No. A16-1367

State of Minnesota
In Supreme Court

CITY OF MINNEAPOLIS; 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;

RESPONDENTS/APPELLANTS,

Vs.

TYLER VASSEUR, ROSHEEDA CREDIT, JOSHUA REA, AND DEVON JENKINS,

PETITIONERS/RESPONDENTS,

AND

GINNY GELMS, IN HER OFFICIAL CAPACITY ELECTIONS MANAGER, HENNEPIN COUNTY,

RESPONDENT/RESPONDENT.

RESPONDENTS TYLER VASSEUR, ROSHEEDA CREDIT
JOSHUA REA, AND DEVON JENKINS'
BRIEF

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STATE OF MINNESOTA
IN SUPREME COURT

City of Minneapolis, 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, Respondents/Appellants, v. Tyler Vasseur, Rosheeda Credit, Joshua Rea, and Devon Jenkins, Petitioners/Respondents, and Ginny Gelms, in her official capacity Elections Manager, Hennepin County, Respondent/Respondent.	Appellate Case Number A16-1367 Trial Court Case Number 27-CV-16-11794 **RESPONDENTS TYLER VASSEUR, ROSHEEDA CREDIT, JOSHUA REA, AND DEVON JENKINS' BRIEF**

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INTRODUCTION

The Minneapolis City Council (the "Council") has refused to fulfill its statutory obligation to place a valid and proper charter amendment on the November 8, 2016 ballot. The proposed charter amendment (the "Amendment") would put before voters a local minimum wage—a provision that, if adopted, would protect the welfare of city residents, much like past and current charter provisions. A coalition of Minneapolis residents and voters exercised their constitutional right to propose the Amendment by petition and gathered sufficient signatures to place it on the ballot. But on August 5, 2016, the Council refused to do so.

The City Attorney took the position that proposed charter amendments in Minnesota are limited to matters concerning the "governance structure, scope of authority and procedures for operation of the municipal government unit," and advised the Council that the proposed Amendment fell outside that scope and amounted to "an ordinance disguised as a charter amendment." *See* Opinion of City Attorney Susan Segal ("Opinion") (Petition, Exhibit A) at 5–6, 16.[1] Appellant City of Minneapolis and County election officials thus planned to produce ballots which wrongfully would omit the proposed Amendment, and which would deny the electorate its constitutional right to decide whether to include a local minimum wage in the Minneapolis charter.

The District Court correctly held in its August 22, 2016 Order Granting Petition that the Council had no authority to exercise such veto power and ordered Appellant City

[1] Available at http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcmsp-184160.pdf.

of Minneapolis to include the proposed charter amendment on the November ballot. As the District Court explained, Appellant has identified no authority for its novel, narrowing construction of the permissible scope of city charters and charter amendments in Minnesota. Order Granting Petition at 13. The text of the applicable statute, Minn. Stat. § 410.07, expressly provides that city charters may 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." Case law and practice show that the "regulation of all local municipal functions" under Minn. Stat. § 410.07 includes the adoption of a local minimum wage. Were this Court now to reverse the District Court's decision, the validity of current and past home rule charter provisions—including those in Minneapolis dealing with the regulation of alcoholic beverage sales—would be cast into doubt.

Accordingly, this Court should issue an order affirming the District Court's decision and directing Appellants and County election officials to prepare a ballot for the November 8, 2016 election which includes the proposed Amendment.

BACKGROUND

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,[2] the "Vote for 15 MN" coalition—a group comprised of dozens of organizations

[2] 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).

and numerous city residents—joined together to propose that Minneapolis establish a local minimum wage of $15 per hour.

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. As detailed in Respondents' original Petition for Correction of Ballot Error and for Declaratory Judgment ("Petition"), the coalition began its signature collection efforts in April 2016. On June 29, 2016, the coalition submitted a total of 17,902 signatures in support of the Amendment to the Minneapolis Charter Commission. On July 13, 2016, the Charter Commission accepted the petition and transmitted it to the Council by referring it to the City Clerk. On July 20, 2016, the City Clerk certified that the petition contained at least 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 assigned to the Council under Minn. Stat. § 410.12(4). 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. However, the Council also voted not to place the Amendment on the November ballot.[3]

[3] 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. (Copy of resolution adopted by the City Council on August 5, 2016, Petition, Exhibit B).

ARGUMENT

In refusing to place the proposed Amendment on the November ballot, the City of Minneapolis has violated its duty under Minnesota law. The City Clerk certified that a sufficient number of voters signed the petition to place the proposed Amendment on the ballot. *See* Minn. Stat. § 410.12(4). While "[t]he form of the ballot shall be fixed by the governing body," the Council does not have the discretion to make an end run around its obligation to put an amendment on the ballot. *Id.* The Council has now jeopardized Respondents' constitutional right to employ direct democracy to address one of their community's most pressing needs—the right to a local minimum wage that corresponds to the high cost of living in Minneapolis—and to protect that right within the city's fundamental law, its charter. Appellants offer no valid justification for the Council's refusal. The Court should require Appellants and County election officials to prepare a ballot for the November 8, 2016, election that includes the proposed Amendment.

I. THIS COURT MUST ORDER THAT THE PROPOSED CHARTER AMENDMENT BE ADDED TO THE NOVEMBER BALLOT UNLESS IT IS UNCONSITUTIONAL OR CONFLICTS WITH STATE OR FEDERAL LAW.

Under Minn. Stat. §410.12, the City has a duty to place the proposed Amendment on the November ballot. The only justifications for refusing to do so would be that the proposed Amendment is unconstitutional or conflicts with state or federal law. But none of these justifications apply. Accordingly, Appellants must include it on the November ballot.

A. The Minnesota Constitution and the Minnesota Statutes permit charter amendments by petition and do not restrict the scope of topics that can be addressed in a proposed charter amendment.

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."). Section 410.12 of the Minnesota Statutes addresses this constitutional right and sets forth the process for proposing a charter amendment by petition. Section 410.12 states "[t]he charter commission may propose amendments to such charter and shall do so upon the petition of votes equal in number to five percent of the total votes cast at the previous state general election in the city." Minn. Stat. § 410.12. Amendments meeting the statutory requirements "shall be submitted to the qualified voters at a general or special election and published as in the case of the original charter." *Id*.

Neither the Minnesota Constitution nor Minn. Stat. § 410.12 limits the scope of topics for a city charter or charter amendments. The Minnesota Supreme Court in *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 regard to charter amendments. Under state law, when a city council is faced with a proposed charter or amendment to a charter, the council must submit the proposal to voters, and "[t]here is no room for argument about the duty of the council in either case." *Id*.

Minn. Stat. § 410.07—the statutory provision on which the City Attorney relied[4] to justify the City's restriction on the scope of charter amendments—states that, subject to the limitations in Chapter 410, a city 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 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. As Respondents argue in Part II, below, Section 410.07 does not limit the subject matter of charter provisions to the narrow subjects of "governance structure, scope of authority and procedures for operation of the municipal government unit," as Appellants have contended, *see* Opinion (Petition, Exhibit A) at 6,[5] and indeed, no case has ever held that it does.

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[4] *See* Opinion (Petition, Exhibit A) at 5–6, 11–12, *available at* http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcmsp-184160.pdf.

