NO. A22-1190

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OFFICE OF APPELLATE COURTS

State of Minnesota

In Supreme Court

Kolten Kranz, David Clark, and Craig Black,

Appellants,

v.

City of Bloomington, Minnesota,

and

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

and

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

and

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

Respondents.

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TABLE OF CONTENTS

INTRODUCTION **1**

ARGUMENT **2**

I. Appellants Are Not Confused About Initiatives or Charter Amendments. 2

II. The City Misunderstands the Court's Holding in *HRA*. 4

III. Severance as Applied to Charter Amendments Fits Perfectly with This Court's Severance Jurisprudence in Other Areas. 8

IV. Statutes Are Not the Only Source of Authority in the Charter Amendment Process. 10

V. Amicus League of Minnesota Cities Offers No Rebuttal to the Application of Severability to the Charter Amendment. 14

VI. Appellants Are Not Required to Restart the Charter Amendment Process to "Clearly Demonstrate the Intent" of Bloomington Voters. 16

CONCLUSION **18**

CERTIFICATE OF COMPLIANCE **19**

TABLE OF AUTHORITIES

Statutes

Minn. Const. art. XII 2, 11, 14

Minn. Stat. § 204B.44 ..... 11, 14

Minn. Stat. § 410.12 ..... passim

Minn. Stat. § 645.20 ..... 8, 9, 10

Cases

Bicking v. City of Minneapolis, 891 N.W.2d 304 (Minn. 2017) 11, 12, 13, 15

Clark v. City of St. Paul, 934 N.W.2d 334 (Minn. 2019) 15

Davies v. City of Minneapolis, 316 N.W.2d 498 (Minn. 1982) 13

Housing & Redevelopment Authority v. Minneapolis, 198 N.W.2d 531 (Minn. 1972) ..... passim

Jennissen v. City of Bloomington, 913 N.W.2d 456 (Minn. 2018) 13, 15

Jennissen v. City of Bloomington, 938 N.W.2d 808 (Minn. 2020) 15

Mangold Midwest Co. v. Village of Richfield, 143 N.W.2d 813 (Minn. 1966) 13

McAlpine v. Univ. of Alaska, 762 P.2d 81 (Alaska 1988) 4

Minneapolis Term Limits Coalition v. Keefe, 535 N.W.2d 306 (Minn. 1995) 11, 12

Samuels v. City of Minneapolis, 966 N.W.2d 245 (Minn. 2021) 14

State ex rel. Lowell v. Crookston, 91 N.W.2d 81 (1958) 12

Thompson v. Polaris, Inc. (In re Polaris, Inc.), 967 N.W.2d 397 (Minn. 2021) 7, 8

Vasseur v. City of Minneapolis, 887 N.W.2d 467 (Minn. 2016) 13, 15

INTRODUCTION

This Court's decision in *Housing & Redevelopment Authority v. Minneapolis*, 198 N.W.2d 531 (Minn. 1972) ("*HRA*") plainly left the door open to sever out unlawful language from a voter-proposed charter amendment, prior to presentation of the measure to municipal voters in the form of a ballot question: "If [Section] 23(a) [of the charter amendment] is severable, there appears to be no reason why it is not proper for adoption." *Id.* at 536 (Minn. 1972). The *HRA* Court declined to sever the illegal parts of the amendment in that case for factual reasons discussed in Appellants' initial brief, and not because the doctrine is never applicable. Appellants' Br. 10-13; *HRA*, 198 N.W.2d at 533-34, 536-37; *see also HRA*, 198 N.W.2d at 539 (Peterson, J., dissenting) and 540 (Kelly, J., dissenting).

The District Court in this case, despite holding against Appellants and severance of the allegedly illegal parts of the amendment at issue here, agreed "…that *HRA* leaves open the possibility that a court could, in an appropriate circumstance, sever an illegal provision of a proposed charter amendment and order that the remainder be presented to the voters." Add. 9-10.

