolis City Charter, § 4.1(f). The charter also mandates that "slaughterhouses may not exist in the city" unless authorized by a three-quarter vote of the city council. Minneapolis Charter, § 4.4(a)(4)(g). In short, McQuillin does not compel a different analysis or outcome.

The City also argues that by not providing initiative and referendum power to its citizens, Minneapolis has chosen to deny its citizens the power to legislate on issues affecting the general welfare. This argument, as noted above, is not supported by reported case law. Moreover, the argument ignores precedent holding that a home rule charter itself is legislation and amending a charter, which citizens have the right to do, is itself a legislative function. *Mitchell v. City of St. Paul*, 36 N.W.2d 132, 135 (Minn. 1949).

Put another way, there is no precedent holding that initiative and referendum is the only citizen power to legislate on matters of general welfare and that the power to amend a charter, with its constitutional right to citizen access, is something qualitatively different and lesser. In fact, there is an alternative hypothesis that is not unreasonable: that there is no bright line distinction between the ends of the two processes but only a difference in the process -- with charter amendments requiring citizen access but also requiring a high petition threshold (Minn. Stat. § 410.12); and initiative and referendum reservable solely to a council but when available to citizens, allowing for a lower citizen participation threshold.

Finally, courts need to tread cautiously when they enter the legislative realm. To reject this proposal based on its content somehow being improper, which the City urges, amounts to passing judgment on the quality of the proposal which is not the province of the court. *HRA of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972); *Winget v. Holm*, 244 N.W. 331 (Minn.

1932) (courts may not "pass judgment" on the quality of proposed charter amendments and may reject them only where unconstitutional or otherwise unlawful).

To conclude, the City cannot avoid certain realities that defeat its position:

- No Minnesota case law supports the City's claim that general welfare legislation may only be proposed through initiative and referendum;
- No Minnesota case law supports the City's claim that "all local municipal functions" means only "the form, structure, and functioning of the municipal government";
- Minnesota cases have allowed district courts to enjoin elections only where the proposed charter amendment was unconstitutional or conflicted with state law neither of which are even argued by the City; and,
- For a Court to enjoin a ballot initiative based on its content when that proposal has garnered the proper number of signatures and proceeded properly could reasonably be seen as overreaching its specific role under Minn. Stat. § 204B.44 and its general role in a government that respects separation of powers.

S.M.R.