STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

FILED
BY _____ DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

Power by the People, a Political Action Committee,

Petitioner,

v.

The Minneapolis Charter Commission,

Respondent.

ORDER
27 CV 12 2043
Judge Joseph R. Klein

The above-entitled matter came before Judge Joseph R. Klein on Petitioner's request for an alternative writ of mandamus. Randall D.B. Tigue, Esq. and Rachel K. Nelson, Esq. appeared for Petitioner.

Based upon the verified Petition for Writ of Mandamus, the memorandum in support thereof, and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. Petitioner's motion for an alternative writ of mandamus be and hereby is, in all respects, granted.

2. Respondent shall file make any filings in opposition to Petitioner's requested relief by **February 21, 2012.**

3. Petitioner shall make any written response to Respondent's filings by **February 28, 2012**.

4. A hearing on this matter will be held on **March 1st, 2012 at 10:00 a.m. in courtroom 1055** of the Hennepin County Government Center, 300 S. 6th St. Minneapolis, MN.

BY THE COURT:

Dated: Feb. 3, 2012

Joseph R. Klein
Judge of District Court

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED
2017 JUN 30 AM 10:31
BY _____ DEPUTY
HENN. CO. DISTRICT COURT ADMINISTRATOR

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Power by the People, a Political Action Committee

Petitioner,

v.

The Minneapolis Charter Commission

Respondent.

PETITION FOR A WRIT OF MANDAMUS

Ct. File No. 27-CV-17-12043

The above-named Petitioner, by the undersigned, hereby petitions this Court, pursuant to Minn. Stat.§586.01, *et. seq.*, for a writ of mandamus, and in support thereof, states the following:

PARTIES

1. Petitioner Power by the People is a Political Action Committee organized under the laws of the State of Minnesota.
2. Defendant Minneapolis Charter Commission is the entity charged by statute with the duty of supervising the process of amending the Minneapolis City Charter.

CAUSE OF ACTION

3. Minn. Stats. Sec. 410.12 sets forth three separate methods by which a city charter may be amended:
   a. The Charter Commission may propose amendments;
   b. The City Council may propose amendments;
   c. Voters numbering five per cent of the total number of votes cast in the preceding state general election in the city may petition to have charter amendments placed on an election ballot.

4. Minn. Stat. §410.12, subd. 1. states, in relevant part,

> "All petitions circulated with respect to a charter amendment shall be uniform in character and shall have attached thereto the text of the proposed amendment in full; *except that in the case of a proposed amendment containing more than 1,000 words*, a true and correct copy of the same may be filed with the city clerk, and the petition shall then contain a summary of not less than 50 nor more than 300 words..." (emphasis added)

5. The statute then goes on to state that a proposed amendment and a summary which satisfies certain criteria "shall first be submitted to the charter commission for its approval as to form and substance." *Id.*

6. On or about December 15, 2011, Petitioner submitted to the Minneapolis Charter Commission a copy of the proposed charter amendment with a summary with the request that the Commission approve or disapprove the amendment and summary pursuant to Minn. Stat. §410.12, subd. 1. A copy of the proposed amendment and summary is attached hereto as Exhibit A.

7. On or around December 28, 2011, Petitioner, through undersigned counsel, received notice that the Charter Commission had placed a planned discussion of the proposed charter amendment and summary on the commission's January 4, 2012 meeting.

8. At the commission's January 4, 2012 meeting, the Commission declined to approve the summary proposed by Petitioner.

9. The basis for Respondent's denial was that the proposed amendment failed to reach the 1,000 word minimum required by Minn. Stat. §410.12, subd. 1 and that therefore the amendment was not entitled to a summary.

10. Respondent declined to approve Petitoner's summary on the basis that the proposed amendment failed to meet the statute's 1,000 word threshold. Respondent, through the city attorney, stated that only those words that are actually being struck or added to the

charter count toward the 1,000 word requirement. See attached Exhibit B. Respondent furthermore stated that it was the intent of the legislature in enacting the 1,000 word limit was to count only those words added or struck.

11. Respondent's interpretation of the language of Minn. Stats. Sec. 410.12, Subd. 1, is clearly erroneous for the following reasons:

    a. The obvious intent of the 1000 word provision in the statute was to include therein all of the language which would normally appear on an amending petition, not merely the words to be changed. The words to be changed are meaningless unless placed in context of the existing charter language intended to be amended.

    b. The language intended to appear on the petition, absent a summary, would amount to 1,327 words. Even if the language not necessary to place the proposed amendment in context were eliminated (See Exhibit C attached hereto), the petition would be 1,115 words in length, well over the 1000-word limitation contained in the statute.

    c. The amending language, which itself amount to 748 words, would be meaningless, if it were the only language to appear on an amending petition (See Exhibit D attached hereto).

WHEREFORE Petitioners request the Judgment and Decree of this Court as follows:

1. That this Court find, as a matter of law, that all language reasonably contained on a petition to amend a Charter be counted when determining whether a summary is appropriate for petition purposes.

2. That this Court s issue an alternative and peremptory Writ of Mandamus ordering the Minneapolis Charter Commission to approve for submission to the electorate Petitioner's summary as to form and substance.
3. That the Court grant such other and further relief as it may deem just, fair, and equitable.

RANDALL TIGUE LAW OFFICE, P.A.

Dated: 1/27/12

Randall D.B. Tigue
Attorney ID No. 110000
Attorney for Petitioner
201 Golden Valley Office Center
810 Lilac Drive
Golden Valley, MN 55422
(763) 529-9211

Dated: 1/27/12

Rachel K. Nelson
Attorney ID No. 0391333
Attorney for Petitioner
201 Golden Valley Office Center
810 Lilac Drive
Golden Valley, MN 55422
(763) 529-9211

ACKNOWLEDGMENT

The undersigned hereby acknowledge that reasonable costs, disbursements, attorney and witness fees may be assessed against the undersigned, pursuant to Minn. Stats. Sec. 549.211.

