

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
Case Type: Civil Other/Ballot Omission  
Declaratory Judgment

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Kolten Kranz, David Clark, and  
Craig Black,

Petitioners,

v.

City of Bloomington, Minnesota;

and,

Christina Scipioni, in her official capacity  
as Bloomington City Clerk;

and,

Mark V. Chapin, in his official capacity  
as Hennepin County Auditor;

and,

Steve Simon, in his official capacity  
as Secretary of State,Respondents.

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**PETITION FOR CORRECTION OF  
BALLOT ERROR, TO ENJOIN  
DISTRIBUTION OF ERRONEOUS  
BALLOTS, AND FOR  
DECLARATORY JUDGMENT**

**Minn. Stat. § 204B.44**

Court File No. \_\_\_\_\_

1. For the second time in the last 6 years, the City of Bloomington has come up with a flimsy excuse to keep a citizen-led proposed charter amendment off the City's general election ballot. The first time, in *Jennissen v. City of Bloomington*, a unanimous Minnesota Supreme Court solidly rejected the City's efforts to thwart citizen activism. The City has proven here that it has failed to learn its lesson and has given this Charter Amendment the unlawful *Jennissen* treatment.

2. Nothing in the proposed amendment is “manifestly unconstitutional,” which is the only reason a city council can prohibit the inclusion of a ballot question. But even if one assumes for purposes of argument that the one procedural matter on the proposed amendment is unconstitutional, the City still should have placed the completely distinct remainder of the proposed amendment on the ballot. Minnesota Supreme Court precedent clearly contemplates that portions of proposed charter amendments may be severable as long as the overall amendment is not “substantially emasculated” by the omission of the unconstitutional part.

3. Because the City has ignored the will of the people yet again, the above-named Petitioners bring this Petition for correction of a deliberate ballot omission under Minn. Stat. § 204B.44. The Petitioners are registered voters residing in the City of Bloomington and bring this action on behalf of themselves and all others similarly situated. The Petitioners seek an Order from the Court directing the City to place the Charter Amendment concerning ranked-choice voting (“RCV”) on the municipal ballot for consideration by the voters in the November 2022 general municipal election in accordance with the requirements of the Bloomington City Charter and Minnesota Statute § 410.12. In support of their Petition, by and through their undersigned attorney, Petitioners complain and allege as follows:

### **PARTIES**

4. Petitioner Kolten Kranz is a registered voter and resident of the City of Bloomington, Minnesota, a home rule charter city. Petitioner Kranz signed and helped to circulate the Petition for the Charter Amendment.

5. Petitioner David Clark is a registered voter and resident of the City of Bloomington, Minnesota, a home rule charter city. Petitioner Clark signed and helped to circulate the Petition for the Charter Amendment.

6. Petitioner Craig Black is a registered voter and resident of the City of Bloomington, Minnesota, a home rule charter city. Petitioner Black signed and helped to circulate the Petition for the Charter Amendment.

7. Respondent City of Bloomington is a home rule charter city under the laws of the State of Minnesota with the capacity to sue and be sued. The City, through its City Council, is the legal entity responsible for the rejection of the Petition and the refusal to place the same on the November, 2022 municipal ballot.

8. Respondent Christina Scipioni is the City Clerk for the City of Bloomington. Along with the other Respondents, she is responsible for preparing the municipal ballot for the general election to be held on November 8, 2022.

9. Respondent Mark V. Chapin is the County Auditor for Hennepin County. Along with the other Respondents, he is responsible for preparing the municipal ballot for the general election to be held on November 8, 2022. Responsibility for inclusion of the Charter Amendment will shift to the County Auditor and the Secretary of State after August 26, 2022.

10. Respondent Steve Simon is the Secretary of State for the State of Minnesota. Along with the other Respondents, he is responsible for preparing the municipal ballot for the general election to be held on November 8, 2022. Responsibility for inclusion of the Charter Amendment will shift to the County Auditor and the Secretary of State after August 26, 2022.