This case thus picks up where *HRA* left off. Severance of voter-led charter amendments is *possible*, so then when is it *appropriate*, and when is it *required*? These follow-up questions have not been addressed by the Court in the 50 years since *HRA* was

decided, until now.[1] This case presents the ideal scenario to answer them and to reinforce that voters leading a charter amendment are entitled to that power and right under Article XII of the Minnesota Constitution and Minnesota Statutes section 410.12, and cities like Bloomington must show deference to that power and right.

To counter Appellants' argument that severance is proper and warranted in the instant case, the City of Bloomington ("City" or "Bloomington") presents little more than straw-man arguments and a fundamental misreading of *HRA*. Neither the City nor Amicus League of Minnesota Cities ("League") presents anything that directly rebuts the arguments made by Appellants in favor of applying the doctrine of severability to city charter amendments in this context. This Court should order severance of Section 4.08 from the Charter Amendment and order the remainder to be presented to the voters at a municipal special election, or at least the next general election.

ARGUMENT

I. Appellants Are Not Confused About Initiatives or Charter Amendments.

One of the City's weakest straw men is their misguided claim that "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." Resp. Br. at 12.[2]

[1] As the District Court noted, "The more recent cases do not specifically address severing portions of a proposed charter amendment and *HRA* is still the guiding authority on severance." Add. 10.

[2] Similar allegations are made elsewhere in the brief: "Initiative pertains to the process to enact ordinances, not charter amendments, and is therefore irrelevant." Resp. Br. at 13; "Appellants again confuse the process for amending ordinances in a city code with the process for amending a city charter;" Resp. Br. at 16. Not so.

Appellants are not confused, and the notion that Appellants are arguing that a city charter can be used to somehow amend itself is incorrect and has no impact on this case. Bloomington merely attacks an argument which Appellants never made.

What Appellants *did argue* in pointing the Court toward initiatives as examples, and which should be persuasive to the Court, is that (1) severance or modification of proposed laws is not an unusual process for the City of Bloomington, so it portends no "parade of horribles" if severance is applied here by this Court, Appellants' Br. 8-9, 20-23; (2) other jurisdictions in Minnesota do the same thing, *id.*; and (3) severance is a familiar concept to all governments in Minnesota, as well as the Courts, *id.* at 9, 15-16. By instead attacking a straw man, Bloomington evades the obvious similarities between the process for adoption of charter amendments in Minn. Stat. § 410.12 and the initiative process laid out for voters in those cities that have adopted it.

The charter amendment process in § 410.12 and the initiative process under the Bloomington City Charter ("Charter") at § 5.04 through § 5.08 have strikingly similar requirements. Both involve five-member sponsoring committees who must adhere to the strict form requirements for petitions laid out in the respective authorities. Both the statute and the initiative process outlined in the Charter establish signature thresholds,[3] require the same information to be provided by signers, and that the text of the measure be attached to

[3] These thresholds are five percent and ten percent, respectively. *See* Minn. Stat. §410.12 Subd. 1; Resp. Add. 00009.

the petition form.[4] The signatures must be genuine and attested to in the form of a sworn statement by the circulators,[5] they must be turned in to city officials who have deadlines to act,[6] and placed on the ballot for consideration for passage by the voters.[7]

This is by no means an exhaustive list. But, again, and as the district court observed, fifty-year-old *HRA* is the controlling, and only, authority on the doctrine of severability in this context. While the City may *prefer* that the Court not look at the (very) similar processes involved in bringing about these different types of voter-initiated legislation, particularly that detailed in *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 94-95 (Alaska 1988), the critical process involved is identical—that of post-signature, pre-election severance of language from the measure. Bloomington merely tries to make a distinction without a difference, and this Court should not fall for the City's straw man argument. The Court should order § 4.08 severed from the full measure and the remainder placed on a special election or the next general election ballot.

