NO. A19-0916

State of Minnesota

In Supreme Court

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

vs.

City of Saint Paul, Minnesota; Sheri Moore,
in her official capacity as City Clerk, and Joseph Mansky,
in his official capacity as Ramsey County Elections Manager,
Appellants.

APPELLANTS' BRIEF AND ADDENDUM

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases:

Other:

STATEMENT OF ISSUES

1. Minnesota law requires cities like Saint Paul to ensure that their residents have garbage-collection services. To meet that requirement, the legislature provided cities the option of organizing trash collection if their elected officials conclude such a system is in the public interest. If a city follows the statutorily prescribed steps, including soliciting public input, the statute gives the city authority to enter into a contract with a consortium of trash haulers, and requires the city to establish organized trash collection through appropriate local controls. This includes adopting service rates through ordinance. Once the statutory process is completed, does the statutorily prescribed method for organizing trash collection preclude, under the doctrine of conflict preemption, referendum on the ordinance that establishes rates and appropriate local controls for an organized trash-collection program?

   Result below: The district court concluded that allowing referendum of Saint Paul Ordinance 18-39 would not conflict with sections 115A.94 and 443 of the Minnesota statutes. (Add.8-11.)

   Most apposite authorities:

   Minn. Stat. § 115A.94;

   Minn. Stat. § 115A.941, subd. (a);

   Minn. Stat. § 443.28;

   Bicking v. City of Minneapolis,
   891 N.W.2d 304 (Minn. 2017).

2. The state and federal constitutions prohibit laws that impair contracts. This prohibition reaches any form of legislative action, including direct voter action through referendum. Here, to organize trash collection, Minnesota law provides that a city must first enter into a binding contract with a consortium of haulers. Only then can a city establish appropriate local controls for its organized-hauling program through ordinance. Saint Paul followed the statutory process. Would a referendum on the Saint Paul ordinance establishing rates and appropriate local controls for organized trash collection unconstitutionally impair the City's pre-existing, statutorily authorized contract?

   Result below: Relying principally on a *force majeure* clause in the City's contract, the district court concluded that a successful referendum on the

applicable ordinance would not unconstitutionally impair the City's five-year contract. (Add.11-16.)

Most Apposite Authorities:

Minn. Const. art. I, § 11;

U.S. Const. art. I, § 10, Cl. 1;

Davies v. City of Minneapolis,
316 N.W.2d 498 (Minn. 1982);

City of Middletown v. Ferguson,
495 N.E.2d 380 (Ohio 1986).

STATEMENT OF CASE

On September 5, 2018, the City of Saint Paul enacted Ordinance 18-39, which established rates and local controls for organized trash collection (effective October 5, 2018). (Add.55-62.) The ordinance was the culmination of a two-year process to investigate, negotiate, plan for, and ultimately implement organized collection for roughly 74,000 households.

Before a city can implement local controls for organized trash collection, Minnesota law requires that the city negotiate and execute a contract with licensed haulers for organized collection:

> The city or town must provide a 60-day period in which meetings and negotiations shall occur exclusively between licensed collectors and the city or town to develop a proposal in which interested licensed collectors, as members of an organization of collectors, collect solid waste from designated sections of the city or town.
>
> * * *
>
> The initial organized collection agreement executed under this subdivision must be for a period of three to seven years. Upon execution of an agreement between the participating licensed collectors and [the] city or town, the city or town shall establish organized collection through appropriate local controls.

Minn. Stat. § 115A.94, subd. 4(d).[1]

[1] This subdivision was amended in 2018 to require a seven-year contract. Because the contract at issue here was finalized before the effective date of that amendment, Appellants have quoted the prior version of the statute.

In compliance with this statute, Saint Paul began negotiations with a large consortium of licensed haulers on August 15, 2016. (Add.48.) Those negotiations spanned more than a full year, and resulted in a comprehensive Residential Solid Waste, Yard Waste and Bulky Waste Collection Agreement (signed November 14, 2017).[2]

The City and haulers then spent the better part of another year preparing for organized hauling. The City undertook substantial public outreach to educate residents about the new program. And the City purchased and coordinated the delivery of thousands of trash bins.[3] Haulers purchased new equipment. After planning was complete, Saint Paul enacted Ordinance 18-39 (as the statute directs). Organized collection began in Saint Paul on October 1, 2018.

On October 16, 2018, the Office of the City Clerk received a petition seeking a referendum on Ordinance 18-39. (Add.64.) Based on advice received from the City Attorney, the City Council passed a resolution declining to allow a referendum on Ordinance 18-39. (*Id.*) The City Council concluded that Minn. Stat. § 115A.94 allows cities to enter into contracts for organized trash collection provided they follow the statutorily prescribed procedures. A referendum, if successful, would unconstitutionally interfere with that legislatively authorized contract. (Add.65.) Moreover, under the circumstances, section 115A.94 and other Minnesota laws conflict with the Saint Paul

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[2] A copy of the contract (without exhibits) was attached as Exhibit E to the Petition for Correction of Ballot Error and for Declaratory Judgment (filed February 7, 2019).

[3] The City purchased and delivered roughly 85,000 trash bins at a cost of approximately $5 million. The City financed that effort with bonds that will be paid off over five years.

