

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Civil Other/Miscellaneous

Tyler Vasseur, Rosheeda Credit, Joshua
Rea, and Devon Jenkins,

Petitioners,

v.

City of Minneapolis,

and,

Casey Joe Carl, in his official capacity
City Clerk, City of Minneapolis;

and,

Grace Wachlarowicz, in her official capacity
Director of Elections, City of Minneapolis;

and,

Ginny Gelms, in her official capacity
Elections Manager, Hennepin County;

**PETITION FOR CORRECTION OF
BALLOT ERROR AND FOR
DECLARATORY JUDGMENT**

Respondents.

Court File No. _____

INTRODUCTION

1. Pursuant to Minn. Stat. § 410.12, a coalition of Minneapolis residents and voters recently gathered sufficient signatures to place a charter amendment on the November 8, 2016 ballot that would establish a local Minneapolis minimum wage of \$15 per hour over the course of several years (hereinafter the “Amendment”). *See* Opinion of City Attorney Susan Segal at 1–3 (copy attached as Exhibit A). Because the Amendment is proper in scope and in no way

conflicts with Minnesota law, the Minneapolis City Council (the “Council”) had an obligation to refer the measure to the electorate. On August 5, 2016, however, the Council refused to fulfill this statutory duty. Respondent City of Minneapolis and Respondent election officials are about to produce ballots that wrongfully omit the proposed Amendment.

2. The date by which the ballot will be finalized is fast approaching. Under state law, a local ballot question’s language must be set at least seventy-four days before a municipal election. Minn. Stat. § 205.16(4). This means that Respondents only have until August 26, 2016—*less than three weeks* from the date of this filing—to submit the final Minneapolis ballot to Hennepin County. Petitioners will suffer irreparable harm without this Court’s immediate intervention.

3. In order to obtain meaningful relief allowing the Amendment to be placed on the November 8, 2016 ballot, Petitioners submit this Petition for Correction of Ballot Error under Minn. Stat. § 204B.44. The statute allows “[a]ny individual [to] file a petition . . . for the correction of any . . . errors, omissions, or wrongful acts which have occurred or are about to occur” on the part of any “municipal clerk . . . or any other individual charged with any duty concerning an election.” Minn. Stat. § 204B.44. The statute also expressly states that “[u]pon receipt of the petition the court shall *immediately* set a time for a hearing” *Id.* (emphasis added). In applying this law, Minnesota courts have frequently noted that “[t]he public interest requires that there should be some speedy method of determining whether [voters] . . . are legally entitled to have their [measure] placed on the official ballot.” *Page v. Carlson*, 488 N.W.2d 274, 278 (Minn. 1992) (quoting *State v. Scott*, 105 Minn. 513, 516 (1908)). Alternatively, Petitioners request declaratory relief under the Uniform Declaratory Judgments Act (the “Act”), which states that “[a]ny person . . . whose rights, status, or other legal relations are affected by a statute

. . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Minn. Stat. § 555.02. Like Minn. Stat. § 204B.44, the Act is “remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.” Minn. Stat. § 555.12.

4. Petitioners respectfully request that this Court provide expedited relief so that they may exercise their right to submit an amendment to the Minneapolis City Charter on the November 8, 2016 ballot.

5. This Court must order the City to place the proposed Amendment on the November 8, 2016 ballot if the proposed Amendment is constitutional and does not conflict with state law. Because the Council based its decision not to place the proposed Amendment on the November ballot on the City Attorney’s conclusion that it is not a proper subject for a charter amendment, the only question that the Court must decide is whether the proposed Amendment is a permissible subject for inclusion in a city charter under Minn. Stat. § 410.07.

6. Any claim that the proposed Amendment is not a proper charter amendment based on the theory that charter amendments may address only the structure, powers and procedure of city government is without basis. Such a limited understanding of what may be included in a home rule charter flies in the face of a long history in the City of Minneapolis and other Minnesota cities of including substantive regulatory provisions in their city charters that extend far beyond the structure, scope and procedures of government. As explained by the chair of the Minneapolis’ 2013 Charter Commission, Barry F. Clegg, the Commission recommended including in the city charter *both* (1) matters pertaining to the structure, scope and procedures of government; *and* (2) other provisions that were deemed sufficiently important to warrant

inclusion in the city's fundamental law. In addition to past practice in Minneapolis and other cities, the Minnesota Supreme Court's opinion in *Markley v. City of St. Paul*, 172 N.W. 215, 215 (Minn. 1919), expressly upheld a city charter provision establishing substantive employee protections—a provision of the St. Paul charter creating a right to workers' compensation for injured firefighters and police officers—holding that city charters may properly embrace “any subject appropriate to the orderly conduct of municipal affairs.” *Id.* at 216.