[5] Notably, Appellants have failed to identify or articulate a consistent standard for what *does* constitute a proper subject for a charter amendment. This failure is likely due to the fact that the City cannot point to a single authority laying out the narrow standard it advocates. At various points, the City has argued that a provision fits within the proper scope of a charter amendment if it relates to: "the establishment, administration or regulation of city government;" "the governance structure, scope of authority and procedures for operation of the municipal governmental unit;" and "the form, structure or distribution of powers within the municipal enterprise." At other points, it has said that it fits within the proper scope if it "is limited to the municipality's governance structure, its scope of authority, and the regulation of its operation;" if it bears on "the municipality's scheme of government: its governance structure; the scope of powers, duties and responsibilities; the organization of government; and the procedures for the government's operation;" and more. *See* Opinion (Petition, Exhibit A) at 4, 6, 11; City Respondents' Brief at 7, 9, 10, 15, 16. Ultimately, Minn. Stat. § 410.07 *is* the standard for what constitutes a proper subject of a charter amendment—there is no need to rephrase it. Appellants have acknowledged that Minn. Stat. § 410.07 lays out the permissible parameters for a charter amendment. Appellants' Petition for Accelerated Review at 10; Opinion (Petition, Exhibit A) at 5 ("Section 410.07 . . . sets out the following parameters for the proper content of city charters."); City Respondents' Brief at 8 ("Minnesota Statutes section 410.07 sets out the following as the proper content of a city charter . . . ."). As argued in more detail, below, Respondents contend that the proposed Amendment fits within the meaning of "regulation of all local municipal functions" in Minn. Stat. § 410.07. As long as the proposed Amendment (continued…)

Rather, a home rule charter city, such as Minneapolis, generally has all of the powers possessed by the state legislature, excluding powers that are expressly or impliedly withheld. *See, e.g.*, *Dean v. City of Winona*, 843 N.W.2d 249, 256 (Min. Ct. App. 2014) ("[I]n matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld.") (citation and internal quotations omitted), *appeal dismissed*, 868 N.W.2d 1 (Minn. 2015). And the power to legislate on all matters not expressly or impliedly withheld by the legislature resides not just with the Council, but also with City residents. The Minnesota Supreme Court in *Park v. City of Duluth* explained:

> The Constitution and general laws of the state confer upon the people of a city the power to frame and adopt its own charter. *The adoption of such a charter is legislation.* The authority which it furnishes to city officers is legislative authority. *The people of a city* in adopting a charter have not power to legislate upon all subjects, but as to matters of municipal concern they have all the legislative power possessed by the Legislature of the state, save as such power is expressly or impliedly withheld.

Park v. City of Duluth, 159 N.W. 627, 628 (Minn. 1916) (citation omitted). *See also Beach*, 191 N.W. at 1012 ("In passing on [] proposed amendment the people [of a city] have all the legislative power possessed by the Legislature of the state, save as such powers are expressly or impliedly withheld.") (internal quotations and citation omitted). In fact, although Appellants argue that the City Council has "exclusive legislative power,"[6] they have acknowledged that the City's charter states only that the City has

fits within this term, there is no conflict with state law and this Court must order the City to place the proposed Amendment before voters.

[6] Appellants' Petition for Accelerated Review at 4.

"*general* legislative and policymaking authority." *See* Appellants' Response to Petition ("City Respondents' Brief") at 14 (citing Minneapolis Charter § 4.1(a)).

Thus, the adoption and amendment of a charter constitutes legislation, and while legislative authority can be conferred to city officers through a charter, the people of a city retain the legislative power granted by the state. A more restrictive reading of that provision would contravene the express findings of *Park v. City of Duluth* and *State ex rel. Andrews v. Beach*. The District Court, in line with this case law, held that the City lacked support in reported case law when arguing that "by not providing initiative and referendum power to its citizens, Minneapolis has chosen to deny its citizens the power to legislate on issues affecting the general welfare." Order Granting Petition at 12. The District Court explained that this argument "ignores precedent holding that a home rule charter itself is legislation and amending a charter, which citizens have the right to do, is itself a legislative function." *Id*. (citing *Mitchell v. City of St. Paul*, 36 N.W.2d 132, 135 (Minn. 1949)).

Minnesota courts have also made clear that the powers of home rule cities and their residents are liberally construed, *see Tousley v. Leach*, 230 N.W. 788 (Minn. 1930), and include a city's general welfare power.[7] Ultimately, the discussion below

[7] The Minneapolis 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. 1943); *see also State v. City of Duluth*, 159 N.W. 792, 794 (Minn. 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 (continued…)

demonstrates that the City's argument before this Court on August 12, 2016 that the Council retains "exclusive" legislative power in the City is inconsistent with Minnesota Supreme Court precedent, history, and practice.

B. The Council may refuse to place a proposed charter amendment on the ballot only if it is unconstitutional or conflicts with state or federal law.

A city council may refuse to place a proposed charter amendment on the ballot only if it is manifestly unconstitutional or is in clear conflict with existing state law. *See Beach*, 191 N.W. at 1012 (noting that while "[a] home rule charter and all amendments thereto must be in harmony with the Constitution and laws of this state," "[n]either the city council nor the courts have any supervisory or veto powers" to preclude the electors from "be[ing] given an opportunity to approve or disapprove of" an amendment).[8] The City has not alleged a conflict with federal law, and the City Council based its decision not to place the proposed Amendment on the November ballot solely on a perceived

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) (citation omitted). The regulation of businesses—including through establishment of a city minimum wage—falls squarely within a city's general welfare powers. *See, e.g.*, *Ex parte Bacigalupo*, 132 N.W. 303, 303 (Minn. 1911) ("It is well settled that the police power extends to all matters where the general welfare, morals, and health of the community are involved, and the right to exercise the power, in the regulation of business affairs, has been . . . often determined by this court . . . .").

[8] Numerous cases show that when a court has permitted a city council not to include a proposed amendment on a ballot, the court has based its decision on the conclusion that the amendment was unconstitutional or in conflict with state or federal law. *See, e.g.*, *Davies v. City of Minneapolis*, 316 N.W.2d 498, 502 (Minn. 1982) (concluding that, "[b]ecause the proposed charter amendment, if approved by the voters, would unconstitutionally impair the contractual rights of stadium bondholders, . . . the Minneapolis City Counsel properly refused to place the proposed amendment before the electorate"); *Haumant v. Griffin*, 699 N.W.2d 774, 777–80 (Minn. App. 2005) (concluding a proposed medical marijuana charter amendment was preempted by state law and would violate state public policy as set forth in the Minnesota Penal Code, and thus was an improper proposed charter amendment); *see also Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531, 536–38 (1972) (holding certain proposed amendments were either manifestly unconstitutional or in contravention to state law, and where therefore improper).

conflict with Chapter 410 of the Minnesota Statutes. Appellants' Petition for Accelerated Review at 2. For the reasons discussed in Part II, below, based on Minnesota case law, history, and statements from the chair of the City's Charter Commission, this Court should find that the proposed Amendment is a regulation of a local municipal function within the meaning of Minn. Stat. § 410.07 and should be placed on the November 8, 2016 ballot.

II. THE CITY'S ARGUMENTS ARE INCONSISTENT WITH MINNESOTA AUTHORITY

In her legal memorandum submitted to the City Council, the City Attorney concluded that the proposed Amendment falls outside the ambit of a proper charter amendment because charter amendments may pertain only to "the governance structure, scope of authority and procedures for operation of the municipal governmental unit." Opinion (Petition, Exhibit A) at 6.[9] The City Attorney based this conclusion on Minn. Stat. § 410.07, but the District Court held correctly that Minn. Stat. § 410.07 includes no such restriction on the scope of charter amendments and no binding Minnesota law authority has found such a restriction. *See* Order Granting Petition at 9–10. To the extent that Appellants' arguments have been reframed throughout the course of this litigation to argue that the proposed Amendment conflicts with other sections of Chapter 410 of the Minnesota Statutes, including Minn. Stat. § 410.20,[10] those arguments also fail to demonstrate how these other sections preclude the proposed Amendment.