City Charter authorizing referendum and, therefore, the statutes preempt the charter under these circumstances.

Four months later, on February 7, 2018, Respondents filed a petition with the Ramsey County district court requesting an order directing the "immediate suspension of Ordinance 18-39 pending approval or disapproval by the voters in Saint Paul." (Pet. at 15.) The petition also requested that the court order the City to "either prepare for citywide election a ballot that includes the Referendum of Ordinance 18-39 or repeal the Ordinance forthwith." (*Id.* at 16.)

On May 30, 2019, the district court, the Honorable Leonardo Castro presiding, granted the petition. (Add.1-17.) The court concluded that Minnesota law does not preempt the City Charter and that a referendum of Ordinance 18-39 would not unconstitutionally impair the City's contract with the haulers. (Add.8-16.) The court ordered the City to: (1) suspend enforcement of Ordinance 18-39 by June 30, 2019 (within 30 days); and (2) place the referendum on the general-election ballot for the November 5, 2019 election. (Add.1-2.)

The City of Saint Paul filed a Notice of Appeal. On June 24, 2019, this Court accepted accelerated review.[4]

On June 27, 2019, the district court issued an order staying its directive to Saint Paul to suspend Ordinance 18-39 by June 30, 2019. The court concluded:

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[4] The statutory deadline for submission of questions to be included on the November general-election ballot is August 23, 2019.

> 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 . . . 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.

(06/27/19 Order at 3, ¶5.) The district court did not, however, change its decision ordering that the referendum of Ordinance 18-39 be included on the general-election ballot for the November 5, 2019 election. (*Id.* at 3-4, ¶¶6-7.)

STATEMENT OF FACTS

I. Saint Paul spent years exploring organized trash collection in response to resident complaints and to address significant environmental, pricing, and traffic concerns.

For many years, Saint Paul had an "open" trash-collection system. Under that system, individual households had to contract independently with any one of many licensed residential haulers.[5] This system was grossly inefficient and unsustainable. Because each hauler's customer base was spread across the municipality, multiple garbage trucks from different companies serviced the same streets and alleys on any given day.

In 2009, the Minnesota Pollution Control Agency commissioned a study to develop data to meaningfully compare open trash-collection systems with organized systems.[6] That study reported that open systems had a significant impact on road degradation, requiring substantial annual repair costs. *See* MPCA Study at 39-40. In addition, the study concluded that organized systems result in lower overall costs to consumers, and reduce noise pollution, road wear-and-tear, air emissions, and fuel consumption. *Id.* at 30-41.

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[5] The number of licensed haulers varied from year to year. In 2013, Saint Paul had thirteen licensed residential haulers. In 2015, the City had nineteen licensed residential haulers.

[6] *Analysis of Waste Collection Service Arrangements* (June 24, 2009), available at: https://www.pca.state.mn.us/sites/default/files/w-sw1-06.pdf (last visited July 2, 2019) ("MPCA Study").

The study also indicated that the open trash-collection system was antiquated. By 2008, nearly three quarters of communities in the United States and Canada had moved to organized trash collection. *Id.* at 10.

A. Saint Paul's preliminary considerations.

In 2013, the City of Saint Paul commissioned its own study regarding waste management.[7] That study concluded that the existing "open" collection system led to higher monthly consumer costs compared to nearby cities (like Minneapolis) with organized collection systems. *See* Wilder Study at 9. Moreover, more than half of surveyed residents reported concerns with air pollution (51%), noise (56%), and street wear-and-tear (58%) related to truck traffic under the open system. *Id.* The study recommended that the City implement an organized collection system "to lower costs, reduce truck traffic, and design trash pricing to incentivize recycling." *Id.*

Then, in 2015, the Macalester-Groveland Community Council ("MGCC") completed a grant-funded study to "devise a more efficient, less intrusive, and environmentally efficient trash collection system than what is currently in place in the City."[8] MGCC Report at 4. Its report concluded that the "multitude of companies operating without any level of coordination leads to great inefficiencies," and that the

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[7] *City of Saint Paul Recycle it Forward, A Comprehensive Assessment of Recycling and Waste Management* (Aug. 2013) ("Wilder Study") (Exhibit A to the Affidavit of Megan D. Hafner filed May 6, 2019).

[8] *Taking Out the Trash, An Investigation into Trash Collection in St. Paul* (2015) ("MGCC Report") (Exhibit B to the Affidavit of Megan D. Hafner filed May 6, 2019). MGCC obtained a grant from the Minnesota Pollution Control Agency to specifically investigate organized trash collection in St. Paul. MGCC Report at 7.

open collection system is "unsustainable in several regards: it is environmentally unsound, costly, and inequitable." *Id.* at 8.

With respect to economic issues, the MGCC Report concluded that the "[i]nefficiency of the open system leads to more expensive collection rates due to the increased costs haulers must shoulder." *Id.* These increased costs "include extra fuel expenditure and equipment wear and tear due to needlessly long routes." *Id.* City residents incur added costs as well because "streets and alleys suffer needless wear," leading to increased taxes to cover repairs.[9] *Id.*

As for equity issues, the MGCC Report found that, because the open system requires homeowners to research individual haulers, sign up for trash collection, and negotiate the price and scope of services, the process makes it "difficult or nearly impossible for non-English speaking community members" to participate. *Id.* at 9. Consequently, in some areas, residents disposed of their trash at undesignated sites ("dumping"). *Id.* This is not an insignificant or benign concern. Each year Saint Paul spends an estimated $250,000 to collect and dispose of illegally dumped garbage. (Add.19.)