Randall D. B. Tigue

Rachel K. Nelson

Dated:

VERIFICATION

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

Zachary Metoyer, being first duly sworn on oath, hereby deposes and says that he is the President of Power by the People, the Petitioner in the above-entitled matter; that he had read the foregoing Petition for Writ of Mandamus; and that the allegations contained therein are true, except as to those matters stated upon information and belief and that, with respect to such matters, he believes them to be true.

Zachary Metoyer

Sworn to and subscribed before me
this 30th day of January, 2012.

Notary Public

ROCHELLE DENISE BARRETT
Notary Public
State of Minnesota
My Commission Expires
January 31, 2017

Exhibit A

Summary

An amendment to the Minneapolis City Charter providing for the election of Chief of Police and City Attorney to a term of four (4) years; creating the office of City Coordinator; providing for the election of City Coordinator for a term of four (4) years; providing for the election of city Mayor to a term of four (4) years; reducing the number of wards from thirteen (13) to seven (7); providing for the election of a Council Member from each ward to serve a two (2) year term; limiting the offices of Mayor and Council Member to two (2) terms; providing for the election of members of the city Planning Commission; providing that the election of the Planning Commission shall be two (2) members per ward, allowing for a total of fourteen (14) members; providing for two (2) year terms for members of the Planning Commission; and limiting membership of the Planning Commission to two (2) terms.

Chapter 1, Section 3 of the Minneapolis City Charter is amended to read:

The city shall consist of ~~thirteen~~ seven (7) Wards with as nearly equal population as practicable. Within the time specified in paragraph C hereof the Charter Commission shall readjust the boundaries of the Wards in accordance with the following standards.

(The rest of the language of Section 3 shall remain unchanged)

Chapter 2, Section 1 of the Minneapolis City Charter is amended to read:

The elective officers of the City shall be Mayor, members of the City Council (who shall be known as Council Members), the City Attorney, the City Coordinator and the Chief of Police and such members of boards or commissions as elsewhere provided in this Charter. The City Council shall consist of one (1) Council Member from each ward to be elected by the voters of the respective ward. This provision will also amend Minneapolis Code of Ordinances Sec. 21.20.

Chapter 2, Section 3 of the Minneapolis City Charter is amended to read:

Section 3. – Terms of Office of City Attorney, City Coordinator, Chief of Police, Mayor and Council Members.

The terms of office of the City Attorney, City Coordinator, and Chief of Police shall be for four (4) years. The term of the Mayor shall be for four years and the term of Council Members shall be for two years, and no person shall be elected to more than two terms for either office. Terms for all elective offices shall commence ~~commencing~~ on the first business day of January of the year following their election.

Chapter 2, Section 4 of the Minneapolis City Charter is amended to read:

A general city election for the election of ~~city officers~~ City Attorney, City Coordinator and Chief of Police shall be held every four years on the first Tuesday after the First Monday in November. A general city election for the election of the Mayor and Council Members shall be held every two years on the first Tuesday after the First Monday in November.

Chapter 3, Section 7 of the Minneapolis City Charter is amended to read:

Section 7. – City Attorney—~~Appointment~~ Election —Powers and Duties.

~~The City Council shall at the time and in the manner specified in this chapter for the appointment of other city officers elect and appoint a City Attorney.~~

The Office of City Attorney shall be an elected office. In case of a vacancy occurring prior to March 1st of the year of the general City election for the Office Chief of Police, it shall be filled for the unexpired term by a special election ordered by the City Council and held City-wide. The special election shall be held within ninety (90) days after such a vacancy shall occur.

The City Attorney may appoint two Deputy City Attorneys, who shall be in the unclassified service, and the City Attorney may, by and with the consent of the City Council, appoint such other assistants and clerical force as may be necessary.

(The rest of the language of Section 7 shall be unchanged)

Chapter 6, Section 1 of the Minneapolis City Charter is amended to read:

The mayor shall be vested with all the powers of said city connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force, subject to the limitations herein contained and the provisions of the civil service chapter of this Charter, and may make all needful rules and regulations for the efficiency and discipline, and promulgate and enforce general and special orders ofr the government of the same, and have the care and custody of all public property connected with the police department of the city. ~~The executive committee shall, by and with the consent of a majority of all the members of the city council, appoint for a term of three (3) years commencing January 2, 1980, some suitable person as chief of police, subject to removal upon the recommendation of the executive committee by a vote of a majority of all of the members of the city council.~~ The Chief of Police shall be an elected office. Such position shall be in the unclassified service. ~~The term of office of each chief of police shall be three (3) years from and after the second day of January of the year of appointment.~~ In case of a vacancy occurring ~~otherwise, the appointment shall be for the unexpired term.~~ prior to March 1st of the year of the general City election for the Office Chief of Police, it shall be filled for the unexpired term by a special election ordered by the City Council and held City-wide. The special election shall be held within ninety (90) days after such a vacancy shall occur. ~~Ten (10) days prior to the appointment of a chief of police, the executive committee shall file with the city clerk the name o all persons the executive committee is then considering for the appointment. The chief of police may be reappointed by a majority of all members of the city council. In the event that the council does not reappoint within thirty (30) days of the termination of the term, the executive committee shall within sixty (60) days thereafter make a new appointment.~~ Persons holding the position of chief of police shall be entitled to the same employee benefits as persons in the classified service except as to appointment and removal. If the person appointed chief of police is a member of the classified service, such person shall be deemed to be on leave of absence during the tenure as chief of police, and upon the termination of service as chief of police shall be returned to his or her permanent civil service classification. If no vacancy is available in that permanent civil service classified position, seniority shall prevail and the person most recently certified to such position shall be returned to the permanent civil service

classification held prior to such certification. The Mayor shall also appoint, subject to the provisions of the civil service chapter of this Charter, all members of the police force and other employees of the department prescribing the title, rank and duties of each, and report a list thereof to the city council and the civil service commission.

