

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Donald M. Fraser, Sharon Sayles Belton,
Scott Neiman, Pat Scott, Mark Andrew, and
Citizens for Independent Parks,
a Minnesota non-profit corporation.
Petitioners,

v.

**MEMORANDUM
IN SUPPORT OF PETITION FOR
CORRECTION OF BALLOT ERROR
OR, IN THE ALTERNATIVE, A
WRIT OF MANDAMUS.**

The City of Minneapolis, and
Patrick O'Connor, in his capacity as
Acting Interim Director of Elections,
Respondents.

INTRODUCTION

Pursuant to Article XII, § 5 of the Minnesota Constitution and Minn. Stat. § 410.12, Petitioners submitted a petition for a proposed charter amendment to the Minneapolis Charter Commission for inclusion on the November 3, 2009, general election ballot for the City of Minneapolis. The petition contained a sufficient number of valid signatures from registered voters in the City of Minneapolis thereby complying with Article XII § 5 of the Minnesota Constitution and also met all of the other requirements of Minn. Stat. § 410.12. The City Clerk certified the petition as sufficient in accordance with Minnesota Statutes. The Charter Commission then transmitted the proposed charter amendment to the City Council. On August 28, 2009, the City Council voted to refuse to place the proposed charter amendment on the November 3, 2009, ballot. Pursuant to this vote,

upon information and belief, Respondent Patrick O'Connor will not place the proposed charter amendment on the November 3, 2009, general election ballot. Petitioners submit this memorandum in support of their Petition for Correction of Ballot Error or, in the alternative, a writ of mandamus, requesting that this Court order Respondent O'Connor to correct the proposed error in the City of Minneapolis general election ballot by placing Petitioners' proposed charter amendment on the ballot.

FACTS

A. Background

1. The Park Board

The Minneapolis Park and Recreation Board (Park Board) was created in 1883 by the Minnesota State Legislature to develop and maintain a park system to meet the needs of the citizens of the City of Minneapolis. *See* Minn. Sp. Laws Ch. 281 (1883); *see also State v. Board of Park Com'rs of City of Minneapolis*, 110 N.W.1121 (1907) (identifying legislative creation of Park Board). The Park Board is a department of City of Minneapolis (City) but is a semi-autonomous body governed by its own elected Board of Commissioners. City Charter Chapter 16, § 1; *see* Minn. Sp. Laws Ch. 281 (1883). The commissioners in turn hire a Superintendent who supervises approximately 500 permanent year-round staff and approximately 1,500 part time staff. The Minnesota Legislature has vested in the Park Board's Superintendent the authority to appoint any suitable person to hold certain positions in the Park Board, e.g. assistant superintendent for administration, director park forestry, police chief. Minn. Sp. Laws Ch. 174 (1999).

The City of Minneapolis,¹ under its charter, has vested the Park Board with broad authority and autonomy. For example,² the Park Board has the authority and autonomy to:

- 1) hire its own attorney rather than use the City Attorney; (City Charter Ch. 3 § 7)
- 2) provide for the payment of all bills and tort claims; (*Id.* at Ch. 4 § 20)
- 3) establish its own police force with its own police chief; (*Id.* at Ch. 16 §14)
- 4) enter into contracts; (*Id.* at § 2)
- 5) condemn land; (*Id.* at § 3)
- 6) issue “park bonds”; (*Id.* at §5)
- 7) accept gifts; (*Id.* at §7)
- 8) vacate streets; (*Id.* at §8)
- 9) construct bridges; (*Id.* at §9)
- 10) sell land; (*Id.* at §13)
- 11) regulate the use of the parks; (*Id.* at §14) and
- 12) plant trees. (*Id.* at § 16)

In addition, the Park Board holds title to numerous pieces of property in the City as well as outside the city limits.³ On the Hennepin County Property Information System, the

¹ The City of Minneapolis is a home rule charter city. The current city charter was adopted by election on November 2, 1920. *See City Charter*. The 1920 charter essentially adopted the prior legislative enactments relating to the Park Board, specifically Minn. Sp. Laws Ch. 30 (1889), as the language of Chapter 16 in the current City Charter, the chapter that governs the Park Board.