### **JURISDICTION**

11. Jurisdiction is proper under Minn. Stat. § 204B.44, which allows “any individual” to file a petition to “correct[]” “an error or omission in the placement or printing of the name or description of...any question on any official ballot.” It also allows any such person to correct “any wrongful act, omission, or error of any...municipal clerk.”

12. The Court further has jurisdiction over this matter because such a petition may be brought when an omission related to a ballot has “occurred or [is] about to occur.”

13. The Court has subject-matter jurisdiction over this action under Minn. Stat. § 484.01.

### **VENUE**

14. The Hennepin County District Court is the proper venue for this action because it arises out of the upcoming Bloomington municipal election, Bloomington is located in Hennepin County, Minnesota, and Minn. Stat. § 204B.44 provides that a petition such as this one must be brought in the county in which the City sits, where the petition relates to a municipal election.

### **STATEMENT OF THE CLAIM**

15. This is a Petition by a group of Bloomington residents (“Petitioners”) seeking to exercise their right to place Charter Amendment concerning RCV on the municipal election ballot in accordance with Minnesota Statutes § 410.12.

16. Bloomington is a home rule charter city, organized under the Minnesota Constitution, Article XII, § 4. It reserves for its residents the right to propose charter amendments by petition in the process outlined in Minn. Stat. § 410.12.

17. A petition to amend the Charter to allow voters to choose whether to repeal RCV in Bloomington was initiated in early Spring, 2022. As required by statute, five residents of the City circulated a petition to collect signatures of five percent of the total votes cast in the city at the last state general election. Minn. Stat. § 410.12. Bloomington and Petitioners agree this total is 2,769. *See* Exhibit C, attached hereto.

18. True and correct copies of the full language of the Charter Amendment and a sample signature page are attached hereto as Exhibits A and B, respectively. As required by §

410.12, the full language of the Charter Amendment was included on each and every circulated signature page.

19. After collecting signatures throughout the city, on June 21, 2022, the circulators presented 3,651 signatures, of which 3,321 were recognized as those of registered Bloomington voters. *See* Ex. C.

20. The Petition was accepted by the Bloomington Charter Commission on July 7, 2022 and transmitted to the City Council and City Clerk the next day, in accordance with Minn. Stat. § 410.12. *Id.*

21. The City Clerk issued a Certificate of Sufficiency in compliance with the statute on July 13, 2022. *Id.*

22. Subsequently, the City Council recognized the Certificate of Sufficiency on July 18, 2022, indicating that the Petition was procedurally sufficient. *Id.*

23. More than *three weeks* after the Certificate of Sufficiency issued, on August 8, 2022, the City Council adopted a resolution rejecting the Charter Amendment as “manifestly unconstitutional,” and announced its refusal to place the question before the voters at the 2022 general election. Exhibit D.

24. The City Council cited two reasons for refusing to submit the ballot question to the voters, both of which appear in § 4.08 of the Charter Amendment. First, it claimed the Amendment fixes an unlawful threshold for approval to revert back to an RCV scheme (a majority of two-thirds, as opposed to their claim that a 51% majority is necessary). Second, the City claims that the language “regular municipal election” prohibits what Minnesota Statute § 401.12 permits – to amend city charters at special elections. Exhibit D.

25. Minnesota law requires the language of a municipal ballot question to be finalized not less than 74 days before election day. Minn. Stat. § 205.16(4). The fall election will be held on November 8, 2022, so the final language of the ballot measure must be submitted by Bloomington election officials to the county auditor no later than August 26, 2022, consistent with § 205.16.

26. Petitioners bring this Petition pursuant to Minn. Stat. § 204B.44 because they seek prompt judicial review and remedial action by the Court. The Petitioners ask the Court to direct that the Charter Amendment be immediately placed on the municipal election ballot.

27. Without immediate intervention by the Court, Petitioners will suffer irreparable harm.

28. Alternatively, Petitioners seek declaratory relief under the Uniform Declaratory Judgment Act, Minn. Stat. § 555.01, *et seq.*

### **The Charter Amendment Is Not Manifestly Unconstitutional**

29. “Permissible charter provisions are... narrow in scope because a charter governs the functions of the municipal government, while ordinances enacted in an exercise of a municipality’s legislative powers regulate the functions and activities of persons, businesses, or entities residing or operating in the municipality.” *Vasseur v. City of Minneapolis*, 887 N.W.2d 2d 467, 473 (Minn. 2016) (emphasis added).