In support of their Petition, Petitioners state and allege as follows:

PARTIES

7. Petitioner Tyler Vasseur is an individual residing in Minneapolis, Minnesota. Petitioner is a qualified and registered voter of the City of Minneapolis, a home rule charter city. Petitioner Vasseur signed the petition to place the proposed Amendment on the November 8, 2016 election ballot.

8. Petitioner Rosheeda Credit is an individual residing in Minneapolis, Minnesota. Petitioner is a qualified and registered voter of the City of Minneapolis, a home rule charter city. Petitioner Credit signed the petition to place the proposed Amendment on the November 8, 2016 election ballot.

9. Petitioner Joshua Rea is an individual residing in Minneapolis, Minnesota. Petitioner is a qualified and registered voter of the City of Minneapolis, a home rule charter city. Petitioner Rea signed the petition to place the proposed Amendment on the November 8, 2016 election ballot.

10. Petitioner Devon Jenkins is an individual residing in Minneapolis, Minnesota. Petitioner Jenkins signed the petition to place the proposed Amendment on the November 8, 2016 election ballot.

11. Respondent City of Minneapolis is a home rule charter city under Minnesota law with the capacity to sue and be sued. The City, through its City Council, is the legal entity responsible for the final decision not to place the proposed Amendment on the Minneapolis ballot for the general election to be held on November 8, 2016.

12. Respondent Casey Joe Carl is the City Clerk for the City of Minneapolis. Along with the other Respondents, Respondent Carl is responsible for preparing the Minneapolis ballot for the general election to be held on November 8, 2016.

13. Respondent Grace Wachlarowicz is the duly appointed and acting Director of Elections for the City of Minneapolis. Along with the other Respondents, she is responsible for preparing the Minneapolis ballot for the general election to be held on November 8, 2016.

14. Respondent Ginny Gelms is the Elections Manager for Hennepin County, which comprises the City of Minneapolis. Along with the other Respondents, she is responsible for preparing the Minneapolis ballot for the general election to be held on November 8, 2016.

FACTS

15. Recognizing that Minneapolis has the highest cost of living in Minnesota, and that even a single worker without children must earn at least \$15.28 an hour to cover basic needs,¹ a coalition of city residents and organizations recently came together to establish a local minimum wage of \$15 per hour. The “Vote for 15 MN” coalition is composed of dozens of individuals as well as community groups, such as Neighborhoods Organizing for Change, Centro de Trabajadores de Lucha, 15 Now Minnesota, and the Minneapolis NAACP.

¹ See cost of living for a single worker with no children in Hennepin County. Minnesota Employment and Economic Development, Cost of Living in Minnesota, <https://mn.gov/deed/data/data-tools/col/> (last viewed Aug. 1, 2016).

16. This coalition mobilized to place the Amendment on the November 8, 2016 ballot. The Amendment proposes that a \$15 local minimum wage be phased in over the course of several years. The increased wage would be phased in more slowly for employers with fewer than 500 employees. *See* Opinion of City Attorney Susan Segal at 1–3 (Exhibit A).

17. Pursuant to Minn. Stat. § 410.12, the coalition needed to assemble a petition of voters equal to five percent of the votes cast in the 2014 state general election in Minneapolis—or 6,869 signatures—to qualify the Amendment for the ballot. The coalition began its signature collection efforts in April 2016.

18. On June 29, 2016, the coalition submitted a total of 17,902 signatures in support of the Amendment to the Minneapolis Charter Commission.

19. On July 13, 2016, the Charter Commission accepted the petition and transmitted it to the City Council by referring it to the City Clerk.

20. On July 20, 2016, the City Clerk certified that the petition contained 8,418 valid signatures and was thus in compliance with relevant statutory provisions. The City Clerk forwarded the petition to the Council so that it could fix “the form of the ballot”—the only responsibility allotted to the Council under Minn. Stat. § 410.12(4).

