

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Yes 4 Minneapolis,

Petitioner,

vs.

**ORDER PARTIALLY GRANTING
PETITION TO CORRECT BALLOT
UNDER MINN. STAT. § 204B.44**

City of Minneapolis and Casey Joe Carl, in
his official capacity as City Clerk of the City
of Minneapolis,

Court File No. 27-CV-21-9345

Respondents.

This matter came before the Court on August 9, 2021, upon Petitioner's Petition to Correct Ballot under Minn. Stat. § 204B.44. Terrance W. Moore, Esq., appeared on behalf of Petitioner. Sarah McLaren, Esq., appeared on behalf of Respondents.


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

ORDER

1. The Petition to Correct Ballot under Minn. Stat. § 204B.44 is hereby GRANTED IN PART as to Prayer for Relief, Paragraph (b) and DENIED IN PART as to Prayer for Relief, Paragraphs (a) and (c).
2. Respondents shall remove the Explanatory Note from the Ballot Question.
3. The following Memorandum is incorporated herein.

BY THE COURT:

DATED: August 13, 2021



Jamie L. Anderson
Judge of District Court

MEMORANDUM

Background

Petitioner Yes 4 Minneapolis is a coalition campaign formed to support the establishment of a Department of Public Safety. *See* Pet. to Correct Ballot, ¶ 1.

Respondent City of Minneapolis (the “City”) is a home rule charter city under the law of the State of Minnesota with the capacity to sue and be sued. *See id.*, ¶ 2.

Respondent Casey Joe Carl is the City Clerk and chief election official for the City. Respondent Carl is responsible for directing the election process in the City and preparing its ballot for the general election to be held on November 2, 2021. *See id.*, ¶ 3.

On April 30, 2021, Petitioner timely submitted petitions for a proposed charter amendment to the City Clerk, the liaison to the Charter Commission. The Charter Commission maintains the charter for the City. *See id.*, ¶¶ 6-7. The proposed amendment would amend Minneapolis City Charter §§ 7.2(a), 7.3, 7.4(c) and 8.2, thereby eliminating the Police Department and creating a Department of Public Safety. *See id.*, Ex. B.

On May 14, 2021, the City Clerk advised the City Council that the petition meets the technical requirements of Minn. Stat. § 410.12 (2020) and is therefore a valid proposed charter amendment. *See id.*, ¶ 8.

On or about May 22, 2021, the City Council directed the City Attorney to perform a legal analysis of the petition and recommend draft ballot language for the November 2, 2021 election. *See* Pet. to Correct Ballot, ¶ 9.

On July 13, 2021, the City Attorney issued a memorandum determining that the charter amendment satisfies the legal standard to be placed on the ballot and recommended language for the ballot question. *See id.*, ¶¶ 10-11; *see also id.*, Ex. B.¹

On July 23, 2021, the City Council approved Resolution No. 2021R-209, which sets the title and language of the ballot question (the “Ballot Question”), including an explanatory note (the “Explanatory Note”) as follows:

“Department of Public Safety

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers (police officers) if necessary, to fulfill its responsibilities for public safety, with the general nature of the amendments being briefly indicated in the explanatory note below, which is made part of this ballot?

Yes _____

No _____

Explanatory Note:

This amendment would create a new Department of Public Safety, which would:

- (1) Combine public safety functions of the City of Minneapolis into a comprehensive public health approach to safety, with the specific public safety functions to be determined.
- (2) Include licensed peace officers (police officers) if necessary to fulfill the responsibilities of the Department of Public Safety
- (3) Be led by a Commissioner of Public Safety. The appointment process for the Commissioner would include a Mayor nomination and a City Council appointment. The Mayor would not have complete power over the establishment, maintenance, and command of the Department of Public Safety.

This amendment would also do the following:

¹ The Petition claims that the City Attorney recommended the ballot question including an explanatory note and directs the Court’s attention to Exhibit B to the Petition. However, the City Attorney’s letter, as it appears in the Petition, cuts off before any of the recommended language appears.

(1) Remove from the Charter a Police Department, which includes the removal of its Police Chief, and the removal of the Mayor's complete power over the establishment, maintenance, and command of the Police Department.

(2) Remove the City Council requirement to fund a police force of at least 1.7 employees per 1,000 residents.

(3) Remove City Council authorization to impose additional taxation on taxable property in the City of Minneapolis of up to 0.3 percent of its value annually to fund the compensation of employees of the police force.”

