

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Cathy Spann, Aimee Lundberg,
Jonathan Lundberg, Don Samuels,
Sondra Samuels, et. al.,

Petitioners,

ORDER FOR EVIDENTIARY HEARING

vs.

Court File No.: 27-CV-20-10558

Minneapolis City Council and
Mayor Jacob Frey

Respondents.

This matter came before the Court on October 19, 2020, based upon the Petitioners' Petition for a Writ of Mandamus. James V. F. Dickey, Esq., appeared on behalf of the Petitioners. Gregory P. Sautter, Esq., and Caroline M. Bachun, Esq., appeared on behalf of the Respondents.

Based upon all the files, records and proceedings herein, the Court makes the following:

1. On August 17, 2020, Petitioners filed a Petition for a Writ of Mandamus.
2. The Petition, in relevant part reads, "[t]he Mayor has failed to employ at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, pursuant to City Charter § 7.3." (Pets.' Pet., ¶ 60.) The Petition continues that, "[t]he City Council has failed to fund at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, force (sic) pursuant to City Charter § 7.3." (*Id.*, ¶ 61.) As a result, Petitioners request this Court "issue a peremptory writ of mandamus ordering Respondents to comply with Section 7.3 of the Minneapolis City Charter and

- employ and fund at least 0.0017 employees of the police force per resident of Minneapolis, or 743 peace officers.” (*Id.*, ¶ 63.)
3. The Minneapolis City Charter (the “Charter”) states, “[t]he City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually.” Minneapolis City Charter § 7.3(c).
 4. In their opposition memorandum, Respondents argue that Petitioners’ “action must fail because they have not established standing in order to bring this claim.” (Resps.’ Opp. Mem. Writ of Mandamus, p. 8.) Further, Respondents argue that the Petitioners “[rely] on taxpayer standing as an alternative to the injury-in-fact requirement, but this type of standing is inapplicable to this mandamus action.” (*Id.*)
 5. At the hearing, Petitioners argued that Minn. Stat. §§ 586.01 and 586.02 confer standing on Petitioners because Petitioners are beneficially interested in the City Council and Mayor performing the actions required by law, namely, funding a police force of at least 0.0017 employees per resident.
 6. Standing requires Petitioners to have “a sufficient stake in a justiciable controversy to seek relief from a court.” *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). “The goal of the standing requirement is to ensure that issues before the courts will be ‘vigorously and adequately presented.’” *Id.* (citing *Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis Cnty.*, 215 N.W.2d 814, 821 (Minn. 1974)).
 7. Typically, standing looks at a plaintiff’s allegations, not the merits of the plaintiff’s case. In turn, when “...ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must

construe the complaint in favor of the complaining party.” *Forslund v. State*, 924 N.W.2d 25, 32 (Minn. Ct. App. 2019) (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). Likewise, a court analyzes whether a plaintiff has “made adequate allegations to support the existence of standing.” *Id.* Thus, commonly, a plaintiff need only sufficiently allege, not prove, the standing factors.

8. The Minnesota Court of Appeals has framed the standing test under Minn. Stat. §§ 586.01 and 586.02 as a merits analysis. In a writ of mandamus action, standing requires “[a] petitioner [to] demonstrate: (1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995); *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. Ct. App. 2003); *See also Friends of Animals & Their Env’t (FATE) v. Nichols*, 350 N.W.2d 489, 491 (Minn. Ct. App. 1984) (analyzing only the first two standing factors in a writ of mandamus petition).
9. The Minnesota Court of Appeals’ standing test is the same test the Minnesota Supreme Court has applied when determining the merits of a writ of mandamus action. *See Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017) (“To obtain a writ of mandamus, [Petitioner] must therefore show that (1) the district court failed to perform an official duty clearly imposed by law, (2) which caused a public wrong specifically injurious to [Petitioner], and (3) for which there is no other adequate legal remedy.”) (internal quotation marks omitted). *See also N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (also applying the Minnesota Court of Appeals’ standing test as the merits test in a mandamus action).

10. In this regard, this Court cannot decide the issue of standing in this case without ruling on the merits of Petitioners' petition. However, simply put, the Court does not have enough information, facts or law to decide the merits or the outcome of Petitioners' petition at this time. As a result, the Court must only analyze whether Petitioners have a beneficial interest in the petition. *See* Minn. Stat. § 586.02. (“The writ shall issue on the information of the party beneficially interested...”) Notably, Petitioners framed the issue of taxpayer standing as a “beneficial interest” question and analysis in their supporting memorandum. (*See* Pets.' Mem. Supp. Writ of Mandamus, p. 10.)
11. In their supporting memorandum, Petitioners argue that they are beneficially interested in a writ of mandamus in this action because they are Minneapolis taxpayers. (*See Id.*) Unlike federal court jurisdiction, “it generally has been recognized that a state or local taxpayer has sufficient interest to challenge illegal expenditures.” *McKee v. Likins*, 261 N.W.2d 566, 570–71 (Minn. 1977). As early as 1888, the Minnesota Supreme Court held, “where the object is...to enforce a public duty...any private person may move to enforce it.” *State v. Weld*, 40 N.W. 561, 562 (Minn. 1888). “[I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials.” *Oehler v. City of St. Paul*, 219 N.W. 760, 763 (Minn. 1928).
12. In *McKee v. Likins*, the Minnesota Supreme Court held that “[t]axpayers are legitimately concerned with the performance by public officers of their public duties. Accordingly...a taxpayer suing as a taxpayer has standing to challenge administrative action which allegedly is rulemaking adopted without compliance with the statutory notice

requirements.” 261 N.W.2d at 571. “While we do not decide the question here, there would appear to be stronger policy reasons to allow a challenge to the performance of mandatory duties by public officials than a properly promulgated regulation itself since the performance of clear public duties by public employers affects the public at large while the effect of a regulation itself may be more limited.” *Id.* at 571 n.5.