[9] *See supra* note 5.

[10] *See* Opinion (Petition, Exhibit A) at 5–9; City Respondents' Brief at 7–11.

Case law and practice show that the "regulation of all local municipal functions," a permissible subject of a charter under Minn. Stat. § 410.07, includes the adoption of a local minimum wage. Any claim that city charter provisions are limited to matters of the structure, scope of authority and procedures of city government wholly ignores and conflicts with Minnesota law and precedent. Were the Court to impose such a limitation, a vast array of present and past provisions in the Minneapolis and other municipal charters would be deemed invalid. In addition, this Part shows that whether the Minneapolis charter permits ordinances by citizen petition does not bear on whether a local minimum wage is a permissible charter amendment proposal. In fact, whether the proposed Amendment could be an initiative to enact an ordinance is inapposite.

A. The "regulation of all local municipal functions" under Minn. Stat. § 410.07 permits the enactment of fundamental charter provisions that advance residents' general welfare, such as a local minimum wage law.

Section 410.07 permits a charter provision to 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." Minn. Stat. §410.07. No state statute and no case law arising out of the context of a charter amendment expressly defines the term "local municipal functions" as used in Minn. Stat. § 410.07. However, past usage of the term in Minnesota cases, including the Minnesota Supreme Court's decision in *Markley v. City of St. Paul*, 172 N.W. 215 (Minn. 1919), and numerous charter provisions from past charters adopted by Minnesota cities demonstrate that the term has encompassed all of those things that a city may choose to do to promote the general welfare of its residents. In fact, following past practice, 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* matters pertaining to the structure, scope of authority and procedures of government and other provisions that were deemed sufficiently important to warrant inclusion in the city's fundamental law.

The City Attorney's memorandum and the City's subsequent filings before the District Court have failed to cite a single binding Minnesota law authority—as there is none—in support of the conclusion that charter provisions are limited to those regulating the "governance structure, scope of authority and procedures for operation of the municipal government unit." The City Attorney's opinion simply asserted her conclusion and cited a national treatise that merely explains that "*[g]enerally speaking*," city charters establish structures and authorities of city government—nowhere does the treatise assert that other important matters that extend beyond those subject areas may not also be included in a charter. *See* Opinion (Petition, Exhibit A) at 6 (quoting 2A McQuillin Mun. Corp. § 9:3 (3d ed.)) (emphasis added).[11]

[11] In fact, municipalities across the country have charter provisions covering subjects well beyond the structures of government. For instance, Savannah, Georgia's charter contains a provision regarding the potential use of a particular property as a parking structure. *See* Charter of Savannah, Georgia Art. 9 § 9-301 *et seq.*, *available at* https://www.municode.com/library/ga/savannah/codes/code_of_ordinances?nodeId=DIVITHCHRELA. Most relevant, in 2000, a Louisiana court ordered that a minimum wage charter amendment proposal be put on the ballot in New Orleans. *See Johnson v. Carter, 2000-0029* (La. App. 4 Cir. 6/28/00), 767 So. 2d 790, 792, writ denied, 2000-2154 (La. 10/27/00), 772 So. 2d 124, and writ denied, 2000-2631 (La. 10/27/00), 772 So. 2d 659 (holding that because the question of whether a state statute preempting local minimum wage laws applied to the City of New Orleans had not been answered, "the proposed amendment to the City Charter providing for a minimum wage [was] not invalid on its face" and "should be placed on the ballot"). Various state laws preempting local municipal laws also acknowledge that local minimum wage laws could be appropriate charter provisions. *See, e.g.*, Tex. Labor Code Ann. § 62.0515 (continued…)

1. Providing for a local minimum wage constitutes a local municipal function.

a) Minnesota case law understands the term "municipal function" to encompass all powers and duties that a city possesses through its home rule powers

Providing for a local minimum wage is a local municipal function. No Minnesota state statute defines the term "local municipal function," and no case appears to address the meaning of the term precisely in the context of a charter amendment. To the extent Minnesota courts have directly addressed the meaning of the term, however, there is no doubt that the term is understood broadly to encompass all powers and duties that a city can assume through its home rule powers.

In *Borgelt v. City of Minneapolis*, 135 N.W.2d 438, 443 (Minn. 1965), the Minnesota Supreme Court articulated the extreme parameters of what constitutes a "municipal function." It explained that "[a]t one extreme are those activities, clearly outside the performance of municipal functions," which would include something like the operation by a city of a moving picture theater. *Id*. "At the other extreme are those activities which are clearly necessary for, or aid, performance of a municipal function," such as the owning and operating of an asphalt plant by a city when the city could not otherwise obtain asphalt to carry out its duty, under the city's charter, to pave or repair city streets and alleys. *Id*. In between those two extremes, the court explained there "lies a

("Except as otherwise provided by this section, the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, *or charter provision* governing wages in private employment, other than wages under a public contract.") (emphasis added); Ga. Code Ann. § 34-4-3.1 ("No local government entity may adopt, maintain, or enforce *by charter*, ordinance, purchase agreement, contract, regulation, rule, or resolution, either directly or indirectly, a wage or employment benefit mandate.") (emphasis added).

gray area where it may be desirable, but not necessary, to engage in the proposed activity." *Id*.

In *State v. Erickson*, 195 N.W. 919, 921 (Minn. 1923), the Minnesota Supreme Court interpreted what it meant for the legislature to allow charters to "provide for the regulation of all local or municipal functions as fully as the Legislature might have done before the amendment was adopted." It stated:

> The constitutional amendment directed the Legislature to prescrible [sic] by law the general limits within which charters shall be framed, and that body has said that *a charter may provide for the regulation of all local or municipal functions* as fully as the Legislature might have done before the amendment was adopted. *In other words,* as to matters of municipal concern, the people of a city, in adopting a charter, have all the power possessed by the Legislature save as such power has been expressly or impliedly withheld.

Id. (citation omitted) (emphasis added). It added that a law review article at the time had summed up the decisions dealing with municipal home rule as follows:

> 'Upon reading these cases * * * one gets the impression that the Supreme Court has been no less liberal than the Legislature toward the principle of self-government. *Within the field of true municipal functions*, *which is a rapidly growing domain, cities are given substantially the same power to confer authority upon themselves by home rule charters as the Legislature formerly exercised*. The fact that the cities charter themselves instead of receiving their powers directly from the Legislature is a distinction without a real difference.'

Id. (citing 7 Minn. Law Rev. 306, 313) (emphasis added).

Both *Borgelt* and *Erickson* show that the Minnesota Supreme Court has understood the term "municipal functions," as it pertains to charters, to broadly encompass all of a city's home rule powers that are not expressly or impliedly withheld by the legislature. As this brief notes above, *see supra* note 7, Minneapolis' home rule

powers include the power to provide for the general welfare of Minneapolis residents, and the regulation of businesses to advance the general welfare has been upheld by Minnesota courts.[12] A local minimum wage would clearly fall within the "gray area" described in *Borgelt*.

The cost of living in Minneapolis provides a pressing reason for the City to establish its own local minimum wage. Hennepin County, where the City is located, has the highest cost of living in the state. The Minnesota Department of Employment and Economic Development has found that a single worker with no children in Hennepin County needs at least $15.28 per hour working full-time to afford basic needs.[13] More than one in ten persons in the City live in poverty.[14] Minneapolis' workers thus face uniquely local conditions that threaten their ability to make ends meet and provide for their families. A local minimum wage would directly respond to these local needs and help the City fulfill its municipal function to provide for the general welfare of its residents.