Based on its investigation, MGCC recommended "a thoughtful move towards organized collection." MGCC Report at 7. MGCC urged Saint Paul to utilize a "consortium of haulers currently operating in the City," and to follow the steps the

[9] Repaving a single alley can cost between $30,000 and $80,000 (largely depending on whether the alley has storm sewers). MGCC Report at 26.

legislature outlined in Minn. Stat. § 115A.94, which "clearly defines the process for implementing a change to the current hauling system." (Add.40, 41.)

On February 24, 2016, the Saint Paul City Council unanimously passed a resolution directing the Public Works Department "to solicit input from residents to develop draft goals and objectives for implementing a system of organized trash collection." (Add.18.) The resolution described the primary conclusions of the Wilder Study and MGCC Report, stated that the City Council had set aside resources to "examine the process . . . [of] organized trash collection," and directed the PWD to provide its findings to the City Council in May 2016. (Add.19-20.)

Over three months, the PWD conducted resident surveys and collected resident comments through Open Saint Paul, U.S. Mail, email, telephone calls, neighborhood meetings, focus groups, social media, and local events. (Add.24.) In addition, the PWD collected trash bills to obtain baseline information about what Saint Paul residents typically paid for services. (*Id.*)

Based on the information collected, the PWD recommended that, if Saint Paul proceeded with organized collection, the City should prioritize certain goals in negotiations with haulers: (1) providing opportunities for small, local, and minority/ women-owned businesses; (2) supporting a living wage; (3) reducing the number of trucks on alleys and streets; (4) creating truck routes that minimize fuel usage and air pollution; (5) providing residents incentives to recycle; (6) providing direct and consistent customer service; and (7) implementing uniform and lower trash-collection charges. (Add.42-43.)

On June 1, 2016, after a full public hearing, the City Council accepted the PWD report and resolved to collect "further community input" on the PWD's recommended goals for negotiation "through a public hearing." (Add.44-45.)

B. The City followed the statutory process to consider and implement organized trash collection.

Section 115A.94 of the Minnesota Statutes prescribes "the process a city must follow before it can organize waste collection." *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 (Minn. 2018). As the first step, the statute states that a city "must provide":

> a 60-day period in which meetings and negotiations shall occur exclusively between licensed collectors and the city or town to develop a proposal in which interested licensed collectors, as members of an organization of collectors, collect solid waste from designated sections of the city or town.

Minn. Stat. § 115A.94, subd. 4(d).

The requirements of the proposal contemplated under subdivision 4(d) are extensive. The proposal "shall include" and address the city's identified priorities, "including issues related to zone creation, traffic, safety, environmental performance, service provided, and price," and "shall reflect existing haulers maintaining their respective market share of business as determined by each hauler's average customer count during the six months prior to the commencement of the 60-day negotiating period." *Id.*

The statute also requires notice to the public and "at least one public hearing" before the city decides whether to implement organized collection. *Id.*, subd. 4(c).

Therefore, the process is a transparent one that includes the city, the public, and all licensed haulers.

On July 27, 2016, the City Council resolved to establish the statutory 60-day negotiation period. (Add.47-49.) The resolution designated August 15, 2016, as the "official date to begin the required 60-day period of exclusive negotiations between existing licensed collectors and the City." (Add.48.) The resolution included the core objectives and priorities that the PWD report identified for the negotiations with the haulers. (*Id.*)

The City and fifteen existing licensed haulers engaged in extensive contract negotiations during the 60-day period and beyond. (Add.50.) The negotiations took eleven months and included sixteen meetings and consideration of seven different proposals. (*Id.*) The final proposal, signed by all haulers, included (among many other things) an agreement to have one hauler service any particular block, uniform prices for weekly garbage service (and a resident option for service every two weeks), wage standards that meet the Living Wage Ordinance and include a $20 per hour minimum wage for drivers, and detailed delinquent-account procedures. (Add.51.)

On July 26, 2017, after another public hearing, the City Council resolved to allow City staff to "begin final contract negotiations" with the licensed haulers. (Add.50.) The parties negotiated the final terms for another three months. On November 8, 2017, the City Council resolved to approve the final contract. (Add.53.)

II. Saint Paul enters into a comprehensive contract with a consortium of trash haulers.

The individual haulers collectively formed a limited-liability company—St. Paul Haulers, LLC—to contract with the City. On November 14, 2017, the City and the limited-liability company signed a five-year Residential Solid Waste, Yard Waste and Bulky Waste Collection Agreement.

The contract is expansive—it spans 52 pages. On the subject of billing, the contract provides that haulers are responsible for invoicing residents based on a delineated price sheet. (Contr. at 23 §§ 2.15.1, 2.15.2.) If a resident fails to pay the invoice within 90 days, the contract states that the City "shall pay the Consortium Member amounts due." (*Id.* at 24-25, § 2.15.8.) The City collects those amounts by assessing those residents who failed to pay. (*See, e.g.*, *id.* Ex. 9.) The contract also includes a detailed rate schedule. (*Id.* Ex. 4.a. (Add.65-66).)

