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State of Minnesota
In Supreme Court

A22-1190

Kolten Kranz, David Clark, and Craig Black,

vs ***Appellants,***

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.

Brief for Respondents City of Bloomington and Christina Scipioni

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STATEMENT OF LEGAL ISSUES

This is an appeal from Hennepin County District Court. The Minnesota Supreme Court granted Appellant's Petition for Accelerated Review on August 30, 2022. The issues before the Court are:

1. Does Minn. Stat. § 410.12 provide the City of Bloomington with the authority to sever the unconstitutional § 4.08 of the Charter Amendment Petition prior to submitting it to Bloomington voters?

   At the district court: Respondents City of Bloomington and City Clerk briefed this issue in their Memorandum in Opposition to Petition for Correction of Ballot Error and Declaratory Judgment arising from Appellant's Petition filed pursuant to Minn. Stat. § 204B.44. Resp. Br. at 12-15.

2. Does *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972) provide the City of Bloomington with the authority to sever the unconstitutional § 4.08 of the Charter Amendment Petition prior to submitting it to Bloomington voters?

   At the district court: The court denied Appellants' Petition by order dated August 24, 2022. The trial court held it would be improper to sever § 4.08 from the Charter Amendment Petition. Doc. 37.

3. Does *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972) provide the Court with the authority to sever the unconstitutional § 4.08 of the Charter Amendment Petition prior to submitting it to Bloomington voters?

   At the district court: *See* No. 2 above.

   Most Apposite authorities for issues:

   Minn. Const. art. XII, §§ 4, 5
   Minn. Stat. § 410.12
   Jennissen v. City of Bloomington, 938 N.W.2d 808 (Minn. 2020)
   Davies v. City of Minneapolis, 316 N.W.2d 498 (Minn. 1982)
   Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis, 198 N.W.2d 531 (Minn. 1972)
   State ex. rel. Andrews v. Beach, 191 N.W.2d 1012 (Minn. 1923)

STATEMENT OF THE CASE

Appellants and City Respondents[1] agree that this case arises out of Appellants' efforts to compel the City of Bloomington ("City") to place an unconstitutional charter amendment on the November 2022 general election ballot. Appellants' proposed Charter Amendment Petition contains four sections (§§ 4.02, 4.04, 4.07, and 4.08) specifically drafted to repeal ranked-choice voting provisions from the City Charter and to require an unconstitutional super majority Bloomington voter approval requirement to reinstate ranked-choice voting (the "Charter Amendment Petition"). The City determined the Charter Amendment Petition violated the Minnesota Constitution and Statutes by requiring more than the statutorily mandated threshold for voter approval of charter amendments and by limiting an election to reinstate ranked-choice voting to less times than specifically authorized under Minnesota Statutes. Thus, the City Council could not place the unconstitutional Charter Amendment Petition on the ballot.

On August 18, 2022, Appellants sued the City and City Clerk under Minn. Stat. § 204B.44 seeking an order compelling the City Council to put the Charter Amendment Petition on the November 8, 2022, general election ballot. On August 24, 2022, the Honorable James A. Moore, Hennepin County District Court, issued an order denying Appellants' "Petition for Correction of Ballot Error, to Enjoin Distribution of Erroneous Ballots, and for Declaratory Judgment." Doc. 35 at 44. Judge Moore held that § 4.08 is

[1] The City and Christina Scipioni are collectively referred to in the body of the brief as the City and for citation purposes as "Resp."

preempted by state law and the Minnesota Constitution and it would be improper to sever § 4.08 from the Charter Amendment Petition, and denied the Petition in its entirety. *Id.*

On August 25, 2022, Appellants appealed the district court's decision appealing only that portion of the district court Order declining to sever § 4.08 from the Charter Amendment Petition. Appellants' Br. at 7. Thus, there is no dispute that § 4.08 of the Charter Amendment Petition is unconstitutional and the issue is no longer before the courts. *Id.*

Also on August 25, Appellants filed a petition in this Court seeking accelerated review. On August 30, 2022, this Court granted the petition, ordered briefing in accordance with Minn. R. Civ. App. P. 131 and 132, and scheduled oral argument for November 28, 2022.

STATEMENT OF UNDISPUTED FACTS

Respondent City of Bloomington is a home rule charter city, and its City Council is the governing body of the City.[2] Respondent Christina Scipioni is the Bloomington City Clerk and is responsible for administering elections in the City consistent with state law and the City Charter. Appellants Kolten Kranz, David Clark, and Craig Black (collectively, "Appellants") are registered voters in the City who signed the Charter Amendment Petition.

[2] The Charter Amendments section of the Bloomington City Charter states "[o]n November 8, 1960, the City first adopted its Home Rule Charter pursuant to § 36, Article IV, of the Constitution of the State of Minnesota." Section 1.02 of the Bloomington City Charter states the "powers of the city" as being "all powers which it … is authorized to exercise for a municipal corporation in this state in harmony with the constitutions of this state and of the United States." Section 1.02 also states that the "intention" of the City Charter "is that every power which the people of the city can lawfully confer upon themselves . . .is … so conferred…". *See* Resp. Add. 00001.

Appellant Kranz is a member of the committee of petitioners. Appellants Clark and Black are not members of the committee of petitioners. Respondents Mark Chapin, in his official capacity as Hennepin County Auditor, and Steve Simon, in his official capacity as Secretary of State, did not take a position on the constitutionality or severability of § 4.08 of the Charter Amendment Petition at the district court.

On June 21, 2022, the committee of petitioners (five Bloomington electors, as required by Minn. Stat. § 410.12, subd. 2) submitted the Charter Amendment Petition to the City seeking to amend the Bloomington City Charter under Minn. Stat. § 410.12. Doc. 25 at 96. The Charter Amendment Petition is titled "Ballot Question – Petition For Charter Amendment to Repeal Ranked-Choice Voting In Bloomington" with a stated purpose of:

> The purpose of this petition is to repeal ranked-choice voting in the City of Bloomington, restore free and fair elections to their prior form, and ensure public approval before any potential future adoption of ranked-choice voting.

Id.

The Charter Amendment Petition contains four sections amending existing City Charter Chapter 4: Nominations and Elections. Appellants' proposal seeks to repeal the ranked-choice voting method that is used by the City to elect its mayor and city council members, to return the form of elections to its previous form, to require a two-third voting threshold for future charter amendments related to ranked-choice voting, and to limit future elections on ranked-choice voting to a regular municipal election. *Id*. at 97. The Charter Amendment Petition proposed to amend the City Charter as follows:

> § 4.02 PRIMARY ELECTIONS.
>
> On the second Tuesday in August before the regular municipal election there must be a primary election to select two nominees for each

elective office at the regular municipal election, unless two nominees or fewer file for each elective office.

