

FILED

CASE NO. A22-1190

November 4, 2022

**STATE OF MINNESOTA
IN SUPREME COURT**

**OFFICE OF
APPELLATE COURTS**

Kolten Kranz, et al.

Appellants,

vs.

City of Bloomington, et al.

Respondents.

**BRIEF OF AMICUS CURIAE
LEAGUE OF MINNESOTA CITIES**

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STATEMENT OF THE ISSUE

Was the city council's rejection of the charter amendment petition, based on its determination that the proposed charter amendment was "manifestly unconstitutional" and "in conflict with the Minnesota Constitution and Minnesota Statutes," erroneous as a matter of law?

The district court upheld the city council's decision and rejected Appellants' request for an injunction to require the city to sever the proposed charter amendment's unlawful provisions from its lawful provisions, and to submit the lawful provisions on the general election ballot. The district court reasoned that severance would "substantially emasculate" the proposed amendment because the invalid provisions are "integral" to its purposes.

STATEMENT OF AMICUS CURIAE'S IDENTITY

The League of Minnesota Cities (League) has a voluntary membership of 832 out of 854 Minnesota cities, including the City of Bloomington (City).¹ It represents cities' common interests before courts and other governmental bodies and provides its members with a variety of services, including advocacy, information, education, training, policy-development, and risk-management services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities.

STATEMENT OF THE CASE AND FACTS

The League adopts the City's statements of the case and facts.

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellants petitioned the district court, under Minn. Stat. § 204B.44, seeking declarative and injunctive relief to correct an alleged ballot error: the City's refusal to place any provisions of a proposed charter amendment on the November 2022 general election ballot. The charter amendment was proposed by a petition, which was signed by registered city voters (including Appellants) and was filed with the city clerk, as authorized under Minn. Stat. § 410.12. The proposed charter amendment seeks two related changes: (1) to repeal the charter's authorization for ranked-choice voting,² and

¹ The League certifies, under Rule 129.03, that this brief was not authored, in whole or in part, by counsel for either party to this appeal, and that no other person or entity, besides the League, has made a monetary contribution to its preparation or submission.

² This authority was adopted in 2020 through a charter amendment that the city council proposed. Appellants' Br. at 19. Charter amendments may be proposed in three ways

(2) to add a super-majority voter-approval requirement for any future attempt to reinstate ranked-choice voting.³

The city council rejected the petition by resolution, determining that the proposed amendment is “manifestly unconstitutional and inconsistent and in conflict with the Minnesota Constitution and Minnesota Statutes.” Resolution No. 2022-146. Doc. 22 at 74; Doc. 25 at 137-138. The district court upheld the city council’s decision and denied Appellants’ request for an injunction to require the City to sever the proposed charter amendment’s unlawful provisions from its lawful provisions, and to place the lawful provisions on the November 2022 general election ballot. Appellants’ Add. at Add. 1-12. The district court concluded that, because the unlawful provisions are “integral to the purposes” of the proposed charter amendment, severance would “substantially emasculate” the proposed amendment and is therefore not justified under *Housing & Redevelopment Auth. v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972). Appellants’ Add. at Add. 11-12. This Court granted Appellants’ Petition for Accelerated Review, accepting review of the district court’s decision regarding severance.

The League requested amicus status because this appeal is about more than the parties’ individual interests. This Court’s decision will have a significant, statewide impact on the ability of the 107 home rule charter cities in Minnesota to protect public

under state statute: by the city council, by the charter commission, or by registered city voters. Minn. Stat. § 410.12.

³ The district court affirmed the city council’s determination that the super-majority voter-approval requirement conflicts with state statute (Minn. Stat. § 410.12) and the Minnesota Constitution (Minn. Const. art. XII, § 5). Appellants have not appealed the district court’s decision on this issue. Appellants’ Br. at 7.

funds by rejecting petitions for unlawful charter amendments. This Court should affirm the district court’s decision and should reject Appellants’ proposed rule of law regarding severance because it conflicts with the plain language of Minn. Stat. § 410.12 and it would create ethical conflicts for city attorneys.