² This list is to provide the court with examples of the Park Board’s authority and autonomy. It is not, nor is it meant to be, complete.

³ In fact, the park in which the Minneapolis Institute of Arts is located was deeded to the Park Board in 1911. *See Moreno v. City of Minneapolis*, 676 N.W.2d 1 (Minn. App.

Park Board is named as the owner of all this property and the address of the “owner” is 2117 West River Road, Minneapolis, Minnesota.”⁴ Moreover, the Park Board’s budget is subject to review by the Board of Estimate and Taxation, not by the City Council.

The Park Board is separate and distinct from the City of Minneapolis. *See* Minn. Sp. Laws Ch. 281 (1883), as amended by Minn. Sp. Laws Ch. 30 (1889). The Minnesota Legislature has recognized this distinction. Indeed, on a number of issues, the Minnesota Legislature already deals directly with the Park Board instead of either the City or the City Council. For example, the legislature has expressly recognized the Park Board and not the city of Minneapolis or the City Council as the implementing agency for metropolitan area regional parks funding. *See* Minn. Stat. § 473.351, subd. 1. In addition, the legislature has long relied on the consent of the Park Board, rather than that of the City Council, to special laws dealing with the parks. *See, e.g.* Minn. Sp. Laws Ch. 574 (1988) (compensation of commissioners); Minn. Sp. Laws Ch. 362 (1992) (redistricting); Minn. Sp. Laws Ch. 120 (1993) (residency); Minn. Sp. Laws Ch. 91 (1974) (park improvements outside of the city); Minn. Sp. Laws Ch. 198 (1999) (electric sales); and Minn. Sp. Laws Ch. 688 (1969) (recreation powers).

The Minnesota Constitution expressly provides:

Every law which upon its effective date applies to a single local government unit . . . is a special law and shall name the unit The legislature may enact special laws relating to local government units, but a special law, unless otherwise

2004) (recognizing distinction between City of Minneapolis and Minneapolis Park Board in the deeding of the Dorilus Morrison Park).

⁴ Prior to 2003, the Park Board’s headquarters were located in the Grain Exchange Building, 400 South Fourth Street, Minneapolis, Minnesota 55415. In 2003, the Park Board purchased property along West River Road in Minneapolis and moved its headquarters to 2117 West River Road.

provided by general law, shall become effective only after its approval by the affected unit....

Minnesota Constitution, Article XII § 2. In each of the special laws mentioned in the above paragraph, the Minnesota Legislature designated the Park Board as the “local government unit” which had to give its consent to the special legislation pursuant to Minn. Stat. § 654.021, subd. 2. It is obvious that the Minnesota Legislature therefore considers the Park Board to be a “local government unit.”

The Park Board’s independence cannot be ignored. Because of its independence, the Park Board has been able to focus its attention on parks and recreation. The Park Board’s autonomy has allowed it to create a magnificent system of parks and lakes, which is nationally recognized as a standard for excellence.

2. Genesis for petition

Recent events have threatened the Park Board’s independence. The demise of the Minneapolis Library Board in 2007 upset the delicate balance among the City Council and the separate and independent Park and Library Boards, and the directly elected members on the Board of Estimate and Taxation (BET), which apportions tax revenues and capital bonding funds among the several agencies.

Until the elimination of the Library Board, the BET was comprised of the Mayor, the City Council President, the Chair of the City Council’s Ways & Means Committee, the President of the Park Board, the President of the Library Board, and two independently elected citizens of Minneapolis. The purpose of the BET was to determine the actual tax levies for all parts of City government, the issuance and allocation of public debt for projects of the City and independent audit oversight of all City functions.

Originally, this was a seven member board; it became a six member Board when the Library Board's function was transferred to Hennepin County in 2007.