§ 4.04 FILING OF CANDIDATES

An eligible person who desires to be elected to any elected office must file an affidavit with the city clerk not more than 84 days nor less than 70 days before the primary election, paying to the clerk a fee of $50.00. The city clerk must prepare and print at city expense the necessary ballots or other material required for an election. The ballots or other material must not contain political party designation of any candidate.

§ 4.07 PROCEDURES AT ELECTIONS.

The council can adopt rules and regulations by ordinance that it considers necessary or desirable to regulate the conducts of elections subject to this chapter and Minnesota Statutes as applicable.

§ 4.08 RANKED-CHOICE VOTING METHOD PROHIBITED

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

Id.

On August 8, 2022, the City Council considered the text of the Charter Amendment Petition and all seven City Council members adopted Resolution No. 2022-146 containing the following decision and findings:

1. The Petition is rejected as manifestly unconstitutional and inconsistent and in conflict with the Minnesota Constitution and Minnesota Statutes; and
2. A question for the Petition cannot be placed on the November 2022 general election ballot; and
3. The City Clerk is directed to retain this Resolution along with the Petition as an official record of the City of Bloomington; and
4. City staff are authorized and directed to take all necessary and appropriate steps to carry out the intent of this Resolution.

Doc. 22 at 74; and Doc. 25 at 137-138.

On August 18, 2022, Appellants filed a petition in the district court for correction of a ballot error under Minn. Stat. § 204B.44 and sought declaratory and injunctive relief. Doc. 1.

On August 23, 2022, the district court held an emergency hearing on the petition for correction of a ballot error. On August 24, 2022, the district court issued an order denying the petition and declaring § 4.08 of the Charter Amendment Petition preempted by state law and the Minnesota Constitution. Doc. 37 at 53. The district court concluded the remaining provisions of the Charter Amendment Petition were valid but declined to sever the preempted provision of the Charter Amendment Petition. *Id.* Accordingly, the district court denied the Appellants' petition in its entirety. *Id.* This appeal followed.

STANDARD OF REVIEW

The relevant facts are not disputed by the parties. This case requires the Court to analyze and interpret the Minnesota Constitution and Minn. Stat. § 410.12, which requires de novo review. *Cruz-Guzman v. State*, 916 N.W.2d 1, 7 (Minn. 2018) (stating that "[t]he interpretation of the constitution is a purely legal issue that we review de novo"); *Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014) (same) (citation omitted).

ARGUMENT

At issue is a city's or court's authority to sever unlawful sections from a charter amendment petition after the requisite number of registered voters have through their signatures attested to knowing the contents and purpose of the petition and before it is placed on a ballot for city-wide consideration at the ballot box. In the words of the district court:

> . . . [Minn. Stat. § 410.12] requires that the language be decided *before* voters' signatures are obtained. There is no room in this statutory scheme for petitioners, city attorneys, or courts to rewrite the language *after* voters' signatures are obtained.

Doc. 37 at 53.

Severing charter amendment language prior to an election is not permitted in Minnesota. Appellants' arguments with respect to cities contradict the constitutional requirement that charter amendments be proposed and adopted as provided by law and the process the legislature prescribes in Minn. Stat. § 410.12. The City had no authority to sever § 4.08 from the Charter Amendment Petition.

Moreover, Appellants' reliance on judicial authority fails as a matter of law. Minnesota courts, including the Court in *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972) ("*HRA*"), have not adopted a judicial policy authorizing pre-election severance of unlawful charter amendment language. Instead, Minnesota courts have held that pre-election severance is impermissible because the court cannot read the minds of the people who signed the Charter Amendment Petition. This Court should reject Appellants' severance arguments and uphold the district court's decision.

I. Severance is not authorized because only the Minnesota Legislature is authorized to change the charter amendment process.

The district court correctly determined § 4.08 of the Charter Amendment Petition is unconstitutional and inconsistent with the Minnesota Constitution and Minnesota Statutes.

Doc. 37 at 49-50.[3] In an attempt to salvage their petition, Appellants ask this Court to take the extraordinary step of judicially creating new procedures for how one hundred and seven (107)[4] Minnesota charter cities amend their city charters. Specifically, Appellants ask this Court to "harmonize the ability of a city council, by and through its city attorney[5], to sever out unlawful language which does not 'substantially emasculate' a voter-initiated charter amendment and present the remainder to the voters for potential approval." Appellants' Br. at 3. Instead of collecting a couple thousand Bloomington voters' signatures a second time, Appellants instead want this Court to accept the Appellants' preferred version of the unknowable intent of thousands of Bloomington voters and ignore well-established charter amendment law under (a) the Minnesota Constitution, (b) State Law, and (c) almost a century of legal precedent. *See* Minn. Const. art. XII, § 5; Minn. Stat. ch. 410; *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 472 (Minn. 2016) (stating that "[t]he fact that Vote for 15MN collected the requisite number of signatures…does not compel a different outcome…because we have said that charter provisions (and therefore charter amendments) must be consistent with state law and public policy")*; Bard v. City of*

[3] Appellants have not appealed the constitutionality of § 4.08. Therefore, Appellants may not now challenge the district court's ruling that § 4.08 is unconstitutional and preempted by state law. *Ortega v. State*, 856 N.W.2d 98, 102 n.4 (Minn. 2014) (stating that "[w]e have held that issues not raised on appeal are waived") (citing *Jackson v. State*, 817 N.W.2d 717, 721 no.3 (Minn. 2012)).

[4] Handbook of Minnesota Cities, "The Home Rule Charter City," Ch. 4 p.3 (July 7, 2022) available at https://www.lmc.org/wp-content/uploads/documents/The-Home-Rule-Charter-City.pdf (last accessed Oct. 26, 2022).

[5] Appellants misunderstand the role and authority of a city attorney. Resp. Add. 00002, § 2.02. ("The council exercises the legislative power of the city and decides all matters of policy."). City attorneys provide advice and counsel to their respective city councils.

Minneapolis, 99 N.W.2d 468, 471 (Minn. 1959) (holding the Minnesota Legislature was given authority to fix the percentage of votes required to amend city charters); *State ex rel. Andrews v. Beach*, 191 N.W.2d. 1012, 1013 (Minn. 1923) (recognizing that "[n]either the city council nor the courts have any supervisory or veto powers."). Appellants' request that this Court rewrite the established legislative procedures for amending home rule charters to authorize or require cities to sever unlawful sections from a charter amendment petition should be denied.

a. The Minnesota Constitution authorized the Legislature to set the charter amendment process.

