

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/ Ballot Omission

Bruce Clark, Peter Butler, and Ann Dolan,
Petitioners,

Judge Leonardo Castro
Case File No: 62-CV-19-857

vs.

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

**ORDER STAYING
SUSPENSION OF ORDINANCE 18-39
PENDING APPEAL**

and,

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

Respondents.

The above-entitled matter came before the Honorable Leonardo Castro, Judge of District Court, on Respondents' Motion to Stay this Court's Order dated May 30, 2019, suspending the enforcement of Saint Paul City Ordinance 18-39 effective June 30, 2019, and requiring referendum on the Ordinance. The parties waived oral argument on the Motion, submitted memoranda of law and affidavits, and this Court relaxed motion time limits, in the interests of justice, in accordance with Minn. R. Gen. P. 115.07. Petitioners are represented by Gregory J. Joseph, *Esq.*, and the Respondents are represented by Megan D. Hafner, Assistant Saint Paul City Attorney.

The Court being fully advised and based upon the record, memoranda, affidavits and files, makes the following:

JURISDICTION

1. Respondents are appealing the Court's May 30 Order under the strictures of Minn. R. Civ. App. P. 103.03(b), which allows this Court to retain jurisdiction to "make any order that affects the order or judgment appealed from." Minn. R. Civ. App. P. 108.01, Subd. 2. Additionally, Respondents are not asking this Court to change, modify, or alter the substance of its May 30

Order. They ask this Court to stay enforcement of its May 30 Order; a request within this Court's authority. This Court finds that it retains jurisdiction of its Order to suspend Ordinance 18-39 because staying suspension of the Ordinance does not affect the order on appeal. Moreover, this Court was presented with substantial additional facts, in the form of affidavits, not available to this Court prior to its May 30, 2019 Order. An order does not necessarily affect the order on appeal if it involves a new set of facts and does not require the district court to consider the merits of the issues on appeal. *In re Thulin*, 660 N.W.2d 140, 143 (Minn. App. 2003) (holding that district court has jurisdiction over continuing commitment during appeal of initial commitment). Temporarily staying the suspension of the Ordinance does not require this Court to reconsider the merits of the issues on appeal.

FINDINGS

2. This Court's Order dated May 30, 2019 (the "Order") suspended Saint Paul City Ordinance 18-39 (the "Ordinance") effective June 30, 2019, pending referendum pursuant to § 8.05 of the Saint Paul City Charter and in accordance with Minn. Stat. § 204B.44.
3. Respondents sought accelerated review of the Order and on June 24, 2019 the Minnesota Supreme Court granted accelerated review outlining an expedited briefing schedule; oral arguments are being held on August 20, 2019.
4. Respondents' appeal raises substantial and important issues, and questions of law. Specifically,
 1. Does Minn. Stat. § 115A.94 preempt and prevent the residents of the City of Saint Paul from their Charter right to referendum on the Ordinance? And,
 2. May the City of Saint Paul's elected officials prevent its residents from their Charter right to referendum by entering into a contract with a vendor? This Court has answered these questions in the negative. These are serious questions on the fundamental right to vote and participate in the decisions of city

governance. The Minnesota Supreme Court's decision on these issues may only be applicable to the City of Saint Paul because of the broad referendum language found in the City's Charter, nevertheless, these are clearly important questions.

5. The Order suspending the Ordinance provides insufficient time for Saint Paul residents and trash haulers to properly coordinate and contract for the effective hauling of trash for the 74,000 households affected. This Court is persuaded by affidavits of City of Saint Paul employees, submitted as part of this motion, outlining the difficulties (and perhaps the impossibility) resident households and haulers would have in meeting the June 30, 2019 suspension date. Therefore, this Court finds that the current effective date of the suspension of the Ordinance would disproportionately injure the residents and affected households.
6. However, the suspension of the Ordinance, and placing it for referendum on the November 5, 2019 General Election Ballot (the "Ballot"), present very different issues. Respondents also move for stay of the Order requiring the referendum question be placed on the Ballot. This Court finds no reason to delay the process of ensuring that the referendum question gets placed on the Ballot. Respondents argue irreparable harm due to the costs and expense associated with putting the question on the Ballot. If the question is not on the Ballot, and the Supreme Court affirms, the City would be required to hold a special election at a cost significantly more than placing it on the Ballot. Also, Saint Paul is statutorily prohibited from holding a special election within 56 days after the state general election (*See* Minn. Stat. § 205.10, Subd. 3), thereby delaying even farther the people's right to vote. Moreover, Respondents have not provided this Court with any evidence of the costs or the extent of the irreparable harm they allege. Additionally, staying the process of placing the referendum on the Ballot would significantly

alter the order on appeal. Again, the Minnesota Supreme Court has set oral arguments on August 20, 2019, and the statutory deadline for inclusion on the Ballot is August 23, 2019.


7. Respondents argue that its appeal would become “lost to the void of justiciability” if an election occurs prior to the Minnesota Supreme Court’s decision. As previously noted, our Supreme Court has granted accelerated review of this matter, as such it has determined that “the case is of such imperative public importance as to justify deviation from the normal appellate procedure and to *require immediate determination*” Minn. R. Civ. App. P. 118 (emphasis added).
8. No security is required in accordance with Minn. R. Civ. App. P. 108.02, Subd. 2.

ORDER

1. Respondents’ motion is **GRANTED**, in part.
2. This Court’s May 30, 2019 Order, ordering the suspension of Ordinance 18-39 effective June 30, 2019, is **STAYED** pending appeal to the Minnesota Supreme Court.
3. Respondents’ motion to stay the process of placing the referendum of Ordinance 18-39 on the November 5, 2019 General Election Ballot is **DENIED**, unless otherwise ordered by the Minnesota Supreme Court.

Dated: June 27, 2019

BY THE COURT:



Leonardo Castro
Judge of District Court