Earlier this year, several City Council members proposed amending the City Charter to abolish the Park Board and give control of the parks to the City Council. The City Charter Commission rejected that idea. But, this same group of council members also proposed abolishing the BET replacing it with the entire City Council. Despite strong protests from the Park Board and one of the elected citizen members of the BET, on July 1, 2009, the City Charter Commission approved the City Council's takeover of the BET as a charter amendment for the November 3, 2009 general city election. This proposed amendment will effectively make the City Council the Board of Estimate and Taxation and eliminate any say that the Park Board has in establishing its tax levy and capital bonding program. If adopted in November, the proposed amendment to the City Charter will give the City Council control of the Park Board and its budget, thereby ending the Park Board's 126 years of autonomy or semi-autonomy in determining its annual taxing authority and need for capital debt service for bonding projects.

When the Charter Commission approved the abolishment of the BET and the transfer of its authority to the City Council, the Park Board expressed its grave concern. On the same date and immediately after the Charter Commission had approved the abolishment of the BET, the Park Board, at its regularly scheduled meeting, expressed its desire to be independent by passing a resolution to that effect on July 1, 2009.

B. Proposed Amendment

Article XII, § 5 of the Minnesota Constitution provides, in pertinent part:

Home Rule Charter Amendments may be proposed by Charter Commission **or** by a petition of five percent of the voters of the local government unit as determined by law...

Minnesota Constitution, Article XII, § 5 (emphasis added). This is a constitutional right of any group of petitioners who can secure the support of five percent of their fellow voters. A petitioner's right is no greater than or less than the constitutional right of the Charter Commission members to have an amendment appear before the voters if all of the other legal requirements have been made. Yet, the City Council appears to think otherwise.

Pursuant to this constitutional provision and in reaction to the amendment to diminish the Park Board's independence, on Saturday, July 4, 2009, Petitioners began circulating a petition for a proposed amendment to the City Charter to keep the Park Board a separate and independent unit of government. The proposed charter amendment reads:

The Minneapolis Park and Recreation Board shall be a separate and independent governmental unit of the state of Minnesota with an elected board of commissioners. The Park and Recreation Board shall preserve and protect park land, lakes and open spaces as a public trust forever and shall have all the powers and rights of a separate and independent governmental unit of the state as determined by the state legislature. The Mayor of Minneapolis shall have the right to veto the Park and Recreation Board's legislative actions and budget, subject to the ability of Park Board to override a veto by a two-thirds (2/3rds) vote.

The deadline for Petitioners submitting their proposed amendment to the Charter Commission was August 11, 2009. Thus, the Petitioners were confronted with a short time period in which to secure the requisite number of signatures on the petition. The City Council members who proposed abolishing the Park Board said that Petitioners would not be able to meet their goal.

Nonetheless, by August 10, 2009, a day before the deadline, Petitioners and volunteers had collected 17,086 signatures on their petition. On August 18, 2009, the City of Minneapolis validated about 63.5% or 10,825 of the signatures. In addition, on that same date the City Clerk issued a Certificate of Sufficiency to Petitioners which certified that Petitioners had met their constitutional threshold thereby activating Petitioners' constitutional right to have their proposed amendment placed on the ballot.

In addition to complying with Article XII § 5 of the Minnesota Constitution, Petitioners have met all of the statutory requirements of Minn. Stat. § 410.12. The City now must submit the proposed charter amendment to the voters; this is a mandatory duty. *See* Minn. Stat. § 410.12, subd. 4; *see also* Minnesota Constitution, Article XII § 5. Neither Minn. Stat. § 410.12 nor any other Minnesota statute allows the City to ignore its mandatory duty to place a proposed charter amendment on the ballot on the petition of five percent of the voters. The City has, however, refused to do so.

Petitioners are therefore asking this court to acknowledge Petitioners' constitutional and statutory rights to have the proposed amendment included on the general election ballot for November 3, 2009. Hence, they seek an order from this court directing Respondents to place the question on the ballot. Time is of the essence in this case. In order to comply with state law, the ballots must be in final form by September 11, 2009.