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[12] Notably, Minn. Stat. § 410.07 derived from language adopted by the legislature as early as 1899. *See* Westlaw Historical and Statutory Notes for Minn. Stat. § 410.07. A copy was attached as Exhibit C to Respondents' Memorandum in Support of Petition for Correction of Ballot Error and for Declaratory Judgment ("Petitioners' Brief"). The legislature has amended Minn. Stat. § 410.07 numerous times. *See* Westlaw Credits for Minn. Stat. § 410.07 (Petitioners' Brief, Exhibit D) (noting amendments in 1959, 1961, 1971, and 1973). When amending Minn. Stat. § 410.07, *see* Westlaw Historical and Statutory Notes for Minn. Stat. § 410.07 (Petitioners' Brief, Exhibit C), the legislature never modified or otherwise restricted the "local municipal functions" language of §410.07, notwithstanding that charter provisions in many Minnesota cities had routinely regulated private businesses and private conduct to provide for the welfare of city residents. *See* Part II, *infra*.

[13] 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).

[14] United States Census Bureau, Quick Facts Minnesota, http://www.census.gov/quickfacts/table/PST045215/27 (last viewed Aug. 13, 2016).

As the District Court held in its Order Granting Petition, the City's "narrow interpretation" of the language in Minn. Stat. § 410.07 stating that a charter "may provide for any scheme of municipal government . . . and may provide for . . . the regulation of all local municipal functions" violates basic principles of statutory construction. Order Granting Petition at 9. The District Court found that the City's interpretation "renders superfluous the first part of the sentence in which the phrase is contained which states that a charter may 'provide for the establishment and administration of all departments of a city government.'" *Id*. This language, the District Court explained, "empowers a charter to establish and regulate city government." *Id*. Therefore, "[b]y claiming that the second clause of the same sentence only addresses matters of municipal governance, the City is essentially urging that the two clauses in the sentence be construed to mean substantially the same thing – thereby violating basic rules of statutory construction." *Id*. (citing Minn. Stat. § 645.16).[15]

[15] In their Response to Petition, Appellants argued that "[w]hen the balance of the [sentence in Minn. Stat. § 410.07 referencing "local municipal functions"] is considered, all of the topics relate to the form, establishment and administration of the municipality." City Respondents' Brief at 26. The City offers no precedent for this type of interpretation. In fact, no recognized canon of statutory construction seeks to identify the "balance" of a sentence. Minn. Stat. § 645.16 "lists the canons of construction used to determine legislative intent for an ambiguous statute." *State v. Rick*, 835 N.W.2d 478, 482 (Minn. 2013). The statute makes clear that "[e]very law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16. When that is not possible, the intent of the legislature may be ascertained by considering, among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute." Minn. Stat. § 645.16. Appellants applied none of these canons of statutory construction, and finding the "balance" would arguably thwart legislative intent. If this Court were to adopt Appellants' argument and interpret the meaning of Minn. Stat. § 410.07 to permit only amendments relating to the structure and form of government, the phrase "regulation of all local municipal functions" would be superfluous, as the District Court found—it would only restate the first parts of Minn. Stat. § 410.07, something the legislature presumably did not intend.

b) Courts across the country have generally concluded that a local minimum wage is a local matter within the scope of a city's home rule powers

When courts in other states have considered local authority to adopt higher local minimum wages, they have generally shown little hesitation in concluding that a local minimum wage is a local matter within the scope of home rule power. In *New Mexicans for Free Enterprise*, 126 P.3d 1149 (N. Mex. Ct. App. 2005), for example, local advocacy organizations and businesses challenged a Santa Fe ordinance requiring certain city-based businesses to pay a minimum wage higher than the state and federal minimum hourly wage. The court held, in relevant part, that the minimum wage ordinance was within the city's home rule powers and not inconsistent with state law. *Id*. The Maryland Court of Appeals similarly upheld local power to adopt a minimum wage ordinance. *City Council of Baltimore v. Sitnick*, 255 A.2d 376 (Md. Ct. App. 1969). Not only did the court find that the city ordinance did not conflict with state law, *id*. at 395, it also found that the legislature did not preserve the exclusive right to legislate on the subject matter, which is required for preemption by occupation. *Id*. In 2005, a Wisconsin circuit court upheld a Madison minimum wage ordinance. The court noted that home rule states have wide latitude to govern themselves without state interference. *Main Street Coalition for Economic Growth v. City of Madison*, No. 04-CV-3853, slip op. (Dane County Cir. Ct., Branch 2, Apr. 21, 2005) (superseded by statute Wis. Stat. § 104.001(1)–(2)).[16] Upholding the city's authority to adopt the measure, the court ruled that the state

[16] Available at http://nelp.3cdn.net/05f29b8cfe475d32d2_wkm6bl8hl.pdf.

minimum wage law did not preempt or limit local authority to adopt a higher minimum wage. *Id*. The court's decision was superseded by a subsequently adopted statute that prohibited local minimum wage laws, but the court's conclusion that the local law advances a legitimate local purpose within the scope of Madison's home rule authority has remained good law.

c) Cases cited by the City from other jurisdictions concerning the proper scope of a charter provision or amendment do not apply in this case

The City Attorney's opinion and the City's subsequent filings with the District court have suggested that restrictions on charter amendments in other states should inform the Court's interpretation of the meaning of "regulation of all local municipal functions" in Minn. Stat. § 410.07. *See* Opinion (Petition, Exhibit A) at 9; City Response Brief at 22–23. Yet the City cites cases from four states—Iowa, Oklahoma, New Hampshire, and Maryland—that rely upon state-specific statutes or case law-based limitations on the permissible scope of municipal charters that do not exist under Minnesota law.

The court in *Berent v. City of Iowa City*, 738 N.W.2d 193, 213 (Iowa 2007), held that charter amendments in Iowa were limited to those addressing the "form of government." The case was based on specific Iowa case law, Iowa statutes, and legislative history that do not resemble Minnesota authority or history. *Berent* explained that Iowa's type of home rule evolved from a Dillon Rule framework that "maintained a tight legislative grip over municipal affairs" to a "legislative home rule" model that "has been criticized by some as not providing municipalities with sufficient local autonomy."

Id. at 196. The court looked carefully at Iowa Code section 372.9, which stated that "[a] city to be governed by the home rule charter form shall adopt a home rule charter in which its *form of government* shall be set forth." *Id*. at 210 (citation and internal quotations omitted) (emphasis added). The court also considered legislative history showing that a related section of the Iowa Code, Section 372.10, had "severely limited" the permissible subjects of a charter to "five specific provisions related to the structure of city councils, the manner of holding elections, and the duties of the city council and city officers." *Id*. The court viewed the inclusion of "form of government" in Section 372.9 as "deliberate." *Id*. at 210–11. The court then looked at how other courts across the country have interpreted the term and concept of "form of government," and held that "form of government" limited the subject matter of Iowa charters to "basic structural proposals truly involving the form, not the substance of government." *Id*. at 212.

Berent's statutory interpretation of the phrase "form of government" within the legislative history of Iowa is not relevant to this Court's assessment of the meaning of the various terms in Minn. Stat. § 410.07. In Minnesota, home rule has afforded cities the same powers as the legislature from the outset and the state Constitution granted residents the right to amend their charter with no express limitation on the subject of those amendments. *See* Part I, *supra*.

