

NO. A21-0931

State of Minnesota
In Court of Appeals

Cathy Spann, *et al.*,

Respondents,

v.

Minneapolis City Council, *et al.*,

Appellants.

RESPONDENTS' BRIEF

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STATEMENT OF LEGAL ISSUES

(1) Whether the District Court correctly ordered the Minneapolis City Council and Mayor Jacob Frey to comply with their Charter-required legal duty to fund and maintain a “police force” of at least 0.0017 sworn officers per resident of the City of Minneapolis.

- a. Respondents raised this issue in their Petition for a Writ of Mandamus. Doc. 1. Appellants moved to dismiss and opposed the petition. Docs. 16, 48. The District Court granted Respondents’ petition and issued an alternative writ of mandamus requiring Appellants’ compliance with the Charter. Add. 26, 29.
- b. The District Court granted Respondents’ Petition for a Writ of Mandamus. Add. 26, 29.
- c. Appellants raised this issue on appeal by timely filing the Notice of Appeal from the July 21, 2021 Judgment on July 23, 2021.
- d. Apposite Cases and Statutes:
 1. Minneapolis Charter, §7.3
 2. *State ex rel. Gillis v. Goodrich*, 264 N.W. 234 (Minn. 1935)
 3. *State ex rel. S. St. Paul v. Hetherington*, 61 N.W.2d 737 (Minn. 1953)
 4. Minn. Stat. §586.01, *et seq.*

STATEMENT OF THE CASE

Respondents are eight residents and taxpayers of the North Side of Minneapolis within the Jordan and Hawthorne neighborhoods and within Precinct 4 of the Minneapolis Police Department who have been subjected to increasing violence in their neighborhoods as a result of Appellants' failure to fund and employ adequate police. After watching police force numbers dwindle and violence near their homes correspondingly increase, Respondents filed this lawsuit on August 17, 2020. Respondents sought a writ of mandamus to require the Appellants Minneapolis City Council and Mayor Jacob Frey to comply with the Charter's legal requirement that the City Council fund, and the Mayor employ or maintain, at least 0.0017 "employees of the police force" per resident of Minneapolis.

Appellants moved to dismiss Respondents' petition on standing grounds, which the District Court denied. Appellants and Respondents then conducted substantial discovery and submitted to the District Court a record consisting of stipulated facts and exhibits, along with closing arguments. The District Court granted Respondents' petition and issued an alternative writ of mandamus that requires the Appellants to fund and employ or maintain at least 730 sworn officers as part of the Minneapolis police force, or a greater number if dictated by the 2020 U.S. Census, by June 30, 2022. The U.S. Census population count for Minneapolis was then issued on August 12, 2021, establishing Minneapolis' 2020 Census population at 429,954, which requires 731 sworn officers for the City. Appellants appealed from the judgment issued by the District Court and sought accelerated review before the Minnesota Supreme Court. The Court denied that request.

RELEVANT FACTS

The parties agreed on a stipulation of facts and exhibits in lieu of an evidentiary hearing. Docs. 45 (Facts) and 46 (Exhibits).¹ These facts and documents show that Minneapolis was and is in a crisis which requires Court intervention. The structure and history of the Minneapolis Charter show that it requires an active force, that Minneapolis does not have the requisite number of active officers on that force, and that Minneapolis itself projects a further decline well beneath minimum required officer numbers.

I. The Minneapolis City Charter Sets Forth a Clear Legal Duty to Fund and Employ a Minimum Police Force of 17 Active Officers Per 10,000 Residents.

Article VII, section 7.3(c) of the Charter requires the Minneapolis City Council to “fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation.” Stip. 4. Section 7.3(c) requires the City Council to provide funding, and then the Mayor must take that funding and translate it into a required minimum number of active, sworn police officers. Stip. 3-4.

Section 7.3(a) of the Charter works in tandem with Section 7.3(c) and charges the Mayor with “complete power over the establishment, maintenance, and command of the police department.” Stip. 4. Mayor Frey testified to his understanding of §7.3(a):

So the chief reports directly to me, and as you stated, under the charter the mayor has significant/complete control over the police department with, of

¹ In this brief, Respondents refer to the Stipulation of Facts, Document Number 45, as “Stip. [page]” or Stip. ¶__”; to the Stipulated Exhibits, Document Number 46, as “Ex. __ at [page]”; and to deposition transcript pages within those exhibits at the actual page within the deposition. Deponents’ names follow transcript citations, and deposition exhibits are referenced as “Dep. Ex. __”.

course, the major exception of budgetary issues that have to get recommended by me and then passed by the council.

Mayor Frey thus has Charter authority and a *mandate* to hire more officers if below the Charter minimum—he cannot simply let money sit in the Minneapolis Police Department Budget, unused, when it is allocated to pay for police officers.

II. The Charter’s “Funding” Requirement Differs From the City’s Definition of “Funding,” Making the City’s Budget Process Disconnected From Reality.

The Charter’s requirement that the City Council “fund a police force” and the City Council’s definition of “funding” are distinct concepts based on Appellants’ reasoning. When Appellants say they have provided “actual funding,” they are talking about a theoretical bookkeeping number on paper that operates as a “cap.” *See* Stip. ¶20. But the Charter’s funding requirement is a *minimum* and refers to a “*force*”—it is about funding that, put to use, enables the Mayor fulfill his duty to bring police force numbers up to the minimum if numbers drop.

There are four different police force strength numbers in play in this case. In the budgetary process, the City creates “goal” force strength numbers and projected “funding” numbers on paper. In other words, the City can have a “goal” number of officers, yet leave those positions vacant. Thus, the City’s 2021 police budget states a “target” force strength of 888 officers, but funding is theoretically available for only 770 officers on a monthly basis. Stip. ¶20 & Ex. 6 at M015713 (2021 Budget); Ex. 16 at 48-54 (Cruver).

Appellants protest that their budget employees’ say-so that they “fund” 770 officers is good enough to satisfy their Charter obligations, but Appellants’ 770-officer “funding” number is, at best, a functional “cap.” Reality bears this out: the budget might pay for 770

officers if the actual costs for sworn officers are consistent with the City Council and Mayor’s budgetary assumptions. But Appellants admit that this has not happened. *E.g.*, Stip. ¶¶9-15. In other words, as discussed in more detail below, while Appellants claim to provide “funding,” on paper, for 770 officers, they do not have nearly that many officers on the force right now. Stip ¶9 (690 as of June 1, 2021). And, the Minneapolis Police Department admits that officers actually employed will continue to decline to, under the very best conditions possible, 637 as of April 1, 2022. Stip. ¶¶11, 15.

The distinction between theory and practice can be summarized in a simple chart:

Goal number of officers	888
Potentially funded officers	770
Officers actually employed using funding	Fewer than 690 (June 1, 2021)
Active officers	690 minus officers on leave (estimated 46 on leave June 1, 2021)

Mayor Frey’s testimony and Appellants’ admissions to the facts on the ground cement the practical meaninglessness of Appellants’ 770-officer bookkeeping figure. Minneapolis currently has fewer than 690 officers. Stip. ¶9. Mayor Frey agrees that Minneapolis needs more officers to secure its safety and says that he wants to hire more. Ex. 17 at 14 (Frey). In fact, he says he would but for the City Council’s defunding efforts. Ex. 17 at 87-88 (Frey). At the same time, Appellants claim that 770 officers are “funded.” Appellants’ Br. 4. If the “770” number meant what Appellants say it does—that there is funding which pays for 770 officers to be employed on MPD—then Mayor Frey should be able to immediately offer jobs to 80 or more new officers today, bringing force payroll

numbers to 770. If he could do that, then it would be clear that there is “funding” for 770 officers. But Mayor Frey claims he cannot hire any more officers than currently projected, and the City Council has not provided Mayor Frey money to hire more officers than what was originally allocated to MPD. Ex. 17 at 50-52, 55-56, 87-88 (Frey); Ex. 18 at 49 (Bender).² The 770 number is a cap, not the Charter’s definition of funding.

What explains the disparity between actual officers on the force and the theoretical budget figures that lead the City to under-fund its police force? The City of Minneapolis is a large enterprise, and there appears to be a problematic disconnect between budgeting and the requirements of public safety. Budget Director Amelia Cruver made this uncomfortably clear in her deposition:

Q. ...Net on Street, what does that mean to you?

A. That takes the total sworn and removes those that are on leave.

Q. So why does Minneapolis track the number of Net on Street?

A. I am not sure. The number I care about is the ones that we pay for, and that's line 19.

Q. ...And...line 19 refers to not just the overall number of employees that are possible to hire for the MPD, but the number that are funded, right?

A. That's right.

² Officer salaries make up the “vast majority” of the Minneapolis police budget, and neither the Mayor nor the City Council can change the compensation terms for Minneapolis police officers because those terms are set by a collective bargaining agreement with the Police Officers’ Federation of Minneapolis (“POFM”). Ex. 41 (CBA); Ex. 17 at 39-41 (Frey); Ex. 16 at 50 (Cruver); Ex. 18 at 49 (Bender). The CBA thus removes any City Council “discretion” as to *how* to fund the number of officers on the force. If there is no budgeted money for additional officers, the City Council must add funding to add officers. Ex. 17 at 42, 55-56 (Frey).

Ex. 16 at 16-17 (Cruver) (bold added). This kind of disconnect is problematic when the MPD needs working officers, or at least officers on payroll, to fulfill Appellants' Charter obligations.