ARGUMENT

THE PROPOSED CHARTER AMENDMENT MUST BE PLACED ON THE NOVEMBER 3, 2009 GENERAL ELECTION BALLOT.

This case is about the right of people to vote. The people must have a say in the governance of their city if we are to remain a democracy and not a city ruled by a city

council with a vested interest in the outcome of a ballot measure. Allowing 13 city council members to deny a ballot measure signed onto by over 17,000 citizens would deny those citizens their constitutional right to have an important issue placed before their fellow voters. In reviewing the arguments in this case, this fundamental democratic right cannot be ignored or overlooked; instead, it is the guiding light in deciding this case.

I. The petitioners have a constitutional right to have their proposal submitted to the people and to vote on the question.

A. The City has a mandatory duty to submit this amendment to the people.

The petitioners in this case have a constitutional right to submit a petition for a proposed charter amendment and to have a public vote on that amendment in November.

The Minnesota Constitution provides:

[H]ome rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. . . .

Minnesota Constitution, Article XII, § 5.

The Charter Commission and City Council *must* submit the issue to the voters.

Minn. Stat. § 410.12 provides:

The charter commission may propose amendments to such charter and *shall do so* upon the petition of voters equal in number to five percent of the total votes cast at the last previous state general election in the city . . .

(Emphasis added.) The language “shall do so” makes the submission mandatory. *See*

Minn. Stat. § 645.44, subd. 16. Under the statute, the City Council’s only function is also ministerial:

Amendments shall be submitted to the qualified voters at a general or special election and published as in the case of the original charter. The form of the ballot shall be fixed by the governing body. The 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. If 51 percent of the votes cast on any amendment are in favor of its adoption, copies of the amendment and certificates shall be filed, as in the case of the original charter and the amendment shall take effect in 30 days from the date of the election or at such other time as is fixed in the amendment.

Minn. Stat. § 410.12, subd. 4. Again, the language is mandatory: the amendments “*shall* be submitted.” (Emphasis added.)

The Minnesota Supreme Court articulated the duty of the city to submit the question to the people clearly and succinctly in discussing the predecessor of section 410.07 in the syllabus to *State ex rel. Andrews v. Beach*, 155 Minn. 33, 191 N.W. 1012 (1923):

The provisions of [the predecessor of 410.07], with respect to the submission of amendments to home rule charters are mandatory. It is the absolute duty of a city council to submit such amendments, subject possibly to the qualification that they need not be submitted if it is apparent that they are not in harmony with the Constitution or laws of this state.

The home rule charter process is a constitutionally mandated system of direct democracy by which the people can decide how they will be governed. A court should be reluctant to allow a small group of public officials to obstruct citizen access to that democratic process in the absence of a very clear showing of unconstitutionality.

The City Council’s own decision on this issue is not entitled to deference, since the Council itself is an interested party. If it succeeds in preventing the people from acting on this proposal, or otherwise to defeats it, the Council’s own powers likely would be enhanced.

The law recognizes only very narrow exceptions to this absolute duty and it places a very heavy burden on a city council that attempts to prevent the voters from considering a proposal.

B. The law places a very heavy burden on the City Council if it wishes to prevent submission of an amendment to the people.

Exclusion of a properly submitted proposal from the ballot is an extraordinary invasion of the democracy mandated by the Minnesota Constitution and state law. Such an action should be limited to the most extreme circumstances.

Thus the courts place a very high standard on a city council which seeks to prevent a vote on a proposed amendment. The city normally must show that the proposal is manifestly unconstitutional, illegal, or preempted. *State ex rel. Andrews v. Beach*, 191 N.W. 1012, 1013 (1923), *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 155 Minn. 33, 35, 293 Minn. 227, 234, 198 N.W.2d 531, 536 (1972), *Davies v. City of Minneapolis*, 216 N.W.2d 498, 504 (Minn. 1982), *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995).

