STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Ballot Omission Declaratory Judgment

Bruce Clark, Peter Butler, and Ann Dolan,

Petitioners,

v.

City of Saint Paul, Minnesota;

and

Shari Moore, in her official capacity Saint Paul City Clerk;

and

Joseph Mansky, in his official capacity Ramsey County Elections Manager,

Respondents.

Honorable Leonardo Castro

Case No. 62-cv-19-857

RESPONDENTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY PENDING APPEAL

Respondents, for their Reply Memorandum of Law in Support of Motion for Stay Pending Appeal, state as follows:

I. THIS COURT HAS JURISDICTION TO STAY ENFORCEMENT OF ITS ORDER PENDING APPEAL.

Petitioners argue this Court's hands are tied from even considering the City's motion to stay. The argument is that the City's pending appeal completely removes this

Court's jurisdiction—rendering the Order legally untouchable by the Court. (Pet'r Mem. Opp. Stay., pp. 3)

This is incorrect, and this Court may stay its May 30 Order for two main reasons. First, Civil Appellate Rule 108.01 provides that "the filing of a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from." Minn. R. Civ. App. 108.01, subd. 2. But the rule gives one exception: appeals made under Rule 103.03(b), which applies to appeals from orders granting injunctive relief. *Id*. ("Except in appeals under Rule 103.03(b) . . . .") The obvious implication of this exception is that in appeals under Rule 103.03(b), district courts *retain* jurisdiction to issue orders affecting "the order or judgment appealed from."

The City expressly stated that it was appealing this Court's May 30 Order under Rule 103.03(b) in its Statement of the Case. *See* Hafner Aff., Ex. L, ("This order is appealable as an injunction under Minn. R. Civ. App. 103.03(b)."). For this reason, the Court has jurisdiction and is free to affect its May 30 Order—including by staying enforcement of that Order.

The second reason this Court has jurisdiction to stay its Order is because district courts retain the power to alter the enforcement of their judgments pending appeal. An appeal certainly removes a district court's jurisdiction "to modify or set aside its order on the merits." *David N. Volkmann Constr. Inc. v. Isaacs*, 428 N.W.2d 875, 876-77 (Minn. App. 1988). But a district court "retains jurisdiction over collateral matters, *such as enforcement*" of its order. *Id*. (emphasis added); *see also* Minn. R. Civ. App. 108.01,

subd. 2 (stating that filing an appeal "suspends the trial court's authority to make any order that affects the order or judgment," but the court "retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.").

Allowing district courts to impact the enforcement—but not the substance—of their orders pending appeal makes sense because generally, an appeal "does not stay enforcement of judgment." *Id*. at subd. 1. If Petitioners were correct—that is, an appeal makes all judgments untouchable—then it would be nearly impossible to stay enforcement of *any* district court judgment. Or, at the very least, any stay would hinge on the district court's speed in deciding on a stay before the appellate clock winds down. But this interpretation clearly runs against the grain of the plain language in Rule 108.01 and caselaw. *See, e.g. Isaacs*, 428 N.W.2d at 876-77; *Perry v. Perry*, 749 N.W.2d 399, 403-04 (Minn. App. 2008) (acknowledging that parties may file motions to stay a district court's judgment even after filing a notice of appeal). Simply put, even with a pending appeal, district courts have the power to stay enforcement of their judgments and orders.

The City is appealing the Court's May 30 Order under the strictures of Rule 103.03(b), which retains jurisdiction in this Court to "make any order that affects the order or judgment appealed from." Minn. R. Civ. App. 108.01, subd. 2. Additionally, the City is not asking this Court to change, modify, or alter the substance of its May 30 Order. The City is asking this Court to stay *enforcement* of its May 30 Order—a request squarely within this Court's power. For both of these reasons, this Court may consider the City's motion to stay.

II. THE DOCTRINE OF UNCLEAN HANDS DOES NOT APPLY TO THIS CASE.

Petitioners imply that the City's position as to the law in this case and its purported unwillingness to compromise constitute "unclean hands." (Pet. Mem. Opp. Stay., pp. 4-5.) As to compromise, Petitioners ignore that from the beginning, they have sought to have the Ordinance repealed and put on the ballot. There is no ability to compromise on repeal of an ordinance or placing the matter on the ballot. There is no middle ground.

More importantly, litigation strategy and interpretation of law does not constitute unclean hands. Petitioners cite no case applying unclean hands to preclude the procedural mechanism of a stay pending appeal—much less one that invokes unclean hands where a party (in good faith) disputed the extent of its legal obligations. The doctrine of unclean hands "is premised on withholding judicial assistance from a party guilty of *illegal or unconscionable conduct*." *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 450 (Minn. App. 2001) (emphasis added). Accordingly, "the doctrine of unclean hands requires something more egregious than mere litigation strategy." *Id.*

This case involves a disagreement of the meaning of statutes and law in Minnesota, there are no allegations of "bad faith." This Court has disagreed with the City's legal arguments, which is a circumstance that exists in every case in which the non-prevailing party seeks a stay pending appeal.

