

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT

Don Samuels,
Sondra Samuels,
Bruce Dachis,

Petitioners,

v.

City of Minneapolis,
Minneapolis City Council,
Hennepin County Auditor Mark V. Chapin,
Casey Joe Carl, in his official capacity as
City Clerk of the City of Minneapolis,

**ORDER GRANTING PETITION
TO CORRECT BALLOT AND
GRANTING MOTION FOR
INJUNCTION**

Court File No. 27-CV-21-11047

Respondents,

and

Yes 4 Minneapolis,

Intervenor.

The Court heard this matter on September 13, 2021, as well as the Motion for Relief Pursuant to Minn. R. Civ. P. 60.02 and 65 in Court File No. 27-CV-21-10650. Though arguments were heard simultaneously, a separate order will issue on the Motion in the other case.

In summary and as detailed below, the Court finds that the New Ballot Question does not ensure that voters are able to understand the essential purpose of the proposed amendment. It is unreasonable and misleading. Therefore, the Current Ballot Language is erroneous under Minn. Stat. § 204B.44. Both the Petition and injunctive relief are granted.

Procedure and Appearances

Joseph Anthony, Esq., appeared on behalf of Petitioners. Ivan Ludmer, Assistant City Attorney, appeared on behalf of Respondents City of Minneapolis, City Clerk Casey Carl and Minneapolis City Council (collectively, the “City Respondents”). Jeffrey Wojciechowski, Assistant Hennepin County Attorney, appeared on behalf of County Auditor Mark Chapin. Terrance Moore, Esq., appeared on behalf of Intervenor Yes 4 Minneapolis.

This Court issued an Order on September 7, 2021, in Court File No. 27-CV-21-10650 granting a Petition to Correct Ballot and granting an injunction (“Sept. 7 Order”), which prohibited the County Auditor from including Current Ballot Language on all ballots and enjoined the City of Minneapolis from allowing Minneapolis residents to vote on the Current Ballot Language. Order Granting Petition, Court File 27-CV-21-10650, Index No. 41, at 17. Later that same day, the Minneapolis City Council passed new language for the ballot question (“New Ballot Question”). The next day, on September 8, 2021, Petitioners’ counsel filed a letter with the Court in which they voiced their opposition to the New Ballot Question and outlined their intent to file a motion to modify the Court’s Sept. 7 Order, including the injunction. Shortly thereafter, Intervenor also filed a letter with the Court, stating its opposition to Petitioners’ anticipated motion on a few grounds, including Intervenor’s position that Petitioners’ proposed motion is “not the proper remedy to correct an allegedly defective ballot question.” Corresp. filed Sept. 8, 2021, Court File 27-CV-21-10650, Index No. 47, at 3. Intervenor went on to state that, “[i]f Petitioners believe [the New Ballot Question] is in error, they must challenge it under Minn. Stat. Sec. 204B.44, with a new petition.” *Id.*

On September 9, 2021, Petitioners filed a Motion and Memorandum in Support of Motion

to Modify Injunction and for other Relief Pursuant to Minn. R. Civ. P. 60.02 and 65 in Court File No. 27-CV-21-10650. Also on September 9, 2021, Petitioners filed this new Petition to Correct Ballot Question Pursuant to Minn. Stat. § 204B.44 and to Enjoin Distribution of Erroneous Ballots.

The Court heard the motion in 27-CV-21-10650, along with the Petition to Correct Ballot in this case, and took both matters under advisement on September 13, 2021.

Later that day on September 13, 2021, Intervenor filed a petition for accelerated review by the Supreme Court on Court File No. 27-CV-21-10650. If the Supreme Court grants review on that case, it is clear that this Court loses jurisdiction on that case. What is not clear is whether the Court can continue in this case, 27-CV-21-11047. Generally, the appellate review of one case would not affect the district court’s action or jurisdiction on the other. However, because these two cases are so connected – same parties, same legal issues, similar challenge to ballot language – this Court asked for briefs from the parties as to whether this Court can proceed with ruling in this case if the Supreme Court grants review on the other case. The parties all agreed that the two cases are independent of each other and requested the Court issue its Order in this case “without delay.” *See generally*, Parties’ Joint Brief on Jurisdiction.

Background

The Sept. 7 Order granted Petitioners’ Petition to Correct Ballot Question and granted injunctive relief. Specifically, the Court enjoined the County Auditor “from including Current Ballot Language on all ballots, including absentee ballots, for any election.” Further, the Court enjoined the City of Minneapolis “from allowing Minneapolis residents to vote on the Current Ballot Language.”