III. The Purpose of the 1961 Charter Amendment, Which Created the Minimum Staffing Requirement, Was to Add Active, Sworn Officers to the Minneapolis Police Force.

In 1960, Minneapolis faced a police shortage and crime crisis similar to today. This crisis was publicly debated and reported on by the Minneapolis Star and the Minneapolis Tribune. Because of the MPD's stagnant police force numbers, the City held a vote in 1961 and enshrined in the Charter the requirement that is today's Section 7.3(c). The public history behind the Charter Amendment shows the purpose of the provision.

The MPD was clearly "shorthanded" by January 1960, when then-Police Chief Buzz Winslow praised the University of Minneapolis' force that took the "campus...off [MPD's] hands." Ex. 30³ at PET422 ("U' Police Force Guards State's 4th Largest City," Tribune, Jan. 24, 1960, p. 7). Minneapolis was a city of about 483,000 in 1960, but only had a force of 646. PET 427 ("A Police Need Met," Morning Tribune, Aug. 5, 1961, p. 4).

Because the MPD was substantially understaffed, police officials, then-Mayor Peterson, and to-be-Mayor Naftalin endorsed a Charter Amendment which would require as follows:

Shall proposed Amendment No. 17, amending Chapter 6 of the Minneapolis City Charter, to increase the Police Force by establishing a ratio of 1.7

³ All references to historical sources from the 1960s are to Exhibit 30 presented to the District Court, and the citations herein are to the Bates numbers for that Exhibit, "PET ____."

employees per 1,000 residents, or as closely thereto as is possible through a tax levy of not to exceed 3 mills, be adopted?

PET 439 (Text of Amendment). Police, including then-Chief Moore, devoted time to supporting the amendment, especially because of the “critical shortage of police personnel,” noting that they would be “derelict in [their] duty if [they] didn’t inform others of [their] position.” PET 425 (Lundegaard).

The next Chief of the MPD, Pat Walling, stated frankly after his August 1961 appointment by Mayor Naftalin: “The basic reason for the record increase in crime is our inadequately manned police department. A year from now, when the 190 men will be on the street, the figures will show a considerable reduction.” PET 429 (Premack, “Walling Named Chief of Police,” Sunday Tribune, Aug. 6, 1961, at 5). In fact, Chief Walling originally turned down the police chief job from then-Mayor Peterson in 1960, because “at the time the department was inadequately manned. I didn’t think I had sufficient men to do the job....Now with the passage of the amendment...I’ll have enough horses to pull the wagon.” PET 428 (Premack at 1); *see also* PET 430.

The citizens of Minneapolis overwhelmingly supported the Charter Amendment with 65.6 percent approval in June 1961. PET 426 (“More Police Assured for 1962,” Star, June 14, 1961, at 13A). Following the vote, the MPD requested a budget, which Mayor Naftalin approved, with authorization for 836 positions, even though only 821 active officers were required under the charter minimum, “[t]o maintain this minimum in the face of normal vacancies and separations.” PET 427 (“A Police Need Met,” Morning Tribune, Aug. 5, 1961, at 4). Mayor Naftalin and the MPD clearly understood in 1961, immediately

after passage, that a *force* of 821 required the number of *officers on payroll* to be greater than the minimum—otherwise, the number actually enforcing the law would fall below the new Charter minimum.

After the Charter Amendment passed, the MPD and the City undertook a massive effort to bring in 190 new officers immediately. For example, the MPD placed advertisements in the Morning Tribune seeking “Patrolmen” for “190 new positions” in the “Minneapolis Police Dept.” PET 432 (far left side of page). The push was for sworn officers who could enforce the laws of the City. The Minneapolis job attracted hundreds of applicants. By October 1961, Minneapolis’ precincts had run out of the 750 applications originally provided by the civil service commission. PET 436 (“Many Show Interest in Police Jobs,” Morning Tribune, Oct. 5, 1961, at 42). By the following November, the City had added at least 180 new officers to the MPD. PET 441-442 (Mayor Naftalin speech to City Council, November 9, 1962).

The history of the 1961 Charter Amendment, which is now Section 7.3(c) of the Charter, and today’s staggering increase in violence while police force numbers dwindle, demonstrate that there must be at least 0.0017 active, sworn officers per resident on the Minneapolis “police force” at any given time. Mayor Frey’s admissions in this case, quoted by the District Court in its Order below, further support the purpose of the 1961 Amendment, still in effect today, and the current need for more officers. Add. 22-23. As the District Court noted: “Mayor Frey acknowledges that ‘the uptick in violence we are seeing’ is because police officers are needed.” Add. 23 ¶60.

IV. Minneapolis’ Police Force Has Dwindled by More Than Twenty Percent Since May 2020 and Continues to Do So, With No Sure End to the Attrition in Sight.

Since May 2020, the Minneapolis police force has experienced a historically devastating decline. As of April 15, 2021, the number of Minneapolis sworn officers actively enforcing the laws was fewer than 651—which is the *highest* it had been since January 30. Stip. ¶¶7-8; Ex. 1 at 3. When Mayor Frey gave his August 2019 budget address for the 2020 budget year, he claimed that the sworn MPD component of 900 officers (876 active officers) was “stagnant”—MPD needed more officers. Ex. 17 at Dep. Ex. 21, M000765 (Frey). MPD is now *more than 250 officers below that*. The maximum⁴ number actively on Minneapolis’ streets—the “police force”—has been, on the corresponding dates in 2021:⁵

Date	Total Sworn Minus Continuous Leave
January 2	649
January 16	655
January 30	628
February 13	634
February 27	645
March 13	640

⁴ The maximum number of officers on active duty on any given day is the total number on payroll minus the number on “continuous leave,” defined below.

⁵ The City is now actively tracking these numbers. April 10 was the most recent date available when the parties signed and filed their Stipulation on April 21, 2021. Appellants can provide updates to the Court as needed but have notably failed to do so in their Principal Brief. Respondents fear the number on the force has dwindled even further than projected by the MPD when this matter was submitted to the District Court for consideration.

March 27	639
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Ex. 1 at 3.

Mayor Frey recognized that the active sworn officer component of the force was dangerously low—roughly 640, he stated—on February 4, 2021. Ex. 40 (Frey Facebook post). These numbers are unacceptable for a City of nearly 430,000. They are like the unacceptable numbers that led to inflated crime in 1960, triggering the Charter Amendment discussed herein.

A. Minneapolis Police Officers Have Been Leaving the Force in Droves.

The Minneapolis police force has experienced the destruction of over *twenty percent* of its force. Since January 2020, and as of April 15, 2021, *185 sworn police officers* separated from the MPD. Stip. ¶37. On January 4, 2020, there were 879 sworn police officers on payroll and only 25 on continuous leave. Stip. ¶6. On April 10, 2021, there were only 743 on payroll and 92 on continuous leave. Stip. ¶6. And the decimation continues. As of June 1, 2021, MPD projected a total of 690 officers on payroll and 46 on continuous leave. Stip. ¶9. The separation of 190 and counting officers from a force of 879 is a reduction of *twenty-two percent*. Nearly a quarter of the Minneapolis police force is gone, and there are still likely 46 or more on “continuous leave,” which means they will also separate.

These officers have left because of a lack of City Council support that resulted in on-duty injuries and retirement, especially related to Post-Traumatic Stress Disorder. PTSD injuries have risen because of the sharp increase in violence in Minneapolis’ streets

with insufficient police. The officers with PTSD have sought, *en masse*, Public Employees Retirement Association (PERA) Duty Disability, described more below. The City also offered a one-time retirement incentive called the “Rule of 80” that bonused officers with age and experience adding up to at least 80 years if they retired. Ex. 15 at 56-59 (Almquist). Twenty-two officers took this retirement incentive and separated from the force by early 2021. Ex. 15 at 59 (Almquist).

B. The Minneapolis City Council Has Defunded the Police in Violation of the Charter.

The sharp decline in the MPD is no surprise given how the City Council has treated it. After the murder of George Floyd, a veto-proof majority of the City Council publicly stated that they were going to defund the MPD. Council President Lisa Bender tweeted on June 4, 2020, in response to Council Member Jeremiah Ellison’s similar call for defunding:



EXHIBIT 34
STIPULATED EXHIBIT 35

Ex. 35. Explaining what her tweet meant, Council President Bender testified that a unanimous City Council resolution passed on June 12, 2020 could best describe her views. This Resolution identified the MPD’s \$193 million budget as a problem. *See* Ex. 18 at 17-

20 (Bender) (referencing Resolution No. 2020R-152, *available at* <https://lms.minneapolismn.gov/Download/MetaData/17459/SignedAct.pdf>). Ms. Bender further lamented that, despite vast majority of MPD dollars going toward officer salary and benefits fixed by a CBA, “the context, for me, is that we have significantly increased the police department's budget during my time on the City Council; ...\$30 million more today than it was in 2014, when I took office.” Ex. 18 at 35 (Bender).

1. The mid-year 2020 cuts.

Immediately after the June 4 tweet, the Powderhorn Park rally, and the June 12 resolution, the Minneapolis City Council began cutting the MPD budget, with its unanimously stated intent to downsize the MPD. Just two weeks after the June 12 resolution, on June 26, 2020, the City Council passed Resolution No. 2020R-177, which cut the MPD expense budget by \$8,625,191. Stip. ¶16; Ex. 3 at M001474.