30. Bloomington has only objected to § 4.08 of the Charter Amendment, which it used as a basis to reject the Charter Amendment in its entirety. Section 4.08 reads as follows:

Unless first approved by two-thirds of the voters in a regular municipal election, the City of Bloomington shall not use the RCV method to elect any candidate to any municipal office. RCV is defined as any election method by which voters rank candidates for an office in order of their preference.

31. The City claims this violates Minn. Const. Art. XII, section 5 and Minn. Stat. § 410.12, subd. 4. In support, the City claims this language is manifestly unconstitutional because, as the City puts it, “the Petition seeks to amend the City Charter to limit future elections *to amend City Charter* provisions related to ranked-choice voting to only at future “regular municipal election[s],” and “the Petition proposes to set a different voting threshold percentage *to amend the City Charter* (two-thirds) than is established by” Minn. Stat. § 410.12. Ex. D p. 3-4 (emphasis added). The City misreads or misunderstands the Charter Amendment.

32. Nowhere in the plain language of § 4.08 is there a 2/3 vote requirement to amend the Bloomington City Charter. It is implicit that a 51% vote on another charter amendment could override this Charter Amendment. Rather, § 4.08 provides a separate option for repeal of this Charter Amendment. That is a 2/3 vote—which could be on any ballot question related to RCV—to override the Charter Amendment as one method of override. Again, Section 4.08 does *not* prohibit the City’s voters from repealing the Charter Amendment by another charter amendment simple majority at a general election.

33. So again, to put it another way, § 4.08 creates two options for reverting to RCV. Option 1 is for the voters of Bloomington to pass any initiative by a 2/3 vote which, by the terms of the Charter Amendment itself, undoes it (although not automatically reinstating RCV), allowing for the voters to approve RCV by charter amendment. Option 2 is for the voters of Bloomington to repeal the Charter Amendment by a 51% vote and either simultaneously pass a separate RCV charter amendment or pass one in a future election.

34. To reiterate, the process in § 410.12 must be followed in order to amend the charter and revert to RCV. In no way does § 4.08 purport to alter or modify any state statute.

35. Important as well, the City is quite familiar with the dual option provided by this language in § 4.08. In *Jennissen v. City of Bloomington*, the City also illegally rejected a similar voter-initiated amendment to the city charter. The language in that measure was as follows:

Unless first approved by a majority of voters in a state general election, the City shall not replace the competitive market in solid waste collection with a system in which solid waste services are provided by government-chosen collectors or in government-designated districts. The adoption of this Charter amendment shall supersede any ordinances related to solid waste adopted by the City Council in 2015-2016.

*Jennissen v. City of Bloomington*, 913 N.W.2d 456, 458-59 (Minn. 2018).

36. Neither the courts nor the City raised issues with the “unless first approved” language in this amendment, despite the City’s years-long fight in the courts to prevent placement on the ballot.

37. As in *Jennissen*, the City should be compelled to place the Charter Amendment on the ballot for the November general election.

**If the Court Finds the Charter Amendment Legally Sufficient *Except For* § 4.08, Then It Should Sever § 4.08 From the Remainder of the Charter Amendment and Place the Clearly Constitutional Remainder on the Ballot.**

38. In the event Section 4.08 of the Charter Amendment is held by this Court to be unlawful, then it should be severed from the remainder of the measure and the legally sufficient provisions should be presented to the voters.

39. The Minnesota Supreme Court has noted the possibility of severing lawful aspects of a proposed charter amendment from its unconstitutional aspects. *Hous. & Redevelopment Auth. v. Minneapolis*, 198 N.W.2d 531 (Minn. 1972) (“HRA”).



40. In that case, voters presented a charter amendment that consisted of four sections. Two of the four were held to be illegal, one was legal, and the final provision was a procedural severability provision. *Id.* The Court held as follows:

We accept the reasoning of plaintiffs and the city that the severability provisions of the proposed amendment apply only to challenges to the validity of [the affected section of code] which occur after the adoption of the amendment... Nevertheless, as a matter of judicial policy, we think the better rule is to prevent an election directed only at a proposal which has been *substantially emasculated*.