The decision of the Oklahoma Supreme Court to strike down a proposed charter amendment in *Initiative Petition No. 1 of Midwest City*, 465 P.2d 470 (Okla. 1970), rests on a long-established Oklahoma rule that a charter amendment is proper only where it replaces a provision already in the charter. The court explained that "[a] charter

amendment may be adopted by initiative petition process *only as an incident to adoption of alternative charter provisions*." *Id.* at 472 (emphasis added). Minnesota has no similar limitation on its charter amendment process.

Next, the City has cited to the New Hampshire case, *Appeal of Barry*, 720 A.2d 977, 979 (N.H. 1998), as an example of a court rejecting a proposed charter amendment as beyond the permissible scope of such an amendment. Yet, at the time *Barry* was decided New Hampshire's home rule statute expressly limited charters to the "*adoption of one of the above-described basic forms of government*," and described issues such as the "number of elected officials; at-large or district representation; manner of filling vacancies; powers of nomination, appointment and confirmation; and terms of office" as possible subjects for charter provisions. *Id.* at 979 (quoting N.H. Rev. Stat. § 49-B:2) (emphasis in original). In that context, the *Barry* court rejected a charter provision that went beyond form of government. Here, Minnesota has no analogous statute imposing such a narrow limitation on charter amendments nor is there a basis for the Court to read in such a limitation.

Last, in the Maryland case which Appellants have cited, *Mayor & City Council of Ocean City v. Bunting*, 895 A.2d 1068 (Md. Ct. Spec. App. 2006), the court relied upon state supreme court precedents holding that the Maryland Constitution limited charter amendments to the "form and structure of government" rather than to "legislative" acts based on an interpretation of Article XI-A of the Maryland constitution. As discussed above, no Minnesota court has imposed *any* binding interpretation on the definition of "local municipal functions" in Section 410.07, let alone an interpretation excluding a

substantive provision. The only case that comes close, *Markley*, shows that a charter can, in fact, include substantive regulation of employment matters. *See* Part II.A.2, below. There is no basis for Minnesota courts to turn away from the *Markley* precedent in favor of a Maryland precedent grounded in Maryland-specific law.

Thus, none of the other jurisdictions identified by Appellants offers persuasive or applicable precedent for this Court. Instead, it is not uncommon to find a wide range of substantive regulations in the charters of cities in other states. *See supra* note 11.

d) Appellants' efforts to establish that provisions in Chapter 410 of the Minnesota Statutes other than Minn. Stat. § 410.07 preclude the proposed Amendment fail

Appellants' argument that the parameters laid out in Minn. Stat. § 410.07 should be interpreted in light of other provisions in Chapter 410, *see* City Respondents' Brief at 8, should have no bearing on this Court's decision. Appellants' Response to Petition acknowledged the parameters laid out in Minn. Stat. § 410.07, but then aimed to lay out a narrow interpretation of those parameters by citing to Minn. Stat. § 410.16, Minn. Stat. § 410.18, Minn. Stat. § 410.19, and Minn. Stat. § 410.12. Appellants noted that these sections all "further detail the types of municipal governance provisions that may be included in a home rule charter." City Respondents' Brief at 8. And Appellants concluded that "[a]ll of these items have a commonality—they all bear on the municipality's scheme of government: its governance structure; the scope of powers, duties, and responsibilities; the organization of government; and the procedures for the government's operation." City Respondents' Brief at 9. That these statutes perhaps address "scheme of government" issues does not shed any light on the meaning of

"regulation of all local municipal functions" under Minn. Stat. § 410.07, and Appellants do not argue that the meaning of "regulation of all local municipal functions" in Minn. Stat. § 410.07 must be derived from other sections in Chapter 410.

Appellants have also looked to the language in Minn. Stat. § 410.12 to support their conclusion that "the proper and intended subjects for charters and any amendments thereto under the scheme set out in chapter 410 by the Minnesota legislature (consistent with general understanding of the purpose of charters) must relate to the form, structure and functions of the municipal government, not the content of proposed legislation." City Respondents' Brief at 11. Appellants have focused on the following portion of Minn. Stat. § 410.12:

> Such [charter amendment] summary shall contain a statement of the objects and purposes of the amendment proposed and an outline of any proposed new scheme or frame work of government and shall be sufficient to inform the signers of the petition as to what change in government is sought to be accomplished by the amendment.

Minn. Stat. § 410.12.

Appellants' analysis is flawed. First, Appellants note that the sentence "clearly reinforces the intent of the legislature that proposed amendments relate in some fashion to a 'change in government.'" City Respondents' Brief at 10. But nowhere do Appellants attempt to define what the word "government" or the phrase "change in government" mean. They simply assume that "government" means the "form, structure or functions *of the municipal government*." *Id.* (emphasis in original). And within that assumption, Appellants fail to explain why adopting a local minimum wage does not carry out a "function" of government. Regulating how a municipality "functions" (operates) is not

the same as regulating a municipality's "functions" (duties). In reality, as Respondents have explained, the local minimum wage in the proposed Amendment carries out a "function" of municipal government—the protection of the general welfare.

Next, Appellants argue that the last portion of the quoted section above from Minn. Stat § 410.12, beginning with "any proposed new scheme," "plainly references that the proposed amendment relate to a change in government" within Appellants' narrow interpretation of that term. City Respondents' Brief at 10. Appellants imply that if Minn. Stat. § 410.12 meant to include something like the local minimum wage in the proposed Amendment, it would have stated "change in government *or municipal regulation*." *Id.* (emphasis in original).

Appellants' quasi-textual analysis of this last portion of the Minn. Stat. § 410.12 language quoted above fails to account for the significance of the word "any" before the phrase "*any proposed new scheme or frame work of government*" in Minn. Stat. § 410.12 (emphasis added). If, as Appellants posit, the only permissible subject of a charter amendment were a new scheme or framework of government, the natural word to have used instead of "any" would be "the." It would read: "Such [charter amendment] summary shall contain a statement of the objects and purposes of the amendment proposed and an outline of *the* proposed new scheme or frame work of government." The word "any" indicates that a charter amendment is not limited to a "proposed new scheme or frame work of government*"* but rather such a scheme or framework is one possible proposal.

The City's argument that Minn. Stat. § 410.12 would have to include the phrase "*or municipal regulation*" to encompass the proposed Amendment is also inconsistent with Minn. Stat. § 410.07. Appellants do not define "municipal regulation." They simply assume that a "municipal regulation" (if it were included in Minn. Stat. § 410.12) would encompass the proposed Amendment while "regulate all local municipal functions" in Minn. Stat. § 410.07 does not. As established above, Minn. Stat. § 410.07 expressly allows charters and charter amendments to "regulate all local municipal functions." Arguably, a "municipal regulation" is the same as a "regulation of a municipal function" under Minn. Stat. § 410.07. Appellants fail to acknowledge or address this.

As a whole, Appellants' attempt to ground their "standard" for what falls within the permissible scope of a charter amendment in a textual analysis of Minn. Stat. § 410.12 assumes too much, ignores important textual details like the word "any," and leads to more questions than answers.

2. *Markley* confirms charter amendments are not restricted to matters relating to the form and structure of city government.

The City has cited not a single case where a Minnesota court has limited the scope of a charter amendment to matters relating to only the form and structure of city government. To the contrary, the Minnesota Supreme Court in *Markley* expressly upheld a city charter provision establishing substantive employee protections and held that city charters may properly embrace "any subject appropriate to the orderly conduct of municipal affairs." *Markley*, 172 N.W. at 216.

In *Markley*, the Minnesota Supreme Court considered whether a section of the St. Paul city charter remained in force. *Id.* 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). 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.* (citation omitted). 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).