Even with a contract in place, the City estimated it would need (at least) an additional twelve months to complete work necessary to transition to the organized collection system. (Add.51.) Among other things, the City had to undertake public outreach to educate residents about the new program. (*See* Contr. at 13 § 2.2.4; *see also id.* at 26 §§ 2.19.1, 2.19.2.) In addition, the City had to collect each resident's preferences for bin size and then assemble and distribute new bins to thousands of households.[10] For

[10] The contract also provided that, within 90 days of the November 24, 2017 effective date, the consortium would propose a draft "Collection Zone map" for review and comment. The City would then confirm that the collection zones meet the market-share requirements in Minn. Stat. § 115A.94, subd. 2d. (Contr. at 13 § 2.2.3.)

these reasons, the contract included two alternative commencement periods for the hauling: October 1 to October 31, 2018, or April 1 to April 30, 2019. (Contr. at 10 § 1.)

The City spent a year conducting necessary public outreach. This included extensive communications with households and the establishment of a separate call center. (Declaration of E. Biales ¶¶3-4 (filed June 13, 2019).) The City coordinated the purchase and delivery of the new trash bins and assembled comprehensive resident billing and service information. (*Id.* ¶4.) Creating new truck routes within the City's collection zones alone took five months. (*Id.* ¶7.)

The haulers, too, expended substantial resources in anticipation of beginning organized hauling under the contract. Most significantly, several haulers purchased updated equipment (including new trucks) based on their assigned territories. (*See* Declaration of J. Klennert ¶7 (filed June 13, 2019).)

III. Saint Paul enacts Ordinance 18-39.

Under the terms of the organized-trash-collection statute, once a contract is executed, the city "shall establish organized collection through appropriate local controls." Minn. Stat. § 115A.94, subd. 4(d). Accordingly, on September 5, 2018, after implementation planning was complete, Saint Paul enacted Ordinance 18-39. (Add.55.) Ordinance 18-39 created Chapter 220 of the Saint Paul Legislative Code, entitled "Residential Coordinated Collection." (*Id.*)

Chapter 220 established the process and specified the rates for organized trash collection.[11] Importantly, it also provided the only mechanism for the City to obtain repayment of funds delivered to the consortium haulers to cover delinquent resident accounts by stating: "The delinquent account shall be a debt owed to the city and any unpaid costs shall be collected by special assessment under the authority of Minn. Stat. § 443.29."[12]

The ordinance stated that it would "take effect and be in force thirty (30) days following its passage, approval and publication"—*i.e.*, on October 5, 2018. (Add.62.) This fell within the first of the two alternative commencement dates in the City's contract with the haulers. (Contr. at 10 § 1.) Thus, in early October 2018, organized collection began in Saint Paul.

IV. Saint Paul declines to put a referendum of Ordinance 18-39 on the November ballot.

On October 16, 2018, the Office of the City Clerk received a petition seeking a referendum on Ordinance 18-39. (Add.64.) The City Attorney reviewed the subject matter of the petition and provided the City Council an opinion on whether it was

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[11] Section 443.28 of the Minnesota statutes requires cities to implement rates for trash removal through ordinance. Minn. Stat. § 443.28 ("Rates for such rubbish disposal, together with regulations incident thereto, shall be established by ordinance.").

[12] Section 443.29 provides that, "in the discretion of the city council of the city," unpaid "rates for rubbish disposal" may be "certified to the county auditor with the taxes against such property served" and "shall be collected as other taxes are collected." Minn. Stat. § 443.29.

appropriate to submit that subject matter to the electorate through the referendum process. (Add.65.)

Based on that legal opinion, the City Council passed a resolution in which it declined to submit Ordinance 18-39 as a ballot question to the County Auditor for placement on the ballot during the next election. (*Id.*) This declaratory-judgment action followed.

SUMMARY OF ARGUMENT

This Court has consistently recognized that a City may decline to place an initiative or referendum question on the ballot if the question is unconstitutional or conflicts with state law. *See, e.g.*, *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313 (Minn. 2017) ("[W]e have recognized that placing an unconstitutional or unlawful proposed amendment on the ballot is a futile gesture that we do not require.") (citing numerous cases).

Accordingly, while the Saint Paul City Charter authorizes referendum on ordinances, the power must yield when it conflicts with state law or triggers an unconstitutional impairment of contract. *See id.*; *State ex rel. Andrews v. Beach*, 155 Minn. 33, 35, 191 N.W. 1012, 1013 (1923) ("A home rule charter and all amendments thereto must be in harmony with the Constitution and laws of this state."); *St. Paul Citizens for Human Rights v. City Council*, 289 N.W.2d 402, 405 (Minn. 1979) ("A municipal ordinance will be upheld unless it is inconsistent with the Federal or State Constitution or state statute.").