Hours after the Sept. 7 Order issued, the City Council passed Resolution No. 2021R-263, the New Ballot Question, that reads:

City Question #2

Department of Public Safety

Shall the Minneapolis City Charter be amended to remove the Police Department and replace it with a Department of Public Safety that employs a comprehensive public health approach to the delivery of functions by the Department of Public Safety, with those specific functions to be determined by the Mayor and City Council by ordinance; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could 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 a part of this ballot?

Yes

No

Explanatory Note:

This amendment would create a Department of Public Safety combining public safety functions through a comprehensive public health approach to be determined by the Mayor and Council. The department would be led by a Commissioner nominated by the Mayor and appointed by the Council. The Police Department, and its chief, would be removed from the City Charter. The Public Safety Department could include police officers, but the minimum funding requirement would be eliminated.

Pet. to Correct Ballot, ¶ 5, Ex. A; City Resp.s’ Opp. to Pet. at 16-17, citing Sept. 8, 2021 Decl. of N. Pentelovitch, Ex. 1.

After the City Council passed the New Ballot Question, that language was sent to the County Auditor the same day, who then immediately “designed a ballot containing the [New Ballot Question], and sent it to the printer on that same day.” *See* Court File No. 27-CV-21-10650, County Auditor’s Resp. to Pets.’ Mot. at 2.

Petitioners now ask the Court to find that the New Ballot Question is erroneous and to order

that the Hennepin County Auditor and City Respondents be enjoined from preparing and distributing ballots and allowing voters to vote on the New Ballot Question. Further, Petitioners ask the Court to order that all ballots with the New Ballot Question be destroyed and that the City Council be enjoined from “adopting any ballot questions that fail to address in some manner definite plans adopted by the City Council for implementing the proposed Charter amendment within the thirty-day period between an affirmative vote approving such Charter amendment and its effective date.” Pet. to Correct Ballot at 28-29.

Standard of Review

Under Minn. Stat. § 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).

A ballot question that amends the city charter shall be “sufficient to identify the amendment clearly...” Minn. Stat. § 410.12, subd. 4.

Analysis

The parties’ arguments and the analysis in this case are very similar to that in the Sept. 7 Order, though the Court’s analysis in this case is solely focused on the New Ballot Question.

Petitioners argue that, if the Petition is not granted and the New Ballot Question appears on the November 2, 2021 general election ballot, voters will be misled about what the proposed amendment does. Pet. to Correct Ballot, ¶ 21. Further, Petitioners argue, voters need to be “presented with ballot language that accurately describes the effects of the decision they are being asked to make...” *Id.*, ¶ 24.

City Respondents argue that Petitioners are purportedly challenging the New Ballot Question, but they are really challenging the amendment itself. City Resp.s’ Opp. to Pet. at 2.

Intervenor argues that because ballot questions are not required to explain the effect of the proposed amendment, and because the New Ballot Question is not unreasonable or misleading (or, for that matter, a palpable attempt to evade its obligation to the voters), the Petition must be denied. Intervenor’s Resp. at 1, 7.

As in filings previously submitted to the Court, City Respondents argue that the court must “evaluate the ballot question with a high degree of deference to the’ City Council.” City Resp.s’ Opp. to Pet. at 21, citing *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636 at 646-647 (Minn. 2012). As this Court has stated before, City Respondents are correct that that deference must be given to the City Council’s authority over its City. It is also true that the court in *League of Women Voters Minn.* goes on to say that “[R]eview is limited to determining whether the ballot question as framed is so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Id.*, citing *League of Women Voters Minn.*, 819 N.W.2d at 647.

As it did with the previous petition regarding the Current Ballot Language in 27-CV-21-10650 (“Prior Petition”), the Court must decide whether the New Ballot Question is so unreasonable

or misleading that it should not be posed to the voters. Additionally, the Court must determine whether the Current Ballot Language is “sufficient to identify the amendment clearly.” Minn. Stat. § 410.12, subd. 4.

As was the case in Court File No. 27-CV-21-10650, the Court heard the Motion for TRO at the same time it heard the underlying Petition on the merits. To be consistent, because both were heard together and will be decided together, the Court finds it appropriate to decide whether the Petition should be granted and, if so, to move on to the Motion for TRO to determine if injunctive relief is warranted.

Petition to Correct Ballot

Again, the question before the Court is whether the New Ballot Question is an error, omission, or wrongful act justifying correction pursuant to § 204B.44.