II. The City Misunderstands the Court's Holding in *HRA*.

As Appellants argued before, the only plausible reason for the *HRA* Court's discussion of voter "intent" behind a proposed charter amendment was to determine the *primary purpose* of the charter amendment in that case. Appellants' Br. 7-8, 10-19. The

[4] This is true unless the charter amendment language is more than 1,000 words. This is significant and will be discussed in more detail later in this brief.

[5] *Id.*

[6] *Id.*

[7] *Id.*

determination of whether those who signed a petition would have agreed to a severed version of it cannot be subject to a subjective intent test, as the City urges. Rather, the "substantially emasculated" language in *HRA* demonstrates that the Court intended to scrutinize whether severance is appropriate based on *objective* measures.

Respondents made the same mistake as the district court in misconstruing the following language in *HRA*:

> 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.

198 N.W.2d 531, 538 (Minn. 1972). The point here is not that severance can *never* occur. That would render the "substantially emasculated" language in *HRA* superfluous. Rather, the point is that the charter amendment in *HRA* was so depleted by the illegal provisions that it was objectively impossible to determine the primary purpose of the measure being signed. Appellants addressed this language extensively in their brief at pages 16-19 and will avoid unnecessary repetition here, but the ramifications of the City's faulty interpretation are worth exploring a bit.

Using a hatchet instead of a scalpel, Bloomington stridently proclaims that "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." Resp. Br. at 7.[8] This is critically wrong in one key respect: if mind-reading and intent of the

[8] The City's brief is built on this faulty premise. It also appears at pages 22, 23, 24, 28 fn. 17, 29, and 34.

signers were the determining factor in whether severance of unlawful language is proper, then the holding in *HRA* would be self-contradictory. This is because the Court plainly held open the possibility of severance under the *proper* circumstances,[9] and mind-reading would be impossible under *any* circumstances.

A signature on a petition is a literal expression of the intent of the signer, no more and no less.[10] To recognize a completely novel requirement that the "intent" of the signer align with the perceived "proper" intent (as determined by the City, of course) would have broad and sweeping ramifications that fall well outside the context of a charter amendment. For example, the City argues that a petition signer "…attest[s] to knowing the contents and purpose of the petition" when the person signs it. Resp. Br. at 6. This is made up from whole cloth and does not exist in the statute or case law in this context. The statute requires that the circulator attest that the language of the full measure was attached to the petition when it was circulated, and that that the signature is genuine—no more and no less. Minn. Stat. § 410.12, Subd. 2. To venture into the subjective intent of the signer so as to render some signatures valid and others invalid is unprecedented in any legislative context and would be facially unlawful.

Next, the requirement that the charter amendment language be attached to each signature page would seem to reinforce the City's point that signers must review and "attest to knowing the contents of the petition" for their signatures to be valid, lest mind-reading

[9] The District Court agreed that *HRA* contemplates pre-election severance under certain circumstances. Add. 9-10.

[10] The City agrees with this premise. Resp. Br. at 29.

be necessary. But Minn. Stat. § 410.12, Subd. 1 allows that the full text of proposed amendments containing more than 1,000 words may be left with the city clerk and not circulated by the petitioners *at all*.[11] Accordingly, the most complex and verbose measures are nearly always unseen by signatories unless they take a trip to city hall to inspect them. At the very least, this suggests that the legislature was satisfied that an opportunity to *review* the *primary purpose* of the proposed measure was sufficient for a signer to make the decision whether or not to endorse its inclusion on the municipal ballot. This cuts squarely against Bloomington's flawed notion that a signer must "attest to knowing the contents of the petition" so that the city council may assume their subjective intent prior to signing it.