(The rest of the language of Section 1 shall remain unchanged)

Chapter 13, Section 1 of the Minneapolis City Charter shall be amended as follows:

There shall be in the City of Minneapolis and executive department of the City to be known as the "City Planning Department," which shall serve as the staff of a City planning commission consisting of fourteen (14) persons. Members of the Planning Commission shall be elected with two members being elected from each of the city's seven (7) wards. The term of office shall be two (2) years, and no member of the commission may be elected to more than two (2) terms. Election dates and dates of the terms shall be governed by Chapter 2, Sections 3 and 4 of this Charter. ~~One shall be the Mayor; one shall be a person selected by the County Board of the county of Hennepin as its represenatative; the City council, the School Board, and the Park Board shall each select one of its own members of any of the above bodies or boards shall be appointed by the Mayor with the approval of the City Council; and one (1) legal voter of the municipality not a member of any of the above bodies or boards shall be appointed by the City Council in January of each even-numbered years.~~

~~Each year the Mayor shall appoint two (2) members to serve for terms of two (2) years each, commencing on the first day of February of the year of their appointment. The terms of appointed members serving for terms to expire in July 1978, and July 1979, shall terminate on January 31, 1978, and the terms of members appointed for terms to expire in July 1980, and July 1981, shall each terminate on January 31, 1979. Vacancies for any unexpired term shall be filled by appointments or selection as in the first instance.~~

The members or the representatives of a member of the Commission ~~except those who are paid by the City or any other public body or agency for attending or serving on the Commission~~ shall be paid for each official meeting attended such amount as the City Council shall establish from time to time by ordinance, with a limitation of one (1) meeting per day and four (4) meetings per month; the Commission may with the approval of the Mayor, employ engineers or other persons and incur such other expenses as are deemed necessary.

(The remaining language of Section 1 shall remain unchanged)

Minneapolis Charter Commission Minutes

January 4, 2012 - 4:00 p.m.
Room 317 City Hall, Minneapolis, Minnesota

Commissioners Present: Clegg (Chair), Cohen, Connell, Dolan, Gerdes, Johnson, Kozak, Lazarus, Metge, Peltola, Rubenstein, Schwarzkopf, Sandberg
Commissioner Excused: Ferrara
Commissioner Absent: Lickness

Also Present: Burt Osborne, Assistant City Attorney

1. Roll Call

Chair Clegg called the meeting to order at 4:03 p.m. Roll call was taken.

2. Adopt Agenda

Lazarus moved adoption of the agenda. Seconded.
Adopted upon a voice vote.
Absent - Ferrara, Johnson, Lickness, Metge.

3. Approve minutes of regular meeting of December 7, 2011

Lazarus moved approval of the minutes of the meeting of December 7, 2011. Seconded.
Adopted upon a voice vote.
Absent - Ferrara, Johnson, Lickness, Metge.

4. Chair's Report

Clegg stated that the Operations Committee had met with Garth Dietrich, the GIS consultant, earlier that day. Mr. Dietrich had attended the Maptitude software training, and the software had been installed and populated with the census data. Once the existing ward and neighborhood lines are installed as an overlay on the map, the Operations Committee will meet with Mr. Dietrich again to consider next steps.

Election of Officers

5. Election of Officers:
Elect Chair, Vice Chair, and Secretary.

Clegg opened the floor to nominations.

Lazarus moved the nomination of Commissioner Clegg as Chair. Seconded.
There being no further nominations for Chair, nominations were closed.

Clegg stated that Commissioner Ferrara had notified him that he did not wish to run for reelection as Secretary.

Kozak moved the nomination of Commissioner Sandberg as Secretary. Seconded.
There being no further nominations for Secretary, nominations were closed.

Kozak's motion to nominate Commissioner Sandberg as Secretary was adopted upon a voice vote.
Absent - Ferrara, Lickness, Metge.

Discussion

6. **Plain Language Charter Revision:**
   Update.

Former Commissioner Brian Melendez was present and stated that that he would try to get the latest draft of the Plain Language Charter Revision to the Commissioners within the next week.

Clegg suggested forming a working group to review the draft when it became available. He asked interested Commissioners to notify him.

7. **Proposed Charter Amendments:**
   Discussion of the following summary language to be circulated with a proposed Charter amendment petition, as submitted by "Power by the People":
   "An amendment to the Minneapolis City Charter providing for the election of Chief of Police and City Attorney to a term of four (4) years; creating the office of City Coordinator; providing for the election of City Coordinator for a term of four (4) years; providing for the election of city Mayor to a term of four (4) years; reducing the number of wards from thirteen (13) to seven (7); providing for the election of a Council Member from each ward to serve a two (2) year term; limiting the offices of Mayor and Council Member to two (2) terms; providing for the election of members of the city Planning Commission; providing that the election of the Planning Commission shall be two (2) members per ward, allowing for a total of fourteen (14) members; providing for two (2) year terms for members of the Planning Commission; and limiting membership of the Planning Commission to two (2) terms."

Clegg stated that both he and Assistant City Attorney Burt Osborne had reviewed the proposed amendment and found it to be less than 1,000 words. The Charter Commission is without discretion when it comes to following the statute which states that if a proposed amendment is 1,000 words or more, it must include a summary approved by the Charter Commission. The Commission does not have the power to approve a summary if the amendment is less than 1,000 words. He did not feel all the words in a paragraph should be

include only the summary but must also include the entire amendment. Also, a summary will be placed on the ballot, not the entire language of the amendment.

Burt Osborne, Assistant City Attorney, stated that although he was not aware of any cases interpreting that portion of the statute, it was his opinion that the legislature wanted people to see every word of proposed Charter amendments if they weren't too lengthy. In counting the words, he had counted the proposed new language as well as the language that had been struck out, and it was well under 1,000 words.

Clegg clarified that the Charter Commission approved summary language solely for the purpose of gathering signatures on a petition. The City Council would craft ballot language after a sufficient number of signatures had been gathered and certified. Ballot language would not necessarily bear any resemblance to summary language.

Rubenstein stated that she didn't understand how a Charter amendment about the Planning Commission could be equivalent to an amendment about the number of wards and another amendment about electing rather than appointing officials.

Nelson stated that that was because they were trying to reach the 1,000 word mark and to keep it internally consistent. For example, the proposal to reduce wards from 13 to 7 had to be consistent with the proposal to have two members of the Planning Commission elected from each ward, for a total of 14 members.

Rubenstein inquired if it was the intention of Power by the People that the amendments all stand together or all fall together. Nelson stated that that was their intention.