In order to highlight the differences between the Current Ballot Language challenged in the Prior Petition and the New Ballot Question in this case, the changes have been “redlined” below.¹

Department of Public Safety

Shall the Minneapolis City Charter be amended to ~~strike and replace~~ remove the Police Department and replace it with a Department of Public Safety that employs a comprehensive public health approach to the delivery of functions by the Department of Public Safety, with those specific functions to be determined by the Mayor and City Council by ordinance; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could include licensed peace officers (police officers), if necessary, with administrative authority to be consistent with other city departments to fulfill its responsibilities for public safety to fulfill its responsibilities for public safety, with the general nature

¹ (~~Struck through~~ language was in the Current Ballot Language and not in the New Ballot Question. Underlined language is in the New Ballot Question and was not in the Current Ballot Language.)

of the amendments being briefly indicated in the explanatory note below, which is made a part of this ballot?

_____Yes

_____No

Explanatory Note:

This amendment would create a Department of Public Safety combining public safety functions through a comprehensive public health approach to be determined by the Mayor and Council. The department would be led by a Commissioner nominated by the Mayor and appointed by the Council. The Police Department, and its chief, would be removed from the City Charter. The Public Safety Department could include police officers, but the minimum funding requirement would be eliminated.

Obviously, the New Ballot Question is quite a bit longer, and includes an explanatory note. The Petition does not object to the New Ballot Question as it pertains to the inclusion of an explanatory note and this Court has previously held that the inclusion of an explanatory note is not improper. *See* Order Partially Granting Petition to Correct Ballot, Court File No. 27-CV-21-9345, filed August 13, 2021. Therefore, the Court will not analyze whether the explanatory note is appropriate.

The Court acknowledges the law and agrees with Intervenor on two points: mere ambiguity in the New Ballot Question is not sufficient to grant the Petition, and the effects of the proposed amendment need not be included in the New Ballot Question. Intervenor’s Resp. at 4. As to the latter, there is a question as to what the “effects” of the proposed amendment are. In *League of Women Voters Minn.*, the case regarding voter identification, the dispute centered around a few phrases in the ballot question. Specifically, there was a dispute over whether the difference between “government-issued photographic identification” as required in the proposed amendment and “valid photographic identification” as specified in the ballot question renders “the ballot

question ‘so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit’ the proposed constitutional amendment ‘to a popular vote.’” *League of Women Voters Minn.*, at 648-649, citing *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006). The Supreme Court found that the difference did not make the ballot question a palpable evasion.

Another challenge to the language in *League of Women Voters Minn.* was whether the ballot question referring to “all voters” was misleading because, petitioners argued, the proposed amendment required only those voting in person to show such identification. The Supreme Court found this argument unpersuasive, and stated that petitioners were wrong because all voters would be required to show a “substantially equivalent identity.” *Id.*, at 649.

Ultimately, the Supreme Court found that though all the effects of an amendment need not be included in a ballot question, the “meaning and effect” might be required to ensure “that voters [are] able to understand the ‘essential purpose’ of the proposed” amendment. *Id.*, at 651.

In *Breza*, the Supreme Court said they “can conceive of a situation...where the language of a ballot question is so complex that voters could not fairly be expected to understand the meaning or essential purpose of the proposed” amendment. 723 N.W.2d at 636. This is that situation. The New Ballot Question is “so complex that voters” cannot be expected to “understand the meaning or essential purpose” of the proposed charter amendment.

The two cases on which all the parties rely, *League of Women Voters Minn.* and *Breza*, have very distinguishable facts from the case at hand. In *League of Women Voters Minn.*, the dispute over “government-issued” versus “valid” as it relates to photographic identification was much simpler. And the Court found the petitioners’ argument about “all voters” to be wrong.

In *Breza*, the challenged ballot question read, “Shall the Minnesota Constitution be

amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?” 723 N.W.2d at 635. Opponents argued that the ballot question was misleading, primarily because voters will believe “there is a 40-60 split between transit and highways.” *Id.* The Supreme Court rejected this argument and said the ballot question “clearly does not meet the high standard set out in our precedent for finding an” amendment to be misleading. *Id.*, at 636.

As this Court reviews the language challenged in *Breza* and *League of Women Voters Minn.*, it sees a stark difference in the language the Supreme Court found acceptable in those cases and the language challenged in this Petition. City Respondents argue that the New Ballot Question clarifies some of the issues addressed in the Sept. 7 Order, but the New Ballot Question, like its predecessor, does not clearly identify the essential purpose of the proposed amendment.