21. On August 5, 2016, the Council approved the ballot language to be used if the proposed Amendment is placed on the November 8, 2016 ballot.²

22. However, on August 5, 2016, the Council also voted not to place the Amendment on the November ballot.³

² Minneapolis City Council Agenda, Regular Meeting, August 5, 2016 – 9:30 a.m., *available at* <http://www.ci.minneapolis.mn.us/meetings/council/WCMSP-184483>.

³ *Id.*

23. Upon information and belief, and based on the resolution passed by the Council on August 5, 2016, Respondents will issue ballots for the November 8, 2016 election that fail to include the proposed Amendment.

ANALYSIS

24. The City of Minneapolis has acted in violation of its duty to place the Amendment before voters in November. City charters in Minnesota are not narrowly limited to matters concerning the structure, authority and procedures of government. The Minnesota Supreme Court has previously upheld the validity of a charter provision in the City of St. Paul addressing employment matters having nothing to do with the structure of city government. There is a long history of including provisions in local Minnesota charters that regulate businesses and private conduct and that reach well beyond the structure of city government. In addition, the chair of the Minneapolis Charter Commission explained as part of the Commission's efforts to revise the charter in 2013 that the Commission included in the city charter both provisions relating to the structure of government and matters that were considered important enough to belong in the charter rather than in a City ordinance.

25. Because the Amendment in no way conflicts with state law and constitutes a proper subject for a charter amendment, the Council has an obligation to submit the measure to the electorate. Unless this Court intervenes swiftly, the Council's refusal to fulfill its duty will precipitate exactly the kind of wrongful ballot omission Minn. Stat. § 204B.44 is designed to thwart.

A. The Enactment of a Local Minimum Wage is a Proper Subject for a Charter Amendment by Petition

26. The Minnesota Constitution grants voters in charter cities like the City of Minneapolis the right to amend their city charter by a petition submitted to voters. Minn. Const.

art. XII, § 5 (“Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law.”). The constitutional right to amend a city charter by petition submitted to voters is addressed in Minn. Stat. § 410.12.

27. Neither the Minnesota Constitution nor Minn. Stat. § 410.12 limit the scope of topics for a city charter. *State ex rel. Andrews v. Beach*, 191 N.W. 1012, 1013 (Minn. 1923), stated that “[n]either the city council nor the courts have any supervisory or veto powers” with regards to charter amendments. Under state law, when a council is faced with a proposed charter or amendment to a charter, the city council must submit the proposal to voters, and the Minnesota Supreme Court has made clear that “[t]here is no room for argument about the duty of the council in either case.” *Id.*

28. Section 410.07 of the state code provides that, subject to the limitations in Chapter 410 of the Minnesota statutes, a city charter may, in relevant part, provide “*for the regulation of all local municipal functions* as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896.” Minn. Stat. § 410.07 (emphasis added). An exercise of the city’s general welfare power through the establishment of a city minimum wage falls squarely within the scope of this authorization.⁴

⁴ The City of Minneapolis is a home rule charter city and, as such, generally has all of the powers possessed by the state legislature, excluding powers that are expressly or impliedly withheld. The powers of home rule cities are liberally construed. *Tousley v. Leach*, 230 N.W. 788 (Minn. 1930). The City’s charter includes a broad grant of powers. It states under a “powers plenary” provision that “the City . . . may exercise any power that a municipal corporation can lawfully exercise at common law.” Minneapolis Charter § 1.4(a). It also states that the “charter’s mention of certain powers does not limit the City’s powers to those mentioned.” Minneapolis Charter § 1.4(d). Courts have interpreted such broad grants of power as “tantamount to that granted under a general welfare clause.” *See N. Pac. Ry. Co. v. Weinberg*, 53 F. Supp. 133, 136 (D. Minn.

29. Only when a proposed charter amendment is *manifestly unconstitutional* or in clear conflict with existing state law may a city council 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*, 198 N.W.2d 531 (1972); *State ex rel. Andrews v. Beach*, 191 N.W. 1012 (Minn. 1923).

30. The Minnesota Supreme Court has made clear that “[i]n passing on [] proposed amendments the people [of a charter city] have all the legislative power possessed by the Legislature of the state, save as such powers are expressly or impliedly withheld.” *State ex rel. Andrews*, 191 N.W. at 1012 (internal quotations and citations omitted).