See id., Ex. C.

On July 28, 2021, the resolution was approved by default after the Mayor did not take any action within the time specified by the City Charter. *See id.*

On July 30, 2021, Yes 4 Minneapolis brought this Petition to Correct Ballot under Minn. Stat. § 204B.44.

Standard of Review

Under § 204B.44, “any individual may file a petition in the manner provided in this section for the correction of . . . errors, omissions, or wrongful acts which have occurred or are about to occur.” The petitioning party bears the burden of demonstrating the error, omission, or wrongful act they seek to have corrected. *Weiler v. Ritchie*, 788 N.W.2d 879, 882 (Minn. 2010). The petitioning party must prove this error, omission, or wrongful act by a preponderance of the evidence. *Id.*, at 883. An act is “wrongful” when it is unjust, unfair, or unlawful. *Butler v. City of St. Paul*, 923 N.W.2d 43, 51 (Minn. Ct. App. 2019).

Analysis

Petitioner challenges the inclusion of the Explanatory Note with the Ballot Question on two grounds. First, Petitioner argues that the City Council, by including the Explanatory Note, has

committed a wrongful act by exceeding its statutory authority. *See* Pet. to Correct Ballot, ¶¶ 17-27. Second, Petitioner argues that inclusion of the Explanatory Note is in error because it is unreasonable and misleading. *See id.*, ¶¶ 28-32. Additionally, Petitioner asks the Court to certify ballot language excluding the Explanatory Note. The Court will address these issues in turn.

A. The City is not Prohibited from Including an Explanatory Note on the Ballot.

Petitioner first argues that the City Council is precluded from including *any* explanatory note on the ballot as it has not been given express authority to do so. *See id.*, ¶¶ 17-27. Respondents contend that the use of explanatory notes is not only permitted under Minn. Stat. §§ 410.12, subd. 4 and 204B.36, subd. 3, but advisable when voters are presented with charter amendment ballot questions. *See* Resp'ts' Mem. in Opp., pp. 20-23.

Ballots shall be prepared in a manner that enables the voters to understand which questions are to be voted upon. *See* Minn. Stat. § 204B.35, subd. 2. Charter amendments shall be submitted to the qualified voters at a general or special election. *See* Minn. Stat. § 410.12, subd. 4. The ballot's form shall be fixed by the governing body and the statement of the question shall be sufficient to identify the amendment clearly and distinguish it from every other question on the ballot at the same time. *Id.* These controlling statutes, Petitioner argues, lack any express legislative authorization to include explanatory notes and because “[m]unicipalities possess only those powers conferred by statute or implied as necessary to carry out legislatively conferred powers[.]” the City Council is therefore prohibited from including any explanatory note on a ballot. *See* Pet. to Correct Ballot, ¶ 18 (*quoting Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006)).

Breza, and the other cases cited by Petitioner, are distinguishable from Petitioner's position in both fact and principle. In *Breza*, the Supreme Court stated "municipalities, like the City of Minnetrista, possess no inherent powers and are purely creatures of the legislature." *Id.* The court, however, was discussing whether a city may exercise domain over the filling and restoration of wetlands when it had not been expressly granted authority over such matters. *See id.* Similarly, Petitioner cites *Village of Brooklyn Center v. Rippen* for its contention that municipalities have no inherent powers. *See* Pet'r's Reply Mem., p. 2; *see also* 96 N.W.2d 585, 587 (Minn. 1959). *Rippen*, too, is distinguishable. In *Rippen*, the court held that the Village did not have authority to license boats using lakes partially or wholly within its boundaries because "[t]he resulting multiplicity of local license requirements would saddle boat owners with burdensome consequences that are both unreasonable and absurd." 96 N.W.2d at 588.

Petitioner also argues that express and implied powers should be construed narrowly and, in this case, the City's power over preparing ballots should be narrowly construed to exclude the ability to include explanatory notes. *See* Pet'r's Reply Mem., pp. 2-3. In support of this argument, Petitioner relies again on dicta from various appellate opinions which state "if a matter presents a statewide problem, the implied necessary powers of a municipality to regulate are narrowly construed unless the legislature has expressly provided otherwise." *See id.* (*quoting Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995) *review denied* Mar. 29, 1995; *quoting Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984)). Again, these cases are distinguishable.