In the Sept. 7 Order, this Court discussed a case in which the trial court found, and the Supreme Court upheld, “that the proposed amendment was vague, ambiguous, and incapable of implementation.” *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 293 Minn. 227, 231, 198 N.W.2d 531, 534(1972). Though this Court believes the New Ballot Question is, like the Current Ballot Language, vague, ambiguous and incapable of implementation, full analysis is unnecessary in light of the analysis of *Breza* and *League of Women Voters Minn.* The Court is certain that the New Ballot Question does not meet the requirement of identifying the essential purpose of the amendment, thereby rendering it insufficient to clearly identify the amendment. The New Ballot Question is so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a vote.

Therefore, the Court finds Petitioners have proven by a preponderance of the evidence that inclusion of the New Ballot Question on the ballot would be both an error and a wrongful act under § 204B.44 because the proposed language is insufficient to identify the amendment clearly, it does not assist the voter in easily and accurately identifying what is being voted on, and it does not meet the requirement of identifying the essential purpose of the amendment, all of which will mislead voters and make it unjust. As a result, the Petition should be granted.

Motion for Temporary Restraining Order and Temporary Injunction

Now that the Court has found that the Petition should be granted, it must determine whether injunctive relief is warranted. The City Respondents and Intervenor spend almost no time on this Motion in their briefs. The Court finds that much of its analysis in the Sept. 7 Order applies to the case at hand. First, the Court will determine whether Petitioners have an adequate remedy at law. If the Court finds that they do not, then the Minnesota Supreme Court has outlined the factors that must be considered for temporary restraining order and temporary injunction requests. Those are: (1) the relationship between the parties before the dispute arose; (2) the harm plaintiff may suffer if the temporary restraining order is denied, compared to the harm inflicted on defendant if the temporary restraining order is granted; (3) the likelihood that the party will prevail on the merits; (4) public policy considerations; and (5) administrative burdens imposed on the court if the temporary restraining order issues. *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

There Is No Adequate Remedy at Law.

An injunction should not issue where there is an adequate remedy at law. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 260 Minn. 499, 504, 110 N.W.2d 348, 351, citing 9 Dunnell, Dig. (3 ed.) s 4472. The threatened injury must be real and substantial. *Id.* Intervenor has argued in the past that Petitioners have an adequate remedy at law – namely, Petitioner can have a hearing on the Petition. Because the Court heard both the Petition and the Motion for TRO at the same time, and will, by this Order, grant the Petition and find that the New Ballot Question is not proper, this argument becomes moot. Therefore, the Court may be able to cease with further analysis. However, because the Petition’s prayer for relief requests injunctive relief, the Court finds it necessary to continue with the full analysis to determine whether injunctive relief is appropriate.

***Dahlberg* Factors**

The Relationship Between the Parties Will Be Unchanged.

The relationship between the Parties is virtually non-existent. There is no evidence that any of the parties – Petitioners, Respondents or Intervenor – know each other or have a pre-existing relationship with each other. By granting a temporary restraining order, the Court will not alter this relationship as it exists. The Court finds this factor to weigh in favor of Petitioners.

Petitioners Will Suffer Irreparable Harm.

Under the second factor in *Dahlberg*, the Court considers the harm to be suffered by Petitioners if the temporary restraining order is not granted versus the harm inflicted on Respondents (and Intervenor) if the temporary restraining order is granted.

When the Court balances the harms, the moving party must show irreparable harm to

trigger an injunction, while the non-moving party need only show substantial harm to bar it. *Pacific Equipment & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. Ct. App. 1994). The moving party “must show that legal remedies are inadequate and that an injunction is necessary to prevent irreparable injury.” *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451, (Minn. Ct. App. 2001).

Petitioners argue that they will be harmed irreparably if the New Ballot Question is allowed to be on the ballot in November 2021. Petitioners’ argument of the potential for harm is identical to that specified in the Sept. 7 Order. The Court adopts its analysis in the Sept. 7 Order for the New Ballot Question and incorporates it herein. Sept. 7 Order at 13-14. If the New Ballot Question is posed to voters in November and it passes, but later it is made clear that voters did not comprehend its meaning, the harm to Petitioners (and Minneapolis residents in general) would be irreparable. It would be nearly impossible, if not impossible, to rectify or reverse a vote of the electorate in favor of the New Ballot Question. Therefore, if a misleading question is put on the ballot and it passes, the Court finds Petitioners would suffer irreparable harm.