Lazarus inquired if Power by the People was a non-profit organization and who its founders were. Nelson stated that it was a political action committee, and its founder was its Chairperson, Luna Al Qutob.

Cohen stated that there had been news articles discussing Mr. Sabri's involvement in the proposed amendments and inquired as to Mr. Sabri's role in the organization. Nelson stated that Mr. Sabri had contacted his attorneys about the possibility of amendments to the Charter. He had donated to the political action committee, Power by the People, but was not the sole financier.

Clegg ruled additional questions along this line out of order. It was not the Charter Commission's job to evaluate the substance of a proposal or who proposed it; their job was to perform their ministerial duty and either approve or disapprove the summary.

Lazarus moved that the Charter Commission not approve the summary in as much as the amendment was less than 1,000 words. Seconded.
Adopted upon a voice vote.
Absent - Ferrara, Lickness.

Clegg stated that he would sign a letter to Power by the People prepared by the City Attorney indicating the Charter Commission's decision.

Rubenstein stated that to her this was actually a series of very distinct Charter amendments and inquired if the Commission had the discretion to inform proposers of an amendment that they would have to petition each of the amendments separately.

Osborne stated that he didn't know the answer to that question. Often such issues must be interpreted by a judge.

Osborne clarified that going forward, when there is a proposal to amend the Charter by petition and a request is received to approve a summary, the Charter Commission would officially receive the request at their next regularly scheduled meeting and would have ten days from that point to act in order to meet the ten-day time frame set out in statute.

Receive and File

8. **Charter Commission 2011 Annual Report:**
   Receive and file the 2011 Annual Report, and direct the Clerk to submit the report to the Chief Judge of District Court.

Lazarus moved approval of the Charter Commission's 2011 Annual Report for submittal to the Chief Judge of District Court. Seconded.
Adopted upon a voice vote.
Absent - Lickness, Ferrara.

Public Commentary

There was no one present wishing to address the Charter Commission.

Lazarus moved to adjourn. Seconded.
Adopted upon a voice vote.
Absent - Ferrara, Lickness.

The meeting was adjourned at 4:45 p.m.

Exhibit C

Chapter 1, Section 3 of the Minneapolis City Charter is amended to read:

The city shall consist of ~~thirteen~~ seven (7) Wards with as nearly equal population as practicable. Within the time specified in paragraph C hereof the Charter Commission shall readjust the boundaries of the Wards in accordance with the following standards.

(The rest of the language of Section 3 shall remain unchanged)

Chapter 2, Section 1 of the Minneapolis City Charter is amended to read:

The elective officers of the City shall be Mayor, members of the City Council (who shall be known as Council Members), the City Attorney, the City Coordinator and the Chief of Police and such members of boards or commissions as elsewhere provided in this Charter. The City Council shall consist of one (1) Council Member from each ward to be elected by the voters of the respective ward. This provision will also amend Minneapolis Code of Ordinances Sec. 21.20.

Chapter 2, Section 3 of the Minneapolis City Charter is amended to read:

Section 3. – Terms of Office of City Attorney, City Coordinator, Chief of Police, Mayor and Council Members.

The terms of office of the City Attorney, City Coordinator, and Chief of Police shall be for four (4) years. The term of the Mayor shall be for four years and the term of Council Members shall be for two years, and no person shall be elected to more than two terms for either office. Terms for all elective offices shall commence ~~commencing~~ on the first business day of January of the year following their election.

Chapter 2, Section 4 of the Minneapolis City Charter is amended to read:

A general city election for the election of ~~city officers~~ City Attorney, City Coordinator and Chief of Police shall be held every four years on the first Tuesday after the First Monday in November. A general city election for the election of the Mayor and Council Members shall be held every two years on the first Tuesday after the First Monday in November.

Chapter 3, Section 7 of the Minneapolis City Charter is amended to read:

Section 7. – City Attorney—~~Appointment~~ Election —Powers and Duties.

~~The City Council shall at the time and in the manner specified in this chapter for the appointment of other city officers elect and appoint a City Attorney.~~

The Office of City Attorney shall be an elected office. In case of a vacancy occurring prior to March 1st of the year of the general City election for the Office Chief of Police, it shall be filled for the unexpired term by a special election ordered by the City Council and held City-wide. The special election shall be held within ninety (90) days after such a vacancy shall occur.

(The rest of the language of Section 7 shall be unchanged)

Chapter 6, Section 1 of the Minneapolis City Charter is amended to read:

The mayor shall be vested with all the powers of said city connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force, subject to the limitations herein contained and the provisions of the civil service chapter of this Charter, and may make all needful rules and regulations for the efficiency and discipline, and promulgate and enforce general and special orders of the government of the same, and have the care and custody of all public property connected with the police department of the city. ~~The executive committee shall, by and with the consent of a majority of all the members of the city council, appoint for a term of three (3) years commencing January 2, 1980, some suitable person as chief of police, subject to removal upon the recommendation of the executive committee by a vote of a majority of all of the members of the city council.~~ The Chief of Police shall be an elected office. Such position shall be in the unclassified service. ~~The term of office of each chief of police shall be three (3) years from and after the second day of January of the year of appointment.~~ In case of a vacancy occurring ~~otherwise, the appointment shall be for the unexpired term.~~ prior to March 1st of the year of the general City election for the Office Chief of Police, it shall be filled for the unexpired term by a special election ordered by the City Council and held City-wide. The special election shall be held within ninety (90) days after such a vacancy shall occur. ~~Ten (10) days prior to the appointment of a chief of police, the executive committee shall file with the city clerk the name of all persons the executive committee is then considering for the appointment. The chief of police may be reappointed by a majority of all members of the city council. In the event that the council does not reappoint within thirty (30) days of the termination of the term, the executive committee shall within sixty (60) days thereafter make a new appointment.~~

(The rest of the language of Section 1 shall remain unchanged)

Chapter 13, Section 1 of the Minneapolis City Charter shall be amended as follows:

There shall be in the City of Minneapolis and executive department of the City to be known as the "City Planning Department," which shall serve as the staff of a City planning commission consisting of ~~ten (10)~~ fourteen (14). Members of the Planning Commission shall be elected with two members being elected from each of the city's seven (7) wards. The term of office shall be two (2) years, and no member of the commission may be elected to more than two (2) terms. Election dates and dates of the terms shall be governed by Chapter 2, Sections 3 and 4 of this Charter. ~~One shall be the Mayor; one shall be a person selected by the County Board of the county of Hennepin as its representative; the City council, the School Board, and the Park Board shall each select one of its own members of any of the above bodies or boards shall be appointed by the Mayor with the approval of the City Council; and one (1) legal voter of the municipality not a member of any of the above bodies or boards shall be appointed by the City Council in January of each even-numbered years.~~

~~Each year the Mayor shall appoint two (2) members to serve for terms of two (2) years each, commencing on the first day of February of the year of their appointment. The terms of appointed members serving for terms to expire in July 1978, and July 1979, shall terminate on January 31, 1978, and the terms of members appointed for terms to expire in July 1980, and July 1981, shall each terminate on January 31, 1979. Vacancies for any unexpired term shall be filled by appointments or selection as in the first instance.~~

The members or the representatives of a member of the Commission ~~except those who are paid by the City or any other public body or agency for attending or serving on the Commission~~ shall be paid for each official meeting attended such amount as the City Council shall establish from time to time by ordinance, with a limitation of one (1) meeting per day and four (4) meetings per month; the Commission may with the approval of the Mayor, employ engineers or other persons and incur such other expenses as are deemed necessary.

(The remaining language of Section 1 shall remain unchanged)

Chapter 1, Section 3 of the Minneapolis City Charter is amended to read:

~~thirteen~~ seven (7)

Chapter 2, Section 1 of the Minneapolis City Charter is amended to read:

the City Attorney, the City Coordinator and the Chief of Police

. This provision will also amend Minneapolis Code of Ordinances Sec. 21.20.

Chapter 2, Section 3 of the Minneapolis City Charter is amended to read:

Section 3. – City Attorney, City Coordinator, Chief of Police

City Attorney, City Coordinator, and Chief of Police.
The term of the Mayor shall be for four years and the term of Council Members shall be for two years, and no person shall be elected to more than two terms for either office. Terms for all elective offices shall commence ~~commencing~~

Chapter 2, Section 4 of the Minneapolis City Charter is amended to read:

~~city officers~~ City Attorney, City Coordinator and Chief of Police

A general city election for the election of the Mayor and Council Members shall be held every two years on the first Tuesday after the First Monday in November.

Chapter 3, Section 7 of the Minneapolis City Charter is amended to read:

Section 7. – ~~Appointment~~ Election.

~~The City Council shall at the time and in the manner specified in this chapter for the appointment of other city officers elect and appoint a City Attorney.~~

The Office of City Attorney shall be an elected office. In case of a vacancy occurring prior to March 1st of the year of the general City election for the Office Chief of Police, it shall be filled for the unexpired term by a special election ordered by the City Council and held City-wide. The special election shall be held within ninety (90) days after such a vacancy shall occur.

Chapter 6, Section 1 of the Minneapolis City Charter is amended to read:

~~The executive committee shall, by and with the consent of a majority of all the members of the city council, appoint for a term of three (3) years commencing January 2, 1980, some suitable person as chief of police, subject to removal upon the recommendation of the executive committee by a vote of a majority of all of the members of the city council.~~ The Chief of Police shall be an elected office.

~~The term of office of each chief of police shall be three (3) years from and after the second day of January of the year of appointment.~~

~~otherwise, the appointment shall be for the unexpired term.~~ prior to March 1st of the year of the general City election for the Office Chief of Police, it shall be filled for the unexpired term by a special election ordered by the City Council and held City-wide. The special election shall be held within ninety (90) days after such a vacancy shall occur. ~~Ten (10) days prior to the appointment of a chief of police, the executive committee shall file with the city clerk the name of all persons the executive committee is then considering for the appointment. The chief of police may be reappointed by a majority of all members of the city council. In the event that the council does not reappoint within thirty (30) days of the termination of the term, the executive committee shall within sixty (60) days thereafter make a new appointment.~~

Chapter 13, Section 1 of the Minneapolis City Charter shall be amended as follows:

~~ten (10)~~ fourteen (14)
Members of the Planning Commission shall be elected with two members being elected from each of the city's seven (7) wards. The term of office shall be two (2) years, and no member of the commission may be elected to more than two (2) terms. Election dates and dates of the terms shall be governed by Chapter 2, Sections 3 and 4 of this Charter. ~~One shall be the Mayor; one shall be a person selected by the County Board of the county of Hennepin as its representative; the City council, the School Board, and the Park Board shall each select one of its own members of any of the above bodies or boards shall be appointed by the Mayor with the approval of the City Council; and one (1) legal voter of the municipality not a member of any of the above bodies or boards shall be appointed by the City Council in January of each even-numbered years.~~

~~Each year the Mayor shall appoint two (2) members to serve for terms of two (2) years each, commencing on the first day of February of the year of their appointment. The terms of appointed members serving for terms to expire in July 1978, and July 1979, shall terminate on January 31, 1978, and the terms of members appointed for terms to expire in July 1980, and July 1981, shall each terminate on January 31, 1979. Vacancies for any unexpired term shall be filled by appointments or selection as in the first instance.~~

~~except those who are paid by the City or any other public body or agency for attending or serving on the Commission~~

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HENN. CO. DISTRICT COURT ADMINISTRATOR
BY _____ DEPUTY

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Power by the People, a Political Action Committee

Petitioner,

v.

The Minneapolis Charter Commission

Respondent.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS

Ct. File No. 27-CV- 12-2043

FACTS

On or December 15, 2012 Petitioner Power by the People, through undersigned counsel, submitted to Respondent Minneapolis Charter Commission a proposed amendment to the Minneapolis City Charter through the Commission's coordinator, Peggy Menshek. On December 28, 2011 Ms. Menshek sent a letter informing Power by the People that its proposed amendment would be considered at the Commission's January 4, 2012 meeting.