In *Lilly*, the City of Minneapolis expanded the scope of a statute with respect to persons who may receive medical benefits and premiums paid when the legislature clearly defined who may receive such benefits. 527 N.W.2d at 113. The Court of Appeals held that such expansion of the statute was beyond the limits of the City's power and therefore without legal force or effect.

Id. Welsh involved a statute giving the City of Orono power to regulate the construction, length and use of docks extending into Lake Minnetonka and whether that statute also granted Orono authority to regulate lakebed dredging. *See generally* 355 N.W.2d 117. The Supreme Court found that it did not, as the legislature had clearly delegated power to regulate lakebed dredging to the Department of Natural Resources. *Id.*

Here, contrary to Petitioner's argument, none of these cases rule on or even discuss whether statutory language creates a ceiling on legislatively-granted authority. Rather, they deal with how local regulatory authority comports with state regulatory authority. It is undisputed that the City Council has express authority to fix the ballot's form. *See* Minn. Stat. § 410.12, subd. 4. Moreover, there is no intermingling of state and municipal authority as there was in all the above cases. The City Council in this case has been tasked with fixing the ballot's form and has done so pursuant to that duty. The City Council has *not* attempted to exercise authority over an area not within their regulatory purview.

In contrast to Petitioner's argument, Respondents argue that the statutory authority granted them to fix the form of ballots creates not a ceiling, but rather a floor for providing voters with accurate descriptions of the ballot measure. *See* Resp'ts' Mem. in Opp., pp. 20-21. In addition to the text of the statute itself, Respondents rely on a 1951 advisory opinion from the attorney general that is on point with the topic now before the Court. *Id.*

While advisory opinions from the attorney general are not binding on courts, they are "entitled to careful consideration, particularly where they are of long standing." *City of Brainerd v. Brainerd Inves. P'Ship*, 812 N.W.2d 885, 891 (Minn. Ct. App. 2012). Moreover, practical construction of a statute by public officials should not be ignored. *Governmental Research Bureau, Inc. v. St. Louis County*, 104 N.W.2d 411, 416 (Minn. 1960).

Here, the 1951 attorney general opinion that Respondents have presented the Court with may not be binding, but it does deserve consideration. The city attorney for Chislm, Minnesota—a home rule charter city like Minneapolis—asked the attorney general for advice on constructing a proper ballot question for a charter amendment that would amend several sections of the city’s charter. *See Op. Atty. Gen., 58-i, Nov. 16, 1951*. In the opinion letter, the attorney general stated his position that, “it would be proper to submit one general question relating to the amendments . . . and, furthermore, that it would be proper to include on the ballot an explanatory note indicating the general nature of those amendments.” *See id.*

Again, while this single opinion is not precedent, it indisputably tips the scale in favor of Respondents’ argument. As is the case here, the opinion regarded forming a ballot question for a charter amendment that would alter multiple sections of the city’s charter. Ultimately, the attorney general’s opinion was that including an explanation of the comprehensive changes would be proper.

In summary, Petitioner has not presented any law or evidence that the City Council acted outside its authority by including the Explanatory Note on the ballot. Further, Petitioner has not proven that this action was “unjust, unfair, or unlawful.” *Butler*, 923 N.W.2d at 51. Accordingly, the Court finds that Petitioner has failed to prove by a preponderance of the evidence that the City Council’s including the Explanatory Note is *in itself* a wrongful act in need of correction pursuant to Minn. Stat. 204B.44. The Petition is denied as to Prayer for Relief, Paragraph (a).

B. Inclusion of the Explanatory Note, as It is Currently Written, would be in Error.

The next question before the Court is whether inclusion of the Explanatory Note, as written, was an error, omission, or wrongful act warranting correction pursuant to § 204B.44. Petitioner

argues that inclusion of the Explanatory Note would be error because it is unreasonable and misleading. *See* Pet. to Correct Ballot, ¶¶ 28-32. Specifically, Petitioner argues that the Note “omits important contextual information and would reflect an author’s inherent bias.” *See id.* (citing *Weiler*, 788 N.W.2d at 888). Respondents’ position is that the language in the Explanatory Note accurately informs voters about the proposed amendment and is necessary so that the question is “sufficient to identify the amendment clearly.” *See generally* Resp’ts’ Mem. in Opp., p. 14.

Section 410.12 states “the statement of the question on the ballot shall be sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” Further, statute requires that “[b]allots shall be prepared in a manner that enables the voters to understand which questions are to be voted upon and the identity and number of candidates to be voted for in each office and to designate their choices easily and accurately.” Minn. Stat. § 204B.35, subd. 2.