31. In a legal memorandum submitted by the City Attorney to the City Council addressing whether the proposed Amendment was valid, the City Attorney did not cite *a single* Minnesota law authority supporting her conclusion that the proposed Amendment falls outside the ambit of a proper charter amendment because, pursuant to Minn. Stat. § 410.07, charter amendments may pertain only to “the governance structure, scope of authority and procedures for operation of the municipal governmental unit.” Opinion of City Attorney Susan Segal at 6 (Exhibit A). Instead, her opinion simply asserts that conclusion, citing only a national treatise as the basis. *Id.* (citing 2A McQuillin Mun. Corp. § 9:3 (3d ed.)). Moreover, that treatise section cited by the City Attorney simply explains that city charters typically establish structures and authorities of city government—but it nowhere asserts that other important matters that extend

1943); see also *State v. City of Duluth*, 159 N.W. 792, 794 (1916). Cities that have a “general welfare” clause have broad discretion to regulate various areas, and whether a local measure “is for the general welfare generally cannot be negated by a court unless it is clearly wrong; that is, [a city’s] estimate of the general welfare should be followed unless it is plainly erroneous.” *Weinberg*, 53 F. Supp. 133, 136 (D. Minn. 1943). The regulation of businesses falls squarely within a city’s general welfare powers.

beyond those subject areas may not also be included in a charter. *See* 2A McQuillin Mun. Corp. § 9:3 (3d ed.).

32. Providing for the general welfare of city residents surely constitutes regulation of a municipal function as that term is used in Minn. Stat. § 410.07. Just as the other City of Minneapolis charter provisions discussed below, providing for regulation of private business operations or regulation of activities that might endanger the public or public infrastructure, constitute regulation of a municipal function to protect the general welfare, so, too, does requiring businesses to pay employees a locally-appropriate minimum wage.

33. No case involving Minn. Stat. § 410.07 appears to address directly the meaning of “regulation of all local municipal functions” in the context of a charter amendment. Minn. Stat. § 410.07.

34. However, at least one Minnesota Supreme Court case shows that a charter can, in fact, include substantive regulation of employment matters. In *Markley*, the Minnesota Supreme Court considered whether a section of the St. Paul city charter remained in force. 172 N.W. at 215. The charter section at issue gave firefighters and police officers a right to workers’ compensation and gave injured workers a right to reinstatement under specific circumstances. *Id.* After the city adopted this charter provision, the state enacted a statewide workers’ compensation law. The court was asked to consider whether the state law repealed the city charter section. *Id.* The court stated that a charter “may provide for any scheme of municipal government not inconsistent with the Constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of *local municipal functions* as fully as the Legislature might have done before the adoption of sec. 33, art. 4, of the Constitution.” *Id.* at 216 (internal quotations and citation omitted) (emphasis added). Crucially for this case, the

court then explained that this power “embraces any subject appropriate to the orderly conduct of municipal affairs” *and* upheld the St. Paul charter section providing for workers’ compensation. *Id.* Thus, the Minnesota Supreme Court acknowledged that provisions consisting of substantive regulation of working conditions may be included in city charters and are a subject “appropriate to the orderly conduct of municipal affairs.” *Id.* (citation omitted).

35. Among cases concerning Article XII, Section 5 of the Minnesota Constitution, which grants residents of charter cities a right to propose a charter amendment by petition, only one appears to have limited the proper subject or scope of a charter amendment outside the context of constitutional or state law limitations that would bar any local law. In *Housing and Redevelopment Authority of Minneapolis*, the Minnesota Supreme Court interpreted Minn. Stat § 410.20 to prohibit a charter amendment that sought to give Minneapolis residents broad referendum powers over city government actions beyond ordinances (e.g. the settlement of lawsuits; appointment of city officials; granting of licenses and permits). 198 N.W.2d at 531. Section 410.20 outlines local recall and referendum powers, and the court held that the legislature intended to limit referendums to ordinances. *Id.* at 537. The proposed Amendment does not involve voters’ initiative or referendum powers, it involves only voters’ right to place a charter amendment before voters pursuant to the Minnesota Constitution and Minn. Stat. § 410.12.

36. A claim that the proposed Amendment is beyond the scope of a charter amendment ignores the longstanding history of including in the Minneapolis City Charter provisions that extend well beyond the governance structure, scope of authority and procedures for operation of the municipal governmental unit. These include charter provisions concerning the regulation of liquor, the obstruction of streets, and the operation of railways.