By refusing the popular petition, the City has set in motion a very expedited process for adjudication. It had an alternative. It could have allowed the people to express their views on the question, seeking adjudication of the constitutionality and legality of the proposal in ordinary litigation on an ordinary timetable only if they favored it. Since the voting would take place in the context of a regular citywide election, the additional cost would not be substantial.⁵

II. The proposed charter amendment is authorized by the Minnesota Constitution and by state law.

The Minnesota Constitution provides broad authority for the people of a municipality to adopt a charter for its governance. Minnesota Constitution, Article XII §

⁵ In fact, very recently the City of Minneapolis chose this very course. Recently, the City Council allowed voters to decide the issue of Instant Runoff Voting despite the various serious constitutional questions that were raised. The council allowed a vote of the people and litigation occurred only after adoption of the amendment. See *Minnesota Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009).

4. Under the Minnesota Constitution, home rule charter cities have all of the legislative power possessed by the state legislature. *Town of Lowell v. Crookston*, 252 Minn. 526, 529, 91 N.W.2d 81, 83 (1958). Charters must, however, be in harmony with the state's constitution and laws. *Id.* Nonetheless, the state's constitution gives home rule charter cities wide latitude in determining local government. *See id.*

The Constitution also provides the method for proposing amendments:

Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law.

Minnesota Constitution, Article XII § 5.

Minnesota Statutes chapter 410 prescribes the contents of municipal charters and the manner in which they are drafted and submitted to the people. Minn. Stat. § 410.07 provides in part:

[S]ubject to the limitations in this chapter provided, it 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. . .

Two phrases in this provision are of particular importance.

Section 410.07 authorizes the charter to provide for “any scheme of municipal government not inconsistent with the constitution.” (Emphasis added.) This language is intentionally broad. It is intended to permit the people of a city to be innovative in the way that they chose to govern themselves. They need not be constrained by the existing models. This language was broad enough, for example, to permit St. Paul to choose a commission form of government in which the heads of the operating departments formed

the governing body for the city, when that form of government had previously been unauthorized. The amendment proposed here clearly provides a “scheme of municipal government.” It separates the parks from other departments, placing the parks under the Park Board and the other departments under the City Council, each with separate budgetary authority. This is not the monolithic scheme of government that the City Council apparently wants to see. It is not a textbook model. It is, however, based on a model that has worked well in Minneapolis for nearly 125 years. It is a model that the Minnesota Legislature itself created and it is a model that the petitioners want to preserve.

The use of a double negative in section 410.07 is significant. The statute does not require the scheme of municipal government to be “consistent with” the constitution. Rather, the proposal need only be “not inconsistent with” the constitution. The proposal must be allowed unless there is some prohibition that it violates. The mere failure to follow a traditional model is not sufficient to justify refusal to submit the proposal. The statute does not require a charter proposal to conform to any pre-established pattern. It only requires that it not run afoul of any express prohibition.

The concluding part of the sentence in section 410.07 is also important. It provides that the charter may provide for the any scheme of municipal government and, for the administration of departments, and for the regulation of municipal functions, “as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896.” (Emphasis added.) (The comma preceding the quoted clause makes it clear that the clause modifies all of the three of the independent antecedent phrases.) Here the proposal is on very firm footing. The Park

Board was originally established as an autonomous entity by the Legislature in the 1880's, before there was a home rule charter for Minneapolis. Minn. Sp. Laws Ch. 281 (1883) as amended by Minn. Spec. Laws Ch. 30 (1889). The proposed amendment does no more than what the legislature *actually did* in 1883 and 1889. It thus falls directly within the authorization of section 410.07. Indeed, it seeks to perpetuate what the legislature did then. It preserves and maintains a park system for Minneapolis independent of the control of the City Council.

III. The City's refusal to submit the amendment is not justified under the standards of Minnesota law.

Minnesota law requires the City to carry a heavy burden if it wishes to thwart the popular will by refusing to submit a properly presented question to a referendum. It must show that the proposed amendment would be manifestly unconstitutional, on a topic preempted by state law, contrary to public policy, or beyond the scope of matters that may be included in a charter. It has failed to do so here.