*Id.* at 538 (emphasis added).

41. This case is fundamentally unlike *HRA* in a way that allows the City to sever the objectionable provision and present the remainder to the voters. Section 4.08 is all about procedure and, if it were entirely absent, would have no effect on the substantive proposals of the remainder of the Charter Amendment.

42. In other words, the language in § 4.08 of the Charter Amendment is purely procedural; it is about *how* the Charter Amendment can later be overridden. It has *nothing to do with* the substantive aspects of the Charter Amendment, which repeal RCV itself. The procedural aspects of § 4.08 can therefore be severed easily from the remainder of the Charter Amendment without “substantially emasculating” the remainder of the measure. Sections 4.02, 4.04, and 4.07, plainly concern changing the substance of Bloomington’s method of voting, while 4.08 concerns how future voters procedurally deal with the Charter Amendment itself.

43. In terms of statutory severability, the Minnesota Supreme Court “presume[s] unconstitutional language is severable unless the valid provisions of the statute are so ‘essentially and inseparably connected with’ the void provisions that the Legislature would not have enacted the valid provisions without the void language, or where (after severance) the remaining valid language would be ‘incomplete and...incapable of being executed.’” *In re Welfare of A.J.B.*, 929

N.W.2d 840, 856 (Minn. 2019) (quoting *State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014)).

44. In terms of severability of ordinances in the face of claims of unconstitutionality, the Minnesota Supreme Court would "attempt to retain as much of the original [ordinance] as possible while striking the portions that render the [ordinance] unconstitutional." *Minn. Sands, LLC v. Cty. of Winona*, 940 N.W.2d 183, 197 (Minn. 2020).

45. Under any standard of severability, the Charter Amendment's other provisions are entirely severable from § 4.08. It is procedure versus substance, plain and simple. And there is no legitimate question that Sections 4.02, 4.04, and 4.07 would stand on their own, fully capable of their own execution. To the extent the City claims otherwise, the City Council is the best witness against it: the Council's resolution finds no error in any of the sections other than 4.08.

46. Under these facts, the first three provisions of the Charter Amendment concern a singleness of purpose: to repeal RCV and restore city elections to the traditional, primary method. The last provision, 4.08, is purely a procedural provision and has zero effect on the other provisions' completeness or capability of execution.

#### **The City's Rejection of the Charter Amendment Unlawfully Adds a Requirement to 410.12 and Shifts the Burden to Petitioners.**

47. The Minnesota Supreme Court has long held that a ballot measure must not be withheld from voter consideration unless it is "manifestly unconstitutional." *See HRA*, 198 N.W.2d at 536; *see also Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995) ("it is well established in Minnesota that when a proposed charter amendment is manifestly unconstitutional, the city council may refuse to place the proposal on the ballot").

48. The authority to exclude a charter amendment on grounds of illegality must be used exceedingly sparingly—hence the use of the term “manifestly” unconstitutional. “It is not within the province of the governing body of a city or of a court to pass judgment on the quality of the work done by a board of freeholders. \* \* \* Neither the city council nor the courts have any supervisory or veto powers.” *State ex rel. Andrews v. Beach*, 191 N.W. 1012, 1013 (Minn. 1923).

49. Importantly, the Court in *HRA* reinforced the distinction between prohibiting a charter amendment from being considered by voters at all, from the severance of a provision that may later be found unlawful. *HRA* recognizes the danger in granting a city government *de facto* veto power to destroy an entire citizen-initiated ballot measure for any one claimed defect, as Bloomington has repeatedly done.

50. The Supreme Court in *Jennissen* used the following language:

Notwithstanding a city's broad power to legislate in regard to municipal affairs, state law may limit the power of a city to act in a particular area.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008) (citation omitted) (internal quotation marks omitted). Cities have no power to regulate in a manner that conflicts with state law or invades subjects that have been preempted by state law. *Bicking*, 891 N.W.2d. at 313.