37. The Minneapolis charter currently includes a number of provisions regulating the sale of liquor, requiring, among other things, that only businesses operating in an area zoned for commercial or industrial use may sell liquor and requiring the Council to establish standards for restaurants holding a liquor license in areas smaller than seven acres. Minneapolis Charter § 4.1(f). Several other of Minnesota’s largest home rule cities, including St. Paul and Bloomington, have charters that similarly regulate the sale of liquor. St. Paul Charter § 17.07; Bloomington Charter § 12.12. If a charter amendment can regulate a highly specific activity like liquor and wine sales through the regulation of local businesses, a charter amendment can address an issue like the minimum wage.

38. The City Attorney suggests that the charter’s liquor-related provisions are a historical exception. She notes that their “presence stems from the 1884 inclusion of . . . liquor patrol limits” and thus cannot justify amending the charter to increase the minimum wage today. Opinion of City Attorney Susan Segal at 15 (Exhibit A). Yet, the long history of these regulations does not change their core purpose: to regulate, in close detail, the sale of liquor and wine in Minneapolis. The City Attorney further argues that the state legislature’s decision to codify liquor-related restrictions, under Minn. Stat. § 410.121, shows that such charter provisions are a permissible anomaly. Section 410.121 states that “[i]f the charter which is to be amended or replaced contains provisions which prohibit the sale of intoxicating liquor or wine in certain areas, such provisions shall not be amended or removed unless 55 percent of the votes cast on the proposition shall be in favor thereof.” Minn. Stat. § 410.121. But the state code sections cited are not framed as enabling legislation or authorizations for such charter content. Rather they simply acknowledge—and impose limits on—this pre-existing longtime practice of including such

substantive regulation in city charters. Further, the liquor regulations in the Minneapolis City Charter go beyond simply prohibiting the sale of liquor in certain areas of the city.

39. Moreover, liquor restrictions are far from the only example of regulation of private conduct that the City of Minneapolis has enshrined in its charter over the years. Prior to the plain language charter adopted in 2015, the City’s charter at one point included a provision that, in part, made persons who rendered streets unsafe for travel under various circumstances liable for damages caused. *See* Minneapolis Charter (Oct. 2012), ch. 8, § 17 (“All persons who shall, by means of any excavations in or obstructions upon any street of said city, not authorized by law or the ordinances of said city, render such street unsafe for travel . . . shall be liable for all damages not caused by the negligence of the party injured”) (copy attached as Exhibit B).⁵ Another section prohibited railway companies from piling up snow or other materials upon a traveled portion of a city street and made railway companies who violated this provision liable for damages to those injured as a result of the violation. *See id.* at ch. 8, § 20 (“No railway company or street railway company shall have any right, in clearing their tracks through any part of said city, or otherwise to pile up snow or other material and leave the same piled upon any traveled portion of any street in said city. And any such company shall be liable to any person who shall be so injured by means of any such obstruction caused by such company, or its servants, for all damages sustained.”) (copy attached as Exhibit C). And another provision made any person who willfully, and without authorization, broke, removed or damaged certain water pipes or other city infrastructure, or engaged in any act that polluted certain bodies of water, or engaged in other related conduct subject to a specified fine or imprisonment. *See id.* at ch. 9, § 16 (“Any person who shall, without authority from the City Council, willfully break, remove or in

⁵ Available at <http://bit.ly/2axQqE7>.

any way injure or damage any main, branch water pipes, intake pipes, aqueduct, dam, . . . or who shall fill up or partially fill up any excavation, or raise or open any gate . . . or . . . act to pollute the water in said Bassett's creek or said river . . . shall be punished by imprisonment of not more than ninety (90) days, or by a fine of not more than seven hundred (\$700) dollars or both.”) (copy attached as Exhibit D).

40. In addition, the chair of the City's Charter Commission, Barry F. Clegg, addressed the issue of what may be included in a city charter when he submitted his report on a proposed plain-language charter revision, which the voters subsequently adopted. In that report, dated May 21, 2013, Mr. Clegg acknowledges that “[d]rawing the line between the ‘fundamentals that belong in the charter, and the ‘regulations’ that belong in ordinance, is somewhat arbitrary.”⁶ The report explained that the Commission “took the approach that a provision was ‘fundamental’ if it affected . . . a citizen’s rights, or . . . the relationship among governmental officers or bodies, particularly including (but not limited to) the independence of municipal boards.”⁷ And when some “participants in the charter-revision process took a broader view than the Commission about which provisions were ‘fundamental[.]’” the “Commission consistently accepted those views” so that it ultimately added “19 pages back into the revision that had been slated for reclassification as ordinances.”⁸ Ultimately, the report noted, “[t]he draft revision contain[ed] every provision that any board, citizen, or other interested person or group considered important enough that it belonged in the charter rather than in an ordinance.”⁹

⁶ Minneapolis Charter Commission, Plain Language Charter, Submitted to the Minneapolis City Council (May 2013) at 9, *available at* <http://www.ci.minneapolis.mn.us/www/groups/public/@clerk/documents/webcontent/wcms1p-109178.pdf> (copy attached as Exhibit E).