Council President Bender blamed that cut on projected revenue shortfalls due to COVID-19. Ex. 18 at 15-16 (Bender). However, Council President Bender admitted that the City Council had the discretion to make zero cuts to the MPD. Ex. 18 at 26 (Bender). Mayor Frey agreed that the cuts were based on projected COVID-related revenue shortfalls, Ex. 17 at 20, but also admitted that the City did not have to cut the MPD’s budget. Ex. 17 at 19-20 (Frey).

Thereafter, the City Council made further cuts to the MPD. On July 24, 2020, the City Council cut an additional \$1,524,000 from the MPD budget. Ex. 4 at p. 2 (Resolution

No. 2020R-194). This cut removed \$212,218 from the budget for the “CSO Program,”⁶ and \$957,719 from “Patrol.” Ex. 4 at p. 2. This cut also *added* \$1,100,000 to the “Office of Violence Prevention” within the Health Department. Ex. 4 at p. 2. These actions were explicitly intended to take from MPD to give to OVP. In response to questions from Council Member Schroeder’s office, Robin McPherson of the MPD identified the real-world effect of these cuts:

2. Did the reallocation of roughly \$1 million for violence prevention efforts this summer (out of a \$188.5 million budget) have *any* impact on police staffing?

Answer: Yes, absolutely there has been an impact. Because we needed to show immediate savings...we had to cancel our academies and the CSO programs as part of that \$1+ million savings. We did not have enough discretionary spending available to cut to reach the required dollars.

Ex. 33 at M004690 (emphasis in original). Mayor Frey testified that he was aware of the cuts to the CSO Program. Ex. 17 at 24 (Frey Dep). Consistent with Robin McPherson’s email, the MPD “cancelled its August 2020 police academy after the enactment of Resolutions 2020R-177 and 2020R-194, revoking job offers to 36 police officer candidates.” Stip. ¶19. The MPD only hires through academies. Stip. ¶23. Thus, due to this cut, the MPD had *no way* to offset continuing attrition to the department.

2. The 2021 budget further slashed MPD funding.

As part of the annual budget process, the Mayor receives input from departments by July 1, meets with those departments, and then puts together a proposed budget to present

⁶ The Community Service Officer Program, or CSO Program, consists of full or part time MPD employees who are unsworn civilians with the goal of attending a future Minneapolis Police Academy and being hired as sworn Police Officers. Stip. ¶18.

to the City Council by August 15, annually. Charter §9.3(a)(2) & (3). The City Council then amends the Mayor's proposed budget, adopts its budget, and returns the Council Adopted Budget to the Mayor for signature. Charter §9.3(a)(5). The Mayor has total discretion as to what kind of budget he will propose city-wide, except, of course, the requirement to fund the MPD. Charter §7.3(c). But the Mayor has to make a political calculation as "what [the Mayor's office is] able to get passed through the City Council." Ex. 17 at 65 (Frey).

For the 2021 Budget, Mayor Frey proposed a cut of MPD's budget to approximately \$174 million, nearly \$20 million lower than the 2020 Budget of \$193 million. Ex. 32 at M005243; Ex. 17 at 37 (Frey). But even that proposed cut, calculated to get past the City Council and "retain as many officers as we possibly could," was not enough to appease the defunding intent of the City Council. Ex. 17 at 36-37 (Frey).

The Council attempted to reduce the total *possible* sworn officers on payroll to 750 for the year 2022—regardless of what the 2020 Census might dictate. Ex. 32 at M005244 ("In 2022 the CSL will fund 750 sworn officers per amendment 14 A5"). That proposed amendment failed. *See* Ex. 18 at 50 & Ex. 6 at M015713. The Council then passed a total MPD budget of \$164,292,000 for which it does not require Council approval—about \$10 million under the Mayor's proposed budget. Stip. ¶20; Ex. 6 at M015718.

At the same time, the City Council removed ongoing funding for academies, the CSO program, and overtime funds, and "backfilled" two one-time reserve accounts which would provide funding for those purposes upon City Council approval. Ex. 17 at 43-49 (Frey); Ex. 32 at M005244 (Amendment 14A1 – 1a-d); Ex. 32 at M005244 (Amendment

14 A4). The Council has since released the reserve accounts, but they are not funded in an ongoing manner. Stip. ¶21b; Appellants' Br. 5 n.2.

Even with the academy funds released, the City Council has now further lowered the MPD's baseline budget and made it impossible for the MPD's slow hiring methods to deal with the current crisis. All the while these cuts were occurring, the number on "continuous leave" in MPD kept increasing, and the number of sworn officers in the MPD continued decreasing, creating a "ghost force" that did not protect Respondents and their neighbors on the North Side.

C. Minneapolis' Payroll and "Continuous Leave" Numbers Show That Minneapolis Has a "Ghost Force" Insufficient to Satisfy the Charter's Requirements.

Appellants argued below that unsworn employees counted toward the minimum funding metric. Add. 9. Respondents argued below that the Charter requires funding for active officers because the availability of long-term leave and the possibility of many officers being on leave would create an unsustainable "ghost force" not intended by the 1961 Charter Amendment. Add. 8-9. The District Court found that "employees of the police force" in Charter Section 7.3(c) referred to sworn officers on payroll. Add. 8-12. Respondents still submit that the Charter requires funding and employment of active officers, not payroll numbers.

As the Charter Amendment history and reality dictate, paper payroll numbers are far from sufficient to satisfy the Charter. Too many officers on payroll but also on leave⁷

⁷ The City uses the term "continuous leave" to refer to those officers who are on leave for 78 or more hours during an 80-hour pay period. Stip. ¶8. However, sworn officers may be

is exactly the pitfall that Chief Walling and Mayor Naftalin sought to avoid in 1961 by hiring more officers than the minimum required. Ex. 30 at PET 427 (“A Police Need Met,” Morning Tribune, Aug. 5, 1961, at 4).

On a “normal” year, the MPD might usually have between 13 and 35 sworn officers on continuous leave. *See* Ex. 1 at 5-7. From February 2019 through May 2020, the number fluctuated roughly between those figures, usually on the low side. Ex. 1 at 5-7. This is similar to the number of officers above the required minimum that Mayor Naftalin and Chief Walling targeted in 1961 and 1962. However, starting in June 2020, MPD officers started to take more “continuous leave” of 78 hours or more in their 80-hour (two week) pay periods. As the number on continuous leave rose, peaking at 150 in late December and early January 2020-2021, the number of officers available for work simultaneously declined.

Instead of employing rapid hiring practices to address the burgeoning number of police on leave, the City has instead attempted to hide behind payroll figures—its “ghost force.” But the City’s payroll practice is soon to meet reality, as the officer “headcount” minus “continuous leave” will mean the same thing as “headcount” once those on “continuous leave” have permanently left the force.

on leave on a given day and not on “continuous leave” because they were not on leave for at least 78 hours in a pay period. Stip. ¶8. Thus, the number of officers in MPD who are “active” and working on a given day is fewer than the number of officers on payroll (“headcount”) minus “continuous leave.” *Compare* Ex. 22 at ¶6 with Ex. 1 at 3 (about 21 additional officers on some sort of leave that was not “continuous leave”).

D. The Vast Majority of Those on Continuous Leave Will Separate From the Force Because of Duty Disability.

Starting shortly after the civil unrest in the wake of George Floyd's murder, numerous sworn police officers have made psychological and physical workers compensation claims. Many of them have also made claims of PERA Duty Disability, claiming disabling injuries related to their duties as sworn police officers. Stip. ¶38. Between May 25, 2020 and April 15, 2021, Minneapolis was aware of 167 sworn police officers who had applied for PERA Duty Disability because of an injury or PTSD claim. Stip. ¶38a. Of those 167 applicants, 97 had separated from employment as of April 15, 2021. Stip. ¶38b.

If applicants are awarded PERA Duty Disability, the City assumes they will separate from employment, because separation within 45 days is a statutory requirement for the disability award. Stip. ¶38d. There is a strong likelihood that these applicants will be approved because of a change to the PERA law in 2019 that created an express presumption that PTSD injuries are related to duty as a police officer. *See* Laws 2018, Chapter 185, art. 5, §1, *available at* <https://www.revisor.mn.gov/laws/2018/0/185/laws.5.1.0#laws.5.1.0> (Adding subdivision 15(e) to Minn. Stat. §176.011).

There were 92 MPD officers on continuous leave as of April 10, 2021. As of the time this matter was submitted to the District Court, of those 92, 88 were assigned to a "Personnel Leaves" unit, which is a non-working "unit" within MPD that tracks inactive officers so that commanders of active units do not have to constantly adjust for those on long term leave when making staffing decisions. Stip. ¶39. Of the 88 assigned to Personnel

Leaves, 79 of those filed or were expected to file for PERA Duty Disability. *See* Stip. ¶39a & b. If they separate or have separated, which was and is the City’s assumption, MPD stands to lose a minimum of 79 additional officers from its April 2021 numbers just based on PTSD and on-duty physical injuries. Given that 97 of 167 prior applicants departed the force within a year of their injuries, the remainder will likely have left by the end of 2021.

