

**STATE OF MINNESOTA
IN SUPREME COURT
A19-0916**

<p>Bruce Clark, Peter Butler, and Ann Dolan,</p> <p style="text-align:right">Respondents,</p> <p>v.</p> <p>City of Saint Paul, Minnesota; Shari Moore, in her official capacity as City Clerk,</p> <p>and,</p> <p>Joseph Mansky, in his official capacity as Ramsey County Elections Manager,</p> <p style="text-align:right">Petitioners/Appellants.</p>	<p style="text-align:right">Judge Leonardo Castro District Court File No. 62-CV-19-857</p> <p style="text-align:center">PETITION FOR ACCELERATED REVIEW</p> <p style="text-align:center">Date Order Entered: May 30, 2019</p>
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TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Appellants request accelerated review by the Supreme Court on the grounds below. Gregory Joseph, counsel for Respondents, has authorized me to report that, although he does not agree with the arguments below or the specific briefing schedule suggested, he does agree with accelerated review and expedited briefing.

A. STATEMENT OF LEGAL ISSUES:

- I. Did the district court err in concluding that conflict preemption did not preclude a referendum or justify the City Council's refusal to put Ordinance 18-39 on the Ballot?
- II. Did the district court err in concluding that the effect of a successful referendum to repeal Ordinance 18-39 would not be an unconstitutional impairment of the City's contract with the consortium of licensed garbage haulers?

III. Did the district court err in suspending the enforcement of Ordinance 18-39 effective June 30, 2019?

B. STATEMENT OF CRITERIA FOR ACCELERATED REVIEW:

The Supreme Court should accelerate the review of this case because it meets the criteria under Minn. R. Civ. App. P. 117, subd. 2(a), (c), (d)(1)-(3), and 118. First, this appeal involves the interplay and apparent conflict between certain constitutional, statutory, and municipal laws relating to state power, city power, and waste disposal. Second, this appeal is an excellent vehicle to answer the conflict-preemption question left open in *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 n.2 (Minn. 2018), and related questions in that still-ongoing appeal. Third, the issues raised here are of statewide importance to hundreds of cities.

In addition to the important legal considerations favoring review, there is a pressing ballot deadline: August 23, 2019 is the last day for putting the electoral question on the ballot for the November 5, 2019 election. If the referendum is on the ballot and fails, the appeal will become moot and the cost and effort to complete the election will have been wasted. If the referendum is successful, then issues of whether it was legally authorized will still need to be decided. The most efficient process would be to obtain an appellate decision, if possible, prior to August 23, 2019.

The Court's decision in this case will delineate the balance of power between state statutes, city governments, and citizen referenda, and will harmonize and clarify seemingly competing provisions of state law and city charters.

Cases involving of municipal-powers and ballot disputes, like this one, often trigger accelerated review. *See, e.g., Bicking v. City of Minneapolis*, 891 N.W.2d 304,

305 (Minn. 2017); *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 468 (Minn. 2016). These prior decisions reflect a municipality's and the public's need for the kind of prompt, final determinations in that only this Court can provide. Often those needs cause the Court to issue its decision in order form with written opinion to follow. *See, e.g., Vasseur v. City of Minneapolis*, No. A16-1367 (Minn. order filed Aug. 31, 2016) (granting petition for accelerated review on Aug. 24, 2016 and holding oral argument on Aug. 30, 2016, and stating "So as not to impair the orderly election process, this order is issued with opinion to follow.").

C. STATEMENT OF THE CASE:

This appeal is from a ballot-correction action brought under Minn. Stat. § 204B.44. This appeal challenges an order of May 30, 2019, suspending City Ordinance 18-39 as of June 30, 2019 and directing Appellants to place a referendum on that ordinance on that ballot in November. That ordinance was enacted pursuant to Minnesota's organized and mandatory collection laws, Minn. Stat. § 115A.94 and 115A.941.

The facts material to the legal issues raised are substantially uncontroverted. Previously, St. Paul had used an open hauling system whereby residents contracted privately with licensed, mixed-solid waste haulers who were able to compete with one another for business. Under that system, thirteen haulers had contracts with residents causing excessive overlap, traffic, and inconsistency of collection times. In 2016, St. Paul officials began exploring the possibility of organizing collection of mixed municipal solid waste in St. Paul pursuant to Minn. Stat. § 115A.94.

After fourteen months of negotiations, pursuant to this section of the statute, St. Paul entered into a Contract on November 14, 2017 with the licensed garbage haulers (“Consortium”) for a term of five years. The Contract sets the agreed-upon rates to be charged for various agreed upon service levels, requires the Consortium to provide collection services to all residential dwelling units and gives the Consortium the sole, exclusive right to provide the garbage services during the term of the Contract, and details the terms of billing, invoicing, and payment. Once the Contract was executed, St. Paul spent significant time, effort and dollars to implement it.

St. Paul was also required to “establish organized collection through appropriate local controls.” § 115A.94, subd. 4d. On September 5, 2018, the City enacted the ordinance at issue here, Ordinance 18-39, creating Chapter 220 of the City Code entitled “Residential Coordinated Collection.” Chapter 220 created general regulations related to coordinated collection and established rates, billing, and collection procedures.