ARGUMENT

I. This appeal will have a significant, statewide impact on home rule charter cities’ ability to protect public funds by rejecting petitions for unlawful charter amendments.

The League concurs with the City’s legal arguments regarding the impermissibility of pre-election severance of unlawful charter-amendment language, and it will not repeat those arguments here. Instead, this brief provides broader context about the severance issue to inform this Court of facts or matters of law that otherwise “may have escaped consideration.”⁴ It does so in part by analyzing the limited legal obligations that Minn. Stat. § 410.12 imposes on home rule charter cities after residents file a charter amendment petition with the city clerk.

Appellants urged the district court to adopt a rule of law that would obligate charter cities, through their city attorneys: “to engage with petitioners to craft petition language that will ultimately withstand legal challenge.” Appellants’ Add. at Add. 11. In other words, Appellants have proposed a rule of law that would obligate city attorneys to provide legal assistance to residents by helping them draft lawful charter amendment petitions.

⁴ *State v. Finley*, 64 N.W.2d 769, 773 (Minn. 1954) (discussing an amicus curiae’s appropriate role).

But there is no such obligation in Minn. Stat. § 410.12. Appellants admit this in their Petition for Accelerated Review (PFAR), noting: “Nothing in § 410.12 requires or even allows city attorneys to assist voters in drafting language....Unfortunately, any requirement that the city attorney assist with the language is notably absent in the charter amendment process [in contrast with the initiative process for proposing ordinances].” PFAR at 13-14. Likewise, there is no requirement in Minn. Stat. § 410.12 that obligates city attorneys to help residents cure an unlawful charter amendment petition, by making pre-election severance determinations. Furthermore, as the City demonstrates in its brief, state statute establishes the exclusive process for amending city charters, unlike the processes for initiative and referendum, which charter provisions may govern. Respondent’s Br. at 7-15.

Therefore, if Appellants want to add new legal obligations to the statutory process for amending a home rule city charter, they must seek statutory amendments in a legislative forum, not this judicial one. In short, this Court should reject Appellants’ request for it to judicially amend Minn. Stat. § 410.12 and should redirect Appellants to the Legislature.

In addition, this Court should confirm that home rule charter cities’ core obligation, upon receipt of a charter amendment petition, is to vet the petition’s form and substance to ensure that they comply with the Minnesota Statutes and the Minnesota Constitution. The city council is the decision-maker under Minn. Stat. § 410.12; the city attorney’s role is to advise the city council about how to comply with its statutory legal obligations. Once the city council completes this vetting process, it has two additional,

alternative obligations. If the petition is lawful, the city council has an obligation to submit the proposed charter amendment to the city voters at an election. But if the petition is unlawful, the city council has an alternative obligation: to protect public funds by rejecting the charter amendment petition.

The Minnesota Constitution expressly restricts the expenditure of taxes to public purposes. Minn. Const. art. X, § 1. Minnesota cities are subject to this constitutional restriction, and cities generally may only spend public funds if two requirements are satisfied: (1) there must be express or implied authority for the expenditure in state statute or city charter (if applicable), and (2) the expenditure must serve a public purpose. *See generally* “Public Purpose Expenditures,” pp. 1-3, League of Minnesota Cities (July 13, 2020) available at: <https://www.lmc.org/resources/public-purpose-expenditures/> (last accessed Nov. 1, 2022).

This Court has consistently confirmed that holding a futile election to consider an unlawful charter amendment does not serve a public purpose because it wastes taxpayer funds. *Housing & Redevelopment Auth. v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972); *Davies v. City of Minneapolis*, 316 N.W.2d 498, 504 (Minn. 1982); *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017). Likewise, this Court should uphold the city council’s rejection of the unlawful charter amendment petition at issue here because it will protect public funds by avoiding a futile election in compliance with the Minnesota Constitution and this Court’s precedent. The election that Appellants propose holding would be futile and lacks statutory authority because, as the City’s brief

demonstrates, the plain language of Minn. Stat. § 410.12 does not authorize pre-election severance of unlawful charter amendment language. *See* Respondent’s Br. at 7-15.