E. The MPD Projects a Continuing Decline in Officer Numbers.

The MPD’s projections defeat the premise that the City is in technical compliance with the Charter based on a “ghost force” that is merely numbers on paper without people behind it. The City’s projections are an admission that, even under their view of the law, Appellants *will be* in violation of the Charter throughout most (if not all) of the next two years as the Minneapolis population grows. The MPD projects they will have the following number of sworn and active officers on the corresponding future dates:

Date	Total Sworn	Continuous Leave	Max. Active
June 1, 2021	690	46	644
January 1, 2022	649	0	649
April 1, 2022	637	0	637
June 1, 2022	669	0	669
January 1, 2023	721	0	721
January 31, 2023	757	0	757

Stip. ¶¶9-14.

The MPD has made highly optimistic assumptions that underlie these projections. First, there must be no additional freezes or losses of MPD funding. Second, the Mayor must support MPD’s funding requests. Third, the 2022 Adopted Budget must fully fund

the Mayor's requested hiring, training and payroll expenses. Fourth, additional funding must be allocated for training expenses including facility rental, increasingly costly background checks, and other increased costs because of increased training. Fifth, the MPD must continue or expand its CSO program. Sixth, the MPD must expand its Field Training Officer (FTO) program to provide mentoring and training to Academy graduates. Seventh, there must be a return to normal attrition after the current group of disability claimants leave the MPD. Eighth, the 2021 training must result in 110 new sworn officers. Ninth, the 2022 training must result in 160 new sworn officers. Stip. ¶15.

These are staggering assumptions when considering a City Council that is determined to defund the police and even remove the charter minimum requirement. As the Court knows, the City Council put forth yet another amendment to remove the funding requirement of the MPD, and they only withdrew their proposal when a group of activists qualified their nearly identical amendment for voting on November 2, 2021. The only way to ensure that the City Council follows the Charter is Court intervention.

V. **As the Minneapolis Police Force Has Declined, Violent Crime Has Risen, Disparately Harming Respondents and Their Diverse North Side Neighbors.**

Respondents and their neighbors are bearing the brunt of the City Council's misguided quest to destroy law enforcement that protects Minneapolis' most diverse communities. The Respondents have repeatedly pleaded with the City Council for help, but their cries fall mostly on deaf ears, while a hail of bullets rips through Jordan and Hawthorne. Respondents' stories show why the people of Minneapolis passed the 1961

Charter Amendment—to protect against this very possibility, with actual officers, not numbers on a budget document.

A. Violent Crime Has Risen Dramatically in Minneapolis Between 2019 and 2020 and Has Continued Into 2021.

Appellants admit that the crime rate in Minneapolis has increased since the murder of George Floyd. Stip. ¶41 & Ex. 9. The increase in crime numbers is jaw-dropping and is summarized in Exhibit 9, a report created by MPD. Between 2019 and 2020, crime trends are as follows:

Type of Crime	Increase from 2019 to 2020
Homicide	70.8%
Robbery	46.6%
Aggravated assault	23.5%
Burglary	18.4%
Theft from motor vehicles	25.3%
Auto theft	35.9%
Arson	69.5%
Gunshot wound victims	105%
Guns recovered by MPD	13.6% (41.5% in Precinct 4)
Carjackings	301%
Theft of motor vehicle parts	660.9%

Ex. 9 at 6, 7, 13, 15, 16, 18.

Even in the beginning of 2021, the number of rapes and robberies continued to rise from 2020 numbers, increasing by 22.7% and 59.7%, respectively. Ex. 9 at 9. The number

of gunshot wound victims is up in January 2021 versus January 2020 by 250%. Ex. 9 at 13. These numbers are appalling, and they are felt most heavily where Respondents live.

B. Violent Crime Disproportionately Affects Precinct 4, Where Respondents Live.

The Appellants know that violent crime disproportionately affects the most diverse neighborhoods in Minneapolis. Yet the City Council continues to try to defund the MPD. The Council claims it tailors its actions to mitigate disproportionate bad impacts on people of color. They even require a Racial Equity Impact Analysis (REIA) for Council Actions, supposedly to achieve that tailoring. But they ignore the disparate racial impact of their quest to defund the police.

The MPD and the Mayor's Office submitted a REIA to the City Council as part of a request for additional MPD funding for support "across the city" through the co-responder program with the Hennepin County Sheriff and the Met Council. Ex. 31 at M003564. Even though the support would be widespread, the REIA stated that additional officers across the city would benefit those in diverse neighborhoods particularly at risk of increased criminal violence. Ex. 31.

The MPD and Mayor's office reported as follows to the City Council:

People of color and more specifically, people from the African American community are disproportionately [sic] more likely to be victims of violent crime and account for the highest percentage of victims of gunshot wound citywide (81%). The highest concentration of both violent crime and shots fired occur in the two precincts with the most diverse communities in the city, Precinct 3 in South Minneapolis, and Precinct 4 in North Minneapolis. Together, these two precincts account for 61.35% of the city's violent crime incident totals and 75% of the city's total homicide victims. Thus, the highest concentration of violent crimes are occurring in the city's most diverse areas.

....

This will achieve racial equity goals by way of having a more equitable distribution of resources across our city. Due to the concentration of part I crimes (violent and shooting) in the most diverse areas of our city, those areas typically experience longer call response times due to the additional strain on resources. We would expect the additional resources to aid in both response during peak call times (middle watch) in the city by decreased response times and increased visibility. Since areas with the highest racial diversity in the city also experience the highest totals with respect to violent crimes and gun crimes, we would expect service levels to increase in those areas for calls for service which would be measured by a decrease in call response time and an increase in presence.

In short, when Minneapolis adds police, it benefits diverse neighborhoods like Respondents' Jordan and Hawthorne the most. When Minneapolis defunds police, it hurts diverse communities like Respondents' the most.

C. Respondents Have Suffered Greatly Due to the City Council's Refusal to Obey the Law.

Respondents testified substantially about the terrible harm they have faced because of the City's failure to adequately fund and employ a police force in their neighborhoods. Ex. 21 (Response to Interrogatory No. 2); Ex. 10 (Sondra Samuels); Ex. 11 (Cathy Spann); Ex. 12 (Aimee Lundberg). Appellants are not even challenging that Respondents have suffered injuries from the concomitant increase in crime. Stip. ¶41; Appellants' Br. 2 n.1. However, Respondents' stories are key to understanding the purpose of the 1961 Charter Amendment, which was intended to protect Minneapolitans from malfeasance like the City Council's.

Respondents' stories speak volumes. The massive increase in violence in North Minneapolis started with the riots following the murder of George Floyd. Ex. 10 at 24 (S.

Samuels); Ex. 11 at 19 (Spann). But the violence did not end there. Respondents clearly identify the City Council's June 7, 2020 defunding announcement and subsequent budget cuts as both catalyst for the violence and a slap in the face to North Siders who have struggled to end violence. Sondra Samuels testified as follows:

[W]ould it be fair to say it's a neighborhood that has suffered violence for much longer than just 2020?

A. Oh, for sure. But I tell you, 2020 was a capstone year. It was the first time my husband and I actually looked at each other and contemplated whether we could stay...to have a city council just go on CNN and make an announcement that they're defunding the police...and dismantling, it felt like they were defunding and dismantling our neighborhood and all that we had...given, had sacrificed, and had been given, quite frankly, from this community.

Ex. 10 at 16-18 (S. Samuels).

Cathy Spann testified the same:

Q. And tell us...what was your response when nine council members stood up with an organization behind a sign that said "Defund the Police"?

A. I had no response. My feeling was numb, shocked disbelief, but I had no response.

Q. After that rally, what happened in your community...?

A. Violence erupted.

Q. What do you mean by that?

A. Families started hearing gunshots hourly, daily, nonstop...the violence just wouldn't stop. People's homes were being shot up. Innocent children and people were being shot on the street. Violence erupted all throughout North Minneapolis, all throughout the Jordan neighborhood. On many blocks, there were gunshots.

Ex. 11 at 31-32 (Spann).

Aimee Lundberg testified similarly:

Q. And then it says, "This announcement, "...with no plan in place," "...out of your emotional response to injustice has ended up in being our burden to bear."....What do you mean by that?

A. I mean their announcement to defund, dismantle....was an emotional response....It was coming from extreme voices, and...I believe it was an emotional response to what we saw happen between George Floyd and the police officer....And as citizens,...we took the brunt of that, the side effect of their announcement and the movement of the MPD and the escalation in carjackings, robberies, and automatic weapons gunfire. It was our burden. We were the ones who lived it.

....

By talking about this, are you pointing to any other actions after June 7th by the council?

A. I mean, we have just seen the budget cuts. You know, we've continued to see that happen.

Ex. 12 at 54-55, 57 (Lundberg).

Respondents also testified that the violence has not abated since the end of the riots after the murder of George Floyd. Sondra Samuels testified:

Well, things...haven't really calmed down in North Minneapolis....I've never in my life experienced what we experienced here post-riot and looting, and...I got to say, and the announcement of the city council about defunding the police and dismantling....those are two inextricably linked scenarios....the biggest difference between the violence and the crime and the lack of safety before the riots and then post, is that we had a depleted police force. So there's never been a time that I called 911 and didn't get an answer, or when they picked up, they say, "Can you hold." Never, ever, ever, ever, ever....we used to complain about the police not coming right away....There was never a time that they just didn't come....[I]t became really clear around what was happening that we just did not have the people power

to do all of those things....And...I remember an officer saying, you know, "Ma'am, we just don't have the numbers."

Ex. 10 at 29-32 (S. Samuels).