The Minnesota Constitution provides that a local government unit may adopt a home rule charter for its government. Minn. Const. art. XII, § 4. *See also Jennissen v. City of Bloomington*, 938 N.W.2d 808, 813 (Minn. 2020) ("The Minnesota Constitution permits "[a]ny local government unit...[to] adopt a home rule charter for its government."). After a home rule charter is adopted, the Minnesota Constitution then restricts or limits the powers it confers to local government on how charter amendments are subsequently adopted. Specifically, "[h]ome rule charter amendments…shall not become effective until approved by the voters by the majority required by law. *Amendments may be proposed and adopted in any other manner provided by law.*" Minn. Const. art. XII, § 5 (emphasis added). This Court interpreted this provision to mean that Minnesota's Constitution authorizes only the Minnesota Legislature to establish the process to amend a home rule city charter. *Bard*, 99 N.W.2d at 470 ("It follows from the repeal of art. 4, s 36, and the adoption of art. 11, s 4, of the state constitution that the legislature was given authority to fix the percentage of

votes required to carry municipal elections, including amendments to a city charter."). As authorized by Minn. Const. art. XII § 5, the Legislature established the process to amend a city charter in Minn. Stat. § 410.12 and as explained below, that process does not authorize cities to sever language from proposed charter amendments.

b. The plain language of Minn. Stat. § 410.12 does not permit severance.

Appellants argue "[c]ity councils in home-rule charter cities in Minnesota have the power to sever portions of proposed charter amendments which are manifestly unconstitutional and retain the remainder for voters to act upon." Appellants' Br. at 7.[6] Yet, Appellants disregard Minn. Stat. § 410.12, which expressly prescribes the only ways charter commissions, city councils, and voters can amend a city charter. *See Jennissen*, 938 N.W.2d at 813 ("The process for amending a city charter is governed by state statute.") Section 410.12, subd. 1a expressly and unambiguously states that "[a] home rule charter may be amended *only* by following one of the alternative methods of amendment provided in subdivisions 1 to 7" (emphasis added).

The plain language of Minn. Stat. § 410.12 grants no authority, either implicitly or expressly, to city councils (or any other entity or individual) to sever unconstitutional portions of otherwise lawfully proposed petitions to amend a city charter and present the left-over remainders to the voters. Rather, state law provides very specific roles, options,

[6] Appellants only cite *HRA* for this proposition. However, as discussed below, Appellants' reliance on *HRA* is misplaced. *See* herein at 19-24. Moreover, the courts have historically used the phrase "manifestly unconstitutional" in the context of alleviating a city's obligation to place an unlawful charter amendment on the ballot, not with respect to severance. *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995); *Davies v. City of Minneapolis*, 316 N.W.2d 498, 504 (Minn. 1982).

and procedures for how charter amendments may be proposed and subsequently placed on the ballot, none of which include the authority of a city council or city attorney to sever unconstitutional provisions from a proposed charter amendment. Minn. Stat. § 410.12. *See also State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007) (citing *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966) (holding Minnesota cities "have no inherent powers and possess only such power as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred"))*; State ex rel. Andrews*, 191 N.W. 2d at 1013 (" 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.").

Minn. Stat. § 410.12 is clear and unambiguous. *Bard*, 99 N.W.2d at 471 ("There is no ambiguity in c. 410 and therefore no room for construction by the court…It is well settled law in Minnesota that a statute is to be enforced literally if its language embodies a definite meaning which involves no absurdity or contradiction."). Appellants have never asserted that Minn. Stat. § 410.12 is vague or ambiguous. Instead, Appellants ask the Court to ignore the clear and unambiguous language and long-standing judicial precedent to add language to § 410.12. *See Halva v. Minn. State Coll. and Univ.,* 953 N.W.2d 496, 504 (Minn. 2021) (declining to add words to the statute that the Legislature did not supply); *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 864-65 (Minn. 2010) (declining to find a private cause of action for third parties within a specific subdivision of the Minnesota Human Rights Act because the language of the statute was unambiguous and there was no

implied cause of action); *Becker v. May Found.*, 737 N.W.2d 200, 207-08 (Minn. 2007) (declining to find an implied cause of action within Minnesota's Child Abuse Reporting Act because the Legislature "expressly creates civil liability when it intends to do so"); *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324, 329 (Minn. 2003) (Stating "when the words of a law are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing its spirit") (quoting Minn. Stat. § 645.16). The Minnesota Legislature amended § 410.12 more than a dozen times since 1905. Had there been an intent to provide charter cities with the authority to sever or remove unconstitutional language from proposed charter amendment petitions submitted by the voters, the Legislature would have already done so.

i. The voter's initiative power is inapplicable to charter amendments.

Appellants confuse a process for amending ordinances, which is established by City Charter, with the process for amending the Charter, which is established by state law. Appellants wrongly argue a city's initiative process guides this Court in its interpretation of the charter amendment process prescribed by Minn. Stat. § 410.12, the process for amending a city charter.[7] Appellants' Br. at 20-22. Initiative is an optional process, which some charter commissions have included within their city charter, that allows voters to

[7] The twelve chapters of the Bloomington *City Charter* and the twenty-two chapters of the Bloomington *City Code* are distinct and different legal instruments. ("All legislation must be by ordinance, unless otherwise stated in this charter…."). *See* Resp. Add. 00004-5, § 3.04. Bloomington City Charter §§ 5.04 through 5.08 provide the procedures for Bloomington voters to initiate a new ordinance for later possible adoption into the Bloomington City Code. *See* Resp. Add. 00007-9.

propose ordinances for enactment into the City Code. *See* Minn. Stat. § 410.20 (stating that "[s]uch commission…may also provide for submitting ordinance to the council by petition of the electors of such city and for the repeal of ordinances in like manner…"). Initiative pertains to the process to enact *ordinances*, not charter amendments, and is therefore irrelevant. *Id*. *See Jennissen*, 938 N.W.2d at 813 ("The process for amending a city charter is governed by state statute."). *See* Resp. Add. 00009, § 5.09 ("INITIATION OF CHARTER AMENDMENTS. Nothing in this charter affects the right of voters registered in Bloomington to propose amendments to this charter *in accordance with the constitution and statutes of Minnesota.*") (emphasis added).

