

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Power by the People, a Political Action
Committee,

Case Type: Writ of Mandamus
File No.: 27-CV-12-2043

Petitioner,

vs.

The Minneapolis Charter Commission,

Respondent.

**MINNEAPOLIS CHARTER
COMMISSION'S REPLY TO
PETITIONER'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS PETITION FOR
WRIT OF MANDAMUS**

INTRODUCTION

Power by the People ("PBP") has asked the Minneapolis Charter Commission ("Commission") to approve the use of a summary in conjunction with its petition to amend the Minneapolis City Charter ("Charter") on two occasions and on both occasions the Commission has notified PBP that its use of a summary would be impermissible under state law. Unsatisfied, however, PBP now asks this Court to grant a Writ of Mandamus that would violate state law and improperly infringe on the Commission's discretionary judgment by forcing the Commission to approve PBP's summary.¹ As a matter of law, therefore, PBP's request for a Writ of Mandamus must be rejected.

FACTS

PBP has drafted several proposed amendments to the Charter. Among its proposed amendments, PBP seeks to reduce the number of wards in Minneapolis, impose term limits on

¹ Although PBP filed a Petition for a Writ of Mandamus, Memorandum of Points and Authorities, and proposed Alternative Writ of Mandamus with the Court on January 30, 2012, PBP never served the Commission or the City of Minneapolis with any of its pleadings. PBP's failure to serve the City violates the Minnesota Rules of Civil Procedure and Minn. Stat. § 586.05.

the Minneapolis Chief of Police, City Coordinator, and City Attorney, and require elections to be held for certain city employees. *See* PBP Ex. A.² In total, PBP's most recent proposal required the addition of or striking out of no more than 748 words from the Charter. *See* Petition at ¶11(c). By letters dated November 17, 2011, and December 15, 2011, PBP submitted a summary of these proposed amendments to the Commission for use in the petition process. *See* Sarff Aff., Exs. A-B.

In response letters dated December 7, 2011, and January 4, 2012, the Commission informed PBP that its summary was not approved for use in the petition process. *Id.* at Exs. C-D. The Commission explained that Minn. Stat. § 410.12 only allows for the use of a summary when the proposed Charter amendment exceeds 1,000 words, and PBP's proposed amendment was less than 1,000 words in length. *Id.* As such, the Commission informed PBP that it would be required to attach a full copy of its proposed amendment to any petition rather than a summary of the proposed amendment. *Id.* The Commission affirmatively noted that it was not expressing any opinion on the form or substance of PBP's proposed Charter amendment. *Id.* PBP now seeks a Writ of Mandamus to force the Commission to approve its summary.

LEGAL ARGUMENT

"Mandamus is an extraordinary legal remedy." *State v. Pero*, 590 N.W.2d 319, 323 (Minn. 1999). By definition, an action for a Writ of Mandamus only applies to nondiscretionary acts. *Pigs R Us, LLC v. Compton Tp.*, 770 N.W.2d 212, 217 (Minn. Ct. App. 2009). To be entitled to a Writ of Mandamus, the petitioner must establish three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to

² For clarification purposes, "PBP Ex." refers to an exhibit produced by PBP in support of its Petition for Writ of Mandamus. "Petition" refers to PBP's Petition for Writ of Mandamus dated January 27, 2012. "PBP Memo." refers to PBP's Memorandum of Points and Authorities in Support of its Petition for a Writ of Memorandum. Finally, "Sarff Aff." refers to the Affidavit of Kristin R. Sarff submitted in support of the Commission's Reply to PBP's Memo.

petitioner; and (3) no other adequate remedy exists. *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995). Additionally, a Writ of Mandamus cannot be issued unless it would serve a legal purpose. *State ex rel. Hennepin County Welfare Bd. v. Fitzsimmons*, 58 N.W.2d 882, 891 (Minn. 1953).

I. A WRIT OF MANDAMUS CANNOT BE GRANTED TO PBP BECAUSE THE PLAIN AND UNAMBIGUOUS LANGUAGE OF MINN. STAT. § 410.12 PRECLUDES PBP FROM USING A SUMMARY WITH ITS PETITION TO AMEND THE CHARTER.

The Commission is responsible for helping to frame and amend the Charter. Minn. Stat. § 410.05. The Commission may propose amendments to the Charter on its own initiative and may also propose amendments when presented with a valid petition. Minn. Stat. § 410.12. To be valid, the petition must be supported by a sufficient number of voters and have the full text of the proposed amendment attached to the petition. *Id.* When the proposed amendment exceeds 1,000 words, however, a summary of the proposed amendment may be attached to the petition provided that the summary has been approved by the Commission. *Id.*

PBP is not entitled to use a summary in conjunction with its petition to amend the Charter. Under Minn. Stat. § 410.12, a summary may only be used with a petition if the proposed amendment exceeds 1,000 words. Specifically, the statute states:

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 setting forth in substance the nature of the proposed amendment.

Minn. Stat. § 410.12, subd. 1 (emphasis added). A plain reading of this statute makes it clear that only those words that are actually part of the “proposed amendment,” *i.e.* the words that are

proposed to be added, struck out, or corrected, can be used in calculating the statute's 1,000-plus word requirement.³

PBP has taken the unsupportable position that the term "proposed amendment" should be interpreted to include not only the words that are added, struck out, or corrected, but also all words that are part of the original text of the Charter and are purportedly necessary to provide context for the proposed amendment. This interpretation is inherently flawed. By their very nature, words that are part of the original text of the Charter cannot simultaneously be part of a proposed amendment because they do not represent a *change* to the Charter's wording and they are not *offered* by PBP for *consideration*. Therefore, any words that are part of the original text of the Charter, regardless of whether they add context to the amended words, cannot be included in calculating the statute's 1,000-plus word requirement.