II. The Minnesota Rules of Professional Conduct limit how city attorneys can ethically interact with residents who file charter amendment petitions.

Minnesota city attorneys take their ethical responsibilities seriously, and they strive to comply with them. The League urges this Court to adopt a rule of law regarding severance that will allow city attorneys to continue complying with these ethical responsibilities. This Court should reject Appellants’ proposed rule of law regarding severance because it would create ethical conflicts for city attorneys.

Appellants admit that city councils and the residents who file charter amendment petitions will likely have adverse interests, as this lawsuit confirms. Appellants’ Br. at 27 (noting that “voter-initiated measures always present a conflict with the will of the city council). But despite this likelihood for an adversity of interests, Appellants have proposed a rule of law that would obligate city attorneys 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 that have already been signed by registered city voters and filed with the city clerk.

Again, these proposed legal obligations do not exist in Minn. Stat. § 410.12. Furthermore, while Minnesota city attorneys do endeavor to be courteous and helpful to the residents with whom they interact, city attorneys cannot ethically provide legal advice to residents. This Court should not adopt a rule of law that would obligate city attorneys

to provide legal assistance to residents who file charter amendment petitions because it would create an ethical conflict for city attorneys, by interfering with their duty of loyalty to their clients under Rule 1.7 of the Minnesota Rules of Professional Conduct.

Because a city attorney represents an organization, the city attorney's clients are the organization's "duly authorized constituents" under Rule 1.3 of the Minnesota Rules of Professional Conduct. As a result, a city attorney's client may vary depending on the factual context and could potentially include: (1) the city council as a whole; (2) individual members of the city council; (3) the city council's authorized agents like the city clerk or the police chief; or even (4) the collective, common interests of all city constituents. *See generally*, Jeffrey L. Goodman and Jason Labokrtsky, *The Attorney-Client Privilege and the Municipal Lawyer*, 48 Drake L. Rev. 655 (2000).

In a context where residents have filed a charter amendment petition with the city clerk, the city attorney represents two clear city constituents: the city council and the city clerk. This is so because these are the two constituents with authority to act, on the city's behalf, to satisfy its limited legal obligations under Minn. Stat. § 410.12. The city attorney cannot ethically provide legal assistance to residents who file charter amendment petitions because they are not the city attorney's client, and because the residents' interests may be (or may become) adverse to the city attorney's client from both a charter-governance perspective (if the city council was supportive of the petitioned-for charter amendment, the city council likely would have proposed that amendment itself) and from a litigation perspective (again, as this lawsuit confirms).

In addition, Appellants' proposed rule of law would create an ethical conflict for city attorneys interacting with petitioning residents who are not represented by an attorney. Under Rule 4.3 of the Minnesota Rules of Professional Conduct, a city attorney is prohibited from doing or saying anything to imply that she is disinterested. Furthermore, if a city attorney believes that an unrepresented party has interests that are adverse to those of her client, Rule 4.3 prohibits the city attorney from providing any legal advice to the unrepresented party, except for the limited advice to hire a lawyer.

In summary, the Minnesota Rules of Professional Conduct limit how city attorneys can ethically interact with residents who file charter amendment petitions. Appellants' proposed rule of law regarding severance would create ethical conflicts for city attorneys. This Court should reject Appellants' proposed rule of law and should instead adopt a pragmatic rule of law that will allow city attorneys to comply with their ethical responsibilities.

CONCLUSION

This Court's decision will have a significant, statewide impact on home rule charter cities' ability to protect public funds by rejecting petitions for unlawful charter amendments. This Court should reject Appellants' proposed rule of law regarding severance because it is bad law and bad public policy; it conflicts with the plain language of Minn. Stat. § 410.12, and it would create ethical conflicts for city attorneys. For these reasons, the League respectfully requests this Court to affirm the district court's decision.

Respectfully submitted,

Dated: Nov. 4, 2022

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**CERTIFICATION OF
DOCUMENT LENGTH**

City of Bloomington, et al.

Respondents.

I certify that this document conforms to the requirements of the applicable rules, is produced with a proportional 13-point font, and the length of this document is 2,053 words. This document was prepared using Microsoft Word for Office 365.

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