Here, the City Council properly declined to place the proposed referendum of Ordinance 18-39 on the ballot for two reasons. First, under the doctrine of conflict preemption, the ability to petition for referendum in these circumstances is incongruous with the statutory scheme to organize trash collection. Minnesota law *requires* Saint Paul to provide residents with a trash-collection system. Minn. Stat. § 115A.941, subd. (a). To this end, the legislature provided cities the option to "organize collection, provide collection, or require by ordinance that every household and business has a contract for

collection services." *Id.* Because it is the cities' obligation to fulfill the statutory mandate, the legislature predictably gave cities the authority to determine and implement the appropriate system. This authority is included in Minn. Stat. § 115A.94 (and its legislative history). A city charter allowing the electorate to repeal an ordinance establishing the system of trash collection conflicts with Minnesota law and would threaten to permit the electorate to prevent Saint Paul from meeting its statutory obligation to provide a collection system.

Second, if passed, the referendum would substantially (and unconstitutionally) impair the City's existing contract with haulers. Importantly, under Minn. Stat. § 115A.94, subd. 4(d), a city must enter into a long-term contract for organized hauling *before* it can establish organized collection through "local controls" (*i.e.*, ordinances). Minn. Stat. § 115A.94, subd. 4(d) ("Upon execution of an agreement between the participating licensed collectors . . . the city . . . shall establish organized collection through appropriate local controls."). The legislature could not have intended an unlawful statutory scheme under which cities desiring to implement organized trash collection must first enter into binding long-term contracts with haulers, only to have those contractual rights and obligations exposed to impairment by voters who later repeal the ordinances establishing the local controls for organized collection.

This Court should reverse the decision below and conclude that Saint Paul properly declined to place a referendum of Ordinance 18-39 on the general-election ballot.

ARGUMENT

I. Legal standard.

This Court reviews *de novo* whether state law preempts the Saint Paul City Charter with respect to the right to referendum on Ordinance 18-39 and whether a referendum, if successful, would unconstitutionally impair the City's contract with haulers. *Bicking*, 891 N.W.2d at 312; *Jacobsen v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 871-82 (Minn. 1986) (stating that the issue of whether a legislative act is an unconstitutional impairment is "solely a legal one" and therefore the Court affords "no deference to the trial court decision").

II. The doctrine of conflict preemption precludes the City's waste-collection ordinance from being subject to referendum.

State law can preempt municipal legislative authority in three different ways: express preemption, conflict preemption, and field preemption. *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018). Conflict preemption is the only doctrine at issue here.

As this Court has stated:

> 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 (quoting *Mangold Midwest Co. v. Vill. of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966)). This Court should hold that a referendum on Ordinance 18-39 (establishing rates and appropriate local controls for organized trash

collection in Saint Paul) conflicts with Minnesota's statutory scheme governing trash collection.

First, under Minn. Stat. § 115A.941, cities (like Saint Paul) with a population greater than 1,000 "shall ensure that every residential household and business . . . has solid waste collection service." Minn. Stat. § 115A.941, subd. (a). The statute describes alternative ways cities can "comply with this section." *Id.* Specifically, the statute provides: "To comply with this section, a city . . . may organize collection, provide collection, or require by ordinance that every household and business has a contract for collection services." *Id.* A referendum repealing an ordinance adopting rates and local controls for organized collection conflicts with this statute because it thwarts the city's efforts to organize collection, when the statute expressly provides that a city may organize collection to satisfy its statutory requirement to ensure that every resident has waste-collection services. In other words, a referendum, if successful, would preclude what the statute permits.

Second, under Minnesota law, city councils are required to establish trash-collection rates by ordinance. Minn. Stat. § 443.28 ("Rates for such rubbish disposal, together with regulations incident thereto, shall be established by ordinance."). In addition, any requirement that citizens privately contract for trash services must be implemented through ordinance. Minn. Stat. § 115A.941, subd. (a). Theoretically, if citizens could demand a referendum on all ordinances requiring them to pay out-of-pocket costs, they could handcuff cities such that the cities' only option would be to "provide collection" services themselves (*i.e.*, by buying and operating trucks, hiring

employees, etc.). Short of that, without the ability to establish rates for organized collection through ordinance, Saint Paul would have to fork over $24 million per year from its emergency reserves to pay the haulers to operate under the current contract. (*See* Declaration of J. McCarthy ¶4-5 (filed June 13, 2019).) This squarely conflicts with the legislature's decision to equip cities with options—including organized hauling—to satisfy their statutory duty to provide trash-collection services.

Third, referendum power of the type contemplated here conflicts with the organized-trash-collection statute. The legislature carefully vested municipalities with power to implement organized trash collection, provided they adhere to the statutory requirements. Indeed, in proposing amendments to Minn. Stat. § 115A.94 in 2018, Representative Linda Slocum noted that the statute provides "a framework for local units of government and private trash haulers to transition from an open-market subscription system to a government-managed system *if a local governmental unit decided it was in the public interest*."[13] Similarly, subdivision 2 provides (just like Minn. Stat. § 115A.941) that "[a] city may organize collection, after public notification and a hearing." Minn. Stat. § 115A.94, subd. 2. Plainly, a referendum repealing organized collection after the City has notified the citizenry and conducted the required hearing (and, in this case, substantially more) conflicts with this broad grant of legislative authority.