On the other hand, the Court finds that neither Respondents nor Intervenor will be substantially harmed if an injunction is ordered. The underlying petition signed by residents of Minneapolis that gave rise to the proposed charter amendment is not affected by this Order and, if the proposed charter amendment is not on the ballot this November, it may be on a ballot in a future election. The Court recognizes Intervenor’s argument that the amendment must be on the general election ballot this November, however the Court is not convinced that, in light of the petition signatures that led to the proposed amendment and all the resulting litigation, there is a chance that the charter amendment question would not be posed to voters at some point in the

future. Again, the Court recognizes some harm to Respondents and Intervenor because of the delay in posing the charter amendment question to voters in November, but does not find that it is substantial harm. Therefore, this factor weighs in favor of Petitioners.

Petitioners Are Likely to Succeed on the Merits of the Petition.

The third *Dahlberg* factor focuses on the moving party's likelihood of prevailing on the merits. *Dahlberg*, 137 N.W.2d at 322. A party moving for injunctive relief must show that it is likely to succeed on the merits of its claim. *Queen City Const., Inc. v. City of Rochester*, 604 N.W.2d 368, 378 (Minn. Ct. App. 1999).

Because the Court heard the Petition and Motion for TRO at the same time, it is evident from this Order that not only are Petitioners likely to succeed on the merits, they *do* succeed on the merits. The Court has already found the Petition should be granted. Therefore, this factor weighs in favor of Petitioners.

Good Public Policy Requires that the Court Grant the Petition.

Under the fourth factor of *Dahlberg*, the Court must consider the aspects of the factual situation which permit or require consideration of public policy. *Dahlberg*, 137 N.W.2d at 321-22.

As the Court found in its Sept. 7 Order, though the issue is ripe for political debate, the Court does not and will not weigh in on whether the underlying charter amendment is good policy. However, the Court is tasked with determining the public policy considerations regarding the allowance of a question to be posed to voters on a ballot in an election when that question is misleading and fails to identify the essential purpose of the amendment. Clearly it is not good

public policy to ask voters to vote, either in favor of or against, an insufficiently identified and misleading question on the ballot. Therefore, this factor weighs in favor of Petitioners.

There is No Administrative Burden.

There is no administrative burden to the Court. Therefore, this factor is neutral.

Based on the consideration of the *Dahlberg* factors and the Court's finding that Petitioners have no adequate remedy at law, the Petitioners' Motion for Temporary Restraining Order and Temporary Injunction should be granted. However, because the underlying substantive dispute is decided simultaneously and the Petition is granted, the injunction shall not be temporary in nature, but rather final injunctive relief.

The Court notes that though Petitioners ask the Court to enjoin the City Council from adopting future "ballot questions that fail to address...definite plans...for implementing the proposed charter amendment..." the Court has no authority to order such an injunction and will not do so.

Injunction

The Court agrees with Intervenor and City Respondents that, in order to lessen the impact of this Order while the parties pursue an appeal, the appropriate injunctive relief should be limited to distribution of the ballots containing the New Ballot Question. The Court agrees with City Respondents (and with the County Auditor in his brief filed in 27-CV-21-10650) that it is appropriate to order that the New Ballot Question remain on the ballots currently being printed and, if an appeal of this Order is filed before September 17, 2021, but not yet ruled on by an

appellate court, ballots distributed should include a “notice of ballot change indicating that the results of the question will not be reported.” *See* Court File No. 27-CV-21-10650, County Auditor’s Resp. to Pets.’ Mot. at 3.

Bond

Because the injunction granted in this Order is not temporary in nature, there is no security required under Minn. R. Civ. Pro. 65.03. The Court recognizes the County Auditor’s request for a \$1,800 bond for “potential costs” his office may incur, but because the Court is not ordering destruction of the current ballots, this request will not be granted.

NOW, THEREFORE, THE COURT MAKES THE FOLLOWING:

ORDER

1. The Petition to Correct Ballot Question is GRANTED.
2. The injunction is GRANTED. The New Ballot Question may remain on the ballots currently being printed. If an appeal to this Order is filed but not yet ruled on by an appellate court before voting starts on September 17, 2021, the City Respondents and County Auditor must provide, with each ballot, a notice of ballot change instructing all voters that the New Ballot Question should not be voted on and will not be counted or reported pursuant to court order.
3. The City Respondents and County Auditor are enjoined from tallying or counting or in any way considering votes on the New Ballot Question. The City Respondents and County Auditor are further enjoined from collecting or releasing any data regarding whether and how voters who, despite being informed that the New Ballot Question should not be voted on, vote on the New Ballot Question.
4. The City Respondents and County Auditor are enjoined from publicly releasing results

tapes or copies of results tapes from individual machines.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

DATE: September 14, 2021



Jamie L. Anderson
District Court Judge