Not even the winter, which usually provides a reprieve to the North Side, has diminished the violence in Jordan and Hawthorne. Aimee Lundberg testified:

Q. Looking at February and this last month of March [2021], how has it been?

A.Last night, last evening, we had a 17-year-old who was shot a block and a half away from our home. And on the Citizen app, you can see over twelve sightings of gunshots, where they're been reported, shots detected. And that experience, that's kind of our normal now.

....

A. Okay. I should not use past tense. It still feels like the wild west. I think I have the responses that I do because I'm not yet in it being past tense. It is still the narrative. It is still what we are living. We came out of a winter that we still heard...gunfire in February at 20 below zero. Two nights in a row, we heard close gunfire. One of those nights sent one of my children into a pretty intense physical reaction. It's still happening....to the extent that we can't rest. Our bodies have found no rest.

Ex. 12 at 33, 61 (Lundberg).

Respondents feel fear, have suffered injury, and they feel defenseless and abandoned by the City Council because of its repeated statements and actions to defund the MPD. Aimee Lundberg has been diagnosed with PTSD because of the increased violence in Jordan. Stip. ¶41d. Gunmen shot Aimee and her husband Jonathan's house twice, once next to her child's bedroom window, because of increased crime and lack of police protection. Ex. 21 (Response to Interrogatory 2); Ex. 38 at PET 420-421 (photos). Cathy Spann became exhausted after being under constant stress from the increased violence in the Jordan neighborhood due to the City Council's efforts to defund the police

and passed out at a June 23, 2020 community event. Ex. 11 at 35-42 (Spann); Ex. 21 (Response to Interrogatory 2). Sondra Samuels also testified:

And, again, it's not that things didn't happen before. It's that we have a depleted police force, and nobody's coming. And...the criminals know that, that nobody is coming....And so it has felt like we are in a defenseless, absolutely defenseless and helpless posture that I never experienced in all of the years I've lived in Minneapolis. I've never been, Counsel, afraid. I've never been afraid of my neighborhood....I've just never been afraid of my neighborhood until the city council moved to defund the police, and we saw the numbers just drop off in an ongoing way. I mean, like a constant.

Ex. 10 at 35-36 (S. Samuels).

In their personal experience, Respondents see the key difference between the ongoing violence now and prior levels as a lack of police, and that the decline in the MPD has been the sole determinant of their declining safety. Aimee Lundberg testified:

Q. So my question for you is, how did the city's failure to comply with its legal duties under City Charter Section 7.3 cause your house to be shot twice?....

A....The...experience that we had this summer...after George Floyd's death, there was an obvious reduction in police, and the escalation of crime and gunfire went to an unprecedented level. We were hearing machine guns. We were hearing exchange of fire, not just a pop, pop, pop, which is what we've come accustomed to, unfortunately. And I don't want to admit that it's normalized, but it had been. But the extent in which this violent behavior happened this summer was immediate and it was overwhelming, and it is so close by, so close by, to the point where it wasn't, "Oh, this is happening because it's a week" -- or "a weekend and it's later at night." It was in the middle of the day. And so I do believe, because of the escalation of gunfire and the escalation of violent behavior in this community, it got to the point where, yeah, our house got hit. I'm surprised it wasn't hit with more bullets. It's shocking to me that it's only two.

The other Respondents echo these deponents' testimony. Ex. 21 (Response to Interrogatory 2). Respondents documented the violence and damage with photographs as well. Ex. 38 (photographs of the bullet holes in the Lundbergs' siding are at PET 420-421).

D. Respondents Have Repeatedly Cried Out for Help, With Limited Response From Respondents and No Actual Help.

Respondents' testimony of grief, loss, and the stories of a "hail of bullets" is not internalized grief. They were not silent, letting their community be ravaged by violence with no response. Rather, they spoke out. They sent email after email to the Appellants begging for help. Except for a few sparse responses, mainly from Mayor Frey and Council Member Lisa Goodman, their cries went unanswered. Ex. 27 (Respondents' emails).

VI. Minneapolis Is Relying Only on Old, Slow Methods of Adding to the Force That Are Insufficient for This Moment in History.

The Minneapolis Police Department requires *all* sworn officers—rookies and veterans alike—to go through police academies for onboarding and training. Even lateral transfers who are licensed peace officers attend to ensure their training is "up to date" before they become full MPD officers. Stip. ¶23. Each Minneapolis Police Academy takes about three months to complete. After graduation, new sworn officers are "probationary" and must shadow Field Training Officers on regular patrol calls. It takes several months for them to transition to independent work. Upon completion of their FTO probationary period, new officers are finally deemed full patrol officers able to work independently. Stip. ¶30.

The City has no current plan to add sworn officers to MPD in 2021 other than through the first two academies to take place in 2021 and potentially through the CSO program. Stip. ¶33. Since May 25, 2020, the MPD has only added 30 new sworn officers.

At the time this case was submitted to the District Court, there were 19 recruits in the February 2021 Police Academy who sought to become fully sworn licensed officers upon graduation in May 2021. Stip. ¶31. Including the February 2021 Academy, there are three Minneapolis Police Academies for sworn police officers scheduled for 2021. Stip. ¶¶22, 24. The second was scheduled for August 2021, and a final academy of cadets was scheduled to begin in December 2021 and end in 2022. The MPD was only expecting to add a maximum of 110 new sworn police officers over the three 2021 training academies due to capacity limits. Stip. ¶¶24-25.⁸ There are two CSO Academies scheduled for CSOs. The Academy scheduled for June will have three candidates, and the fall CSO Academy has not been scheduled yet, nor are the numbers for that class known.

For the 2022 budget process, the Mayor's office asked the MPD to request in its 2022 budget proposal funding to train as many new sworn police officers as is reasonably possible. Appellants represented below that the Mayor's proposed budget to be released in August 2021 would include training for 160 or more new sworn officers in 2022. Stip. ¶34; *see also* Exhibit 8. However, it is unclear from the budget proposal whether that is true. <https://stories.opengov.com/minneapolismn/published/SzNaOgENE>. And whether the City Council will adopt the Mayor's proposals is unknown.

⁸ It is not clear whether these academies are actually full consistent with expectations, which Appellants failed to discuss in their brief.

During the course of these academies, it is not as though attrition stops. Rather, as the City’s projections show, even while slowly adding officers, the MPD expects to lose more officers than it adds over the next year. Stip. ¶¶9-14.

VII. Charter Section 7.3 Requires an Annual Review of Population Numbers as Part of an Annual Budgeting Process, and Provides for an Annual Tax to Ensure Adequate Staffing.

Section 7.3(c) and 9 of the Charter refer to an annual budgeting and tax process that require the City Council and Mayor to determine a police budget that meets the Charter’s staffing requirement every year. In addition, Section 7.3(c) allows the City Council to tax Minneapolitans specially for the police force using an *annual* discretionary tax on property within the City to ensure the minimum staffing requirement is met.

The District Court held that the language of Section 1.3(d)(5) of the Charter unambiguously provides, “any reference to population or other enumeration refers to the latest decennial census.” Add. 13.⁹ However, because the Census had not been compiled as of July 1, 2021, the District Court held that the 2019 U.S. Census population estimate was a proper population number for Appellants to use to budget for the police force in 2020. Add. 14.

VIII. In The District Court, Appellants Admitted That Funding Requires Hiring.

While Appellants argue here that funding need not translate into employment of officers in the MPD, they did admit in the District Court that funding and hiring of officers

⁹ The District Court did not mention the provision of Charter §1.3(d) that states that its subsections apply “except as this charter otherwise provides.” Stip at 2 (Charter, Section 1.3(d)).

go together:

The other thing, Your Honor, is yes, we do have this funding minimum, but Minneapolis is unique in the sense that it has a funding minimum that many other departments don't have funding minimums. So if one were -- and I don't know the grave details of how Duluth or Moorhead or any other place in the city of -- of the state of Minnesota does it, **but without funding minimums they could have a force that goes down to a minimum number, the extremes that you talked about, but here we have a funding minimum that is being met by the department.** Does that answer your question, Your Honor?

Doc. 66 at 6:12-22 (emphasis added).

Appellants also “[g]ranted there is a certain point when officers are funded and **hiring must happen....**” Doc. 66 at 17:9-14 (emphasis added). Appellants then conflated funding and hiring later in the argument, stating:

The funding **for the hiring** and for the positions are there. The Mayor and the Chief have proposed and received a budget for 2021 that increased hiring and intend to ask for more money for the 2022 budget, but they can only move as fast as they can move.

Doc. 66 at 26:23-27:3 (emphasis added). Appellants thus admitted that funding necessarily requires hiring. The Mayor's mandate to hire upon receiving funding is unequivocally supported by the structure, text, and history of the Charter. After all, the sole purpose of funding a “police force” is to hire its members.

Appellants did attempt to hyper-technically reduce Section 7.3(c) of the Charter to mere paper funding numbers in other statements to the Court. *E.g.*, Appellants' Br. 16. But Appellants recognized in their admissions quoted herein that the purpose of the Charter is for the Mayor to use funds to hire officers.

ARGUMENT AND AUTHORITIES

I. Introduction

When the District Court properly granted the alternative writ of mandamus in favor of Respondents, it gave them a glimmer of hope that the City of Minneapolis and their neighborhoods, dearly beloved to them, would have a chance to thrive again. The District Court’s order was refreshing common sense in the face of the City Council and Mayor Frey’s hyper-technical arguments that entirely ignore the purpose of the Charter they are duty-bound to uphold. As one glaring example, taken to their logical conclusion, the Minneapolis City Council and Mayor Frey are arguing that Mayor Frey can use “discretion” to fire every officer in the MPD today and leave the City with no police force at all. This Court should reject Appellants’ unreasonable positions, affirm the District Court, and send the same message to Minneapolis’ officials: they need to restore their police force—*now*.