III. PETITIONERS HAVE NOT IDENTIFIED IRREPARABLE HARM.

When deciding a stay, courts should balance the parties' potential harms. *Webster v. Hennepin Cnty.*, 891 N.W.2d 290, 293 (Minn. 2017) (citations omitted). In balancing the level of harm, courts must examine whether either party "will sustain irreparable or disproportionate injury" should the stay be granted or denied. *State v. N. Pac. Ry.*, 221 Minn. 400, 409, 22 N.W.2d 569, 574-75 (1946).

Petitioners make a circular argument that the irreparable harm to Petitioners is denying their rights under the Charter to have the matter repealed and put on the ballot. These are the very matters at issue in this lawsuit. Staying enforcement of this Court's order might postpone the date on which the ordinance becomes ineffective, but it will not eliminate those rights and the matter could still be placed on the ballot. Delay is not irreparable harm when compared with the harm to the city and the public. *Cf. Webster* at 292 (citing *Northern Pac. Ry.*, 221 Minn. at 409, 22 N.W.2d at 574-75) (courts should grant a stay when the appealing party will sustain irreparable or disproportionate injury and "it does not appear that the [non-appealing] party will sustain irreparable harm or disproportionate injury in case of affirmance" of the decision).

Furthermore, Petitioners' claims that there will not be harm to the City or that harm will be minimal defy common sense. In its Memorandum opposing the stay, Petitioners claim that the City is not bound by the contract and performance is excused. (Pet'r Mem. Opp Stay, p. 6.) Confusingly, Petitioners then claim that each of the households in Saint Paul has a designated hauler (ignoring that these haulers are

designated pursuant to *the contract* between the Consortium and the City) and the City will recognize a cost savings by allowing residents "the ability to opt out of service and share cans." (Pet'r Mem. Opp Stay. p. 8.) Thus, Petitioners' claim that the "City need not completely undo organized collection"—it "only" needs to find a way to provide continuity of service without the ordinance—seems, on the one hand, to be an argument that there is no ordinance or contract, and on the other, that the City and Consortium should continue to provide service under the contract with different terms. This does not make sense and is impossible. Petitioners cannot quantify their irreparable harm, and offer no other solution than that the City "need only find a way to provide continuity of service." Continuity will be guaranteed by imposition of the stay.

IV. THE CITY STILL NEEDS A STAY OF ENFORCEMENT OF MAY 30 ORDER EVEN WITH SUPREME COURT'S GRANT OF ACCELERATED REVIEW.

As this Court is aware, the Minnesota Supreme Court has granted Respondents' Petition for Accelerated Review of this appeal, setting a short briefing schedule and oral argument for August 20, 2019. *See* Doc. # 46, Grant of Pet. Acc. Rev. (Minn. June 24, 2019). The Minnesota Supreme Court's accelerated briefing and decision schedule does not eliminate the need for a stay pending the Supreme Court's decision. Even with the accelerated review and a decision prior to August 23, 2019, the City will still have 70 days of uncertainty as to trash service in the City. There are numerous aspects to this uncertainty, such as who can provide trash services within the City, whether the

Consortium can bill residents, and whether the City has a valid contract with the Consortium.

Petitioners ignore that the validity of the contract between the City and the Consortium has not been determined. Further, Petitioners ignore that the Consortium is not a party to this lawsuit and they specifically opposed the City's efforts to have the Consortium joined. Throughout this case, Petitioners have repeatedly argued that repeal of the ordinance terminates the contract. (Petition, ¶ 51, Reply in Supp. Pet., p. 3.) It has not been decided whether there is a valid contract or not. The Consortium has its own opinion and believes it has a valid contract with the City. Furthermore, as explained in the City's initial Memorandum, the City and residents cannot have changeover in rapid succession between various haulers and types of trash service. Moreover, this would result in chaos and uncertainty for residents and involve a public-health crisis as to trash collection. Operationally, it is not possible for this to happen in such a short time frame on a possibly temporary basis. Petitioners present no evidence to the contrary. The answer to all of this uncertainty is a stay of enforcement of the Court's May 30, 2019 order pending the appeal.

The briefing schedule and argument date set by the Minnesota Supreme Court indicate that the Court intends to issue a decision before the ballot question needs to be submitted and to avoid unnecessary changes regarding collection of trash in Saint Paul. Given the Supreme Court's grant of accelerated review, Respondents are no longer seeking to have this Court stay enforcement of its order for 90 days past the final decision

of an appellate court. Respondents' seek to have this Court stay enforcement of its order during the pendency of the appeal and a final decision by the Minnesota Supreme Court.

Respectfully submitted,

Dated: June 26, 2019

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MINN. STAT. § 549.211
ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

s/ Megan D. Hafner
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