13. Here, there is a clear public duty bestowed upon the City Council and Mayor Frey – funding a police force – that affects the safety of both the Petitioners and the public at large. This public duty clearly falls within *State v. Weld*, which again, held that “where the object is...to enforce a public duty...any private person may move to enforce it.” 40 N.W. at 562. As the Minnesota Supreme Court noted in *McKee*, there are “strong[] policy reasons to allow a challenge to the performance of mandatory duties by public officials.” 261 N.W.2d at 571 n.5. Specifically, Petitioners allege recent violent acts¹ in their Minneapolis neighborhoods prove that the public duty to fund a police force is compromised. Petitioners now move to enforce said duty.
14. Thus, this Court believes that the Minneapolis taxpayers in this case have a beneficial interest in the clear public duty of funding a police force of at least 0.0017 employees per resident under the Charter § 7.3.
15. In their memoranda, Petitioners and Respondents have characterized the standing issue as the non-expenditure of municipal funds. (*See* Pets.’ Mem. Supp. Writ of Mandamus, p. 11; *See also* Resps.’ Mem. Opp. Writ of Mandamus, p. 26.) Respondents correctly note that “[t]axpayer standing derives from the understanding that a government’s or government

¹ “[A] mother’s car was shot up with eight bullets, with her infant on board...[a] bullet went through the front door of a wall of our neighbor’s home...[a] woman was kicked and stomped within inches of her life in the middle of the street.” (Aff. of James Dickey, Ex. 20.)

actor's unlawful disbursements of taxpayer money will likely increase the tax burden on the government's taxpayers." (See Resps.' Mem. Opp. Writ of Mandamus p. 25.) (citing *Arens v. Village of Rogers*, 61 N.W.2d 508, 514 (Minn. 1953)). However, Respondents then argue that "[Petitioners'] claims against the City argue that the City should be spending *more* money – not that what the City already spends is in excess of its authority." (*Id.* at 26–27.) Petitioners are not arguing for the City to spend more money on the police force as a discretionary policy. Rather, Petitioners argue that Respondents "...have violated their duties to fund, employ and manage an adequate police force required by the City Charter." (Pets.' Mem. Supp. Writ of Mandamus, p. 1.) More specifically, Petitioners argue that Respondents have misallocated money that properly should fund a police force; Respondents are collecting tax money that should be paying for the police force, but is paying for something else. This alleged misallocation of money would "likely increase the tax burden on the government's taxpayers." See *Arens*, 61 N.W.2d at 514.

16. Respondents have no authority to divert funds from the Minneapolis Police Department if they have not met their public duty to fund a police force of at least 0.0017 employees per resident. Misallocation of money that properly should fund a police force, is an unlawful disbursement of funds. Petitioners claim Respondents allegedly diverted \$1.1 million from the Minneapolis Police Department in 2020, even as there was a purported shortage in peace officers. Thus, as Minneapolis taxpayers, Petitioners have a beneficial interest in the petition both to enforce a public duty and to remedy any alleged misallocation of funds.
17. It should be noted that at the hearing, Petitioners argued that Petitioners Aimee Lundberg and Jonathan Lundberg had stray bullets shot at their home after Petitioners' memorandum was due but prior to the October 19, 2020 hearing date. These facts, if true, would be

considered “a public wrong specifically injurious” to Aimee Lundberg and Jonathan Lundberg. However, the Court need not address Petitioners’ particularized injury as all Petitioners are beneficially interested in a writ of mandamus as Minneapolis taxpayers.

18. Lastly, as was cursorily mentioned above, the Court does not have enough information, facts or law in order to determine the merits of this case and whether a writ of mandamus should issue at this point in time. Specifically, the Court must hear evidence in order to determine whether a writ of mandamus should issue “to compel the performance of an act which the law specially enjoins as a duty resulting from an office...” Minn. Stat. § 586.01. Further, the Court must hear evidence in order to determine whether the writ of mandamus, if issued, should be alternative or peremptory, pursuant to Minn. Stat. § 586.03.
19. The Court anticipates that allowing the parties to call witnesses may result in the need for limited discovery. Further, engaging in limited discovery may inadvertently push the evidentiary hearing farther out than the parties would like. Although the Court would also like to address this matter in an expedited fashion, it simply cannot do so without more facts/information as it relates to the accounting, the Minneapolis Police Department and its employees, the injury/harm to Petitioners, and the law.
20. Thus, the parties shall submit a proposed scheduling order on or before the end of business on **November 30, 2020**, which should outline discovery parameters and deadlines, as well as proposed days/weeks for the evidentiary hearing to be heard by this Court. The Court urges the parties to submit a joint recommendation/proposed order, however, if the parties are unable to agree on a timeline, then the parties should submit separate proposed orders on or before November 30, 2020, for the Court’s review. The Court will schedule an evidentiary hearing as early as possible in 2021.

IT IS HEREBY ORDERED:

1. The Petitioners have standing to proceed on their Petition for a Writ of Mandamus.
2. On or before November 30, 2020, the parties shall submit either a joint proposed scheduling order or separate proposed scheduling orders for the Court's review. The proposal shall include parameters and a timeline of discovery, if any, as well as suggested days and/or weeks for the evidentiary hearing to be heard by this Court.

BY THE COURT:Dated: November 20, 2020

Jamie L. Anderson
Judge of District Court