913 N.W.2d at 459 (internal citations omitted).

51. City governments do not have the power to omit procedurally sufficient ballot questions from the ballot unless they are manifestly unconstitutional or preempted by state law or policy.

52. Likewise, city governments do not have the power to refuse to sever claimed defects from a ballot question when the remainder is substantively different from the language to which the City objects. Both have the long-term effect of destroying citizen legislation, contrary to the express allowance of the same in Minn. Stat. § 410.12.

53. This Court should reinforce the line between qualifying a measure for the ballot, which is a process outlined in 410.12, and determining its eventual legality if or when it is enacted. Such a decision would be a logical extension of the Supreme Court's holding in HRA, it would reconcile the reservation of power for citizen legislation in 410.12 with other caselaw, and provide a basis for greater cooperation between city governments and voters.

54. Voter ballot measures will always present an inherent conflict with the desires of the City Council. The legislature and the framers have taken precautions to ensure that charter rights are protected and citizen rights to amend charters are likewise protected. To validate the denial of the Charter Amendment effectively deletes the powers of the people to legislate, and it rewards the City for ignoring them.

**COUNT ONE: MINN. STAT. § 204B.44**

55. The preceding allegations are incorporated by reference.

56. To successfully petition for correction of an error on a ballot, Petitioners must show that the City committed, or will commit, an error, omission, or wrongful act that must be corrected under Minn. Stat. § 204B.44.

57. The City erred by refusing to place the Charter Amendment on the 2022 municipal election ballot.

58. Even if Section 4.08 of the Charter Amendment conflicts with state law, the City erred by failing to put those other severable substantive provisions, namely 4.02, 4.04, and 4.07, on the ballot.

59. The only means to protect Petitioners and Bloomington voters from the immediate and irreparable harm that will arise from the failure to place the Charter Amendment on the ballot

is to enjoin Respondents from erring by presenting voters with ballots not containing the Charter Amendment, and to order the City to place the Charter Amendment on the ballot.

60. Petitioners ask for this relief under Minn. Stat. §§ 204B.44 and 555.01 *et seq.*

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners respectfully request that this Court enter relief on their favor and against Respondents:

- A. Finding that the Respondents erred and acted wrongfully, or will have erred and acted wrongfully, by refusing to place the Charter Amendment on the November 8, 2022 ballot.
- B. Finding that the Petitioners would be irreparably harmed if the Court does not enter injunctive relief requiring the Respondents to refer the Charter Amendment to the county auditor for inclusion on the November 8, 2022 ballot.
- C. Ordering the City and the City Clerk to place the Charter Amendment on the November 8, 2022 ballot in full and issuing a temporary restraining order and temporary injunction with that requirement.
- D. Ordering the County Auditor not to certify any ballots without the Charter Amendment language in full, or those and issuing a temporary restraining order and temporary injunction with that requirement.
- E. Barring the Secretary of State from printing or distributing any ballot that does not contain the Charter Amendment language in full;
- F. Ordering that any bond requirement for temporary injunctive relief or a restraining order be waived.

- G. Alternatively, ordering the relief in Paragraphs C-E above, except that § 4.08 of the Charter Amendment is severed from the final ballot language, and the remainder of the Charter Amendment language be placed on the November 8, 2022 ballot.
- H. Immediately setting a time for hearing, and Petitioners suggest Tuesday, August 23, 2022, so that ballots can be immediately corrected before the information to be placed on the ballot is certified to the county auditor and Secretary of State on August 26, 2022, consistent with Minn. Stat. §205.16.
- I. Such other, further, or different relief as this Court deems just and proper.

**JOSEPH LAW OFFICE PLLC**

Dated: August 18, 2022

/s/ Gregory J Joseph

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**ATTORNEYS FOR PETITIONERS**

**ACKNOWLEDGEMENT**

I hereby acknowledge that, pursuant to Minn. Stat. §549.211, subd. 3, sanctions may be imposed by this Court if it determines that Minn. Stat. §549.211, subd. 2, has been violated.

Dated: August 18, 2022

*/s/ Gregory J Joseph*  
\_\_\_\_\_  
Gregory J Joseph (#0346779)