⁷ *Id.* at 10.

⁸ *Id.*

⁹ *Id.*

41. Outside of the City of Minneapolis, other charter cities have also adopted provisions that go beyond the “governance structure, scope of authority and procedures for the operation of a municipal governmental unit.”

42. The original charter adopted by the City of St. Paul, for example, declared depots, houses, and other buildings storing more than twenty-five pounds of gunpowder or other inflammable or explosive oils or substances to be public or common nuisances. *See* St. Paul Charter (1869) at ch. IV, § 5 (copy attached as Exhibit F).¹⁰ It made gambling houses, houses of ill fame, disorderly taverns, and other places selling certain liquors without a license public or common nuisances *Id.* It also made it unlawful for any person to “refuse to obey any lawful order of any engineer, fire warden, Mayor, or alderman, at any fire,” and made persons liable up to fifty dollars for violations. *Id.* at ch. IX, § 4 (copy attached as Exhibit G).

43. Similarly, the original charter adopted by the City of Duluth contained a section that required “[e]very physician, mid-wife, or other person who may professionally assist or advise at any birth” to “make and keep a registry of every such birth” containing certain required information. Duluth Charter (1900), ch. IX, § 125 (copy attached as Exhibit H).¹¹ Another provision made any person who took water from certain city pipes without proper authorization subject to a misdemeanor punishable by a fine of not more than one hundred dollars or by imprisonment. *Id.* at ch. XIV, § 160 (copy attached as Exhibit I). The charter separately made any person who maliciously or willfully diverted water from certain works or damaged certain canals or property used for the distribution of water liable in a civil action for treble damages, in addition to the cost of the lawsuit, and made such actions misdemeanors punishable by a fine of up to one thousand dollars and/or imprisonment. *Id.* at ch. XIV, § 161 (copy attached as Exhibit

¹⁰ Available at <https://babel.hathitrust.org/cgi/pt?id=umn.319510021213631;view=1up;seq=5>.

¹¹ Available at <https://babel.hathitrust.org/cgi/pt?id=umn.31951002655099r;view=1up;seq=7>.

J). The charter also made any bystander or citizen who refused to “aid in preserving the peace, or in suppressing riotous or disorderly behavior or proceedings” when required by certain city officials subject to a misdemeanor conviction punishable by a fine of up to fifty dollars or imprisonment. *Id.* at ch. XX, § 262 (copy attached as Exhibit K).

44. Ultimately neither the text of § 410.07 nor longstanding practice in Minnesota limit the content of charter amendments solely to matters pertaining to the structure and powers of city government. And whether the proposed Amendment is or could be an initiative to enact an ordinance is inapposite in this case. The dispositive question before the court is whether the proposed Amendment provides for the “regulation of [] local municipal functions” within the meaning of Minn. Stat. § 410.07 such that it may be included in a city charter.

45. As established in detail in this section, the proposed Amendment provides for the regulation of a local municipal function within the meaning of Minn. Stat. § 410.07. It provides for the general welfare of the residents of the City of Minneapolis by establishing a minimum standard for the protection of workers in the City. It therefore protects the well-being and functioning of the City in a way that is analogous to past charter provisions that protected the public against other hazards such as explosives or dangerous conduct in the streets.

46. Confirming the conclusion that raising the minimum wage in order to combat income inequality is sufficiently important to be included in a city’s fundamental law is the growing trend among states to enshrine higher minimum wages in their state constitutions. *See, e.g.*, Fla. Const. art. X, § 24 (added in 2003); Nev. Const. art. XV, § 16 (added in 2006); Ohio Const. Article II, Section 34a (added in 2006); Colo. Const. art. XVIII, § 15 (added in 2006); N.J. Const. art. I, ¶ 23 (added in 2013).