At the January meeting, Power by the People's proposed amendment was considered by the Commission. The Commission, through the advice of assistant city attorney Burt Osborne, decided that the proposed amendment was not entitled to a summary since it failed to meet the 1,000 word threshold. The commission reasoned that only the words that were struck or added counted toward the 1,000 word limit, that this was clear by the language of the statute and that it had been the legislature's intent to count only those words struck or added.

As a result of the commission's ruling, Power by the People has not been able to circulate their proposed summary on the petitions being circulated.

ARGUMENT

I. THE CHARTER COMMISSION'S INTERPRETATION OF MINN. STATS. SEC. 410.12, SUBD. 2, IS CLEARLY ERRONEOUS.

Petitioner disagrees with Respondent's view that the language of the statute is clear. Minn. Stat. §410.12, subd. 1. states, in relevant part,

> "All petitions circulated with respect to a charter amendment shall be uniform in character and shall have attached thereto the text of the proposed amendment in full; except *that in the case of a proposed amendment containing more than 1,000 words*, a true and correct copy of the same may be filed with the city clerk, and the petition shall then contain a summary of not less than 50 nor more than 300 words..." (emphasis added)

The Commission's view is that only those words struck or added to the Charter count toward the 1,000 word limit of a "proposed amendment." Using this definition the amendment proposed by Petitioner contains 748 words.

However, this is by no means the only construction to be given to the language. As will be pointed out, *infra,* an alternative and far more reasonable construction of the statutory language is that the "proposed amendment" refers not only to those few words being actually changed, but to the contextual surrounding language required to give the amending language meaning.

Where, as here, the plain language is ambiguous and subject to more than one interpretation, courts must turn to other cannons of statutory construction to ascertain legislative intent. See *Brua v. Minn. Joint Underwriting Ass'n,* 778 N.W. 2d 294, 300 (Minn. 2010). See also Minn. Stats. Sec. 645.16.

The cannons may require examination of the occasion and necessity for the law, the circumstances of enactment, the object to be obtained, and the consequences of a particular interpretation. Sec. 645.16.

While neither case law[1] nor legislative history [2] provide much guidance as to legislative intent, the object to be obtained and the consequences of a particular interpretation are obvious from a reading of the plain language of the provision. The reason to provide an exemption from the requirement that the complete language of an amendment be set forth in a petition, for those proposed amendments containing more than 1000 words is clear: To relieve the burden on potential signers of a petition from the burden of reading a lengthy document in order to determine whether to sign the petition. That burden is obviously just as great if the 1000 words consist of the words being changed or the surrounding context required to give meaning to the amending words. In either case, the purpose behind the summary option is served by providing the potential signer with a brief and accurate summary of the proposed amendment he or she is being asked to approve.

Another basic cannon of statutory construction is that the legislature does not intend results that are absurd, impossible of execution, or unreasonable. Minn. Stat. §647.15(1). However, using the Commission's understanding of which words count toward the 1,000 word limit set forth in §410.12(1) would end with just such a result.

As submitted, and not including words contained in phrases such as, "Chapter 1, Section 3 of the Minneapolis City Charter is amended to read" or "The rest of Section 3 shall remain unchanged," Power by the People's amendment contains 1,327 words. By eliminating all words except those strictly necessary to convey context and again not including the above phrases, the

[1] There appear to be no published or unpublished appellate opinions in Minnesota construing this statutory provision.

[2] This particular provision was introduced by Sen. Walter P. Wolfe as S.F. 1145 on March 21, 1939. The bill traveled to the Committee on Municipal Affairs and was considered by the Committee of the Whole, which recommended passage only 9 days after it was introduced. The bill was signed by the Governor on April 17, 1939. The brief legislative history contains no statements or testimony as to what was to be included in the 1000-word limitation.

amendment would contain 1,115 words. The total number of words either struck or added, not counting context words, is 748.

However, if Power by the People circulated a petition with only those 748 words, those being asked to support the petition would likely be confused about what, exactly, was going to change if a proposal eventually went on to be approved by referendum. You would need the words surrounding the changes to give them context. Compare Exhibit D, attached to the Petition (amending language alone included), with Exhibit C, attached to the Petition (amending language with the minimum contextual language added). Even using strictly those sentences immediately preceding or following a proposed change brings the total length of Power by the People's amendment to 1,115 words. It would be unreasonable to suppose that only those words directly added or subtracted counted toward the 1,000 words when contextual language is needed to make the Petition meaningful and understandable.

One of the arguments made by the Commission was that, using Petitioner's definition, a single word of a charter could be amended and so long as they submitted enough of the language surrounding the changed word, a summary could be circulated on the petition to draw support for such a change. This argument knocks down a straw man. Any petition circulated to gather support for the changing of a single word of a Charter would not require a summary, and so submission of the proposed summary to the Commission for their approval would add an unnecessary step to those proposing the amendment.

By contrast, an amendment that changes 748 words cannot be meaningfully presented in a petition without the surrounding context. When that surrounding context brings the total language in the Petition in excess of 1000 words, that is precisely when a summary is required.

Circulating a petition with only the changed language without any context would be meaningless to any potential supporter of the amendment. See Exhibit D attached to the Petition.

Under Sec. 412.12, Subd. 1, Petitioner does not require the approval of the Charter Commission to circulate a petition proposing a charter amendment; it is the summary that needs commission approval. The statute requires that a circulated petition have attached thereto "the text of the proposed amendment."[3]

The summary has to do with the circulation of a petition by a group of citizens seeking to amend a city's home rule charter. In 1939 printing was a premium, and having to have an extensive proposal attached in full to what would potentially amount to hundreds of pages of signatures was no doubt a daunting prospect. In the interest of ensuring that the process was difficult, but not impossible, the statutory language reflects the understanding that at a certain point, circulating the full language of a petition in order to garner the necessary support would be cumbersome. Thus, they chose a word limit that reflected that the petition process was to be streamlined when an amendment proposal was substantial enough to warrant a summary.

Minn. Stat. §410.12(1) establishes a process whereby a petition for an amendment containing more than 1,000 words can contain a 50 – 300 word summary. The proposed summary must 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."