Moreover, the City's initiative process contemplates certain City involvement not applicable to charter amendments. The City's voter *initiative process* seeking to add a provision to the Bloomington City Code requires certain procedural steps and expressly authorizes certain actions, such as the city attorney approving the proposed ordinance or putting it into proper legal form, the City Council modifying the language of the proposed ordinance prior to adoption, and the proposed ordinance, as modified, may be placed on the ballot. *See* Resp. Add. 00007-9, §§ 5.04-5.08. In contrast, the plain language of Minn. Stat. § 410.12 contains no similar procedures, implicitly or expressly, authorizing city councils or city attorneys to modify a voter-proposed amendment of city charter language prior to it being placed on the ballot. Appellants cite no legal authority for their assertions that a city's initiative process should be used to interpret the authority Minn. Stat. § 410.12 grants to city councils to modify or sever the language of a proposed charter amendment. *Jennissen*, 938 N.W.2d at 813 ("The process for amending a city charter is governed by

state statute."); *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 311 (Minn. 2017) (stating that "[w]e do not have such expansive initiative rights in Minnesota").[8]

c. Determining public policy is the role of the Minnesota Legislature.

Finally, Appellants put forth several "public policy" arguments in support of their contention that this Court should overturn long standing judicial precedent and write new procedures into an unambiguous statute to modify the charter amendment process in Minnesota. Appellants ask this Court to "foster an environment that encourages cooperation, trust, and collaboration between city governments and their voters, rather than the acrimony we see playing out across the country." Appellants' Br. at 33. Fostering certain environments and furthering public policy is judicially recognized as the role of the legislative body.

Consistently, this Court has been hesitant to set public policy. *See Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 151 (Minn. 2014) ("…reflects our general reluctance

[8] Minnesota has a multitude of "pre-election review of citizen-initiated legislation" examples arising from cities' initiative proceedings. The total absence of a statutory pre-election review and modification by city councils to amend a city charter pursuant to Minn. Stat. § 410.12 cannot be ignored by this Court and should be considered intentionally absent. *See General Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 799-800 (Minn. 2019) ("When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used."); *Seagate Tech., LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 759 (Minn. 2014) (noting that "a condition expressly mentioned in one clause of a subdivision provides evidence that the Legislature did not intend for the condition to apply to other clauses in which the condition is not stated. In addition, [w]e cannot add words or meaning to a statute that were intentionally or inadvertently omitted"). *Cf.* Minn. Stat. § 410.12, subd. 1 ("The summary…with a copy of the proposed amendment, shall first be submitted to the charter commission for its approval as to form and substance. The commission shall…return the same to the proposers of the amendment with such modifications in statement…").

to expand a purely legislative statement of public policy by recognizing a new cause of action without any indication that the Legislature intends for us to do so") (citing *Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 457 n.5 ("…this court has generally been reluctant to undertake the task of determining public policy since this role is usually better performed by the legislature") (internal citations omitted)); *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) ("The public policy of a state is for the legislature to determine and not the courts."). *See also Bruegger v. Faribault Cty. Sheriff's Dep't*, 497 N.W.2d 260, 262 (Minn. 1993) ("Principles of judicial restraint preclude us from creating a new statutory cause of action that does not exist at common law where the legislature has not either by the statute's express terms or by implication provided for civil tort liability."); *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 440 (Minn. 2009) (holding it is the role of the legislature, not the courts, to rewrite statutes and stating "[t]he public policy arguments therefore should be advanced to the legislature, the body that crafted the language"). Determining public policy is the role of the Minnesota Legislature, not the courts.

i. The committee of petitioners is not a legislative body.

Appellants assert that "Petition committees under § 410.12 in home rule charter cities are akin to legislative bodies." Appellants' Br. at 28. Further, that those who "… care enough about their cities to bring about a charter amendment should be considered the legislative body they actually are and their power to sit at the same table as the council and its attorney should be reaffirmed." Appellants' Br. at 29-30. In other words, Appellants assert that Minn. Stat. § 410.12 provides that an unelected, self-appointed group of five is

vested with full legislative power to craft charter amendments *after* citizens have expressed their intent by signing a petition.

Appellants seek judicial recognition as a legislative body and to be treated "with the same deference" as "any other legislative body." Appellants' Br. at 27-30. However, Appellants cite no authority for such judicial recognition and fail to acknowledge numerous codified distinctions. In seeking such recognition, Appellants conveniently ignore the relative role and legal standing of every Bloomington voter. *Cf. Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 533 (stating "[t]his is an action brought by two residents of the city . . . against the city and members of the council . . . to prevent defendants from submitting to the voters a proposed charter amendment…or holding the proposed charter amendment unconstitutional").

Appellants again confuse the process for amending ordinances in a city code with the process for amending a city charter, and in so doing, overlook clear limitations in state law. Appellants assert that a committee of petitioners have "coequal legislative authority with their city councils" and suggest the relative powers of initiative, referendum, recall, and charter amendment are synonymous with each other and put them on equal footing as "any other legislative body." Appellants' Br. at 28. The language of Minn. Stat. § 410.12, subd. 2, expressly limits the committee's role when collecting charter amendment petition signatures stating "[t]here shall appear on each petition the names and addresses of five electors of the city…who, as a committee of the petitioners, shall be regarded *as responsible for the circulation and filing of the petition*" (emphasis added). By comparison, § 5.07 of the Bloomington City Charter (action of council on initiative petition) expressly

provides for quasi-legislative discourse between the council and committee of petitioners stating "[i]f the council passes the proposed ordinance with amendments and at least 4/5 of the committee of petitioners do not express their objection with the amended form by a signed and notarized statement filed with the city clerk within ten calendar days of its passage, then the *ordinance* need not be submitted to the voters registered in Bloomington" (emphasis added). Resp. Add. 00008-9. Minn. Stat. § 410.12 contains no similar role for the committee of petitioners for a charter amendment.

Moreover, not every Minnesota home rule city charter includes the powers of initiative, referendum, and recall; some cities have all three, others have only two, and others have none. *See e.g.*, Minnetonka City Charter ch. 5 (no recall)[9]; Rochester City Charter ch. 3 (only recall)[10]; Coon Rapids City Charter ch. 1 (no recall)[11]. Additionally, of the home rule city charters that include the powers of initiative, referendum, and recall, each has their own procedures as set forth in their own city charters, as such is the self-designed city-specific process provided for in Minn. Stat. § 410.20.[12]

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[9] The Minnetonka City Charter is available at https://codelibrary.amlegal.com/codes/minnetonka/latest/minnetonka_mn/0-0-0-19765 (last accessed Oct. 26, 2022).

