

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,

**ANSWER OF
RESPONDENT MINNEAPOLIS
CHARTER COMMISSION**

v.

The Minneapolis Charter Commission,

Respondent.

For its Answer to the Petition for Alternative Writ of Mandamus (“Petition”), the Respondent Minneapolis Charter Commission (“Commission”) states as follows: Except as admitted or otherwise pled herein, the Commission denies each and every allegation, matter and thing in the Petition and puts the Petitioner Power by the People (“PBP”) to its strict burden of proof.

PARTIES

1. The Commission is without sufficient information or knowledge to form a belief about the allegations made in paragraph 1 of the Petition and it, therefore, denies the allegations. The Commission affirmatively states that PBP is registered with the Minnesota Secretary of State as a domestic nonprofit corporation.

2. The Commission denies the allegation in paragraph 2 that the Commission is “charged” with the duty of “supervising the process of amending the Minneapolis City Charter.” The Commission affirmatively states that Minn. Stat. § 410.05, subd. 1 allows for the appointment of the Commission to “frame and amend” the Minneapolis City Charter.

CAUSE OF ACTION

3. The Commission denies the allegations made in paragraph 3 as they consist solely of legal conclusions. The Commission affirmatively states that Minn. Stat. § 410.12 speaks for itself.

4. The Commission admits that PBP has recited only a part of Minn. Stat. § 410.12, subd. 1 in paragraph 4 of the Petition, but denies that the partial recitation contains all relevant portions of and context to the statute's subdivision. The Commission affirmatively states that Minn. Stat. § 410.12, subd. 1 speaks for itself, and is recited in full as follows:

Proposals. The charter commission may propose amendments to such charter and shall do so upon the petition of voters equal in number to five percent of the total votes cast at the last previous state general election in the city. Proposed charter amendments must be submitted at least 17 weeks before the general election. Only registered voters are eligible to sign the petition. 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. Such 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. 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 above set forth.

5. The Commission admits that PBP has quoted an isolated portion of Minn. Stat. § 410.12, subd. 1 in paragraph 5 of the Petition. The Commission affirmatively states that Minn. Stat. § 410.12, subd. 1 speaks for itself and is fully set forth above in paragraph 4 of this Answer.

6. The Commission denies the allegations in paragraph 6 of the Petition. The Commission affirmatively states that by letter dated November 17, 2011, PBP submitted a copy

of a proposed charter amendment and summary with a request that the Commission “review the amendments as to form and return them to the committee with such modifications as [the Commission] deem[s] necessary . . .” Further, the Commission affirmatively states that by letter dated December 15, 2011, PBP submitted a copy of a revised proposal for a charter amendment and summary with a request that the Commission “review the amendments as to form and return them to the committee with such modifications as [the Commission] deem[s] necessary . . .” The Commission admits that the document attached to the Petition as Exhibit A is the revised proposal and summary attached to PBP’s letter dated December 15, 2011.

7. The Commission is without sufficient information or knowledge to form a belief about the allegations made in paragraph 7 of the Petition and it, therefore, denies the allegations.

8. The Commission admits the allegations in paragraph 8 of the Petition.

9. The Commission denies the allegations in paragraph 9 of the Petition. The Commission affirmatively states that by letters dated December 7, 2011, and January 4, 2012, the Commission informed PBP that it did not approve of PBP’s use of a summary because Minn. Stat. § 410.12 only allows for the use of a summary where a proposed amendment *exceeds* 1,000 words and PBP’s proposed amendment did not exceed 1,000 words in length.

10. The Commission admits the allegation in paragraph 10 of the Petition that the Commission did not approve PBP’s use of a summary because the amendment proposed by PBP did not exceed 1,000 words, which is a prerequisite to the permissible use of a summary under Minn. Stat. § 410.12. The Commission admits that only words that are added, struck out, or corrected by the proposed amendment are to be considered in calculating the 1,000-plus word requirement. Although the Commission maintains that the legislature intended only for added, struck out, or corrected words to be included in calculating the 1,000-plus word requirement, the

Commission denies having made any statement related to this legislative intent. The Commission denies that Exhibit B to the Petition is an accurate and complete copy of the Minneapolis Charter Commission Minutes for the Commission's January 4, 2012 meeting.