Indeed, the District Court's decision below held that "[t]he language of § 410.07 limits what can be included in a charter amendment in the same way that it limits what can be included in an ordinance, since the power to enact ordinances derives from the very same source – i.e. the charter, which must conform to the 'limits' of § 410.07." Order Granting Petition at 10. The District Court acknowledged that *Markley* "informs

this point." *Id*. at 11. And the District Court found that *Markley* relied "*upon the very same language that is the subject of the dispute at bar*," referring to the statement in *Markley* that "[s]ubject to the limitations in this chapter provided, it [the charter] may provide for any scheme of municipal government not inconsistent with the Constitution, and may provide 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 11 (quoting *Markley*, 172 N.W. at 216) (emphasis in original).

Thus, the District Court found that *Markley* "contains the familiar analysis of whether the city charter and the state statute conflict," but "it also speaks to the reach of the subject matter of a charter, holding that a home rule charter 'embraces any subject appropriate to the orderly conduct of municipal affairs.'" *Id*. (citation omitted). The District Court accepted that "[i]f a charter may contain 'any subject appropriate to the orderly conduct of municipal affairs,' then so to can a charter amendment" and noted that *Markley* "is the only time the Minnesota Supreme Court has spoken to this issue." *Id*.

3. Past Minnesota charter provisions confirm that charter amendments are not restricted to matters concerning the form and structure of city government.

A claim that the proposed Amendment is beyond the scope of a charter amendment ignores the longstanding history of including in the Minneapolis and other Minnesota city charters provisions that extend well beyond the governance structure, scope of authority and procedures for operation of the municipal governmental unit. Such charter provisions include provisions concerning the regulation of liquor, duties of midwives, the obstruction of streets, and the operation of railways.

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.

The City has suggested that the charter's liquor-related provisions are a historical exception. The City Attorney's opinion noted 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 (Petition, Exhibit A) at 15. Yet, the long history of these regulations does not change their core purpose: to regulate, in close detail, the sale of liquor and wine by private entities in Minneapolis. The City Attorney further argued that the state legislature's reference to charter liquor-related restrictions, under Minn. Stat. §§ 410.04 and 410.121, shows that such charter provisions are a permissible anomaly. Section 410.04 concerned boundaries for liquor sales and states "[a]ny city in the state may frame a city charter for its own government in the manner hereinafter prescribed; provided, that *in such cities having patrol limits established by charter*, such limits shall not be altered unless the charter proposing such alteration be adopted by a three-fourths majority," Minn. Stat. § 410.04 (emphasis added), and 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 (emphasis added). These state code provisions do not restrict or authorize charter content. Rather they simply acknowledge the pre-existing longtime practice of including substantive regulation in city charters and set special, even higher requirements for amending charter provisions regulating the sale of liquor.

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 . . . .") (Petition, Exhibit B). 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. *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.") (Petition, 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. *Id.* at ch. 9, § 16 ("Any person who shall, without authority from the City Council, willfully break, remove or in 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.") (Petition, Exhibit D).

Outside 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." For example, the original charter adopted by the City of St. Paul 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 (Petition, Exhibit F).[17] 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

[17] Available at https://babel.hathitrust.org/cgi/pt?id=umn.319510021213631;view=1up;seq=5.

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 (Petition, Exhibit G).

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 (Petition, Exhibit H).[18] 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 (Petition, 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 (Petition, Exhibit 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

[18] Available at https://babel.hathitrust.org/cgi/pt?id=umn.31951002655099r;view=1up;seq=7.

misdemeanor conviction punishable by a fine of up to fifty dollars or imprisonment. *Id.* at ch. XX, § 262 (Petition, Exhibit K).[19]

All of these charter provisions regulate private conduct to the extent such conduct affects the general welfare and safety of the city's residents. A minimum wage law is a similar measure—it helps to ensure the city's residents earn sufficient income to cover basic needs. If this Court were to accept the City's contention that charter provisions can only relate to the narrow subjects of "governance structure, scope of authority and procedures for the operation of the municipal unit," countless charter provisions like the ones cited here, which have governed cities across the state of Minnesota for decades, would be deemed to have been invalid.

Appellants seek to escape the significance of these historical charter provisions by pointing to the legislative history of home rule charters, but the relevance of the cited historical provisions stands. Appellants explained in their Response to Petition that "[p]rior to 1892, local problems in Minnesota were generally handled by special laws applicable to one, or at most, a few municipalities." City Respondents' Brief at 27–28. Appellants then explained that in 1896, the Minnesota Constitution authorized home rule charters and allowed "cities to exercise power under those charters which were formerly exercised by the legislature through the enactment of special laws." *Id*. at 28 (citation omitted).

[19] All of these examples are also matters that almost certainly could have been passed by a city council in the form of an ordinance. Thus, these examples reinforce Respondents' contention, below, that matters which could be enacted by ordinance may also be included in a home rule charter in Minnesota.

With regards to the examples of past Minneapolis charter provisions identified above, Appellants have argued that "many of the provisions that existed in Minneapolis' prior charter were relics from when Minneapolis operated under its legislative charter and would not have conformed to the requirements of chapter 410 but for the fact that they were expressly allowed through the grandfathering provision of section 410.07," City Respondents' Brief at 29.

However, the 2012 charter cited by Respondents contains an entire chapter, Chapter 20, which expressly enumerates and describes the special laws that were incorporated into that charter.[20] Section 1 of Chapter 20 stated: "The following mentioned and described laws and acts of the Legislature of the State of Minnesota heretofore enacted and made applicable to the City of Minneapolis and all the provisions thereof, except the words and phrases of said acts limiting the application thereof to cities of the first class not governed under a home-rule charter, are hereby continued in force and effect in the City of Minneapolis and are hereby made a part of this Charter as fully and to the same extent as if incorporated herein at large . . . ." Minneapolis Charter (2012), ch. 20, § 1. Respondents have cited to chapters 8 and 9 of the 2012 Minneapolis charter for historical examples of charter provisions governing private conduct. Thus, none of the historical provisions cited by Respondents from the 2012 Minneapolis charter

[20] Minneapolis Charter (2012), ch.20, *available at* https://law.resource.org/pub/us/code/city/mn/Minneapolis,%20MN%20Code%20thru%20supp%20%2345,%20Rev.%20vol.%20%231.pdf.

were special laws "grandfathered in" through chapter 20. They continue to demonstrate that past Minneapolis charters have adopted substantive regulations of private conduct.

The historical provisions cited by Respondents from the City of Duluth charter of 1900 also remain valid examples of how charters have included substantive regulations of private conduct after the enactment of Minn. Stat. § 410.07. The City Attorney's website of the City of Duluth explains that Duluth was incorporated under the Special Laws of Minnesota for 1887 before Duluth adopted its first home rule charter in March 1900.[21] Respondents have reviewed the Minnesota Session Laws of 1887 by surveying the index of provisions included in those laws and found that those laws did not pertain to any of the subjects addressed in the historical examples cited by Respondents.[22]

Appellants have therefore not demonstrated that any of the specific provisions cited by Respondents from past Minneapolis and Duluth charters should be dismissed because they were special laws that were grandfathered in. This Court should consider the Minneapolis and Duluth examples, at a minimum, in considering past practice regarding charters in Minnesota cities. If this Court were to uphold the City's standard for determining whether a subject is appropriate for a charter, it would deem the examples Respondents cite from past Minneapolis and Duluth charters to have been invalid.

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[21] The City of Duluth, Minnesota, Duluth City Attorney's Office, http://www.duluthmn.gov/attorneys/ (last viewed Aug. 18, 2016).