47. The City Attorney cites the Minnesota Court of Appeals' decision in *Haumant v. Griffin*, 699 N.W.2d 774 (Minn. Ct. App. 2005), in claiming that the proposed amendment is “an initiative cloaked as a charter amendment” that does not qualify for the ballot. *Id.* at 781 (internal quotations omitted). The Court of Appeals held in *Haumant* that a proposed charter amendment to authorize marijuana dispensaries in Minneapolis was not a proper charter amendment and so should not appear on the city ballot. The court's decision hinged chiefly on its conclusion that the proposed measure conflicted with both state and federal law, and was therefore “manifestly unconstitutional”—a well-established basis on which cities may decline to place a proposed charter amendment before the voters. *Id.* at 777-81.

48. The language in *Haumant* cited by the City Attorney appears in a cursory discussion at the end of the opinion. It concerns an argument that was clearly not necessary for the court to reach, as it had already invalidated the proposed charter amendment as “manifestly unconstitutional.” Nonetheless, without citing authority or engaging in any analysis of whether there exists a formal distinction between a charter amendment and an initiative to enact an ordinance, the court observed that it saw “appellant's proposed charter amendment as an attempt to circumvent Minneapolis' bar on legislation by initiative.” *Id.* at 781.

49. The passage in *Haumant* cited by the City Attorney is therefore of uncertain precedential status and, in any event, sheds little light on the scope of what may properly be included in a city charter. Instead, the Minnesota Supreme Court's decision in *Markley* is the more germane precedent for the instant proposed charter amendment. It stands for the proposition that matters of employment policy that are deemed important to a city and its residents may properly be enshrined in the city's fundamental law.

B. Petitioners Have Obtained the Right to Amend the Minneapolis Charter Through the Ballot this November

50. Amendment advocates submitted the required number of signatures to place the proposed Amendment before the electorate on November 8, 2016.

51. Because the City Clerk certified that a sufficient number of voters signed the petition to place the Amendment on the November ballot, it should be submitted to voters at the November election. *See* Minn. Stat. § 410.12(4).

52. While “[t]he form of the ballot shall be fixed by the governing body,” the Council does not have the discretion to evade its obligation to put an amendment on the ballot. *Id.*

53. In this case, the Council refused to fulfill its duty, jeopardizing Petitioners’ rights to partake in direct democracy and to address one of their community’s most pressing needs.

54. This Court may affirm the City’s refusal to place the proposed Amendment on the November 8, 2016 ballot only if it finds that (1) the proposed Amendment is “manifestly unconstitutional” or in clear conflict with existing state law; or (2) the proposed Amendment does not provide for “the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters were authorized by constitutional amendment in 1896,” as permitted under Minn. Stat. § 410.07. If this Court finds neither of these things, it must allow the voters of Minneapolis to decide whether they consider the establishment of a local minimum wage of \$15 sufficiently important to the city’s municipal functions to codify in the city’s charter.

C. Respondents Must Carry Out Their Duty to Place the Charter Amendment on the Ballot Because the Proposed Minimum Wage Law Is Not Prohibited by State Law

55. Although “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,” this case features no such conflict with state law. *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W. 2d 306, 308 (Minn. 1995).

56. As established above, no Minnesota law authority supports the City’s position that the proposed Amendment is not a permissible subject for a charter amendment. Petitioners have identified Minnesota Supreme Court precedent, as well as numerous examples of similar provisions in the charters of Minneapolis and other cities establishing that the proposed Amendment can and should be added to the City of Minneapolis Charter.

57. While a city cannot enact a local regulation that conflicts with state law, the proposed Amendment would not create such a conflict. As Minnesota courts have explained, “[i]t is elementary that an ordinance must not be repugnant to, but in harmony with, the laws enacted by the Legislature It cannot authorize what a statute forbids or forbid what a statute expressly permits, but it may supplement a statute or cover an authorized field of local legislation unoccupied by general legislation.” *Mangold Midwest Co. v. Village of Richfield*, 143 N.W. 2d 813, 816 (Minn. 1966) (citation and internal quotations omitted) (emphasis added).

58. Here, a local minimum wage would be in complete harmony with the state minimum wage law. There is no dispute that, unlike some states, the Minnesota legislature has not enacted any prohibition against localities’ adopting higher local minimum wages.

59. Nor would the proposed charter amendment conflict in any way with Minnesota’s state minimum wage statute. It would not authorize what the state law currently forbids (payment of wages of less than \$9.50 an hour). It would not forbid what the state law expressly permits (since the state minimum wage law does not anywhere provide that employers have the right to pay the current state minimum wage and no more than that wage—it simply forbids them from paying less). Minnesota’s state minimum wage is simply what it is—a minimum. It is a

floor, not a ceiling, and the statutory language in no way suggests that local governments cannot require more.

