

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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Yes 4 Minneapolis,

Petitioner,

vs.

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

Respondents.

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**ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS**

Court File No. 27-CV-21-9345

This matter came before the Court on August 18, 2021, upon Petitioner's Petition for Writ of Mandamus, filed with this Court on August 17, 2021. Terrance W. Moore, Esq., appeared on behalf of Petitioner. Sarah McLaren, Esq., appeared on behalf of Respondents.

Based upon the written submissions and oral arguments of counsel, all of the files, records, and proceedings herein, the Court being duly advised now makes the following:

Background

"Petitioner respectfully asks this Court for entry of judgment in its favor against the Respondents: (a) Granting and Ordering that a peremptory writ of mandamus shall issue immediately compelling the Respondents to immediately provide notice to the County Auditor of the Approved Ballot Question and its title, exclusive of the Stricken Explanatory Note and/or any mention of the Stricken Explanatory Note, by 4:30 p.m. on August 18, 2021 . . . (b) [i]n the alternative, granting and ordering that a temporary, immediate, and permanent injunction be issued

compelling the Respondents to immediately provide notice to the County Auditor of the Approved Ballot Question and its title, exclusive of the Stricken Explanatory Note and/or any mention of the Stricken Explanatory Note in time to permit the Ballot Question to be included on the ballot on November 2, 2021. . . (c) [i]n the alternative, granting and ordering the issuance of an alternative writ of mandamus compelling the Respondents to immediately show cause why the writ should not immediately issue.” *See* Pet’r’s Pet. for Writ of Mandamus (*hereinafter* “Pet’r’s Pet.”), Prayer for Relief, ¶¶ (a)-(c).

#### **SUMMARY OF RELEVANT FACTS**

1. The Court hereby incorporates and restates the relevant facts from its August 13, 2021 Order Partially Granting Petition to Correct Ballot (the “Order”).
2. Petitioner Yes 4 Minneapolis is a coalition campaign formed to support the establishment of a Department of Public Safety. *See* Order, p. 2.
3. 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.*
4. 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.*
5. 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. 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.*

6. 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.*
7. 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 id.*
8. 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 Order.*, p. 3.
9. 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”<sup>1</sup>). *See id.*
10. On July 28, 2021, the resolution was approved by default after the Mayor did not take any action within the time allowed. *See id.*
11. On July 30, 2021, Yes 4 Minneapolis brought a Petition to Correct Ballot under Minn. Stat. § 204B.44, which the Court heard on August 9, 2021. In its Order, the Court ordered Respondents to remove the Explanatory Note—as it was written when approved by the City Council on July 23, 2021—from the Ballot Question.
12. Respondents have now proposed a new ballot question (the “Revised Ballot Question”) with a new explanatory note (the “Revised Explanatory Note”), which the City Council’s Policy & Government Oversight Committee (“POGO Committee”) was scheduled to consider on August 18, 2021, immediately after the hearing on this Petition. *See Decl. of*

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<sup>1</sup> Also referred to by Petitioner as the “Stricken Explanatory Note.”

Moore, ¶¶ 3-4; *see also* Resp'ts' Mem. in Opp. Pet. for Mandamus (*hereinafter* "Resp'ts' Mem."), p. 2. Respondents state that the full City Council will then consider the POGO Committee's recommendation and adopt ballot language at its regularly scheduled meeting on Friday, August 20, 2021. *See* Resp'ts' Mem., p. 3.

13. Under Rule VIII, Section 7 of the Rules of the Minneapolis City Council, the resolution is then subject to consideration and approval by the Mayor. *See* Second Decl. of McLaren, Ex. A. Within five days, "the Mayor must either: 1) approve and sign the action(s); or 2) veto the action(s) and return the same together with the Mayor's objections thereto to the City Clerk." *Id.* If the Mayor returns any ordinance, resolution, or other act of the City Council within the five-days without having signed the same, it shall be deemed approved. *Id.*
14. By statute, the City must provide ballot language to the Hennepin County Auditor at least 74 days prior to a municipal election. Minn. Stat. § 205.16. The statutory deadline for the County Auditor to then provide notice of the election to the Minnesota Secretary of State is also 74 days before the election. *Id.* Therefore, the deadline for both the City and the County Auditor to provide ballot language to their respective recipients is Friday, August 20, 2021.
15. Petitioner brings this Petition for a Peremptory Writ of Mandamus under Minn. Stat. § 586.04, and alternatively an Alternative Writ of Mandamus under § 586.03-.04 or injunctive relief (the "Petition").