Additionally, accepting PBP's interpretation that context-adding words can be included in calculating the 1,000-plus word requirement renders the requirement meaningless. Any petitioner could simply strike out or add *one* word and then claim that the entirety of the remaining Charter text is required to establish context, thereby exceeding the 1,000-plus word requirement. PBP merely responds that "the changing of a single word of a Charter would not require a summary." That is precisely the point: proposed amendments that are not sufficiently lengthy (1,000 words or less) do not require the use of a summary. The 1,000-plus word requirement establishes an objective, bright-line test. In contrast, including "context" words leaves the calculation open to interpretation, requiring the Commission to determine the meaning

³ "Proposal" means "[s]omething offered for consideration or acceptance." Black's Law Dictionary 1255 (8th ed. 2004). "Amendment" means a "formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or correction." *Id.* at. 89.

of the proposed amendment and which unchanged words in the Charter text are truly needed to add context to the proposed amendment. This is not called for or contemplated by the statute.

Given the clear and unambiguous meaning of the phrase “proposed amendment,” the Court need not engage in any other form of statutory interpretation encouraged by PBP. For the sake of argument, however, an examination of underlying legislative intent or the necessity that gave rise to the statute does not compel the court to expand the definition of “proposed amendment” to include any so-called “context” words. The statute permits a summary to be used because voters would be aided by the use of a summary when a proposed amendment is sufficiently lengthy. When the proposed amendment changes only 1,000 words or less, however, an aid is not necessary and the voters are benefited by having reviewed the full text of the proposed amendment.

Moreover, PBP’s heavy reliance on the importance of context belies its position that a summary is permissible when the proposed amendment changes less than 1,000 words in the Charter. PBP does not seek to use a summary because it wants to add context for voters. In the event that PBP is granted a Writ of Mandamus, it will use a stand-alone 157-word summary in connection with its petition. The surrounding text of the proposed amendment, which PBP claims is critical to context, will not be included with PBP’s petition. PBP implicitly concedes that this result would be harmful to voters. *See* PBP Memo. at p. 4 (“[A]n amendment that changes 748 words [the approximate count of PBP’s proposed amendment] cannot be meaningfully presented in a petition without the surrounding text.”) If, on the other hand, PBP’s summary does not meet the 1,000-plus word requirement then the full text of the proposed amendment must be attached to its petition and no context will be lost. For all of the reasons

stated above, PBP is not entitled to use a summary in connection with its petition to amend the Charter.

II. A WRIT OF MANDAMUS CANNOT BE GRANTED TO PBP BECAUSE THE SUMMARY HAS NOT BEEN FULLY REVIEWED FOR APPROVAL

If, contrary to the plain meaning and intent of the statute, the Court decides that the so-called "context" words should be included in calculating the statute's 1,000-plus word requirement, PBP still would not be entitled to a Writ of Mandamus that mandates the immediate approval of PBP's summary. To begin, if the Court allows "context" words to be included in calculating the 1,000-plus word requirement, the Commission has not yet reviewed the proposed amendment to determine which words are truly needed to establish context for PBP's proposed amendment. Additionally, in its December 7, 2011, and January 4, 2012, letters, the Commission did not express any opinion on the form and substance of PBP's summary. Valid objections may exist to the proposed summary, and the Commission is required to approve the form and substance of any summary before it may be used in connection with the petition process.⁴ Therefore, the Writ of Mandamus, as requested by PBP, must be rejected.

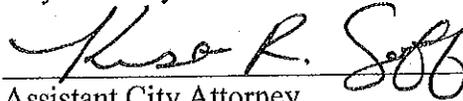
CONCLUSION

PBP is not entitled to a Writ of Mandamus. The Commission properly determined that PBP's use of a summary was impermissible under the plain and unambiguous language of Minn. Stat. § 410.12, subd. 1. Moreover, PBP's proposed summary has not yet been approved for form and substance requirements as required by state statutory law. Therefore, the Commission respectfully requests that the Court deny PBP's Petition for a Writ of Mandamus.

⁴ As noted in the Commission's Answer to PBP's Petition for Writ of Mandamus, PBP's Petition must progress "in the same manner as in [any other] civil action." Minn. Stat. § 586.08. Accordingly, PBP must file a Motion for Summary Judgment to obtain a dispositive ruling in this case and must serve the Commission with proper notice as dictated by the Minnesota Rules of Civil Procedure. The Commission reserves its right to assert any and all available defenses and facts during future motion arguments and/or trial.

Dated: February 21, 2012

SUSAN L. SEGAL
City Attorney



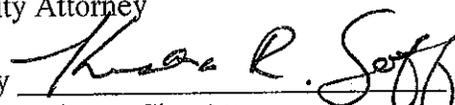
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ACKNOWLEDGMENT

Pursuant to Minn. Stat. § 549.211, the undersigned acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties for actions in bad faith; the assertion of a claim or a defense that is frivolous and that is costly to the other party; the assertion of an unfounded position solely to delay the ordinary course of the proceedings or to harass; or the commission of a fraud upon the court.

Dated: February 21, 2012

SUSAN L. SEGAL
City Attorney

By 
Assistant City Attorney