[10] The Rochester City Charter is available at https://library.municode.com/mn/rochester/codes/code_of_ordinances?nodeId=PTICH_CHIIIELELOFOF_S3.07REELOF (last accessed Oct. 26, 2022).

[11] The Coon Rapids City Charter is available at https://library.municode.com/mn/coon_rapids/codes/code_of_ordinances?nodeId=TIT1CHCORAMI (last accessed Oct. 26, 2022).

[12] Minnesota Statutes limits charter authority. *See i.e.*, Minn. Stat.§ 410.07 (stating "[s]ubject to the limitations in this chapter provided, [the charter] may provide for any scheme of municipal government not inconsistent with the constitution . . ."), § 410.09 (regulation of franchises), § 410.121 (sale of intoxicating liquor or wine, favorable vote).

These various, self-designed procedures to adopt and repeal city ordinances and recall elected officials, stand in sharp contrast to the constitutionally and legislatively established options to amend every city charter in the state of Minnesota. Minn. Const. art. XII, § 5; Minn. Stat. § 410.12. The Minnesota Legislature has established specific roles for how charters are amended (i.e., the clerk, the charter commission, the city council, and the committee of petitioners) and the responsibilities of those roles are different depending on which authorized method is being used to amend the city charter. *Id.* Had the Legislature desired to create a negotiation role for the committee of petitioners or an arbiter role for the city attorney, as suggested by Appellants, it would have specifically stated so as it did in subdivisions 5 (amendments proposed by council) or 7 (amendment by ordinance). *Id.*

Appellants' numerous assertions in support of their quest for judicial recognition of a self-appointed committee of petitioners as a legislative body akin to an elected city council, a judicially appointed charter commission, or an elected state legislature lack legal authority and are inconsistent with long established Minnesota legislative procedures. Although Appellants assert, again without authority, that they uniquely know the intent of the "framers of Article XII, Section 4 of the Minnesota Constitution", this Court does not have to rely on Appellants' assertion because the plain language of Minn. Const. art. XII, § 5 and Minn. Stat. § 410.12 clearly provides specific roles for the various parties to a charter amendment process. Appellants' Br. at 28. The powers Appellants seek for themselves, the city council, and the city attorney simply do not exist and there is no legal authority to create such powers. *See Kuhlman*, 729 N.W.2d at 580 (Minnesota cities "have

no inherent powers and possess only such power as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred").

II. The Court in *HRA* did not adopt a rule allowing cities and courts to sever language from a proposed charter amendment before it is submitted to voters.

As shown above, the City, either through the City Council, Charter Commission (or its City Attorney), lacks the authority to sever unlawful language from a proposed charter amendment before submitting any remaining legal provisions to its voters. The City's arguments apply with equal force to and limit the Court's ability to accomplish the same result without violating Minn. Stat. § 410.12. As a last resort, Appellants rely almost exclusively on this Court's decision in *HRA* to advocate for a state-wide policy allowing cities and courts to sever unconstitutional or unlawful language from proposed charter amendments prior to their submission to voters. The Court in *HRA* did not adopt a universal policy allowing severance in the context of a citizen led charter amendment. Appellants' arguments should be rejected.

a. Appellants' interpretation of *HRA* is misguided and inaccurate.

In *HRA*, the proposed charter amendment consisted of four sections, 23(a) through 23(d), with section 23(d) stating that the provisions in section 23 were severable and the invalidity of one provision would not affect the validity of the other provisions. *Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 534. Among other things, the trial court determined "the proposed amendment was vague, ambiguous, and incapable of implementation…and further held that the proposal was in violation of Minn. Const. art. 11 s 3, art. I, s 2, art 4, s 27, and art. 7; and U.S. Const. Amend. XIV." *Housing and*

Redevelopment Auth. of Minneapolis, 198 N.W.2d at 534-35. In order to correctly interpret the holding in *HRA* with respect to the doctrine of severability, it is instructive to view severability through the lens of the *HRA* parties' arguments.

The issue raised by appellant intervenors at the Minnesota Supreme Court was whether "the doctrine of severability will save any part of the proposed charter amendment which is found to be vague, ambiguous and incapable of implementation." Resp. Add. 00056. The appellant intervenors did not argue the doctrine of severability permitted the court to remove the unconstitutional provision from the proposed charter amendment, but rather that it allowed the Court to remove the vague and ambiguous language from the proposal. *Id.* To support their proposition, appellant intervenors relied on *State v. McFarland*, 105 N.W.187, 188 (Minn. 1905)[13] ("If a statute or ordinance contains provisions that are invalid, the other portions thereof are valid, if they are not dependent on the part which is void. In such cases the valid provisions will be given effect.") *Id.* at 00039-40. Appellant intervenors also cited Minn. Stat. § 645.20 which states:

> Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

[13] Appellant Intervenors appear to have incorrectly used the party name "Stone" in their brief, when in should have been "McFarland" as that citation and quote is actually found in *State v. McFarland* (not *State v. Stone*).

Id. at 00040.

Respondents HRA and City of Minneapolis countered the appellants intervenors' arguments that the authorities cited by the appellant intervenors did not apply because they dealt with enacted statutes or ordinances and not a proposed charter amendment. Resp. Add. 00081.

Respondents HRA and City of Minneapolis further argued:

> there is no provision in the law permitting the amendment of a proposed charter amendment by the Committee of Electors after signatures have been secured or by the City Clerk or by anyone else except by the submission of new petitions containing the proposal so altered. In effect, Appellants, by arguing severability, are arguing that this court has authority to amend the Proposal.

Id.

The Supreme Court found that provision 23(a) would be properly adopted, but invalidated provisions 23(b) and 23(c). *Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 537-38. The remaining issue to address was whether the doctrine of severability allowed the Court to sever the vague and ambiguous provisions. *See id.* at 538 (stating the issue as "whether provision 23(a) [was] severable from provisions 23(b) and 23(c) for purposes of submitting provision 23(a) separately to the voters for adoption"). The Court accepted the reasoning of respondents HRA and City of Minneapolis and found that the severability language in provision 23(d) would only apply after adoption of the amendment and did not save the proposed amendment for purposes of submission to the

voters. *Id.*[14] Thus, the Court tacitly acknowledged that its authority to sever unconstitutional statutory language pursuant to Minn. Stat. § 645.20 does not apply to enacted charter amendments. The Court then addressed whether the charter amendment could be saved by severing the unconstitutional language *before* the election and held:

> *We cannot search the minds of those who signed the petition to ascertain their intent. In the absence of such prescience, we feel compelled* ***to hold*** *that the proposal which would be submitted to the voters is not the one which the Appellants sought to have adopted.*

Id at 538. (emphasis added). The Court went on to say:

> We recognize that 23(a) is the least controversial of the provisions of s 23. 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. Consequently, we have determined that without provisions 23(b) and 23(c), provision 23(a) is not saved by provision 23(d) and the entire proposal must therefore fail.