Below, the parties disputed two major arguments related to what the Charter requires, decided by the District Court: (1) what type of person is part of the Charter-mandated “police force”?, and (2) how many on the police force does the Charter require? As to the first, the District Court held that the Charter requires Appellants to fund and employ sworn police officers. Add. 8-12. As to the second, the District Court held that because the 2020 Census was delayed, the U.S. Census Bureau’s 2019 population estimate controlled for the time being, but the District Court also held that the 2020 Census was an appropriate figure on which to base the Charter’s minimum police force requirement. Add. 12-15. Because the duty to fund and employ the police force is clearly set forth in the

Charter and Respondents failed to uphold it, the District Court issued the writ of mandamus. Add. 15-24.

On appeal, Appellants appear to drop their argument that the police force includes unsworn employees of MPD. Appellants largely turn their focus to the second issue before the District Court, which involves which population estimate the City Council and Mayor must consider when funding and employing the police force. Appellants’ Br. 8-15. But even if this Court were to disagree with the District Court’s reference to the 2019 U.S. Census population estimate for Minneapolis, it is harmless error at best, because the 2020 Census has been issued and is controlling based on the District Court’s judgment. Add. 24; 2020 U.S. Census, Minneapolis population.

Appellants also challenge whether the Charter requires the Mayor to hire the number on the “police force” funded by the City Council—or any police at all. Appellants’ Br. 15-20. The text, history, and structure of the Charter, along with the requirements of the biannually agreed upon collective bargaining agreement (“CBA”) with the Police Officers Federation of Minneapolis (“POFM”) give the Mayor no discretion as to how many officers to hire once funding is provided.

And finally, Appellants argue that the District Court could not order them to use their discretion in a particular way. Appellants’ Br. 20-24. The District Court did not order Appellants to exercise their discretion in a particular way; the District Court simply ordered them to comply. How they comply is a matter of discretion, as long as they do their jobs.

The District Court was right to issue the writ of mandamus, and this Court should affirm.

II. This Court May Sustain the Judgment Below on Any Grounds.

In reviewing the issuance of a writ of mandamus, this Court gives deference to the District Court’s findings of fact, and will only reverse on appeal if there is no evidence reasonably tending to sustain the District Court’s findings. *Popp v. Winona County*, 430 N.W.2d 19, 22 (Minn. Ct. App. 1988). This Court reviews the District Court’s “ultimate conclusions” as to the meaning of the Charter *de novo*. *Id.*

However, “the function of this court ‘is limited to identifying errors and then correcting them.’ *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). It is the appellant’s burden to show how the district court erred. *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949). ‘[W]e may affirm a grant of summary judgment if it can be sustained on any grounds.’ *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).” *Everest Stables, Inc. v. Foley & Mansfield, LLP*, No. A20-1514, 2021 WL 4059943, at *6 (Minn. Ct. App. Sept. 7, 2021).

A Charter is “subject to the recognized rules of statutory construction.” *Id.* Where a Charter provision is unambiguous, no construction or interpretation is necessary—courts apply the statute’s plain meaning. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). But if the Charter’s terms are ambiguous—subject to different reasonable interpretations, *State v. Caldwell*, 803 N.W.2d 373, 382 (Minn. 2011)—then the Court must attempt to ascertain its meaning based on extrinsic evidence available to it. *Leslie v. Minneapolis Teachers Ret. Fund Ass’n*, 16 N.W.2d 313, 315 (Minn. 1944). An essential canon of statutory construction is that “words or phrases are construed ...according to their

common and approved usage” unless some special meaning has been attributed to them over time. Minn. Stat. §645.08(1).

III. Appellants Do Not Challenge the District Court’s Determination That Charter Section 7.3(c) Refers to Sworn Officers, As Opposed to Total Employees, Within the MPD.

Appellants do not appear to challenge the District Court’s conclusion of law that the “police force” in Charter §7.3(c) consists of sworn officers. Respondents agree with the District Court that, at minimum, sworn officers are required.¹⁰ This specific requirement of *sworn officers*, as opposed to non-sworn employees, is important in understanding the Charter’s directive to Appellants—the purpose of the 1961 Charter Amendment was to reduce crime in Minneapolis, and without hiring to follow the funding of *sworn officers*, that objective would be defeated. Thus, while Appellants waive any argument against the interpretation of Charter Section 7.3(c) as referring to sworn officers, Appellant Mayor Frey does not have the discretion to allow the number of sworn officers on the “police force” to fall below the Charter minimum if money is there to hire them.

IV. The 2020 Census Controls the Number of Sworn Officers Required for MPD Under the Charter, and This Court Should Affirm on That Basis.

The parties below clearly agreed that the 2020 Census, when it was issued, would control the question of how many officers must be on the Minneapolis police force. Doc. 66 at 25:19-24, 26:16; Doc. 48 at 18. Now, because the District Court provided an

¹⁰ Respondents believe that the District Court should have held that history of the 1961 Charter Amendment supports an active officer requirement, not just keeping a certain number of officers on payroll, but Respondents agree that the District Court’s holding is more appropriate than Appellants’ argument below. *See supra* 7-11.

alternative to the 2020 Census prior to its release, Appellants want this Court to hold that the District Court erred. Appellants’ Br. 8-15. However, this Court may affirm the District Court on any grounds supporting the judgment. *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012). The judgment in this case resulted in a writ of mandamus which corresponds to the 2020 Census—the population figure that Appellants agree is controlling. Regardless of whether the District Court was right or wrong about applying the 2019 U.S. Census population estimate to Charter §7.3, the Court can affirm the issuance of the writ of mandamus based on the fact that the District Court also held that the 2020 Census would control.¹¹

V. There Is No Live Controversy for This Court to Decide Related to the District Court’s Reference to the 2019 Census Estimate.

There is no live controversy for this Court to adjudicate related to the population figure to be applied under the Charter. Appellants claim that this issue is not moot because it “will be a recurring issue” due to the District Court’s holding that Appellants have a duty to be “proactive” in ensuring police force numbers do not violate the Charter. Appellants’ Br. 9; Add. 15 ¶27. There are at least two fundamental problems with Appellants’ argument: (1) the District Court’s ruling only applies in the context of where “the Census is not published as expected,” and (2) there is no case law support for an exception to mootness simply based on the possibility of recurrence alone.

¹¹ Whether the District Court erred by ordering the Writ based on ‘whichever population number was higher’ is also a dead issue; the 2020 Census population figure for Minneapolis is higher than the 2019 Census population estimate.

The District Court expressly limited its reliance on the 2019 Census population estimate in circumstances where “the Census is not published as expected.” Add. 14 ¶23. While Respondents believe that the Appellants must update budgets and hire for the police force more frequently, that is not what the District Court held. Appellants quixotically tilt at windmills with argument about theoretical future lawsuits like this one. Appellants’ Br. 11-12. But any population issue as in this case would only arise, under the District Court’s order, if both (a) the Census is delayed again, and (b) the City of Minneapolis’ police force numbers fall below that required by population estimates at the end of a decade. Appellants engage in extreme speculation by claiming this issue is likely to recur—it is unlikely that another pandemic will hit the United States in 2029 such that the 2030 Census is delayed.

Appellants also provide no case law to support their claim that the possible recurrence of an issue, alone, is sufficient to keep a controversy alive. *See* Appellants’ Br. 8-15. This is likely because there is no legal basis for resurrecting a moot issue solely based on whether it might occur again—the matter must also be inherently evading review:

the “capable of repetition, yet evading review” doctrine is “limited to the situation where two elements are combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.”

Kahn v. Griffin, 701 N.W.2d 815, 821 (Minn. 2005).

In *Kahn*, for example, the Supreme Court held that the decennial recurrence of redistricting and the inherent fleeting nature of elections—likely to be completed before a

lawsuit can be completed¹²—made the issue before it inherently evading review and not moot. *Id.* This case is unlike *Kahn* for two reasons: (1) there is no reasonable expectation that a pandemic will hit Minnesota in 2029 (unlike redistricting, which happens every 10 years) and delay the 2030 Census to trigger the District Court’s narrowly limited population estimate ruling, and (2) a lawsuit under those circumstances would not “evade review” at all; rather, if the Hennepin County District Court were to apply the same reasoning, the population issue would either come before this Court or be resolved by the issuance of the Census, as in this case. The Court simply does not have a live issue before it related to population numbers.

VI. This Court Can Also Affirm If It Finds That the Charter Requires Annual Population Review Related to Force Numbers.

Even if the Court reaches the question of which population number the District Court should have used, it can affirm because the Charter requires an annual population review to ensure adequate funding and employment of sworn officers. Relying only on the decennial census to address police needs nine years later confounds the intent of the people of Minneapolis who overwhelmingly supported the 1961 Charter Amendment. *E.g., Wegener v. Comm’r of Revenue*, 505 N.W.2d 612, 617 (Minn. 1993) (“we are equally obliged to reject a construction that leads to absurd results or unreasonable results which utterly depart from the purpose of the statute”); Minn. Stat. §645.17(1).

¹² Similar to, for example, a Governor’s executive orders during a pandemic which are of inherently short duration.