60. Specifically, in determining whether a city ordinance conflicts with state law, Minnesota courts have explained that a local ordinance that is “merely additional or complementary to or in aid and furtherance” of a state law, does not conflict with that state law. *Mangold*, 143 N.W.2d at 817. Here, a local minimum wage law would merely complement existing state minimum wage protections by adding a higher wage floor for workers in Minneapolis.

61. Finally, Minnesota’s minimum wage law does not preempt local minimum wage regulation by “occupying the field.” In determining whether state law has occupied the field, Minnesota courts consider four factors: (1) the subject matter regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether the legislature in partially regulating the subject matter has indicated that it is a matter solely of state concern; and (4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general population. *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1 (Minn. 2008) (citing *Mangold*, 143 N.W.2d at 820). Courts’ discussion of these factors is often overlapping, but the analysis generally turns on whether the state legislature has made it sufficiently clear, either through its words or through such comprehensive regulation, that it intends to occupy the field—even where the locality is regulating the same subject matter as the state.

62. There is nothing in Minnesota’s minimum wage law to suggest that low wages are solely a matter of state concern, nor has the legislature suggested that it completely dictates the regulation of minimum wages.

63. Courts look favorably upon local regulation where it addresses an issue that is of particular concern for that community. *See, e.g., State v. Dailey*, 169 N.W.2d 746 (Minn. 1969). Courts have additionally put a strong burden on the legislature to demonstrate its preemptive intent, highlighting judicial reluctance to find implied preemption and a preference for explicit preemption. *See id.*

64. In short, Minnesota state law has neither explicitly nor impliedly “preempted” localities from adopting higher city minimum wages. Unlike legislatures in some states, the Minnesota legislature has not expressly banned local wages. Moreover, under the standards set out by the Minnesota Supreme Court for when state laws will be interpreted as implicitly preempting local authority, the Minnesota minimum wage law does not indicate an implicit intent to preempt. A higher local minimum wage merely supplements the state floor, something that courts have indicated does not conflict with state law so as to present a preemption concern.

65. The Council therefore had no basis on which to deem the proposed Amendment unconstitutional and has a duty to put it on the November 8, 2016 ballot. By refusing to fulfill its statutory obligation under Minn. Stat. § 410.12, the Council risks depriving Petitioners of their right to place the Amendment before Minneapolis voters. The Amendment’s imminent and wrongful omission from the ballot demands immediate relief under Minn. Stat. § 204B.44.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court issue an Order, pursuant to either Minn. Stat. § 204B.44 or Minn. Stat. § 555, requiring Respondents to prepare a ballot for the November 8, 2016 election that includes the proposed Amendment.

Dated: August 5, 2016

NICHOLS KASTER, PLLP



Paul J. Lukas, MN Bar No. 22084X
4600 IDS Center, 80 South 8th Street
Minneapolis, MN 55402
Telephone (612) 256-3200
Fax (612) 215-6870
lukas@nka.com

Bruce D. Nestor, MN Bar No. 0318024
DE LEÓN & NESTOR, LLC
3547 Cedar Avenue South
Minneapolis, MN 55407
Telephone (612) 659-9019
Fax (612) 436-3664
nestor@denestlaw.com

Karen E. Marty, MN Bar No. 0205746
Marty Law Firm, LLC
3800 American Boulevard West, suite 1500
Bloomington, MN 55431
Telephone (952) 921-5859
Fax (651) 294-1026
kmarty@martylawfirm.com


Laura Huizar*
National Employment Law Project
2040 S Street NW, Lower Level
Washington, DC 20009
Telephone (202) 640-6521
Fax (202) 234-8584
lhuizar@nelp.org
*subject to granting of motion to appear *pro hac vice*

ATTORNEYS FOR PETITIONERS

Acknowledgement

I hereby acknowledge that, pursuant to Minn. Stat. § 549.211, subd. 3, sanctions may be imposed by this Court if it determines that Minn. Stat. § 549.211, subd. 2, has been violated.

Dated: August 5, 2016

A handwritten signature in black ink, appearing to read 'P. Lukas', written over a horizontal line.

Paul J. Lukas, MN Bar No. 22084X