Such an important holding would appear somewhere besides a rhetorical flourish in the last few sentences of *HRA*. Nothing about this language reads like a "rule," whereas the introduction of a new subjective voter intent assessment applied to charter amendments would almost certainly merit more than a passing mention. The same is true if the *HRA* Court intended to foreclose the doctrine of severance going forward. A proper reading of the passage reveals that determining the *objective* intent of the measure—its *primary purpose*—is the test. This Court engages in this kind of analysis all the time.[12] It was a

[11] Consistent with the statute, "a summary of not less than 50 and not more than 300 words setting forth in substance the nature of the proposed amendment" must accompany the petition. *Id.*

[12] Similar to the primary purpose test implied by the Court in *HRA*, this Court recently adopted the "predominant purpose" test to determine whether documents are legal advice or business advice. *Thompson v. Polaris, Inc. (In re Polaris, Inc.)*, 967 N.W.2d 397, 408 (Minn. 2021). In analyzing the documents at issue, the Court noted that it was important

uniquely difficult task in *HRA* because of the significant differences among the three sections, but it is not difficult in the Charter Amendment before the Court. Here, the Charter Amendment's primary purpose is clear: to repeal ranked-choice voting ("RCV").[13] This is not affected by the removal of Section 4.08. The Court should so hold.

III. Severance as Applied to Charter Amendments Fits Perfectly with This Court's Severance Jurisprudence in Other Areas.

Appellants discussed the doctrine of severance and the meaning of the "substantially emasculated" language at length in their primary brief and will avoid unnecessary repetition here. *See* Appellants' Br. at 14-15, 19, 23-26. Respondents included a lengthy addendum containing the briefs of the parties in *HRA* in an apparent attempt to convince the Court that the parties in *HRA* were actually arguing about something other than severance of language from a proposed charter amendment. Most of the relevant portions of the addendum solidly support Appellants' position in favor of adopting severability, with particular emphasis on Minn. Stat. § 645.20:

> 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

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that "the legal portions of the audit report are not 'intimately intertwined' or 'difficult to distinguish' from the nonlegal portions." *Id.* at 411. Likewise, Section 4.08 is decidedly not "intimately intertwined" or "difficult to distinguish" from the remainder of the proposed ballot question.

[13] Appellants allow that the caption of the Charter Amendment Petition includes the following language: "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." Resp. Br. at 4. The City alleges that removal of the public approval element would result in the destruction of the Amendment, but there has been no test presented to the Court by either party or the League that would produce such a result.

> 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.

Id.; Resp. Add. at 00040. Here, despite straw-man arguments to the contrary,[14] Appellants do not ask the Court to overturn the authority granting Minnesota cities the ability to deny an unlawful charter amendment. We only ask that the Court apply the doctrine of severability to the field of charter amendments the same way it is already required in all other legislative contexts as evidenced above.[15]

Examining the "mind-reading" language in *HRA* in light of Minn. Stat. § 645.20, the *HRA* Court's thinking behind this passage, misunderstood by Respondents, becomes clear. The second clause fits neatly with the language from § 645.20: After addressing the unenforceability and removal of the other clauses in the *HRA* Amendment, the Court notes: "…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*." 198 N.W.2d 531, 538 (Minn. 1972) (emphasis added). Compare this with the statute: Any portion of a law that remains after the severance of unlawful provisions will still be valid ***unless*** "…the court cannot presume the legislature would have enacted the remaining valid provisions without the void

[14] The City accuses Appellants of urging this Court to "…ignore well-established charter amendment law under (a) the Minnesota Constitution, (b) state Law, and (c) almost a century of legal precedent." Not so.

[15] It bears repeating here that the case before the Court involves a charter amendment that has not been passed into law yet, and this argument is about presenting voters with the mere *opportunity* to pass it.

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*." Minn. Stat. §645.20 (emphasis added).

The problem with the *HRA* amendment was that the measure was substantially emasculated after severance, and it was impossible for that Court to determine, from the objective evidence available to it, whether the signers—the functional equivalent of the legislature in § 645.20—would have enacted it with only one of the original four sections remaining. This is not remotely a concern in the amendment before the Court. Viewed through this lens, despite Respondents' apparent confusion, the language chosen by the *HRA* Court makes perfect sense.

