

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Ballot Omission

Declaratory Judgment

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Bruce Clark, Peter Butler, and Ann Dolan,

Honorable Leonardo Castro

Petitioners,

Case No. 62-cv-19-857

v.

City of Saint Paul, Minnesota;

and

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

and

**AFFIDAVIT OF  
MEGAN D. HAFNER**Joseph Mansky, in his official  
capacity Ramsey County Elections  
Manager,

Respondents.

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STATE OF MINNESOTA )  
) ss.  
COUNTY OF RAMSEY )

Megan D. Hafner, being first duly sworn, deposes and states as follows:

1. I am an Assistant City Attorney for the City of Saint Paul representing Respondents in the above-captioned matter.

2. Attached as Exhibit L is a true and correct copy of the Statement of the Case of Appellants, filed June 13, 2019, in the Minnesota Court of Appeals.

FURTHER YOUR AFFIANT SAYETH NOT.

s/ Megan D. Hafner  
MEGAN D. HAFNER

Subscribed and sworn to before me  
on June 26, 2019

s/ Julie L. Tinkham  
Julie L. Tinkham

Notary Public  
My commission expires on January 31, 2020

**FILED**

June 13, 2019

**OFFICE OF  
APPELLATE COURTS**STATE OF MINNESOTA  
IN COURT OF APPEALS

Bruce Clark, Peter Butler, and Ann Dolan,

Respondents,

v.

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

and,

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

Appellants.

Judge Leonardo Castro

District Court File No. 62-CV-19-857

Appellate Case No. A19-\_\_\_\_\_

**STATEMENT OF THE CASE  
OF APPELLANTS****Date Order Entered: May 30, 2019****1. Court or agency of case origination and name of judge or hearing officer who presided.**

Ramsey County District Court, Second Judicial District; Judge Leonardo Castro.

**2. Jurisdictional statement.**

A. Appeal from district court.

- |     |   |  |
|-----|---|--|
| (1) | Statute, rule or other authority authorizing appeal:                      | <i>Minn. R. Civ. App. P. 103.03(b).</i> <sup>1</sup> |
| (2) | Date of entry of judgment or date of service of notice of filing of order | <i>Order entered May 30, 2019.</i>                   |

<sup>1</sup> This order is appealable as an injunction under Minn. R. Civ. App. 103.03(b). The order requires the City to take prescribed actions and at ¶ 3 provides that a failure to obey the order is contempt. *Accord Breza v. Kiffmeyer*, 723 N.W.2d 633, 634 (Minn. 2006) (characterizing a petition under Minn. Stat. 204B.44(a) as seeking to “enjoin” respondents).

from which appeal is taken:

- |     |  |  |
|-----|--|--|
| (3) | Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):  | <i>Minn. R. Civ. App. P. 104.01 subd. 1.</i> |
| (4) | Date of filing any motion that tolls appeal time:  | <i>Not Applicable.</i>                       |
| (5) | Date of filing of order deciding tolling motion and date of service of notice of filing:   | <i>Not Applicable.</i>                       |
| B.  | Certiorari appeal.   | <i>Not Applicable.</i>                       |
| C.  | Other appellate proceedings.   | <i>None.</i>                                 |
| D.  | Finality of order or judgment.   |  |
| (1) | Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorneys' fees?                   | <i>No</i>                                    |
|     | (a) If yes, provide date of order/judgment:  |  |
|     | (b) If no, did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01? | <i>No</i>                                    |
|     | (i) If yes, provide date of order:   | <i>N/A/</i>                                  |
|     | (ii) If no, is the order or judgment appealed from reviewable under any exception to the finality rule?                                  | <i>Minn. R. Civ. App. P. 103.03(b)</i>       |

(E) Criminal only.

(2) Has a sentence been imposed or imposition of sentence stayed? *Not applicable.*

(a) If no, cite statute or rule authorizing interlocutory appeal. *Not applicable.*

**3. State type of litigation and designate any statutes at issue.**

This appeal is from a ballot-correction action brought under Minn. Stat. § 204B.44. This appeal challenges an order suspending City Ordinance 18-39 on 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.941 & 115A.95.

**4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.**

On February 7, 2019, Petitioners commenced the current lawsuit against Respondents City of Saint Paul, Minnesota and the city clerk and county election official. Petitioners asked the district court to "issue an Order pursuant to Minnesota Statute § 204B.44 and Minn. Stat. § 555, that directs the immediate suspension of Ordinance 18-39 pending approval or disapproval by the voters in Saint Paul." (Petition, p. 15.) At the same time, Petitioners sought to have the district order that the "Respondents either prepare for citywide election a ballot that includes the Referendum on Ordinance 18-39 or repeal the Ordinance forthwith." (Petition, p. 16.)

The City opposed the petition because the referendum on Ordinance 18-39 is in conflict with state law and would work an unconstitutional impairment of the contract between the City and the haulers. Specifically, the City argued that conflict preemption exists here because the referendum allowing repeal of the ordinance contradicts 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.

Besides conflict preemption, the City argued that a referendum-based repeal of Ordinance 18-39 constitutes an unconstitutional impairment of the contract. Both the United State Constitution and the Minnesota State Constitution contain a “Contract Clause” which prohibits the passage of laws that impair contracts. U.S. Const. art. I, § 10, cl. 1; Minn. Const. art I, § 11.

The district court agreed with the petitioners, and suspended the enforcement of Ordinance 18-39 effective June 30, 2019 and ordered a referendum of the ordinance be placed on the November 5, 2019 ballot.

**5. List specific issues proposed to be raised on appeal.**

- 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 cause a repeal of 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?

**6. Related appeals.**

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

*Not applicable.*

List any known pending appeals in separate actions raising similar issues to this appeal. If none known, so state.

*Jennisson v. City of Bloomington, No. A17-0221, involves similar legal issues as this appeal regarding Minn. Stat. § 115A.94.*

**7. Contents of record.**

Is a transcript necessary to review the issues on appeal?

*A transcript is not needed.*

**8. Is oral argument requested?**

*Yes.*

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?

*No.*

**9. Identify the type of brief to be filed.**

Formal brief under Rule 128.02

(X)

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits)

( )

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2.

( )

**10. Names, addresses, zip codes and telephone numbers of attorneys for Appellant and Respondent.**

## Attorneys for Appellants

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## Attorneys for Respondents

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Date: June 13, 2019

**Attorneys for Appellants/ Respondents**

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By:     /s/ Sam Hanson    

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