[22] *See* The Office of the Revisor of Statutes, Minnesota Session Laws – 1887, Regular Session, https://www.revisor.mn.gov/laws/?view=session&year=1887&type=0.

4. The chair of the Minneapolis Charter Commission confirmed that the City's charter is not limited to provisions governing the form and structure of city government.

In addition to *Markley* and the long-standing practice of including provisions regulating private conduct in city charters, 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. This report resulted from an eleven year process which included input and review by the Council, various Minneapolis boards and commissions, the Minneapolis City Attorney, various outside expert readers with years of involvement in city government, and multiple public hearings spread out from 2005–2012.[23] In that comprehensive and exhaustive report, dated May 21, 2013, Mr. Clegg acknowledged that "[d]rawing the line between the 'fundamentals that belong in the charter, and the 'regulations' that belong in ordinance, is somewhat arbitrary."[24] 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."[25] And when some "participants in the charter-revision process took a broader view than the Commission about which provisions were 'fundamental[,]'" the "Commission

[23] 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 (Petition, Exhibit E).

[24] *Id*. at 9.

[25] *Id*. at 10.

consistently accepted those views" so that it ultimately added "19 pages back into the revision that had been slated for reclassification as ordinances."[26] 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."[27]

The City's current position simply cannot be reconciled with the City's position in 2013 when the City controlled the charter amendment process. The City cannot have it both ways, and this Court should ensure that residents' constitutional right to amend their charter retains meaning.

B. Whether the Minneapolis charter permits ordinances by citizen petition does not bear on whether a local minimum wage is a proper subject for a charter amendment.

The City points out that the Minneapolis charter, unlike some other Minnesota city charters, does not give residents the power of initiative and referendum. *See* Opinion (Petition, Exhibit A) at 6–9. But whether the Minneapolis charter permits citizen petitions for ordinance proposals has no bearing on whether a local minimum wage is a proper charter amendment. Respondents agree that Minn. Stat. § 410.20 allows cities to create an initiative and referendum process, and Respondents do not dispute that other Minnesota cities outside of Minneapolis have chosen to adopt such procedures. However, Minn. Stat. § 410.20 only gives cities *the option* to establish an initiative petition to enact *an ordinance*. Minn. Stat. § 410.20 ("Such commission may also provide for . . .

[26] *Id.*

[27] *Id.*

submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner."). By contrast, the right to amend the charter through a petition process is grounded in the Minnesota Constitution. Minn. Const. Art. XII, § 5.

The Minnesota Constitution expressly allows home rule charter amendments to be proposed "by a petition of five percent of the voters of the local government unit as determined by law," and such proposed amendments "shall not become effective until approved by the voters by the majority required by law." Minn. Const., Art. XII, § 5. Section 410.12 of the Minnesota Statutes, in turn, requires that amendments shall be submitted to the voters and that, "[i]f 51 percent of the votes cast on any amendment are in favor of its adoption, copies of the amendment and certificates shall be filed, as in the case of the original charter and the amendment shall take effect in 30 days from the date of the election or at such other time as is fixed in the amendment." Minn. Stat. § 410.12. These provisions setting forth requirements for charter amendments are distinct from the provisions allowing home rule charter cities to provide for ordinances by citizen initiative, and nothing in any provision restricts the subject matter for proposed charter amendments.

Moreover, the right to place something in a city's charter is distinct from the right to place something in a code of ordinances. The City's charter provisions are accorded significantly more protection than ordinances. Under the Minneapolis charter, the Council may enact or repeal any ordinance with an absolute majority (i.e. a vote in favor from the majority of the Council's membership). Minneapolis Charter § 4.4(a). In contrast, the Council may amend the City's charter only by a ballot question requiring at

least a majority of the votes or by an ordinance "passed by the unanimous vote of the entire membership of the City Council and the approval of the mayor."[28] In this case, even if Minneapolis residents had the power to enact a local minimum wage by ordinance through an initiative process, the City Council could quickly repeal it or substantially weaken it with votes from only a majority of Council members.

The constitutional and statutory provisions governing charter amendments make clear that what is proposed and ultimately adopted through the rigorous charter amendment process should become part of the city's fundamental law, regardless of its subject matter. Through the charter amendment process, the Minnesota Constitution clearly sought to give residents a right to the unique protection available through a charter, as well as an alternative to Council politics in the form of direct democracy. The Minnesota Constitution does not even mention ordinances by citizen initiative. Thus, whether the Minneapolis charter allows for citizen initiatives for ordinances does not determine whether a proposed charter amendment, brought pursuant the Minnesota Constitution and Minn. Stat. §410.12, is valid and can be put to the electorate.

C. Whether the proposed Amendment could be an initiative to enact an ordinance does not preclude it from being a proper proposed charter amendment.

In Minneapolis, a new city law may be enacted as an ordinance approved by the City Council, see Minneapolis Charter, art. IV, or as an amendment to the city charter proposed by citizen petition, *see* Part I, *supra*. There is no restriction or rule providing

[28] *See* Minneapolismn.gov, Amendments to the Charter, http://www.minneapolismn.gov/charter/charter-commission_amendment-process (last viewed Aug. 18, 2016).

that substantive measures that could be adopted by the city council by ordinance cannot, alternatively, be pursued by a citizen petition to amend the city charter. Appellants attempt to create a false and inapplicable dichotomy between "legislation" or "legislative proposals" and "charter" provisions. It is possible for a proposal to constitute *both* a proper ordinance and a proper charter amendment. As long as a proposal is consistent with federal and state law, including by fitting within the subjects permissible for a charter amendment under Minn. Stat. § 410.07, the proposal may proceed as a charter amendment.[29]

As explained in the report of Minneapolis' 2013 Charter Revision Commission, the choice of whether a proposed measure is sufficiently fundamental to include in the city charter versus the code of ordinances reflects a values-based judgment by city leaders and residents. In the case of worker employment protections, the Minnesota Supreme Court made clear in *Markley* that such measures may be adopted as part of a city charter—in which case they may be put before the voters as a citizen petition for a charter amendment—or may be adopted by the city council as a city ordinance. The proposed Amendment complies with state and federal law because the Amendment constitutes a regulation of a local municipal function as permitted under Minn. Stat. § 410.07. *See* Part II.A., *supra*.

[29] Because it is irrelevant whether the proposed Amendment could be enacted as an ordinance, the City's reliance on *Hanson v. City of Granite Falls*, 529 N.W.2d 485 (Minn. Ct. App. 1995), does not support the City's decision not to place the proposed Amendment on the November ballot. As characterized by Appellants before the District Court, the case concerned only a city referendum and whether the use of a referendum is limited to acts that are legislative in character. City Respondents' Brief at 16–17.

The Minnesota Court of Appeals' decision in *Haumant v. Griffin*, relied upon by Appellants, does not support a contrary conclusion. *See* Opinion (Petition, Exhibit A) at 8–9; City Respondents' Brief at 18–22; Appellants' Petition for Accelerated Review at 4–5. The City cites the Minnesota Court of Appeals' decision in *Haumant* in claiming that the proposed amendment is "an initiative cloaked as a charter amendment" that does not qualify for the ballot. However, the conclusion the City wishes to draw from *Haumant* is dicta and not binding in this case.

The Court of Appeals held in *Haumant* that a proposed charter amendment to authorize marijuana dispensaries in Minneapolis was not a proper charter amendment because it conflicted with state law. *Haumant*, 699 N.W.2d at 777–81. The court in *Haumant* spent the bulk of its opinion addressing the question of whether the charter amendment conflicted with *state law*. *See id*. at 778–80. It then moved on to address a second possible basis for affirming the lower court's decision—preemption under federal law—but the court expressly qualified its discussion of the federal preemption question with the caveat that "this topic need not be reached in light of the analysis above." *Id*. at 780. Thus, the court itself made clear that its *only* essential holding was that concerning conflict with state law.