Id. (emphasis added).

The Supreme Court's holding in *HRA* must be read and applied within the context of its circumstances. With the context of how the parties in *HRA* presented the severability argument to the Supreme Court, it is evident Appellants misconstrue the Court's holding in *HRA*. When read in its entirety and within the context with how the issues were presented and analyzed, the Supreme Court in *HRA* held:

> we are of the opinion that the *proposed amendment is manifestly unconstitutional*. It was therefore proper for the trial court to enjoin the

[14] The severability clause in *HRA* only applied after adoption. Ultimately, the Court did not rely on the severability clause to determine the intent of the signatories. *Id.* Appellants' Charter Amendment Petition clearly does not contain a severability clause, and the signatories had no notice that language could be severed. No case law suggests that the mere presence of a severability clause saves an otherwise unlawful charter petition prior to an election.

> election rather than permit the administration and the voters of the City of Minneapolis to experience the frustration and expense of setting up election machinery and going to the polls in a process which was ultimately destined to be futile.

Id. at 536 (emphasis added). *See also Haumant v. Griffin*, 699 N.W.2d 774, 780 (Minn. Ct. App. 2005) ("It is clear that although courts have often used the phrase 'manifestly unconstitutional' in their analysis, this phrase has never been interpreted as barring only those proposed amendments that are proved to be unconstitutional beyond a reasonable doubt…Courts have never said that a proposal, being only "somewhat unconstitutional" should be allowed to pass. Such a distinction would be illogical."). *HRA* established a court's ability to enjoin an election if the proposed charter amendment is manifestly unconstitutional, but it did not establish a court's ability to sever the unconstitutional provisions from any of the remaining valid provisions because it cannot search the minds of the individuals who signed the petition. *Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 536.[15] Consequently, *HRA* squarely supports the City's and district court's decision.

b. The City acted properly when it declined to put the entire Charter Amendment Petition on the November 2022 general election ballot.

Finally, Appellants' take their argument to the extreme, asserting the City "has crossed the line" and "not only can [the City] throw out bad questions, but [the City] can throw out the good *with* the bad just because they were written into the same petition."

[15] The Court's opinion in *HRA* has been cited for holding that "severance [is] not appropriate as court cannot determine intent of signators if some portions invalid." *Berent v. City of Iowa City*, 738 N.W.2d 193, 209 (Iowa 2007).

Appellants' Br. at 31. However, as demonstrated above, the Court in *HRA* did not grant the authority to allow either the courts or cities to sever claimed defects and recast the expressed wishes of its voters. *HRA* does not support Appellants' argument that courts should sever unconstitutional provisions from proposed charter amendments. Moreover, nothing in the City's Charter or state statutes authorizes severance.[16] Thus, severability is not appropriate and the City and district court properly decided the Charter Amendment Petition should not be placed on the ballot.

III. Even if this Court recognizes severability applies to charter amendments, section 4.08 of the Charter Amendment Petition cannot be severed as a matter of law.

In the unlikely event this Court considers severing § 4.08 from the Charter Amendment Petition, Appellants' charter amendment still fails in its entirety. At best, *HRA* supports a discretionary judicial option allowing severance on a case-by-case basis, not an automatic remedy. *Id*. at 536 ("…the question of whether the court should enjoin an election is one of judicial propriety"). This Court cannot sever § 4.08 from the Charter Amendment Petition because it cannot read minds to be sure that voters would have signed the Petition without § 4.08. Thus, Appellants' claim should be dismissed.

a. Section 4.08 cannot be severed because the Court cannot ascertain the intent of the petition signers.

[16] *See*, generally Charter. Minn. Stat. § 645.20 expressly allows courts to sever unconstitutional statutory provisions stating "[u]nless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable." This is the exact concern respondents HRA and City of Minneapolis expressed in *HRA* and the Court agreed with the respondents. *See* herein at 19-21. A charter amendment is not a law and there is nothing in Minn. Stat. Ch. 410 containing similar language allowing severance of unconstitutional charter amendment provisions.

Minnesota courts have long recognized their judicial authority to cautiously sever portions of *statutes* determined to be unconstitutional.

> When the question of the validity of an act of the Legislature is presented, courts are very reluctant to pronounce it invalid, if by any reasonable interpretation it can be sustained. Where, therefore, the court is compelled to pronounce one part of a statute invalid, it does not necessarily follow that the entire act is void, if the remaining part of the statute can be upheld upon any reasonable hypothesis. *Unless the void and the otherwise valid portions are so inseparably connected and bound together that the one cannot stand as a complete and enforceable law without the other, or unless it is clearly apparent that the invalid portion was a material inducement to the enactment of the rest, the otherwise valid enactment must stand.*

Bofferding v. Mengelkoch, 152 N.W 135, 136 (Minn. 1915) (emphasis added). The Court's "authority to remedy a constitutional violation, including the possibility of severing the unconstitutional portion of a law, derives from the Minnesota Constitution, and in general, [it is] to sever as little as possible of an unconstitutional law." *Back v. State*, 902 N.W.2d 23, 31 (Minn. 2017). However, the Court recognizes:

> Under our severance jurisprudence, we do not excise just a word or a phrase from a provision if the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the Legislature would not have enacted the valid provisions without the voided language.

Id. Consequently, severance is not appropriate when the Legislature's intent is unclear. *Id.* Applied without restraint, the doctrine of severance allows the courts to rewrite legislation, which this Court has acknowledged is "within the Legislature's purview" *Id*. at 33.

Appellants' reliance on the "substantially emasculated" language as the test for severance should be rejected. As discussed above, the *HRA* Court briefly analyzed severability as applied as applied to citizen led charter amendment petitions that have been

declared vague and ambiguous. *See* herein at 19-21. It appears the Court relied on existing severability jurisprudence rather than intentionally creating a new enduring legal standard. Thus, as was the concern of the *HRA* Court, the tenets that guide this Court's resolution in the instant case, and consistent with existing severance jurisprudence, must be whether it knows the intent of the people that signed the Charter Amendment Petition, the extent to which § 4.08 is inseparable from the remaining language, and its judicial restraint against rewriting legislation.