Petitioners are St. Paul residents who seek a referendum on Ordinance 18-39 concerning the organized collection of waste.¹ The City Charter provisions at issue in this lawsuit are contained in § 8 of the Charter which is a general provision allowing residents to require ordinances to be submitted to a vote upon submission of a petition.

Charter § 8.05 allows an ordinance to be the subject of a referendum by a petition filed within forty-five (45) days after ordinance publication. Petitioners collected enough signatures and timely filed the petition seeking a referendum to repeal Ordinance 18-39.

¹ Many of the persons who signed the referendum petition were not opposed to organized collection but objected to specific terms of the contract.

The City Council determined that “the provision of the City Charter allowing referendum for the subject matter of the Petition is preempted by Minnesota Statutes §§ 443.28 and 115A.94, and is an unconstitutional interference with the Contract between St. Paul and the Consortium, and conflicts with state public policy.” Resolution 18-1922. The City Council then directed the City Clerk not to submit Ordinance 18-39 as a ballot question for the next election.

On February 7, 2019, Petitioners sued, asking the district court to enjoin Ordinance 18-39 pending approval or disapproval by the voters in Saint Paul. Petitioners argued that the City Charter provides its residents the broadest allowable authority under the home rule amendment of the Minnesota Constitution, and that the referendum power on any ordinance is all expressly reserved for the residents in Saint Paul. St. Paul argued that the referendum was precluded by conflict preemption—the Minnesota Legislature could not have intended that a City be required to perform all of the complex steps to comply with Section 115A.94 before any ordinance was needed, including extensive study, balancing of interests, negotiations, and public hearings, only to have the whole process vulnerable to repeal by referendum. St. Paul argued that the statute contemplated that the City Council, the “governing body,” had sole authorization under the statutes to balance all interests and establish organized collection. St. Paul also argued that any successful referendum would unconstitutionally impair the obligations of the City to the haulers and the obligations of the haulers to the City under their contract.

The district court ruled for Petitioners, and in a May 30, 2019 order directed the suspension of Ordinance 18-39 effective June 30, 2019, and ordered St. Paul to place the

referendum on Ordinance 18-39 on the November 5, 2019 ballot. That order states that violation of its terms is punishable by contempt.

ARGUMENT

Accelerated review is warranted in this legal dispute. As detailed below, this appeal raises issues of constitutional, conflict-of-laws, and municipal powers dimensions. Furthermore, the district court's looming June 30, 2019 suspension deadline and the August 23, 2019 ballot deadline create the type of temporal urgency for which accelerated review was designed.

The issues in this appeal involve the interplay and apparent conflict between certain constitutional, statutory, and municipal laws. "Any local government unit when authorized by law may adopt a home rule charter for its government." Minn. Const. art. XII, § 4. The legislature requires cities and towns over a certain size to ensure that all residents have solid-waste-collection services, Minn. Stat. § 115A.941, and has enacted laws allowing the governing body to require organized trash collection as a means to satisfy this requirement. Minn. Stat. § 115A.94. St. Paul is a home rule city, and § 8 of its Charter includes a provision allowing residents to require ordinances to be submitted to a vote upon submission of a petition that meets certain requirements.² *See* St. Paul City Charter § 8.05. The constitutions of both the United States and Minnesota prohibit the passage of laws that impair contracts. U.S. Const. art. I, § 10, cl. 1; Minn. Const. art. 1, § 11.

² The requirements of the petition are not disputed on appeal.

This appeal is an excellent vehicle to answer the conflict preemption question left open in *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 n.2 (Minn. 2018) (declining to consider conflict-preemption argument because city had not made it). This Court has held that a “conflict exists between state law and a municipal regulation when the law and the regulation contain express or implied terms that are irreconcilable with each other, when the ordinance permits what the statute forbids, or when the ordinance forbids what the statute expressly permits.” *Bicking*, 891 N.W.2d at 313 (quotations omitted). Conflict preemption exists here at least for two reasons. First, because state statute provides express authority for “the governing body of the city” to adopt organized collection after it has followed the statutory process. *See* Minn. Stat. § 115A.94, subd. 4c. In contrast, the suspension and referendum forbid and would forbid (respectively) the city council from adopting organized collection after the conclusion of the complex and costly statutory process if sufficient voters vote to nullify the city council’s decision at a citywide election. Second, conflict preemption exists here because the application of the referendum provision of § 8.05 of the St. Paul Charter at the end of this protracted process effectively conflicts with the process mandated in § 115A.94, and will result in local law that is irreconcilable with the process that the statutes (§ 115A.94 and § 443.26 *et seq.*) expressly permit and require.