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[13] Minn. State House of Rep. archive video (May 02, 2013) *House floor session – part 2*, available at: https://www.house.leg.state.mn.us/hjvid/88/880345 (last visited June 1, 2019).

A referendum on Ordinance 18-39 would conflict with the organized collection statute in other ways, too. Subdivision 4(d) provides that, at the end of a 60-day negotiation period, the city may enter into a contract with the participating licensed haulers for a term of "three to seven years." Minn. Stat. § 115A.94, subd. 4. The legislature further provided that, if such a contract is agreed upon, the city "is not required to fulfill the requirements of subdivisions 4a, 4b, and 4c, except that the governing body must provide the public notification and hearing required under subdivision 4c." *Id.* Notably, one of the requirements that the city is excused from is assembling an "organized-collection-options committee" that would seek input from "residents of the city or town who currently pay for residential solid waste collection services." *Id.*, subd. 4(b)(3)(iv). It would be incongruous for the statute to excuse the formation of a committee to solicit resident feedback before the city enters into a contract and implements organized trash hauling but then leave room for those same residents to essentially veto the process following contract formation and implementation.

The statute also *requires* that any contract under subdivision 4(d) be for a minimum of three years. But in this case, a successful referendum on Ordinance 18-39 would result in the City obtaining just one year of benefits under the contract. This plainly conflicts with subdivision 4(d).

Finally, a referendum on the statutorily authorized ordinance establishing rates and appropriate local controls for organized trash collection is antithetical to the practical realities of the situation. Providing any city-wide system of trash-collection service requires months of careful planning, substantial financial outlays, and extensive public

outreach. A successful referendum on November 5 would yield absurd results. The City cannot just stop trash collection (organized or otherwise) on November 6. To continue organized collection, the City would have to pay the haulers itself (an estimated $6 million per quarter). Even if the City desired to revert to the prior "open system," thousands of individual residents would have to contract with haulers for private trash service. As the record shows, reverting to the "open system" would present substantial logistical issues and would require significant additional expenditures and months of preparation and planning.[14] Among other things:

- All pre-existing garbage contracts were terminated effective October 1, 2018. (Add.59 (Ordinance 18-39 Sec. 220.03).) Accordingly, tens of thousands of households would have to contract for new services. "'[S]witching' to open hauling in a short amount of time is not possible. For example, if approximately 74,000 households would need to set up service accounts within the next 30 days, within an 8 hour day, and 20 business days, this computes to 468 households needing to sign up for service per hour (3,744 per day)." (Klennert Dec. ¶9.)

- "Each of these service accounts will then need to be placed on the appropriate route to ensure that service is received on the first day. It took the haulers five months to map the City and determine routes." (*Id.* ¶10.)

- "A Work Plan Task Matrix was developed as part of the OTC [organized trash collection] planning and implementation process. During the planning it was determined that no less than ten months was required

[14] Saint Paul's process here began in February 2016. (Add.20.) Yet given the time and effort necessary to transition from the "open system," organized hauling did not begin until October 2018. The sheer size of the City required a lengthy, deliberate approach.

> to appropriately educate the public and implement the changes needed to go from an open trash hauling system to OTC. A similar work plan task matrix would be required to implement any future phases of 'switching' back to open trash hauling. The same type of planning process and most of the tasks will need to be followed again by multiple parties for any type of change." (*Id.* ¶8.)

In short, no reasoned interpretation of the statute suggests that the legislature intended, on the one hand, to provide for a complex, months-long process for cities interested in implementing organized hauling (including authorization to enter into comprehensive, antitrust-immune contracts), but on the other expect that, in the event of a successful referendum, cities could quickly revert to the prior collection system or cover the expenses of the organized system themselves. *Cf. American Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000) ("[C]ourts should construe a statute to avoid absurd results and unjust consequences.").

In staying enforcement of its order directing the suspension of Ordinance 18-39 pending the referendum vote, the district court similarly recognized that applying the City Charter, as written, would produce an extraordinarily difficult situation that Saint Paul, the haulers, and the public could not conceivably address in a timely fashion. (06/27/19 Order at 3, ¶5 ("The Order . . . 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 involved.").)

Nevertheless, the district court determined that Minnesota law does not conflict with Saint Paul's charter as it relates to the electorate's power to seek referendum on

Ordinance 18-39. This Court should not be persuaded because the district court's reasoning is flawed in several respects.

First, the district court acknowledged that Minn. Stat. § 115A.94, subd, 4(c), provides "the governing body of the city" authority to decide "whether to implement organized hauling." But the court concluded that it "is not convinced that 'governing body' is limited to the City Council," and may include the public (through the City Charter). (Add.11.) This interpretation, too, yields absurd results. For example, the subdivision provides: "The governing body must provide public notice and hold at least one public hearing before deciding whether to implement organized collection." And subdivision 4(d) provides that, upon execution of a contract with existing licensed haulers, "the governing body must provide the public notification and hearing required under subdivision 4c." Minn. Stat. § 115A.94, subd. 4(d). Plainly, if "governing body" included the public, these provisions would be superfluous and nonsensical: the public would be required to provide notice to itself.