Even if this Court recognizes city-level severability authority within the context of charter amendments, Appellants cannot show with any degree of certainty that the people that signed the Charter Amendment Petition would have done so without the text of § 4.08. Appellants make conclusionary statements, such as "[t]he thousands who signed the petition…are overwhelmingly likely to agree that the three indisputably legal measures reflect the intention of the original Charter Amendment." Appellant Br. at 32. Yet those statements are not supported by the record. Neither this Court nor the City Council or City Attorney can guess the collective intent of the thousands of Bloomington voters that individually signed the Charter Amendment Petition. *Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 538.

Language is important. The District Court correctly determined that the law requires that the text of a proposed amendment must be attached in full to the signature sheets and that the statute requires the language be decided before voters' signatures are obtained. Doc. 37 at 53. *See* Minn. Stat. 410.12, subd. 1 ("All petitions circulated with respect to a charter amendment shall be uniform in character and shall have attached thereto

the text of the proposed amendment in full…"). *See also Vasseur*, 887 N.W.2d at 470 (proposed amendments must "inform the signers of the petition as to what change in government is sought to be accomplished by the amendment") (citing Minn. Stat. § 410.12, subd. 1).

Consequently, this Court must conclude that the Charter Amendment Petition without its § 4.08 "is not the one which the Appellants sought to have adopted." *Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 538. This Court and the City Council cannot and should not guess the intent of the Appellants, the committee of petitioners (of which only one is a party in the instant case), or the over three thousand Bloomington voters that attached their names and signatures to the amendment language presented to them. Appellants' efforts to push through language different from what was presented on the Charter Amendment Petition is exactly the situation the Court rejected in *HRA*.

Additionally, nothing in the plain language in the Charter Amendment Petition in any way suggests that its sections might be severable, and such severability language cannot be written into the Charter Amendment Petition sections or the stated purpose. *See State ex rel. Andrews,* 191 N.W. at 1013 (stating that glaring defects in the amendments were publicly pointed out but city determined it was not its role to revise the amendments).

The Charter Amendment Petition specifically states that its purpose is three-fold: 1) repeal ranked-choice voting; 2) return to the previous form of elections; and 3) ensure public approval before any future adoption of ranked-choice voting. Doc. 25 at 95. From the plain language of their own Charter Amendment Petition, both in the stated purpose

and the actual text of the proposed amendment, there is no indication that the signers of the petition would agree to adoption of less than the whole; and there is no indication that that the unlawful provision in § 4.08 (to accomplish the third purpose) is severable from the other two purposes.

With no authority or citations to the record whatsoever, Appellants assume and assert that "[t]here is no question" that the Charter Amendment Petition signers would collectively all be supportive of Appellants' willingness to negotiate with the City to sever portions of the Charter Amendment Petition.[17]Appellants' Br. at 25. Yet, Appellants could have simply cured the matter currently being litigated by collecting new signatures on a fresh petition that did not include the unconstitutional language in § 4.08. Restarting the signature collection process would have clearly demonstrated the intent of Bloomington voters and eliminated this ex post facto use of expedited judicial resources.[18] *Cf. Vasseur*, 887 N.W.2d at 472 (even though the requisite number of signatures were collected, it does not compel a different outcome). Surely, it's possible to imagine that apart from what appears on the plain text of the Charter Amendment Petition, Appellants simply cannot and

[17] It is impossible to know the minds of three thousand signatories other than that they were willing to sign based on the words on the petition paper presented to them, which included three purposes given equal importance. The petition does not appoint the committee to negotiate away provisions that the signatories sought to amend into the City's Charter. (As discussed above such a delegation of negotiation authority is well beyond the statutory authority of the committee of petitioners stated in Minn. Stat. § 410.12, subd. 2.)

[18] Had the committee of petitioners decided to revise its Charter Amendment Petition without § 4.08, it would likely have caused no more of a delay in bringing the matter to the ballot than is occurring with this litigation, which may suggest that the committee of petitioners was concerned it could not reach the required number of signatories without also including the unconstitutional § 4.08 language.

do not know the minds of the several thousand signatories to the Charter Amendment Petition. Had the City severed § 4.08 and placed the question on the November 2022 general election ballot, the City would have created three thousand potential plaintiffs litigating the propriety of the City's authority and arguing the City's action undermined their petition rights under Minn. Stat. § 410.12.[19] *See* Minn. Stat. § 204B.44 ("Any individual may file a petition.") Because the Court cannot know the minds of the Charter Amendment Petition signatories beyond their literal expressed intent, it is a certainty that a city council and a city attorney would have no ability to be "mind readers," so the Court should reject Appellants' arguments.

In order to support Appellants' argument that severance of § 4.08 does not "substantially emasculate" the remaining sections of their Charter Amendment Petition, Appellants ignore the plain language of Minn. Stat. § 410.12, subd. 1, and argue *HRA* requires the Court to look at the "objective purpose and meaning of the proposed amendment, and expressly not the signers' subjective intent." Appellants' Br. at 17. By asking the Court to take this position, Appellants appear to forget or ignore their own stated purpose on the Charter Amendment Petition, which was, in part, to "ensure public approval before any potential future adoption of ranked-choice voting." *See* herein at 27. To remove

[19] Appellants suggestion that the voters should have been and should be allowed to vote on the language as proposed, or unilaterally severed by the City, ignores the city financial and staff resources and election judge time required to administer a futile election whose outcome would likely be litigated, as well as the electorate's likely confusion as city staff and opponents attempt to explain the ballot. *See* Appellants' Brief at 9. *See Housing and Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 536; *Davies.* 316 N.W.2d at 504; *Minneapolis Term Limits Coalition*, 535 N.W.2d at 308.

§ 4.08, as suggested by Appellants, flies in the face of Appellants own stated charter amendment purpose.

Finally, Appellants characterize their unconstitutional § 4.08 as "one error" and equate it to "one jot or one tittle" to conclude the City Council's action was "unreasonable", "self-contradictory", and requiring "perfection." Appellants' Br. at 16. The actual contradiction is that Appellants are not seeking to sever a typographical error or an errant word or phrase, but Appellants seek to sever an entire section of their Charter Amendment Petition -- which amounts to a fourth of all of their text and one-third of their stated purpose, and that during all relevant times was presented as a unified proposal to accomplish the three purposes set forth on the top of their Charter Amendment Petition. The Court must consider the impact of removing § 4.08 on the entire Charter Amendment Petition. The district court correctly determined "the provisions are part of a whole" and "taken as a whole, will never survive judicial scrutiny." Doc. 37 at 53.