A. The amendment is not manifestly unconstitutional or illegal.

First are the cases in which the courts have prevented a proposed amendment from going to the voters, if that amendment is *manifestly unconstitutional* or otherwise clearly illegal. In *Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn. 1982) the proposal sought to end a special Minneapolis excise tax that had been committed to the repayment of bonds already issued for construction of the Metrodome. The Minnesota Supreme Court found that the amendment would be an unconstitutional impairment of the obligation of contracts in violation of the Article I, Section 10, of the United States Constitution.

In *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W. 2d 306 (Minn. 1995), the proposed amendment would have established term limits for the holders of city offices. The Minnesota Supreme Court found that Article VII, Section 6, of the Minnesota Constitution set forth the only qualifications that could be required of office holders. Thus there was a direct collision between the proposed amendment and the state constitution, so the amendment could not be submitted.

The key in these cases, as in earlier cases, is that the contradiction between the proposal and the constitutional language must be *manifest*. The reason for this is that voters have a right to propose amendments to their charters. Thus, it is only when a proposal is so clearly outside the bounds of either the state or federal constitution that the government has the authority to step in and stop the debate. This is not the case here.

B. The Legislature has not preempted the field.

In second group of cases, the courts have permitted cities to refuse proposed charter amendments on subjects that have been *preempted* by state law.

In some cases the legislature has expressly provided that only the state law will apply and has expressly excluded any supplemental local legislation. For example, the Municipal Planning Act, Minn. Stat. § 462.351 provides, in part:

It is the purpose of sections 462.251 to 462.359 to provide municipalities, in a single body of law, with the necessary powers and *a uniform procedure* for adequately conducting and implementing municipal planning.

(Emphasis added.) By insisting on a “uniform procedure” the statute clearly excludes any change or supplementation from local charters, ordinances, or regulation. The city must simply follow the state mandate in these cases. It cannot modify it or supplement it. In *Nordmarken v. Richfield*, 641 N.W.2d. 343 (Minn. App. 2002), the Minnesota Court of

Appeals found that the state statutes regulating planning and zoning so occupied that field of law that no home rule charter provision could alter the manner for consideration of proposed planning and zoning changes. A similar result had been reached earlier in *Housing and Redevelopment Authority v. City of Minneapolis*, 293 Minn. 227, 198 N.W.2d 531 (1972).

Unlike zoning, where there is a comprehensive state law regulating the topic throughout the state and a requirement of uniformity, there is no state-wide law to regulate the uniform structure or operation of park boards or the structure of municipal charters, and no similar requirement of uniformity.

The City has also suggested that the subject matter of this amendment is preempted by various provisions of Article XII of the Minnesota Constitution and by various provisions of chapters 365 to 418 of the Minnesota Statutes. It is wrong on all counts.

Minnesota Constitution, Article XII § 3 is the general provision that allows the legislature to create units of local government. It says:

The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats.

The legislature has usually done so by enacting general laws delegating that power to others. Thus it allows county boards to create and change the boundaries of townships, Minn. Stat. § 365.01, and permits the chief administrative judge to create municipalities, Minn. Stat. § 414.02. Likewise it also allows each home rule charter to provide for “any scheme of government” for that city. Minn. Stat. § 410.07.

Article XII § 3 simply gives the legislature power. It does not prescribe that that power must be exercised by the legislature alone; it can be delegated. The text does not say that “only the legislature” can exercise this power; it is not manifestly exclusive. Rather, this provision provides that the legislature “may provide by law for the creation” of local government units. *See id.* The legislature did this by enacting Minn. Stat. § 410.07 where it allowed “for any scheme of government.” *See* Minn. Stat. §410.07. Therefore there is no manifest conflict with the state’s constitution in this case.