The District Court held that the language of Section 1.3(d)(5) of the Charter unambiguously provides, “any reference to population or other enumeration refers to the latest decennial census.” Add. 13. The District Court did not mention the provision of Charter §1.3(d) that states that its subsections apply “except as this charter otherwise provides.” Stip at 2 (Charter, Section 1.3(d)). However, the annual nature of the Section 7.3(c) special tax, the annual budgeting process, and the purpose of the minimum force requirement all support an annual rebalancing.

A. The Charter Requires an Annual Tax If More Officers Are Needed, and the Budget Is an Annual Process.

Under Section 7.3(c) of the Charter, the City Council may increase property taxes by 0.3 percent “*annually*” to ensure that Minneapolis has the requisite number of officers on its police force. This tax can be assessed on top of anything else assessed to City residents and property owners. As Budget Director Cruver testified, this provision is certainly available if the City is below Section 7.3(c)’s minimum and is unique to MPD. Ex. 16 at 37-39 (Cruver). Because the tax is available “annually,” an annual review of police force numbers is required. Section 9.3 of the Charter also provides for an *annual* budget. *Each year*, the City Council must adopt a budget “which must ...appropriate money for each board’s, commission’s, department’s, and officer’s operations.” Charter §9.3(a)(5).

B. Minneapolis Adjusts Budget Numbers Based on Tax Revenue Changes.

There is no question that the government response to the COVID-19 pandemic has been costly to the City of Minneapolis. Sales tax revenues for Minneapolis were down 47%

in 2020, which is close to Minneapolis' worst-case scenario. Ex. 16 at 77-79 (Cruver). Mayor Frey confirmed that sales tax revenue's decline drove the City's 2020 mid-year budget cuts. Ex. 17 at 66-69 (Frey). He also testified that an increase in sales taxes could result in a mid-year budget increase. *Id.* The 2020 mid-year budget cuts were massive. The MPD budget alone was cut by more than \$10 million, which is more than 5 percent of the original 2020 MPD budget of about \$193 million. Exs. 3 & 4 (Council Resolutions 2020R-177 and 2020R-194). The City's actions and testimony in this matter show that tax revenue is essential to crafting an accurate budget, which is an annual process—and a budget can be amended mid-year to deal with catastrophic situations, as 2020 also showed.

C. Sales and Property Tax Revenue Are Dependent on Population, Which Determines the Size of Minneapolis' Police Force, and Are Considered Annually as Part of the Budget Determination.

Budget Director Cruver testified that a drop in population, which is not a once-a-decade thing, would in turn affect revenue for the City. Ex. 16 at 35-37 (Cruver Dep). And when revenue drops, as 2020 proved, cuts must be made—that is, unless a department has a minimum funding provision. *See* Ex. 17 at 19-21 (Frey) (cuts to the MPD were not *required* as part of the City-wide cuts and hiring freeze). Important as well, property tax revenue is dependent on population, as Budget Director Cruver testified:

So if the population fluctuated wildly, my guess is it would have an impact on both property taxes....Those are the big pieces that, off the top of my head, would be dramatically impacted by a swing in population.

Ex. 16 at 36-37 (Cruver).

It is well known that population and tax revenues are inextricably linked. An Urban Institute study of Detroit noted that from 1950 to 2010, Detroit lost 52 percent of its people and 60 percent of its property tax revenue. *The Detroit Housing Market*, Urban Institute, at 2 (March 2017), available at http://www.urban.org/sites/default/files/publication/88656/detroit_path_forward_finalized.pdf. While Director Cruver claimed that population does not affect how much the City allocates per department annually, see Ex. 16 at 35 (Cruver), the City's budgeting decisions and actions show otherwise.

First, property taxes made up \$374 million of the City's revenue in the 2020 Budget, Ex. 6 at M015323, and they make up \$396 million in the City's revenue in the 2021 Budget, Ex. 6 at M015323. Not surprisingly, as the population of Minneapolis has risen by 13% since 2010, Ex. 6 at M15290, the City's property tax levy has also risen by 41%, from \$280 million in 2011 to \$396 million in 2021, Ex. 6 at M015323.

Second, both the 2020 and 2021 Budgets refer to Minneapolis' estimated annual population. Ex. 2 at M017510 (2020 Budget); Ex. 6 at M015290 (2021 Budget).

Third, the Minneapolis City Council receives population updates as part of its "strategic planning." In June 2018, the City Council received a report that included a 10.4% growth calculation for Minneapolis' population since 2010. Ex. 21 at 21, first white bullet point (available at <https://lims.minneapolismn.gov/File/2018-00670>, "Minneapolis Trends & Comparisons," p. 3).

Fourth, Mayor Frey himself has referenced annual population estimates as essential to how many officers need to be on the street. In his August 2019 address related to the 2020 Budget, he stated:

And this past decade, they have been responsible for doing more with less. Our city has grown from 382,000 people in 2010 to about 430,000 today, while our number of sworn officers has remained stagnant. Again, population up, sworn officers stagnant. That's not a sustainable metric.

Ex. 17 at Dep. Ex. 21, M000765.

When asked his meaning, Mayor Frey was frank: "I was advocating for additional officers." Ex. 17 at 9-11.

Simply put, population affects revenue. Revenue affects budgets. More people results in a need for more public safety resources, which can be accomplished through the tax in Section 7.3(c). Respondents consider the effects population change has in implementing their annual budgets and strategic planning. Consistently, the exception to Section 1.3(d) applies because Section 7.3 "otherwise provides" that the *annual* population number applicable to City budgeting must be applied to the police force minimum required by Charter §7.3.

VII. Mayor Frey May Not "Maintain" a Police Force of Zero Officers If the City Council Provides Required Funding.

The District Court held that "[t]he parties do not dispute that 'to fund' also requires the City 'to employ.'" Add. 8 n.6. Appellants argue that they have claimed to the contrary, and, essentially that the Charter does not require the Mayor to hire *any* police officers *at all* for the MPD if he so chooses. Appellants' Br. 15-20. Both arguments fail. The plain meaning of the requirement that the City Council "fund a police force of at least 0.0017 employees per resident" is that the City Council must fully fund the salaries, according to the CBA between the City and POFM, of at least 731 (based on the 2020 Census)

active employees who are part of “a body of trained officers entrusted by a government with maintenance of public peace and order, enforcement of laws, and prevention and detection of crime.” Ex. 39 (<https://www.merriam-webster.com/dictionary/police%20force>). Mayor Frey must then, based on his unambiguous obligation to “maintain” the police force, hire officers using the funding provided. Charter §7.3(a). Mayor Frey has zero discretion to personally fire, lay off, or reduce officers where minimum funding is provided. *State ex rel. Gillis v. Goodrich*, 264 N.W. 234 (Minn. 1935).

A. Because of Section 7.3(a) and 7.3(c), Mayor Frey Must “Maintain” a Minimum Number of Officers in MPD.

Appellants essentially argue that Mayor Frey, using “discretion,” can fire the entire MPD and leave Minneapolis without a police force, even if the City Council provides funding. This is totally absurd and contrary to the obvious purpose of the 1961 Charter Amendment. Unsurprisingly, Appellants provide no case law support for this unreasonable interpretation. Additionally, the Minnesota Supreme Court has held, in the context of city funding minimums, that such minimums require hiring.

The Minnesota Supreme Court has reviewed a different mandamus proceeding that provides instruction as to how to view the Mayor’s authority under the Charter. *State ex rel. Gillis v. Goodrich*, 264 N.W. 234 (Minn. 1935). In *Gillis*, the St. Paul Comptroller was tasked with the division of funds between the police, fire, and health funds of the city. *Id.* at 237. The law giving the comptroller this power set no minimums, only maximums. The comptroller transmitted to the city council a fire department budget estimate that had the practical effect of reducing the number of fire department employees by 93 employees

from its previous 427 and underpaying numerous employees. *Id.* at 235. The Court allowed this because the controlling legal provision at issue only set “maximums beyond which the designated department shall not go, in number or personnel, or their compensation.” *Id.* at 238. The Court specifically stated that “[w]ere this a case where by a standing ordinance certain expenditures were mandatorily required, our conclusion as to result might be otherwise.” *Id.*

This is the case envisioned by *Gillis*. Unlike the comptroller in *Gillis*, there are no maximums here, but a minimum number of officers to be funded by the City Council. Upon receiving funding for MPD, Mayor Frey does not have discretion to fail to spend the funds appropriated by the City Council. Once the City Council appropriates to the Mayor the mandatory funds for Minneapolis’ police force, he must use his powers as Mayor to appoint a sufficient number of police officers to give effect to Section 7.3. There is no discretion in the Mayor’s duty here.

This conclusion is squarely supported by the history and purpose of the 1961 Charter Amendment. First, the 1961 Charter Amendment was designed to result in an immediate increase in both funding and hiring of sworn officers. In 1960, Minneapolis was in the midst of a crime wave, and the force had fallen to 646 officers in a city of 480,000, larger than today. The people of the City therefore voted for a minimum force requirement to fight that crime wave. Tellingly, the 1961 Charter Amendment stated:

Shall proposed Amendment No. 17, amending Chapter 6 of the Minneapolis City Charter, *to increase the Police Force* by establishing a ratio of 1.7 employees per 1,000 residents, or as closely thereto as is possible through a tax levy of not to exceed 3 mills, be adopted?

PET 439 (Text of Amendment) (emphasis added).