Appellants also attempt to salvage their argument by parsing the Charter Amendment Petition into two parts and asserting that § 4.08 is different from the other sections because it is future focused and merely procedural. Appellants' Br. at 14, 19. Appellants attempt to sew their parsing together by recasting their primary purpose of the charter amendment as only the repeal of ranked-choice voting.[20] *Id.* However, after reviewing the parties' briefing and oral arguments, the district court thoroughly reviewed

[20] Section 4.08 is neither "one jot or one tittle." The district court correctly determined their proposed section 4.08 asked "the voters to also do what they had no ability to do—impose restrictions upon further charter amendments that find no support in law." Doc. 37 at 52-53.

and correctly determined that Appellants "marketed the proposed Charter Amendment Petition as both an attempt to disregard ranked-choice voting *and as a scheme to preclude ordinary reconsideration of the issue. The latter is ultimately an overstep—and its fatal to their request.*" Doc. 37 at 52 (emphasis added). Thus, regardless of how Appellants now attempt to recast and recharacterize § 4.08 of the Charter Amendment Petition, this Court can rely on Appellants' own stated objective purpose and meaning of the purposed amendment rationale ("to ensure public approval before any potential future adoption of ranked-choice voting") at the time signatures were collected from Bloomington voters. Section 4.08 cannot be severed from the Charter Amendment Petition.

b. Appellants' reliance on Alaska law should be rejected as inapplicable.

Finally, Appellants attempt to rescue their failed Charter Amendment Petition by asking the Court to adopt Alaska's test for a court-conducted pre-election review of a citizen initiative as established in *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 94-95 (Alaska 1988). In *McAlpine*, the state received an initiative application proposing the adoption of a bill establishing "a separate independent Community College System" and imposing related requirements.[21] *Id.* at 83. The court found that a portion of the initiative petition would make an unconstitutional appropriation. *Id.* at 91. The *McAlpine* court then considered whether it could sever the unconstitutional language in the initiative from "a proposed bill and order the remainder to appear on the next ballot without the sponsors

[21] The Alaska Constitution affords the people the power to propose state laws. *See* Alaska Const. Art. XI, § 1 (stating "[t]he people may propose an enact laws by the initiative, and approve or reject acts of the legislature by the referendum").

reinstating the certification and signature-gathering process." *Id*. at 91-92. The court recognized that while state statute "gives courts the authority to sever invalid portions of legislatively-enacted statutes, no analogous statute gives courts the authority to sever invalid portions of proposed initiatives." *Id*. at 92. The court held:

> . . . we hold that the duty of a court in conducting a preelection review of an initiative is similar to the court's duty when reviewing an enacted law. In particular, when the requisite number of voters have already subscribed to an initiative, a reviewing court should sever an impermissible portion of the proposed bill when the following conditions are met: (1) standing alone, the remainder of the proposed bill can be given legal effect; (2) deleting the impressible portion would not substantially change the spirit of the measure; and (3) it is evident from the content of the measure and the circumstances surrounding its proposal that the sponsors and subscribers would prefer the measure to stand as altered, rather than be invalidated in its entirety.

Id. at 94-95.

Here, resorting to law outside this jurisdiction is not necessary because the doctrine of severance has been well-developed by the Minnesota courts and needs no further clarification. In addition, as shown above, the *HRA* Court relied on Minnesota law and severance cannot save Appellants' Charter Amendment Petition under Minnesota law.

Moreover, *McAlpine* is easily distinguishable for several reasons. First, the instant case arises out of a local petition to amend a city charter and not, as Appellants misunderstand, an initiative to adopt a bill into state law. The Alaska court's extension of its duty to correct defective enacted state statutes to severing portions of pre-election initiatives is not an analogous comparison to this city charter amendment case. Second, as correctly pointed out by Appellants, Minnesota does not have a statewide initiative and referendum authority. *Bicking*, 891 N.W.2d at 311 ("We do not have such expansive

initiative rights in Minnesota. Accordingly, decisions from other states that refrain from resolving justiciable controversy out of deference to citizen-initiative rights are not persuasive here.").[22] *See generally* Minn. Const. Third, Appellants wrongly argue the Alaska test is consistent with existing Minnesota case law on severability. Appellants' Br. at 24 (citing *In re Welfare of A.J.B.*, 929 N.W.2d 840, 856 (Minn. 2019)). The court in *In re Welfare of A.J.B.* interpreted the constitutionality of a state statute and whether the invalid portion may be severed. *Id.* As explained above, while the Court has long recognized a duty to sever unconstitutional language from enacted statutes when appropriate, such authority has not and should not be extended to a citizen petition to amend a city charter. *See* Minn. Stat. § 645.20 (granting authority to courts to sever under some circumstances).

Finally, even under Appellants' proposed test, their Charter Amendment Petition must fail in its entirety. As shown above, § 4.08 of the Charter Amendment Petition cannot be severed without negatively impacting the remainder of the proposal and eviscerating its stated purpose. Further, the Court is unable to ascertain the exact intent of over three thousand voters who signed the petition and whether they would have signed the petition without the inclusion of § 4.08. Finally, as a matter of judicial prudence, the Court must

[22] Appellants cite cases from Arizona and California to support their proposition that severability of citizen-led initiatives is permissible. Those case are distinguishable. Those cases involved initiatives and not charter amendments and they involve a post-election review of the citizen-led initiative. *Fann v. State*, 493 P.3d 246, 251, 430 (Ariz. 2021) ("In 2020, Arizona voters passed Proposition 208…Petitioners sound to enjoin the collection of that tax…"); *Pala Band of Mission Indians v. Bd. of Supervisors*, 63 Cal. Rptr. 2d 148, 150 (Cal. Ct. App. 1997) ("In 1994, San Diego County voters approved Proposition C, an initiative...requesting the court to declare the initiative invalid…").

err on the side of not judicially severing § 4.08 and rewriting the charter amendment text because it would be tantamount to a legislative act. Thus, Appellants' severability arguments fail as a matter of law.

CONCLUSION

The District Court's holding should be affirmed. The City of Bloomington did not err in concluding that the Charter Amendment Petition should not be placed on November 8, 2022, general election ballot because the City lacks the legal authority to lawfully sever the unconstitutional § 4.08 from the Charter Amendment Petition. The City and the Court lack the ability to read the minds of the thousands of individual Bloomington voters and determine whether each signatory to the Charter Amendment Petition intends for all, some, or none of the proposed charter amendment language to appear on the November 8, 2022, general election ballot. Consequently, Appellants' Charter Amendment Petition must be dismissed in its entirety.

Dated: October 28, 2022

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document conforms to the requirements of the applicable rules, is produced with Times New Roman, a proportional font, and the length of this document is 10,066 words. This document was prepared using Microsoft Word 2010.

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