The City also relies heavily on the provisions of Minn. Stat. § 410.18. That section provides that a city charter “may” provide administrative powers, and that the council “may” determine certain matters. The language is entirely permissive. It does not mandate anything and it does not prohibit anything. The charter might contain such provisions or it might not. This is hardly an argument that the legislature created a uniform mandate.

In *Haumant v. Griffin*, 699 N.W.2d 774 (Minn. App. 2005), the Minnesota Court of Appeals found that a proposed amendment that required Minneapolis to establish a facility for medical use of marijuana was preempted by federal and state criminal law and was thus invalid.

In other preemption cases, the Minnesota courts have applied a four factor test, first enunciated in *Mangold Midwest Co. v. Richfield*, 274 Minn. 347 143 N.W.2d 813, 819-20 (Minn. 1966). Courts review:

- (1) the subject matter regulated;
- (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern;
- (3) whether any partial legislation on the subject matter evinces an intent to treat the subject matter as being solely a matter of state concern; and

- (4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general state population.

See id. An examination of these factors clearly shows that the state has not preempted the field of the organization of home rule city charters. It has not tried to create uniformity. Minn. Stat. ch. 410 gives the people of Minneapolis broad latitude to structure their government as they wish. The proposed amendment should have no effect at all on the general state population.

C. The proposed amendment is consistent with public policy.

In *Haumant, supra, at 780*, the Minnesota Court of Appeals also noted that the proposal for the city to establish a medical marijuana distribution center would violate state public policy, because Minn. Stat. § 152.021 flatly prohibited manufacture, distribution or possession of marijuana and provided criminal penalties. The uniform and statewide prohibition overrode any local interest, especially because it was enforced by the penal law.

In contrast, the proposed amendment is authorized by Minn. Stat. § 410.07, which permits a Charter to propose “any scheme of municipal government.” The public policy of the state, articulated in Article XII of the Minnesota Constitution and in Minn. Stat. ch. 410, is to allow broad latitude to home rule cities. There is certainly nothing equivalent to the criminal prohibitions in the marijuana laws to articulate a contrary public policy.

D. The proposed amendment regulates governmental structure and the powers and duties of local units and is thus a proper subject for a charter provision.

Relying on *Haumant, supra, at 781*, the City has also suggested that the proposed charter amendment is an improper *legislative initiative*. The amendment in that case

sought to legalize medical marijuana; the proposal there did not regulate the form of government of the city in any way. Section 410.07 of Minnesota statutes only allows a municipal charter to regulate the structure and operations of municipal government; it does not authorize the charter itself to contain substantive legislation on other topics. (Minn. Stat. § 410.20 deals with the recall of elected officials and the enactment or repeal of ordinances. In addition, the statute allows city charters to include popular legislative initiative and referendum, but Minneapolis has not chosen to do so.)

In contrast, in this case the amendment deals only with the structure of governance of one unit of city government, leaving it in the hands of an independent board, subject to legislative control.

IV. The Minnesota Legislature currently recognizes the Park Board as a separate unit of local government.

The Minnesota Legislature already recognizes the Minneapolis Park Board as a separate unit of local government. It also recognizes that the Park Board and the City Council are two separate units of local government within the same territory.

The Minnesota Constitution, Art. XII § 2, requires that a special law enacted by the legislature can be effective only when approved by the governing body of the unit of local government affected by that law. When it enacts special laws relating to the Minneapolis parks, the Minnesota Legislature routinely designates the Park Board as governing body of the local government unit that must approve the law can take effect. It does not refer them to the City Council for approval. *See, e.g.*, Minn. Sp. Laws Ch. 688 (1969) (recreation powers); Minn. Sp. Laws Ch. 91 (1974) (park improvements outside of the city); Minn. Sp. Laws Ch. 574 (1988) (compensation of commissioners); Minn. Sp. Laws Ch. 362 (1992) (redistricting); Minn. Sp. Laws Ch. 120 (1993) (residency); and

Minn. Sp. Laws Ch. 198 (1999) (electricity sales). The City has argued that a charter provision cannot create a separate unit of local government. The legislature, however, recognized the Park Board as such a unit long ago.