The court spoke to Appellants' improper legislation argument in a cursory discussion at the end of the opinion that read in its entirety as follows:

> Finally, while appellant failed to directly address this issue, the district court's finding that "the proposed charter amendment is an initiative cloaked as a charter amendment" has merit. As respondent points out, the City of Minneapolis elected not to include initiative powers as part of its home rule charter. Minneapolis residents are not permitted to directly

> implement legislation by petition. By his actions, appellant is furthering a cause that his elected representatives, so far, have refused to: namely, to lay the groundwork for the use of marijuana for medicinal purposes in Minnesota.
>
> Appellant makes some interesting legal arguments and has spent considerable resources in furthering this cause, but we see appellant's proposed charter amendment as an attempt to circumvent Minneapolis' bar on legislation by initiative.

Id. at 781.

In reality, this portion of *Haumant* is non-binding dicta, and, as part of a lower court decision, would certainly not bind this Court. The Court of Appeals in *Brink v. Smith Companies Const., Inc.*, 703 N.W.2d 871, 877–78 (Minn. Ct. App. 2005) explained that "[j]udicial dictum involves a court's expression of its 'opinion on a question directly involved and argued by counsel though not entirely necessary to the decision.'" *Id*. (quoting *State v. Rainer*, 103 N.W.2d 389, 396 (Minn. 1960)). The court defined "obiter dictum" as "simply Latin for something said in passing." *Id*. (citation and internal quotations omitted). It also explained that "[j]udicial dictum is entitled 'to much greater weight than mere obiter dictum and should not be lightly disregarded.'" *Id*. (citation omitted). Regardless of the difference, neither type of dicta is binding on this court. *State v. Weyaus*, 836 N.W.2d 579, 585 (Minn. Ct. App. 2013).

This court should find that the discussion of whether the charter amendment in *Haumant* amounted to an improper initiative was obiter dicta. The opinion offers no reasoned analysis or authority for its suggestion that the proposed amendment in that case was an impermissible initiative. It is also unclear to what extent the parties in that case directly briefed the question. Indeed, basing the decision in this case on *Haumant* would

conflict with *Markley*, which is the controlling precedent here. And even if the parties in *Haumant* did, in fact, directly brief and address the question of whether the charter amendment in that case constituted an impermissible initiative, then the court in *Haumant* expressed an opinion on the question not entirely necessary to the decision. This comports exactly with *Brink's* definition of judicial dictum.

The District Court agreed that the last portion of *Haumant* is non-binding dicta, explaining that it contained "no analysis at all; no independent reasoning that would convert the appellate court's comments on the lower court's reasoning into an alternative holding." Order Granting Petition at 8. The District Court highlighted that the opinion simply stated what the "respondent points out" and noted that the district court's decision "has merit." *Id.* Moreover, the Order below found that "the comments [in *Haumant*] about the power given to citizens by the Minneapolis Charter extend beyond the facts that the court needed to consider in its preemption and constitutional analyses – both of which were based solely on the language of the proposed amendment." *Id.* And the District Court's Order noted that the comments addressing whether the charter amendment constituted an impermissible initiative cloaked a charter amendment were "not incorporated at all in the [c]ourt's 'Decision' which states in its entirety: 'Appellant's proposed charter amendment would be deemed preempted by Minnesota and federal laws. We conclude that appellant's proposed amendment is manifestly unconstitutional'

as that phrase has been defined by Minnesota courts. Accordingly we affirm the district court's denial of injunctive relief.'" *Id*. (quoting *Haumant*, 699 N.W.2d at 781–82).[30]

Not bound by *Haumant*, the District Court held that the language in Minn. Stat. § 410.07 "limits what can be included in a charter amendment in the same way it limits what can be included in an ordinance, since the power to enact ordinances derives from the very same source." *Id*. at 10. Thus, the District Court explained, "[t]he fact that this language applies to all legislative acts by home rule cities, whether charter amendments or ordinances, highlights the untenable nature of the City's interpretation," and "it explains why the City cannot locate any Minnesota case law that creates the distinction that it urges between the proper subjects of initiative and referendum legislation and the proper subject of charter amendment legislation." *Id.* Ultimately, "[i]t is all legislation, and it is all enabled by the same statutory language." *Id.* (citing *Mitchell*, 36 N.W.2d at 135).

In short, what makes a particular subject suitable for a proposed charter amendment by petition is not whether the subject could be enacted by an ordinance through the City Council. As long as a proposed amendment complies with the constitution and laws (federal and state), the Minnesota Constitution expressly granted

[30] Appellants have attempted to establish that all issues discussed by an appellate court in affirming a lower court's decision constitute binding precedent by citing to *Foster v. Naftalin*, 74 N.W.2d 249 (Minn. 1956), and by importing federal case law. City Respondents' Brief at 20–21. But Appellants' assertion that *Haumant's* mere discussion of alternative grounds should bind this Court does away with the concept of "judicial dictum" entirely. Even Appellants have acknowledged the validity of the judicial dictum doctrine, City Respondents' Brief at 22, and more modern Minnesota appellate decisions continue to recognize it as well, *see e.g.*, *Brink*, 703 N.W.2d 871. Appellants' defense of all parts of *Haumant* as binding pursuant to this argument is therefore untenable.

Minneapolis residents a right to place issues that they consider sufficiently important and fundamental before voters.

CONCLUSION

The right of Minneapolis residents to petition for "redress of grievances" and secure a vote on a proposed amendment to the fundamental law of the city, the Minneapolis charter, arises from Article XII, Section 5 of the Minnesota constitution. Minnesota's legislature, in enacting enabling legislation in Chapter 410.07, gave a broad grant of power to the people to address in a municipal charter all "local municipal functions" to the same degree that the legislature could have done. Neither the text of Minn. Stat. § 410.07 nor longstanding practice in Minnesota limits the content of charter amendments solely to matters pertaining to the structure and powers of city government. As established above, no binding Minnesota law authority supports the City's position that the proposed Amendment is not a permissible subject for a charter amendment. Respondents have identified Minnesota Supreme Court precedent, numerous examples of similar provisions in the charters of Minneapolis and other cities, and past practice in Minneapolis itself establishing that the proposed Amendment can and should be included on the November ballot. Because the proposed charter amendment satisfies Minn. Stat. § 410.12, is constitutional, and does not conflict with state or federal law, Minneapolis voters have a constitutional right to decide whether they consider the establishment of a local minimum wage of $15 sufficiently important to the city's municipal functions to codify it in the city's charter.

Finally, the facts of this case no doubt demonstrate that the process for placing a charter amendment proposal before voters is not an easy one. However, Respondents and the workers and local organizations they represent have shown that a right to a locally-appropriate minimum wage is pressing and worth the time, energy, and resources necessary to give citywide voters the opportunity to consider their proposal and decide for themselves whether it should be enshrined in the Minneapolis charter.

Respondents respectfully request that this Court issue an Order affirming the District Court's order and requiring Appellants and County election officials to prepare a ballot for the November 8, 2016 election that includes the proposed Amendment.

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CERTIFICATION OF LENGTH

Pursuant to Rule 132.01 subd. 3, I hereby certify that this brief is produced with a proportional 13 point font, was prepared using Microsoft Word, 2010, and contains 13,024 words.

s/Paul J. Lukas
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