IV. Statutes Are Not the Only Source of Authority in the Charter Amendment Process.

Respondents paradoxically declare that "[s]everance is not authorized because only the Minnesota Legislature is authorized to change the charter amendment process." Resp. Br. at 7. In other words, the City argues, because severance is not specifically codified in Minn. Stat. § 410.12, it must be illegal: "[h]ad 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." Resp. Br. at 12.

This argument fails at its very foundation for two reasons. First, this Court *does* have legislatively granted authority to determine whether a ballot question must be placed

on the ballot, pursuant to Minn. Stat. § 204B.44. The Court said so in *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 308 (Minn. 2017):

> We have express statutory authority to resolve the dispute between the parties: whether the Minneapolis City Council properly directed the City Clerk not to place the proposed question on the ballot for the 2016 election. *See* Minn. Stat. § 204B.44(a)(1) (conferring authority on the judicial branch to correct any error or omission "in the placement . . . of . . . any question on any official ballot"). Bicking invoked section 204B.44 when he filed his petition in the district court, the parties agree that section 204B.44 confers judicial authority to review a ballot-question decision…"

But second, the legality of the City's failure to place the Charter Amendment on the 2022 ballot is "one of judicial propriety and not one of jurisdiction." *HRA*, 198 N.W.2d at 536. In other words, the determination of whether a proposed ballot question—or a part of a question—may be excised from a ballot is purely *judicial* gloss on the Minnesota Constitution, Article XII, and Minn. Stat. § 410.12. Ironically for Respondents, that judicial gloss is the *only reason* Bloomington could have kept the Charter Amendment at issue off the ballot in the first place. Nothing in the text of the Minnesota Constitution or Minn. Stat. § 410.12 allows a city to keep a voter-led amendment off a ballot for non-technical, form-based reasons. That cities like Bloomington can keep a proposed amendment off a ballot is solely rooted in this Court's case law.

Appellants cannot say it better than this Court did in *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995):

> Pursuant to this constitutional authority, the legislature has set forth additional methods of charter amendment in Minnesota Statutes section 410.12, including a certification process for amendments proposed by a citizens' petition. Under these provisions, amendments meeting the technical requirements "shall be submitted to the qualified voters at a general or special

> election and published as in the case of the original charter." Minn. Stat. § 410.12, subd. 4.
>
> ***Nevertheless***, it is well established in Minnesota that when a proposed charter amendment is manifestly unconstitutional, the city council may refuse to place the proposal on the ballot. *See Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn. 1982); *Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 293 Minn. 227, 198 N.W.2d 531 (1972); *State ex rel. Andrews v. Beach*, 155 Minn. 33, 191 N.W. 1012 (1923).

Id. at 308 (emphasis added). Thus, this Court has complete and total authority to decide the question presented as to the propriety and necessity for severance of part of a ballot question, just like it had the authority to recognize that a city need not place on the ballot a "manifestly unconstitutional" provision.[16] It is not a legislative decision, as a *century* of this Court's precedent dictates.

This is because "charter provisions (and therefore charter amendments) must be consistent with state law and state public policy." *See State ex rel. Lowell v. Crookston*, 91 N.W.2d 81, 83 (Minn. 1958) ("The adoption of any charter provision contrary to the public policy of the state, as disclosed by general laws or its penal code, is also forbidden."). *Bicking*, 891 N.W.2d at 312. "And we have recognized that placing an unconstitutional or unlawful proposed amendment on the ballot is a futile gesture that we do not require." *Id.* at 313 (citing *HRA*, 198 N.W.2d at 536 (holding that the district court properly enjoined an election on a proposed amendment to a city charter "rather than permit the administration and the voters of the city of Minneapolis to experience the frustration and expense of setting

[16] Appellants are not making any argument about whether this recognition of judicial authority is right or wrong, only that the precise contours of city power to reject voter amendments have been extensively litigated and thus very well-defined by case law, alone.

up election machinery and going to the polls in a process which was ultimately destined to be futile")); *accord Davies v. City of Minneapolis*, 316 N.W.2d 498, 504 (Minn. 1982); *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 472 (Minn. 2016).