Second, relying on this Court's earlier decision in *Jennissen*, the district court emphasized that subdivision 6(a) states that "[t]he authority granted in this section is optional and is in addition to authority to govern solid waste collection granted by other law." (Add.8.) The district court also noted that subdivision 6(c) states that "a city . . . may exercise any authority granted by any other law, including a home rule charter, to govern collection of solid waste." (*Id.*)

The Court in *Jennissen* cited these same provisions to hold that Minn. Stat. § 115A.94 does not completely "occupy the field" of solid waste collection such that all

other laws on the subject are precluded under the doctrine of *field* preemption. 913 N.W.2d at 462. The issue here, however, is different. The City does not argue field preemption.[15] Instead, the question is whether a referendum on Ordinance 18-39 conflicts with Minnesota law, which expressly: (1) requires cities to provide trash services; (2) gives cities the ability to choose organized collection to discharge that duty; (3) provides that cities may enter into contracts for organized hauling, provided they follow the process in Minn. Stat. § 115A.94, and (4) requires cities to enter into binding contracts *before* they can establish local controls for organized trash collection through ordinance. It plainly does conflict.

Moreover, contrary to the district court's analysis, subdivisions (6)(a) and (6)(c) do not change the outcome. By their terms, those provisions preserve *existing* "other law[s]" that "govern solid waste collection" and "govern the collection of solid waste." Minn. Stat. § 115A.94, subd. 6(a), 6(c). The Saint Paul City Charter does not have a provision that governs solid waste collection. Accordingly, these subdivisions are inapplicable. In addition, even if the Charter did have a provision related to solid waste collection, subdivision (6)(c), which references "a home rule charter" related to solid waste collection, provides that "a city or town or county may exercise" authority under that charter. It says nothing of the electorate.

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[15] The Court in *Jennissen* limited its holding to field preemption because that was the only issue presented. It did not address the issues presented here: conflict preemption and contractual impairment. *Jennissen*, 913 N.W.2d at 459-60 n.1, 2.

In sum, then, a referendum on Ordinance 18-39, which established rates and appropriate local controls for organized trash collection in Saint Paul and which indisputably followed the statutory requirements (including an executed contract and substantial public outreach) conflicts with Minnesota law governing trash collection. The referendum, if successful, would preclude what the statute permits: Saint Paul exercising its statutory authority to discharge its duty to provide trash-collection services through organized collection. This Court should reverse.

III. A referendum that strikes down the City's waste-collection ordinance would violate the contracts clauses of the state and federal constitutions.

While conflict preemption is certainly enough, a successful referendum of Ordinance 18-39 would also be unconstitutional. It would substantially impair the pre-existing (and statutorily authorized) contract the City has in place with a consortium of haulers. The Court should reverse for this alternative—but equally important—reason.

The state and federal constitutions prohibit laws that impair contracts. Minn. Const. art. I, § 11 ("No . . . law impairing the obligation of contracts shall be passed."); U.S. Const. art. I, § 10, Cl. 1 ("No state shall . . . pass any . . . Law impairing the Obligation of Contracts."). As this Court has said, "[t]he contract clauses prevent retroactive impairment of contracts." *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 435 (Minn. 2014).

These constitutional prohibitions apply broadly to any form of legislative action, including action by the people through local government initiatives. *Davies v. City of Minneapolis*, 316 N.W.2d 498, 502 (Minn. 1982) (holding that amendment to the

Minneapolis City Charter would unconstitutionally impair a pre-existing contract); *see also City of Middletown v. Ferguson*, 495 N.E.2d 380, 385 (Ohio 1986) (finding that local ballot initiative would unconstitutionally impair contract and stating: "Once the contract had been executed and performance had begun, the voters of the city . . . were not free to impair the city's contractual obligations on the contract.").

Of course, these prohibitions are not absolute. *See Christensen v. Minneapolis Mun. Emps. Retirement Bd.*, 331 N.W.2d 740, 750 (Minn. 1983) ("The federal constitutional prohibition against contract impairment . . . has been construed to mean that the state reserves some power to modify contract terms when the public interest requires."). Nevertheless, "the contracts clause [remains] a viable restriction of the powers of the States, and if a State undertakes to alter substantially the terms of a contract, it must justify the alteration, and the burden that is on the state varies directly with the substantiality of the alteration." *White Motor Corp. v. Malone*, 599 F.2d 283, 287 (8th Cir. 1979).

To this end, the United States Supreme Court has developed a two-part test to "determine when . . . a law crosses the constitutional line." *Sveen v. Melin*, 138 S. Ct. 1815, 1821 (2018). The threshold inquiry is whether the law would operate as a "substantial impairment of a contractual relationship." *Id.* at 1821-22 (quoting *Allied Structural Steel Co v. Spannaus*, 438 U.S. 234, 244 (1978)). To determine substantial impairment, the Supreme Court considers "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating its rights." *Id.* at 1822. If there would be a

substantial impairment, the inquiry turns to whether the "state law is drawn in an 'appropriate' and 'reasonable' way to advance 'a significant and legitimate public purpose.'" *Id.* (quoting *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983)).