11. The Commission admits the allegation in paragraph 11(c) of the Petition that the "amending language" proposed by BPB did not exceed 1,000 words. The Commission denies all of the remaining allegations made in paragraph 11 and subparts 11(a), 11(b), and 11(c) as they consist solely of legal conclusions. Exhibits C and D to the Petition speak for themselves.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim upon which relief can be granted.
2. PBP is barred from using a summary in conjunction with its proposed amendment to the Minneapolis City Charter because the proposed amendment does not exceed 1,000 words as required by Minn. Stat. § 410.12, subd. 1.
3. The Commission affirmatively alleges that the summary proposed by PBP violates the form and substance requirements of Minn. Stat. § 410.12.
4. The Commission's actions are in compliance with applicable state law.
5. The Commission's actions are protected by statutory immunity.
6. The Commission's actions are protected by discretionary immunity.
7. PBP has not suffered any injury from the Commission's actions.
8. PBP has not suffered an irreparable harm and it is, therefore, not entitled to a writ of mandamus or injunctive relief.
9. PBP is not entitled to monetary damages.
10. PBP has failed to mitigate its damages.

11. PBP failed to properly serve the Commission with its Petition for Writ of Mandamus, Memorandum of Points of Authorities in Support of the Petition for a Writ of Mandamus, and proposed Alternative Writ of Mandamus in violation of the Minnesota Rules of Civil Procedure.

12. PBP failed to properly serve the Commission with the Order executed by Judge Joseph R. Klein and the "petition upon which the writ [was] granted" in violation of Minn. Stat. § 586.05.

13. The Commission reserves the right to assert any and all affirmative defenses that become available to it as the facts of this case develop and discovery is taken and received.

WHEREFORE, the Commission prays for an Order of this Court as follows:

A. Quashing the Alternative Writ of Mandamus.

B. Dismissing PBP's Petition on its merits and with prejudice.

C. Rescinding paragraph 3 of the Court's February 3, 2012 Order, which granted PBP the opportunity to file a response to the Commission's Answer, because no new matters were raised by the Commission in its Answer and, as a result, any responsive pleading by PBP would be impermissible under Minn. Stats. §§ 586.07, 586.08.

D. Striking PBP's Memorandum of Points and Authorities in Support of the Petition for a Writ of Mandamus from the Court's records as an impermissible pleading under Minn. Stat. § 586.08.

E. Cancelling the hearing scheduled under paragraph 4 of the Court's February 3, 2012 Order to take place on March 1, 2012 at 10:00 a.m. because the Commission's Answer to the Petition shows cause for its actions and, pursuant to Minn. Stat. § 586.08, the issues asserted in PBP's Petition are required be tried in the same manner as any other civil action, including

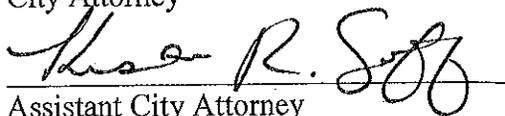
compliance with Minnesota's Rules of Civil Procedure governing the scheduling, notice and service of motions.

F. Awarding the Commission all of its costs and disbursements as allowed by law, including reasonable attorney's fees and the cost to obtain PBP's filings from the records department of the Hennepin County District Court.

G. For such other and further relief as this Court deems just and equitable.

Dated: February 21, 2012

SUSAN L. SEGAL
City Attorney



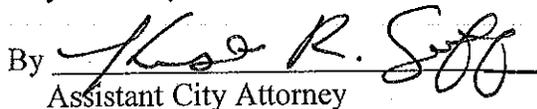
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ACKNOWLEDGMENT

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