The legal issues raised are of statewide importance. Whether, when, and how local laws conflict with the duties imposed by Minn. Stat. § 115A.941 and the process set forth in Minn. Stat. § 115A.94 are questions important to every town and city in the state that provides or wishes to provide for organized solid-waste collection. If this Order stands,

no City would likely undertake the enormous effort to develop a plan for organized collection if it could simply be undone at the end. No two cities are identical, and the simultaneous consideration of this appeal along with the pending *Jennissen* appeal creates a unique opportunity for the Court to clarify for the 853 cities in Minnesota—including the 107 home-rule cities—how to navigate voter-driven responses to organized trash collection.³ That clarification may include whether and how voters may impair contracts into which cities have entered under authority of state law. Furthermore, considering these cases together will allow the Court to analyze the distinction between a charter-amendment initiative, like in *Jennissen*, and an ordinance-repeal referendum, as in this appeal.

The public-policy considerations at issue here are significant. It seems unlikely that the Legislature would have contemplated allowing voters to reverse a city council's decision to adopt organized collection months or even years after the city has taken actions, and spent public funds in reliance on the statutory process. The extensive media coverage reflects the importance of this case. *See, e.g.,* Courtney Godfrey, *St. Paul trash collection fight could cost city \$13 million*, FOX9, available at <http://www.fox9.com/news/st-paul-trash-collection-fight-could-cost-city-13-million>; Elizabeth Dunbar, *When Minnesota cities take over trash collection, they take heat. But sometimes it pays off*, MPR News, available at

³ Research Dept., Minn. House of Representatives, *Classification of Cities*, (Sept. 2018) p. 4, available at <https://www.house.leg.state.mn.us/hrd/pubs/cityclass.pdf>.

<https://www.mprnews.org/story/2019/06/05/minnesota-cities-organized-trash-pickup-see-lower-costs-controversy> (June 5, 2019).

Time is of the essence in this appeal. As detailed in the Memorandum in Support of Motion to Stay Pending Appeal (included in the addendum hereto), the order creates two deadlines: suspending the enforcement of Saint Paul City Ordinance 18-39 by June 30, 2019 and ordering the City to place the Referendum of Ordinance 18-39 on the November 5, 2019 General Election Ballot. These two deadlines harm St. Paul in different but important ways.

The June 30, 2019, deadline does not give residents sufficient time to obtain solid waste collection services and, as a result, will cause immediate harm to the City. Trash collection is a critical public health service. The City of Saint Paul is required to ensure that all of its residents have garbage collection service. Minn. Stat. § 115A.941(a). Since last year, 74,000 households have been assigned a selected hauler, uniform and City owned trash carts have been distributed to these households, and haulers have been working in their contractually-agreed-upon areas of the city to effect a smooth collection of refuse. (Add.35.) The district court's June 30, 2019 deadline seeks to undo what took more than 14 months to put into place. (Add.36.) One example of the impracticability of the June 30 deadline is as follows:

If approximately 74,000 households need to set up service on their own, this means that approximately 3,744 households need to sign up for service per day of the 30 days until June 30 (20 business days, with eight hour days, and 74,000 customers). Neither the City nor the haulers have call centers that could handle this type of call volume. When the City was at the peak of its cart selection process in May of 2018, the City had nine staff people each responding to 20 to 30 calls per day (180 to 270 calls). In

addition, consortium haulers were called upon to provide responses to residents about customer service and billing issues. Haulers have varying capacity for handling calls. Some smaller haulers have one or two staff people to answer phones and provide customer service. Regardless of the number of customer service staff available to haulers, the high volume of calls that would need to be made and responded to for there to be timely trash service for all residential households, would overwhelm any customer service system.

(Add.36-37 (citations omitted).) In rolling out the current system, it took eight weeks simply to deliver a garbage cart to each property. (Add.37.) Without some combination of accelerated review and/or a stay pending appeal, the St. Paul is likely to incur a quarterly cost exceeding \$6,099,820, and would need to tap its emergency reserves to pay. (Add.38.)

The order's requirement to place the matter on the ballot for the November 5, 2019 election creates different, but still urgent, problems. For the matter to be on the ballot in November, the ballot question must be provided to the county election official by August 23, 2019. Minn. Stat. § 205.16, subd. 4. Without a stay or a conclusive appellate determination, before August 23, 2019, the City would be required to submit a ballot question. The burden and expenses will have already been borne. And even though an appellate ruling in the City's favor would make that particular ballot question unnecessary, voters would likely be confused as to why they were being asked to vote on question whose answer is of no effect. Preventing voter confusion in an election is a compelling state interest. *Schmitt v. McLaughlin*, 275 NW2d 587, 591 (Minn. 1979).

CONCLUSION

Appellants ask the Court to grant accelerated review, order expedited briefing, and set oral argument in sufficient time for the court to issue an order announcing its decision before August 23, 2019, with a written opinion to follow. Appellants propose a briefing schedule as follows:

Appellants' Brief	June 24, 2019
Respondents' Brief	July 10, 2019
Reply Brief	July 15, 2019

Appellents further propose an argument date in late July.

Respectfully submitted, June 13, 2019.

Attorneys for Appellants

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CERTIFICATE OF DOCUMENT LENGTH

The undersigned counsel for certify that this document contains 2,665 words, including heading, footnotes and quotations, and is in compliance with the requirements of Minn. R. App. P. 118 subd. (2).

Dated: June 13, 2019.

/s/ Sam Hanson

Sam Hanson