## CONCLUSIONS OF LAW

Whether the Petition should be granted depends on whether Respondents have failed to submit the ballot question to the Hennepin County Auditor on time pursuant to Minn. Stat. § 205.16, subd. 4, thereby failing to discharge their legal duty of submitting a valid proposed charter amendment to the qualified voters of Minneapolis.

**I. Petitioner has not established the essential elements required for the issuance of a peremptory or alternative writ of mandamus.**

1. A writ of mandamus may be issued “to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” Minn. Stat. § 586.01. A writ of mandamus is either alternative or peremptory. Minn. Stat. § 586.03. “An alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and the defendant's omission so to do, and command the defendant that immediately after the receipt of a copy of the writ, or at some other specified time, the defendant do the required act, or show cause . . . why the defendant has not done so.” *Id.* A peremptory writ shall be in similar form, but without the words requiring defendant to show cause. *Id.* When the right to require the performance of the desired act is clear and there is no valid excuse for nonperformance can be given, a peremptory writ may be allowed. Minn. Stat. § 586.04. In all other cases, the alternative writ shall issue. *Id.* A writ of mandamus shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law. Minn. Stat. § 586.02.
2. “Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in exercise of sound judicial discretion and upon equitable principles.” *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 493 (Minn. Ct. App. 2003). The two primary uses of mandamus

are (1) to compel the performance of an official duty clearly imposed by law and (2) to compel the exercise of discretion when that exercise is required by law. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006).

3. To obtain a writ of mandamus, the petitioner must demonstrate: “(1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995). In other words, the petitioner “must demonstrate a clear legal right to have the act in question performed and must demonstrate every material fact necessary to show the existence of the plain duty to act with respect to the relief sought.” *Mendota Golf*, 708 N.W.2d at 174.
4. A writ of mandamus does not control the manner in which a duty is to be performed. *Id.* at 171. “When a body has discretion as to how to perform a certain duty, the writ petitioner must show that failing to exercise that discretion in a given way was so arbitrary or capricious as to be an abuse of discretion.” *Houck v. E. Carver County Sch.*, 787 N.W.2d 227, 233-34 (Minn. Ct. App. 2010). Only in rare cases will official discretion be viewed as an abuse of discretion. *Id.*
5. A city’s charter commission shall propose amendments to the city charter upon the petition of voters equal in number for five percent of the total votes cast at the last general election in the city. Minn. Stat. § 410.12, subd. 1. Such amendments shall be submitted to the qualified voters at a general or special election and the form of the ballot shall be fixed by the governing body. *Id.*, subd. 4. The question on the ballot shall be stated “sufficient[ly] to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” *Id.*

6. Such ballot language shall then be transmitted by the municipal clerk of the city to the county auditor at least 74 days prior to the municipal election. Minn. Stat. § 205.16.
7. Petitioner argues that Respondents' proposing a Revised Ballot Question and Revised Explanatory Note for City Council approval is a direct violation of the Court's August 13 Order<sup>2</sup> and "an unlawful and improper way to keep the [question] off the ballot this November." Pet'r's Pet., ¶ 29.