The legislature also recognizes that both the Park Board and the City Council are responsible units of local government within the same geographic territory. In the 2008 session alone, the Minnesota Legislature enacted three special laws that affected the interests of both the Park Board and the City Council. In each case the laws required the consent of both the Park Board and the City Council before they could take effect. *See* Minn. Sp. Laws Ch. 314 (2008) (Mississippi River Front Redevelopment Board); Minn. Sp. Laws Ch. 331 (2008) (park dedication fee); Minn. Sp. Laws Ch. 366, art. 17, sec. 5 (2008) (park dedication fee). So the City's concern that a charter amendment could not separate the functions of Park Board from those of the City is without merit. That separation already exists and is recognized by the Minnesota Legislature.

V. **The proposed amendment, if adopted, would have practical effect, even without further legislative action.**

Immediately on the effective date, the proposed amendment will have practical legal effects. It sets forth the purpose and direction of the parks system. It creates a public trust over park lands forever. These are clearly regulations of municipal functions that are expressly permitted in a charter provision by Minn. Stat. § 410.07. The proposal also reconfirms the veto power of the mayor of Minneapolis over Park Board legislative actions and budget decisions. That is a matter relating to government structure and well within the range of topics that can be included in a charter amendment. So even if the City's interpretation of the proposal were correct, there are provisions that would take effect without further implementing legislation.

The City greatly exaggerates the consequences of the amendment. The proposal provides simply that the Park Board “shall have all powers and rights of a separate and independent governmental unit of the state as determined by the state legislature.” This phrase has meaning for past and future legislature actions. It does not make the Park Board a state or regional agency, although the legislature might choose to do so. When the amendment is adopted, the Park Board would continue to be a creature of the City Charter and would independently exercise all of the powers and rights of Minneapolis with respect to parks. In this limited sense it would still be a “department” of the Minneapolis government, although its status would be very different from that of other departments. Minn. Stat. ch. 410 recognizes that departments can have different organization and structure. The legislature could, as it always can, change any of these relationships by legislation. The proposal is not, however, dependent on legislative action to take effect.

V. The proposed amendment is properly drafted.

The petitions for the amendment complied with all of the requirements of Minn. Stat. § 410.12, subd. 1. It is to be placed into the Charter as section 1A of Chapter 16.

The City seems to complain that the drafting of the proposal is not elegant. State law does not require elegance. Nothing in the state statutes requires that charter amendments contain a line-by-line revision of the existing document. This amendment is much like an ordinary session law enacted by the legislature. Under ordinary principles of statutory interpretation, the most recent enactment automatically repeals or modifies any prior law that it contradicts. If possible, this amendment and prior Charter provisions should be construed in a manner that both could remain valid.

CONCLUSION

For more than 85 years, the law in Minnesota has been clear:

The provisions of [the predecessor of 410.07], with respect to the submission of amendments to home rule charters are mandatory. It is the absolute duty of a city council to submit such amendments, subject possibly to the qualification that they need not be submitted if it is apparent that they are not in harmony with the Constitution or laws of this state.

State ex rel. Andrews v. Beach, 155 Minn. 33, 191 N.W. 1012 (1923). Moreover, a charter amendment that complies with the requirements of Article XII § 5 of the Minnesota Constitution and has been submitted by a citizen's petition in accordance with Minn. Stat. § 410.12 must be presumed to be constitutional. *Minneapolis Term Limits*, 535 N.W.2d at 310 (Stringer, J. dissenting).

In this case, the petitioners have submitted a valid petition with sufficient signatures in a timely manner, with no manifest violation of the constitution or laws. Thus, the City must submit the proposal to the people on November 3, 2009. Then and only then will the citizens of the City of Minneapolis be able to exercise their constitutional right to vote on this important issue.

For the reasons stated above as well as the reasons set forth in the Petition, Petitioners, respectfully request that the court grant the relief requested in the petition.

Signature Page Follows.

Respectfully submitted:

Date: August 28, 2009

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