This Court has also "…recognized three types of state preemption of municipal legislative authority: express preemption, conflict preemption, and field preemption. Express preemption occurs when 'the legislature has expressly declared that state law shall prevail over municipal regulation.' . . . . Conflict preemption occurs when state and local laws 'contain express or implied terms that are irreconcilable with each other, when [local law] permits what the statute forbids, or when [local law] forbids what the statute expressly permits.'" *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018) ("*Jennissen I*") (quoting *Bicking*, 891 N.W.2d at 313). Field preemption occurs when "the Legislature has comprehensively addressed the subject matter such that state law now occupies the field." *Id.* at 459-60; *see also Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 819 (Minn. 1966) (explaining the "occupation of the field concept").

These doctrines are well settled in the realm of whether voter-led proposed amendments may appear on a ballot. And Respondents' logic is entirely self-defeating: if they are correct, the Court would also have to abandon its century of precedent allowing cities to refuse to place unconstitutional proposed amendments on ballots; after all, there is *nothing* in the Minnesota Constitution or Minnesota Statutes that expressly allows a city to keep a voter-led charter amendment off a ballot. Respondents' argument is a mere straw man with which the Court can easily dispatch.

V. Amicus League of Minnesota Cities Offers No Rebuttal to the Application of Severability to the Charter Amendment.

As Appellants argue above, they do not seek the reversal of existing case law granting cities the power to reject wholly unlawful voter-led ballot measures. Rather, severability would add a new tool to the kit of Minnesota cities, not take one away. But Amicus League of Minnesota Cities argues that applying this well-settled doctrine to charter amendments would lead to *more* waste of taxpayer funds in the form of "frivolous elections," and not less. Amicus Br. at 6-7. However, the League fails to demonstrate how this would be the case with this or any other charter amendment. *Contra* Appellants' Br. 20-22 (modification of initiative and referendum provisions by city councils is codified in charters and a regular occurrence), 27-33 (reviewing policy reasons supporting allowing severance).

The League's argument here is circular: it contends that the Court should refuse to recognize severability of Section 4.08 because it would lead to a futile election which wastes taxpayer funds. The election would be futile and a waste of taxpayer funds because severability has not been recognized by the Court. Amicus Br. at 6-7. But that's the point of bringing this case to this Court: this Court can end this hypothetical circle by holding that severing an unlawful provision from a proposed charter amendment is consistent with *HRA*, Minn. Stat. § 204B.44, Minn. Stat. § 410.12, and Minn. Const. Art. XII.

Further, the onslaught of recent challenges to city decisions about charter amendments refutes the idea that adopting Appellants' position would increase waste. *E.g.*, *Samuels v. City of Minneapolis*, 966 N.W.2d 245 (Minn. 2021); *Jennissen v. City of*

Bloomington, 938 N.W.2d 808 (Minn. 2020) ("*Jennissen II*"); *Clark v. City of St. Paul*, 934 N.W.2d 334 (Minn. 2019); *Jennissen I*, 913 N.W.2d 456 (Minn. 2018); *Bicking*, 891 N.W.2d 304 (Minn. 2017); *Vasseur*, 887 N.W.2d 467 (Minn. 2016). It is hard to imagine that, with recognition of a collaborative process by this Court, litigation will *increase* as opposed to decrease.[17]

The other position put forth by the League concerns the ethical conflict that would result from a city attorney who would be compelled to "provide legal assistance to petitioning residents in two ways: (1) by helping them draft lawful charter amendment petitions, and (2) by making pre-election severance determinations to help residents cure unlawful charter amendment petitions…" Amicus Br. at 7. The primary problem is that Appellants made no such argument. The opposite is true.