*Failure to Perform an Official Duty Imposed by Law*

8. The first requirement Petitioner must satisfy is that Respondents have failed to perform an official duty clearly imposed by law. *Coyle*, 526 N.W.2d at 207. This requirement is only satisfied upon showing "the existence of a legal right to the act demanded which is so clear and complete as not to admit any reasonable controversy." *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn. Ct. App. 2009) (internal quotation omitted).
9. Here, Petitioner argues that Respondents do not legally have time to consider the Revised Ballot Question and Revised Explanatory Note because even if both are approved, the Mayor still has five days to consider the same. Pet'r's Pet., ¶ 27. As a result, Petitioner argues, there is no time to approve a Revised Ballot Question and Explanatory Note and still meet the statutory notice requirements of § 205.16. *Id.* Therefore, Petitioner continues, Respondents have no authority to even consider a Revised Ballot Question and/or Revised Explanatory Note. *Id.*, ¶ 28. Considering these circumstances, Petitioner argues there is no valid excuse for Respondents not to fulfill their statutory obligation and submit the title

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<sup>2</sup> Petitioner misstates the Court's Order. The Order does not preclude Respondents from including *any* explanatory note and in fact finds that the City *is not* barred from including one. Rather, the Court ordered that the "Explanatory Note", the one approved by City Council Resolution No. 2021R-209 on July 23, 2021, be removed.

and language of the ballot question to the County Auditor immediately. *Id.*, ¶¶ 35-36. Petitioner therefore requests an order compelling Respondents to immediately notify the County Auditor of the Ballot Question language without the Explanatory Note or any mention of the Explanatory Note by 4:30 p.m. on August 18, 2021.<sup>3</sup>

10. While it is uncontested that Respondents have a legal obligation to submit a ballot question regarding the proposed charter amendment to the qualified voters at the next general election, the Petition is deficient on multiple grounds.
11. First, Petitioner’s argument is based on generalized statements of purported ill-intent that are not rooted in fact. Petitioner assumes that by considering the Revised Ballot Question and Revised Explanatory Note, Respondents are somehow trying to “run out the clock” and shirk their duties under §§ 205.16 and 410.12. Upon review of the submissions and arguments of counsel, the opposite appears to be true.
12. Respondent Carl has declared that he will ensure the ballot language is provided to the Hennepin County Auditor so long as it is adopted by the City Council and signed or returned by the Mayor on Friday, August 20. *See* Second Decl. of Carl, ¶ 6. Similarly, the Mayor himself has declared that when the City Council adopts ballot language on August 20, 2021, he will act upon such language the same day. *See* Decl. of Frey, ¶ 10. Both declarations are made under penalty of perjury.
13. This does not reflect a failure to perform an official duty imposed by law, much less a clear showing of “the existence of a legal right to the act[ion] demanded” by Petitioner. *In re Welfare of Child of S.L.J.*, 772 N.W.2d at 838. Rather, the circumstances indicate a diligent effort by Respondents to comply with their statutory duties to submit the amendment to the

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<sup>3</sup> At oral argument, counsel for Petitioner amended this request to 12:00 p.m. on August 19, 2021.

qualified voters of Minneapolis, state the question on the ballot “sufficient[ly] to identify the amendment clearly,” and transmit the language to the County Auditor before the statutory deadline. *See* Minn. Stat. §§ 410.12, 205.16.

14. Second, the Petition essentially asks the Court to force the City Council to cease their administrative process and adopt old language that they (presumably) no longer see fit. It is the City’s responsibility to draft the ballot language and they have a statutory deadline of Friday, August 20 to transmit it to the County Auditor. The deadline is not August 18, nor is it August 19. The Court will not interfere with the administrative process while Respondents are still compliant with the statutory deadline.
15. Lastly, Petitioner asks the Court to prescribe ballot question language, which it has already refused to do. *See* Order Granting Pet., p. 11, Aug. 13, 2021. The Court finds it worth repeating that “[t]he form of the ballot shall be fixed by the governing body,” not the Court. Minn. Stat. § 410.12, subd. 4. Further, the law is clear that a writ of mandamus does not control the manner in which a duty is to be performed. *Mendota Golf*, 708 N.W.2d at 171. Even if mandamus were proper in this instance, the Court cannot tell Respondents *how* to discharge their duties.
16. While Petitioner has a right to demand performance of Respondents’ duties, it has no right to demand performance at the time of its choosing, nor does it have a right to dictate how such duties are performed. There has been no refusal to act, adequate time still remains for Respondents to perform their duties, and Petitioner seeks relief that cannot be granted, therefore neither a peremptory writ of mandamus nor an alternative writ of mandamus is inappropriate.