While no case law directly on point exists, much case law exists as to what information *is* and *is not* allowed on a ballot regarding political candidates. Time and again, the Supreme Court of Minnesota has held that supplemental information should be added to a ballot sparingly, and should be excluded if it will potentially sway a person’s vote.² The primary theme of all these decisions has been to keep the tone and content of the ballot neutral so as not to affect voters’ decisions at the polls. These decisions are in line with the plain language of the statute, “[t]he name

² *See Dougherty v. Holm*, 44 N.W.2d 83, 84 (1950) (noting that the purpose of allowing additional information about candidates with identical surnames is to prevent voter confusion); *Foley v. Donovan*, 144 N.W.2d 600, 603 (1966) (“Our election laws are bottomed on the theory that no candidate for an office ought to be given an unfair advantage over another and the people ought to be permitted to know whom and what they are voting for”); *Clifford v. Hoppe*, 357 N.W.2d 98, 101 (1984) (holding that use of middle name “Prolife” could give candidate unfair advantage despite candidate’s claim that use of “Prolife” was being used to enlighten electorate on good faith issue); *Weiler v. Ritchie*, 788 N.W.2d 879 (2010) (disallowing use of nickname “Doc” on several grounds, including consistency with statute and conforming to proper function of ballot).

of a candidate shall not appear on a ballot in any way that gives the candidate an advantage over an opponent.” Minn. Stat. § 204B.35, subd. 2.

While the Court agrees that Respondents have authority, and a statutory duty, to word the ballot in a way that is “sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot,” the language in the Explanatory Note is problematic. The ballot question itself is comprised of a single sentence containing of 67 words, while the Explanatory Note is 192 words spread across six bullet points and multiple subsections that read as much like a warning label as they do informational statements.

The proper function of the ballot is to assist the voter in easily and accurately identifying what they are voting on. *Weiler*, 788 N.W.2d at 888. Even in service of this principle, attempts to enlighten voters on good faith issues may create an unfair advantage one way or the other if extraneous information is allowed. *Clifford*, 357 N.W.2d at 101. Respondents may be correct that the Explanatory Note accurately informs voters about the proposed charter amendment, and it is important to note that they have not taken a position either in-favor-of or against the proposed amendment, but the Ballot Question addresses a highly-relevant public policy issue and a voter could very well construe such a lengthy and detailed explanation as either an endorsement or a warning.³ The Supreme Court has made it clear that additional information on the ballot should only clear up confusion, not create it. *Dougherty*, 44 N.W.2d at 84. Here, the Explanatory Note goes beyond the black-and-white of clarifying what is on the ballot and wades into a grey area of explanation that is not allowed.

For these reasons, the Court finds Petitioner has proven by a preponderance of the evidence that inclusion of the Explanatory Note would be an error under § 204B.44 as the proposed language

³ The Court is uncertain whether the Explanatory Note would tend to “help” or “hurt” one side or the other, but that is irrelevant.

has potential to sway voters' decisions one way or another. Petitioner's Prayer for Relief as to Paragraph (b) is granted.

C. The Court will not Certify Alternative Language.

Finally, Petitioner also requests that the Court certify ballot language without the Explanatory Note *See* Pet. to Correct Ballot, Prayer for Relief, ¶ (c). Respondents do not explicitly argue against this relief. The language Petitioner requests the Court to certify is as follows:

“Department of Public Safety

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers (police officers) if necessary, to fulfill its responsibilities for public safety?

Yes _____

No _____”

See id. The Court cannot and will not do so, just as it will not clarify what might constitute proper explanatory note language. While the Court has authority on matters regarding the legality of ballot language, it is longstanding policy that the judiciary's role is not to advise policy makers how to word bills or ballots. *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 651 (Minn. 2012) (*citing State v. Duluth & N.M Ry. Co.*, 112 N.W. 897, 898 (Minn. 1907)).

CONCLUSION

For the foregoing reasons, the Petition to Correct Ballot is granted in part as to Paragraph (b) of Petitioner's Prayer for Relief. Pursuant to Minn. Stat. § 204B.44 (b), the Court hereby orders Respondents to remove the Explanatory Note from the Ballot Question. The Petition is hereby denied as to Paragraphs (a) and (c) of Petitioner's Prayer for Relief.

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