As Appellants argue and the League acknowledges, "city councils and the residents who file charter amendment petitions will likely have adverse interests, as this lawsuit confirms." Amicus Br. at 7. Appellants went much further than that, arguing that "city councils are virtually always adverse to voter legislation," Appellants' Br. 32, but that "this inherent healthy conflict" will remain regardless of what the Court decides today, *id.* at 27. Voters who complete the requirements to present a petition for a charter amendment should get a seat at the table and play a role in the adversarial process, seeking compromise on

[17] Of course, Appellants cannot control how Bloomington acts in response to this Court applying the severability doctrine here. As this Court knows all too well, the City has an unfortunate track record of denying legitimate ballot questions from being proposed to its voters. *E.g., Jennissen II*, 938 N.W.2d 808 (Minn. 2020); *Jennissen I*, 913 N.W.2d 456 (Minn. 2018).

language just as any other adverse parties would do in the legal realm. Appellants seek no special treatment or "help" from city attorneys—only the chance to negotiate instead of being forced to immediately litigate.

The second issue with this League argument is that the League wholly ignores the existing conflict of interest which Appellants addressed at length in their primary brief: that between the city attorney's obligation to represent the interests of the council, and his/her duty to make a detached determination as to the legality of a pending charter amendment petition brought forth by a group of city taxpayers in the "collective, common interests of all city constituents." *Compare* Appellants' Br. at 32 *with* Amicus Br. at 8. City attorneys are already dealing with a conflict as both advocate for the City and supposedly neutral "judge" of the legality of charter amendments. So, when the League argues that a conflict would arise if severance is applied here, it is really saying that the voters just do not deserve a seat at the table.

VI. Appellants Are Not Required to Restart the Charter Amendment Process to "Clearly Demonstrate the Intent" of Bloomington Voters.

Voters seeking to amend their city charters have long been treated in a paternalistic and dismissive manner. This attitude is evident in the City's argument: "Instead of collecting *a couple thousand* signatures a second time…," Appellants are burdening the City and the Court with their arguments concerning severability. Resp. Br. at 8 (emphasis added). Respondents go on:

> 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.

Resp. Br. at 28 (emphasis added).

Respondents might as well have said, "let them eat cake." They have apparently lost all touch with the arduous and sacrifice-laden reality of the petition process. To prepare a legal petition and gather signatures in compliance with the strictures of Minn. Stat. § 410.12—during a Minnesota February, for presentation to an openly hostile city council, which will dissect the measure for reasons to reject it—is nothing short of a Herculean task. Hundreds or even thousands of volunteer hours are necessary to accomplish such a feat, and the will of scores of city voters hangs in the balance while an adverse city government decides the fate of the measure.

To dismiss such an effort as a waste of the Court's time is emblematic of an "us versus them" attitude which also seems to challenge the very idea that they might be subject to judicial review in the first place. It is this attitude that has become pervasive across Minnesota cities, especially with Respondents. This is exactly why it is so important that the Court apply its precedent in *HRA* and hold that severance is appropriate and even necessary here: it would acknowledge that voters, and particularly those on a successful petition committee, have a legitimate place at the negotiating table with even a hostile city council after they have done the hard work of obtaining thousands of voter signatures to—hopefully—propose a change with which the majority of their fellow voters would agree.

CONCLUSION

The Court's precedent in *HRA* acknowledges that the well settled and often-applied doctrine of severability applies to proposed charter amendments like the one at bar. Neither Respondents nor the League of Minnesota Cities presented any arguments that would justify a decision to ignore this commonsense application of a well-settled doctrine to charter amendments under Minn. Stat. § 410.12. This Court should order the severance of § 4.08 from the remainder of the Charter Amendment and require Respondents to present the rest to the voters of Bloomington at a special election in accordance with Minnesota statutes.

Dated: November 11, 2022

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CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P. 118, SUBD. 2

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