Public Wrong Specifically Injurious to Petitioner

17. Petitioner must also establish that it has suffered a public wrong and was specifically injured by Respondents' failure to perform their official duties. *Coyle*, 526 N.W.2d at 207; *see also In re Welfare of Child of S.L.J.*, 772 N.W.2d.
18. Petitioner cannot show such injury because it has not proven that Respondents have failed to fulfill any official duty. As such, the Petition also fails as to the second requirement of a writ of mandamus.

Other Adequate Legal Remedies

19. The final requirement of a writ of mandamus is that the petitioner show no other adequate legal remedies exist other than mandamus. *Coyle*, 526 N.W.2d at 207.
20. Petitioner's sole reference to adequacy of other legal remedies is "[g]iven the statutory notice deadlines, the Petitioner does not have a plain, speedy, or adequate remedy in the ordinary course of law because there will not be time to challenge any language approved on the very day it is due." Pet'r's Pet., ¶ 22. Petitioner's argument, essentially, is that no other redress will be adequate if Respondents perform their legally-imposed duties<sup>4</sup> and Petitioner is unable to challenge the approved language before it goes to the Hennepin County Auditor.
21. The Court is unaware of any caselaw creating an absolute right to challenge ballot language before the municipal clerk submits it to the county auditor. Additionally, other various legal remedies exist for Petitioner in the event it seeks them. The Petition therefore fails as to the third requirement as well.

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<sup>4</sup> Further, performance by Respondents of said duties would thereby render this Petition moot.

**II. Petitioner is not entitled to alternative injunctive relief.**

22. Petitioner alternatively requests that a “temporary, immediate, and permanent injunction be issued compelling the Respondents to immediately provide notice to the County Auditor of the Approved Ballot Question and its title, exclusive of the Stricken Explanatory Note and/or any mention of the Stricken Explanatory Note in time to permit the Ballot Question to be included on the ballot on November 2, 2021.” Pet’r’s Pet., Prayer for Relief, ¶ (b).
23. Petitioner has set forth no legal argument illustrating why or how it is entitled to such relief. A party seeking injunctive relief must show that such relief is necessary to prevent the occurrence of an event that will cause great and irreparable harm. *City of Mounds View v. Metro. Airports Comm’n.*, 590 N.W.2d 355, 357 (Minn. Ct. App. 1999). Put another way, injunctive relief must be necessary to prevent “harm that cannot be redressed by a legal remedy.” *Id.*
24. Here, Petitioner has not shown how *any* harm will result from allowing Respondents to complete their respective administrative processes, much less irreparable harm. Furthermore, should Petitioner be harmed, it has other legal remedies it may pursue besides injunctive relief. For these reasons, Petitioner’s request for injunctive relief must also be denied.

**CONCLUSION**

25. Respondents have not failed to timely submit the ballot question on the proposed charter amendment to the County Auditor, therefore they have not failed to discharge their legal

duty of submitting a valid proposed charter amendment to the qualified voters of Minneapolis.

26. Petitioner is not entitled to a peremptory writ of mandamus, nor is it entitled to an alternative writ of mandamus or injunctive relief.

**ORDER**

1. Petitioner's Request for a Peremptory Writ of Mandamus is hereby DENIED.
2. Petitioner's Request for an Alternative Writ of Mandamus is hereby DENIED.
3. Petitioner's request for injunctive relief is also DENIED.
4. The Petition is hereby DISMISSED.

**LET JUDGMENT BE ENTERED ACCORDINGLY.<sup>5</sup>**

BY THE COURT:

DATED: August 19, 2021



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Jamie L. Anderson  
Judge of District Court

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<sup>5</sup> Though the Court does not believe entry of judgment is wholly necessary in this Order denying the writ, judgment language is included (and judgment will be entered) so the parties have no reason to doubt the finality of this Order.