After the vote, Mayor Naftalin and Police Chief Walling set out to hire 190 officers to attain a total of 836 officers—even though the minimum only required 821. Why? “To maintain this minimum in the face of normal vacancies and separations.” Ex. 30 at PET 427 (“A Police Need Met,” *Minneapolis Morning Tribune*, Aug. 5, 1961, at 4). Mayor Naftalin and Chief Walling did, in fact, hire those officers. The original public meaning of the charter minimum therefore requires that the number of officers actually on the force be funded *and* employed.

The Charter itself reflects this clear intent, and only its wording—not its meaning—has changed since the “Plain Language Revision” in 2014. Prior to the “Plain Language Revision,”¹³ Chapter 6, section 1 of the Charter stated:

The personnel of the police department shall be established and maintained at a ratio, or as closely thereto as is possible within the limits of section 2 hereof, of not less than one and seven-tenths (1.7) employees per one thousand (1,000) of population of the city according to the latest United States official census.¹⁴

¹³ This revision was not intended to change the meaning of the Charter, only to update the language to more modern style and usage for clarity. November 5, 2013 Charter Amendment No. 172, available at <https://vote.minneapolismn.gov/results-data/election-results/2013/ballot-questions/>; *Hayden v. City of Minneapolis*, 937 N.W.2d 790, 798 (Minn. Ct. App. 2020), review denied (Apr. 14, 2020) (“the city and park board contend that section 4.1(b) of the current city charter should be interpreted using the previous city charter as a guide”).

¹⁴ Minneapolis City Charter, Nov. 24, 2014 archive, Ch. 6, §1, available at https://library.municode.com/mn/minneapolis/codes/code_of_ordinances/232009?nodeId=CH_CH6PODE.

The Plain Language Revision merely clarified that the City Council provides funding and the Mayor employs officers with that funding. The intent of the Charter to have an actual force minimum has not changed. The Mayor cannot personally fire police officers to bring the Minneapolis police force below the minimum set by Section 7.3(c), or down to zero for that matter.

B. The District Court Properly Understood Appellants’ Admissions That Funding Requires Hiring.

First, while Appellants in some places have argued that funding alone is required for MPD, they have admitted that the Mayor must hire officers when they are funded by the City Council. Thus, at oral argument below, Appellants characterized the interplay of the funding and hiring mechanism of Section 7.3 as necessary to prevent force numbers from dropping, a function not available in other charter cities without such a requirement. *See supra* pp. 32-33.

Appellants also said: “[g]ranted there is a certain point when officers are funded and *hiring must happen....*” Doc. 66 at 17:9-14 (emphasis added); *see also* Doc. 66 at 26:23-27:3. Appellants’ statements below indicated an understanding that reduction in funding is intertwined with reduction in force and increase in funding is intertwined with increases in officers. The District Court thus understandably interpreted Appellants’ statements as indicating agreement that funding and employment are inextricably linked for MPD.

C. Respondents Have Argued That Mayor Frey Is Duty-Bound by Both Section 7.3(a) and 7.3(c) in Every Step of This Case.

Appellants falsely claim, “Respondents’ [sic] made no claim or assertion that the mayor was in violation of [Section 7.3(a)]. Appellants’ Br. 18. Respondents have made

that exact argument from the beginning of this case through the oral argument leading to the issuance of the writ of mandamus. In the Petition for a Writ of Mandamus, Respondents alleged:

The City Charter, in Article VII, section 7.3(c), requires the City Council to fund 0.0017 police per citizen in Minneapolis. Section 7.3(a) gives the Mayor “complete power over the establishment, maintenance, and command of the police department.” As a result of these two provisions, the City Council must fund, and the Mayor must employ, 743 officers based on the number of Minneapolis residents in 2020.

Doc. 1 (Petition ¶3).

In their final argument in support of issuance of the writ, Respondents argued:

Section 7.3(a) of the City Charter gives the Mayor “complete power over the establishment, maintenance, and command of the police department.” Stip. 4. Mayor Frey testified to his understanding of §7.3(a)...Mayor Frey thus has Charter authority to hire more officers if they are required—he actually has a *mandate* to hire more officers if below the Charter minimum.

Doc. 47 (Respondents’ Argument in Support of Writ at 4).

Respondents have consistently argued that Sections 7.3(c) and 7.3(a) of the Charter work together such that Mayor Frey has the obligation to hire officers if the City Council actually provides funding to do so.

VIII. By Issuing the Writ, the District Court Properly Set the Exercise of Appellants’ Discretion Into Motion.

Appellants claim that the District Court overstepped its proper role by instructing the City Council and Mayor how to exercise their discretion. Appellants’ Br. 22-23. It did not—it merely set that discretion into motion, which is the purpose of mandamus relief. *State ex rel. S. St. Paul v. Hetherington*, 61 N.W.2d 737, 740 (Minn. 1953)

("[M]andamus...does lie to set the exercise of that discretion into motion where the board fails to act....").

Respondents have never argued that Appellants must engage in certain hiring practices, or offer certain salary amounts, bonuses, better benefits, and so on. The oral argument below made this starkly clear. *E.g.*, Doc. 66 at 12-13. Respondents, and the District Court, have only stated that Appellants do not have discretion to violate Appellants' clear legal duty in the Charter to fund¹⁵ and employ 0.0017 employees of the police force per resident of Minneapolis. Add. 26. The hiring methods Appellants choose, the oversight they provide, the benefits they offer, the bonuses they offer—all things used by the City in 1961 following the passage of the Charter Amendment—are matters of discretion.

But Appellants have no discretion to not comply with the Charter. The District Court providing Appellants a *year* to comply and show cause if they do not was generous—it certainly did not have to do that. Appellants miscast the Writ as requiring them to “hire a certain number of officers.” Appellants’ Br. 22. That is not what the Writ says; the Writ merely tells Appellants to comply with the Charter, however many officers that takes and in whatever method they need to reach the Charter-required number. It is unreasonable for Appellants to read the Writ differently—after all, only Appellants know how many officers

¹⁵ Contrary to Appellants’ claims, Respondents do dispute that “the City has funded 770 officers at all times relevant to this lawsuit.” *Compare* Appellants’ Br. 22 *with* Stip. ¶20 (“actual funding...on payroll”) *and* Stip. ¶¶9-15 (number of employed officers declining). Appellants’ “funding” is not what the Charter means by “fund,” which refers to funding used to employ 770 employed officers, not a number on paper.

are on MPD right now, as they glaringly neglected to update the Court as to the current figures. Appellants have merely been given a benchmark that they must meet, and they need to use their discretion to meet it, whether that means a substantial budgetary increase, a new CBA, or whatever they come up with.

Appellants are merely trying to find technical ways to avoid their legal duties. What Appellants are really asking this Court to hold is that it is an “exercise of discretion” to be cheap, slow, and ineffective—while Respondents duck from gunfire ripping through the streets of Minneapolis’ embattled North Side. Discretion is not an excuse for inaction.

IX. Appellants Have Acted Arbitrarily and Capriciously in Defunding the Police and Letting the Force Dwindle.

Appellants finally argue that even if the District Court could, under the mandamus standard, control their exercise of discretion, it could only do so if Appellants’ actions are deemed arbitrary and capricious. Appellants’ Br. 23-24; Add. 16 ¶30; *Houck v. Eastern Carver County Sch.*, 787 N.W.2d 227, 232 (Minn. 2010). The District Court did not have to go there because it merely held Appellants accountable to a clear legal duty they are bound to uphold. But Appellants’ actions certainly reach the arbitrary and capricious standard, and this Court can affirm on that alternative ground.

Appellants have been well aware of Respondents’ struggles with substantial increases in violence in Precinct 4 as the number of MPD officers correspondingly declines. Add. 19-20, 22-23. Appellants have repeatedly recognized that they are able to raise the MPD’s budget and hire more officers. Ex. 17 at 50-52, 55-56, 87-88 (Frey); Ex. 18 at 49 (Bender). There is absolutely *zero* evidence in the record demonstrating that

Appellants cannot comply with the Writ, and Appellants only point to the fact that it would cost more to hire more. Appellants have admitted that they know the number of officers in MPD will decline, even under best-case assumptions. Stip. ¶¶9-15. Appellants have had every opportunity to comply with the law, but the Minneapolis City Council, in particular, has cut the MPD budget at every opportunity. The Council's unanimous June 12, 2020 resolution identified police funding as exactly what they think it is: a problem. Resolution No. 2020R-152, available at <https://lims.minneapolismn.gov/Download/MetaData/17459/SignedAct.pdf>.

Appellants' actions in defunding and cutting the police force in the face of a Charter minimum are the definition of arbitrary and capricious. The District Court did not have to reach this issue, but this Court can affirm on this basis as well.

CONCLUSION

The District Court's issuance of the writ of mandamus set the exercise of Appellants' discretion into motion, because Appellants have failed to act. Respondents have borne the brunt of Appellants' Charter violations, and it is time for that to stop. Appellants must ensure the funding and maintenance of 0.0017 active, sworn officers per resident of Minneapolis. The Court should affirm the issuance of the Writ of Mandamus.

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Dated: October 8, 2021

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CERTIFICATE OF DOCUMENT LENGTH

I hereby certify that this document conforms to the requirements of the applicable rules, is produced with a proportional 13-point font, and the length of this document is 13,925 words. This Brief was prepared using Microsoft Word 365, Version 2105.

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