Upon being drafted in a way that satisfies the statutory requirements,

> "The summary, together with a copy of the proposed amendment, shall first be submitted to the charter commission for its approval as to form and substance. The commission shall within ten days after such submission to it, return the same to the proposers of the amendment with such modifications in statement as it may deem necessary in order that the summary may fairly comply with the requirements set forth above."

The extent of the Charter Commission's discretion in this matter is limited. If the proposed amendment contains more than 1,000 words and the proposed summary meets the requirements set forth in statute, the Charter Commission *shall* offer its approval as to form and substance, offering the amendment's proponent modifications and statements necessary to ensure the summary circulated on the petition is statutorily satisfactory.

The Charter Commission erred when it deemed the charter amendment proposed by petitioner Power by the People failed to meet the 1,000 word threshold. This finding precluded the Commission from even considering whether the proposed summary satisfied Minn. Stat. §410.12(1).[4]

II. PETITIONER IS ENTITLED TO A WRIT OF MANDAMUS COMPELLING THE CHARTER COMMISSION TO APPROVE THE PROPOSED SUMMARY.

Minn. Stat. §586.081 provides,

> "The writ of mandamus may be issued to any inferior tribunal, corporation, board or person to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust o station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of its functions, but it cannot control judicial discretion."

In construing this statute, the Minnesota Supreme Court in *Latourell v. Dempsey*, 518 N.W.2d 564, 565 (Minn. 1994), stated the following:

> "Writs of mandamus are issued 'to compel the performance of an act which the law specifically enjoins as a duty.' [Citation omitted.] Mandamus will issue to compel a judicial officer 'to perform duties within respect to which they (sic) plainly have no discretion as to the precise manner of performance and where only one course of action is open.' [Citation omitted.]"

That is plainly the case here. Once the issue of which words count toward the 1,000 word requirement is satisfied, the rest of the Commission's duties under Minn. Stat. §410.12(1) are clear and unambiguous. The statute provides that, upon submission of the amendment and proposed summary, the Commission "shall" return the same to the proposers of the amendment with "such modifications in

[4] In this regard, it should be noted that there is no suggestion in the Minutes of the Charter Commission, attached to the Petition as Exhibit A, that the language in the proposed summary is not an accurate summary of the proposed amendments as a whole.

statement as it may deem necessary in order that the summary may fairly comply with the requirements set forth above." Given the fact that there can be no question that the summary accurately reflects the contents of the proposed amendment, approval shall be unconditional.

Courts have also held that mandamus will issue only where a party is otherwise without an adequate legal remedy. See for example, *Pole v. Trudeau,* 516 N.W.2d 217 (Minn. App. 1994).

The absence of an adequate remedy at law is obvious. The Commission's action leaves Petitioners with the choice of submitting an excessively lengthy Petition, clearly in excess of 1000 words, without the benefit of a summary the statute clearly provides, or limiting the Petition to the language to be changed, in which event the petition is meaningless gibberish. See Exhibit D attached to the Petition.

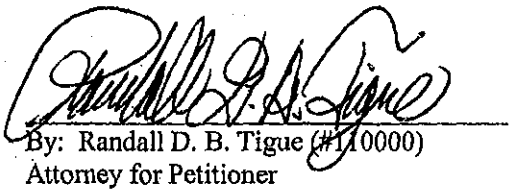
Moreover, the statute itself requires that, in order to get the proposed amendment on the ballot in the next general election, signed petitions must be submitted to the Charter Commission "at least 17 weeks prior to the general election." This means that, in order to get the proposed amendments onto the Nov. 6, 2012 election ballot, the requisite signatures must be submitted to the Charter Commission no later than July 10, 2012. This means any delay in getting the summary to the electorate clearly prejudices Petitioner.

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Mandamus should be, in all respects, granted.

Respectfully submitted,

RANDALL TIGUE LAW OFFICE, P.A.



By: Randall D. B. Tigue (#10000)
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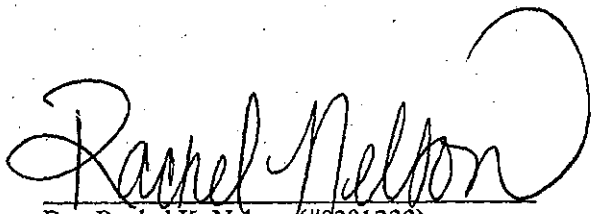

By: Rachel K. Nelson (#0391333)
Attorney for Petitioner
201 Golden Valley Office Center
810 N. Lilac Drive
Golden Valley, MN 55422
(763) 234-0447

Dated: Jan. 31, 2012

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Power by the People, a Political Action Committee

Petitioner,

v.

The Minneapolis Charter Commission

Respondent.

ALTERNATIVE WRIT OF MANDAMUS

Ct. File No. 27-CV- 12-2043

The above-entitled matter came before the undersigned Judge of the above-named Court on Petitioner's request for an alternative writ of mandamus.

Randall D. B. Tigue, Esq., and Rachel K. Nelson, Esq., Golden Valley, appeared for Petitioner.

Based upon the verified Petition for Writ of Mandamus, the memorandum in support thereof, and upon all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That Petitioner's motion for an alternative writ of mandamus be and hereby is, in all respects, granted.
2. That by _____, 2012, at_____, Respondent shall either grant the relief sought by the Petition, to-wit: Approve Petitioner's proposed charter amendment and summary for submission to the electorate for signature, pursuant to Minn. Stats. Sec. 412.12, Subd. 1, or appear before this Court and show cause why such relief should not be granted.

BY THE COURT:

District Judge

Dated:

State of Minnesota
Hennepin County

District Court
Fourth Judicial District
Court File Number: 27-CV-12-2043
Case Type: Civil Other/Misc.

Notice of Judicial Assignment-Motion-Petition-Miscellaneous

FILE COPY

F.Y.I. - THIS CASE IS BEING MAINTAINED ELECTRONICALLY
IN THE FUTURE, YOU MAY CHOOSE TO FILE DOCUMENTS ELECTRONICALLY IN THIS CASE

Power by the People, a Political Action Committee vs The Minneapolis Charter Commision

Date Case Filed: January 30, 2012

All future papers must include the above file number, name of assigned judge, attorney identification number, and must otherwise conform to format requirements or they will be returned.

This case is assigned the following judicial officer for all further proceedings:

District Court Judge Philip D. Bush
612-348-8082

Mailing Address: 300 South Sixth Street, MC 332, Minneapolis, MN 55487-0332

Parties: If you receive this notice and have obtained an attorney, notify him/her of this assignment immediately.

Attorneys: Only the first listed attorney for a party is being sent this notice. If you are the attorney receiving this notice, contact all other attorneys representing your party of the judge assignment and requirements.

The filing attorney/party is responsible for notifying all attorneys/parties not listed on the Certificate of Representation of the judge assignment and requirements.

All future hearings and trial dates will be scheduled by the courtroom staff. Check with the Court Display Monitors on the Public Service Level for the location on the day of the hearing.

A notice to remove this judicial officer must comply with Minnesota Rules of Civil Procedure 63.03 and Minnesota Statute § 542.16.

Failure to timely file any required document or other failure to comply with the General Rules of Practice for the District Courts may result in the impositions of sanctions, including possible dismissal of the case.

Dated: January 30, 2012

Mark S. Thompson
Court Administrator
Hennepin County District Court

cc: RANDALL D TIGUE

Requests for case to be assigned to a judge
on an emergency or expedited basis

Attorney/Party – Please read and complete this form

General Procedure:

Your paperwork is screened for completeness and for the indication that you need an emergency/expedited filing. Once approved, the file in opened.

- For emergency filings, the waiting time period is one hour, and after 3:00 pm it is to the next morning by 9:00 am.
- For expedited filings the waiting period is the next morning by 9:00 am.

Note:

You may want to wait for the file and bring it to the judge/judicial staff to make their request. Judges however, rarely grant ex-parte orders or appointments, and usually the only thing accomplished by waiting and bringing the file to the judge is obtaining a hearing date.

It is suggested that you go back to your office/home and wait for the court staff to call. The staff will tell you the name of the assigned judge the judicial staff's phone number. You can then call the courtroom and set the hearing date. (The file has been placed in the judge's mailbox and the judicial staff alerted that they have an emergency filing.

You need the following:

- For any of the following case types, a Summons and Complaint are required documents at the time of filing, along with the affidavits and/or motion papers. The case will not be opened without the Summons and Complaint and supporting documents.

  Contract, Discrimination, Employment, Forfeiture, Malpractice, Mechanics Lien, Personal Injury, Product Liability, Property Damage, Replevin, Sexual Harassment, Wrongful Death, and most Civil/Other

- For other types of cases not requiring a Summons and Complaint, a petition or Notice of Motions and Motion, etc. (whatever is applicable) will suffice, as long as there are supporting documents to indicate the need for immediate assignment.
- Appropriate Filing and Motion fees
- Fully Completed Certificate of Representation

Please indicate the nature of the emergency:

___ TRO/Injunction

___ Replevin

X Other – please explain: writ of mandamus
require judge signature of alternative writ

Name of party to contact with judge assignment information

Name: Tanka Tigue Phone Number 2437-6732

Form generated by Civil Assignment Office
Requests for cases to be assigned to a judge on an emergency or expedited basis.doc

State of Minnesota
Hennepin County

District Court
Fourth Judicial District
Court File Number: 27-CV-12-2043
Case Type: Civil Other/Misc.

Notice of Judicial Reassignment-Motion-Petition-Miscellaneous

FILE COPY

F.Y.I. - THIS CASE IS BEING MAINTAINED ELECTRONICALLY
IN THE FUTURE, YOU MAY CHOOSE TO FILE DOCUMENTS ELECTRONICALLY IN THIS CASE

Power by the People, a Political Action Committee vs The Minneapolis Charter Commision

Date Case Filed: January 30, 2012

All future papers must include the above file number, name of assigned judge, attorney identification number, and must otherwise conform to format requirements or they will be returned.

This case is reassigned to the following judicial officer for all further proceedings:

District Court Judge Joseph R. Klein
612-543-1341

Mailing Address: 300 South Sixth Street, MC 332, Minneapolis, MN 55487-0332

Parties: If you receive this notice and have obtained an attorney, notify him/her of this assignment immediately.

Attorneys: Only the first listed attorney for a party is being sent this notice. If you are the attorney receiving this notice, contact all other attorneys representing your party of the judge assignment and requirements.

The filing attorney/party is responsible for notifying all attorneys/parties not listed on the Certificate of Representation of the judge assignment and requirements.

All future hearings and trial dates will be scheduled by the courtroom staff. Check with the Court Information Booth on the Public Service Level for the location on the day of the hearing.

A notice to remove this judicial officer must comply with Minnesota Rules of Civil Procedure 63.03 and Minnesota Statute § 542.16.

Failure to timely file any required document or other failure to comply with the General Rules of Practice for the District Courts may result in the impositions of sanctions, including possible dismissal of the case.

Dated: January 30, 2012

Mark S. Thompson
Court Administrator
Hennepin County District Court

cc: RANDALL D TIGUE

STATE OF MINNESOTA DISTRICT COURT

FILED

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Power by the People, a Political Action Committee,

Petitioner,

v.

The Minneapolis Charter Commission,

Respondent.

ORDER
27 CV 12 2043
Judge Joseph R. Klein

The above-entitled matter came before Judge Joseph R. Klein on Petitioner's request for an alternative writ of mandamus. Randall D.B. Tigue, Esq. and Rachel K. Nelson, Esq. appeared for Petitioner.

Based upon the verified Petition for Writ of Mandamus, the memorandum in support thereof, and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. Petitioner's motion for an alternative writ of mandamus be and hereby is, in all respects, granted.

2. Respondent shall file make any filings in opposition to Petitioner's requested relief by **February 21, 2012.**

3. Petitioner shall make any written response to Respondent's filings by **February 28, 2012.**

4. A hearing on this matter will be held on **March 1st, 2012 at 10:00 a.m. in courtroom 1055** of the Hennepin County Government Center, 300 S. 6th St. Minneapolis, MN.

BY THE COURT:

Dated: Feb. 3, 2012

Joseph R. Klein
Judge of District Court