This Court has adopted a similar test for purposes of the State's own contract clause. Like the federal test, this Court first asks "whether the state law has, in fact, operated as a substantial impairment of a contractual obligation." *Christensen*, 331 N.W.2d at 750. Importantly, the "severity of the impairment increases the level of scrutiny." *Id.* If there would be a substantial impairment of contract, "the state must demonstrate a significant and legitimate public purpose behind the legislation." *Id.* Moreover, "the state's action is examined in the light of this public purpose to see whether the adjustment of the rights and responsibilities of the contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." *Id.* at 751.

Applying these factors to the record here, it is clear that a referendum on Ordinance 18-39 would unconstitutionally impair the City's contract with the haulers. This Court should accordingly reverse.

A. A repeal of the ordinance enacting local controls for organized collection would substantially impair the City's five-year contract for organized collection.

Under the trash-collection statute, Saint Paul had to enter into a multi-year contract with a consortium of licensed haulers *before* it could implement controls for organized collection. Minn. Stat. § 115A.94, subd. 4(d). That contract gives the

consortium exclusive rights to haul in Saint Paul for five years, designates rates for service, establishes routes, and provides that the City will pay haulers for delinquent resident accounts.

Ordinance 18-39 establishes appropriate local controls to support organized hauling pursuant to Saint Paul's statutorily-authorized contract. Among other things, the ordinance establishes service rates (as required by statute), requires residents to select the size of their bin, and provides that the City will assess to collect payments made to haulers for delinquent accounts. These are the very implements of the contract. If the ordinance is repealed, the parties will still have a contract, but will be unable to meaningfully perform their obligations. Their reasonable expectations will be thwarted. This is the *sine qua non* of contractual impairment.

Two reasoned decisions from sister jurisdictions—though not binding—inform the analysis here. In *City of Middletown v. Ferguson*, the Ohio Supreme Court considered a ballot initiative that would have impacted the City of Middletown's contractual obligations with respect to a road-improvement project. Following public hearings, the city contracted with the Ohio Department of Transportation to perform the work. A public initiative was then presented that, if successful, would have restricted the issuance of bonds to finance the project. In particular, the initiative provided that bonds could not be issued to finance further construction unless authority was first obtained by election. *City of Middletown*, 495 N.E.2d at 385. The voters pushing for the initiative defended it by arguing that it did not impair the contract because it "merely operated as a repudiation of the contract" and, therefore, "no constitutional claim" was stated. *Id.*

The Ohio Supreme Court rejected the argument. The court affirmed the district court, which had reasoned:

> Once having granted certain powers to a municipal corporation, which in turn enters into binding contracts with third parties who have relied on the existence of those powers, the legislature (*or here, the electorate*), is not free to alter the corporation's ability to perform.

Id. (emphasis in original). The Ohio Supreme Court concluded that if the voters' ordinance, which aimed to stop construction while it was in progress, had been given effect, the express terms of the city's contract "would obviously have been impaired because the bargained-for completion of the project would have been impossible." *Id*. at 387.

The Oregon Supreme Court reached a similar conclusion in an organized waste collection case. In *Elliott v. City of Eugene*, 294 P. 358 (Ore. 1930), the city had by ordinance granted one garbage hauler the exclusive right to service the city for three years. Barely a year later, the city electorate amended the city charter to prohibit the granting of an exclusive contract for the hauling of solid waste. *Id.* at 359. The Oregon Supreme Court held that this charter amendment violated the contracts clause of the federal constitution and reasoned: "It is impossible to construe the charter amendment as anything but as effort to impair the contract between Bray Bros. and the city of Eugene." *Id.* at 361.

The same is true here. The Minnesota Legislature expressly gave cities the authority to enter into binding contracts to organize trash collection. Saint Paul then followed the statutory procedure and, in reliance on the statute that conferred the

contracting authority, entered into a five-year contract with the haulers to provide for organized hauling. Having exercised its statutorily conferred authority to contract for organized hauling, Saint Paul cannot have its ordinance enacting rates and local controls for organized hauling subject to referendum.

A referendum on Ordinance 18-39 would substantially impair the City's (and haulers') reasonable expectations and ability to perform. A few examples include the following:

- **Rates and payment.** The contract provides detailed rates for trash-collection services. (Contr. Ex. 4.a. (Add.65-66); *see also* Contr. at 23 § 2.15.2).) And it provides that those rates are "guaranteed" through December 31, 2019. (Add.65.) Ordinance 18-39 sets corresponding collection rates (as statute requires). (Add.61.) If the ordinance is repealed, the haulers either won't have the ability to charge for their work or, if they do, the residents would be under no obligation to pay for the services (as they are not a party to the contract). The City would likely have to pay for those services directly, completely eroding its reasonable expectations and rendering the contract a financial nightmare.

- **Delinquent accounts.** The contract provides that the City will pay the haulers for certain delinquent resident accounts. (See Contr. at 23-25 § 2.15.8.) Ordinance 18-39 provides the City with the corresponding ability to recover those payments from residents through assessments. (Add.62.) That the City would have that ability was one of the parties' primary expectations. Indeed, Exhibit 9 to the Contract is a "Billing Timeline" that details exactly when the City will pay delinquent accounts and when it will obtain repayment (by assessment) through the county auditor.[16] If the ordinance is repealed such that the City

[16] Exhibit 9 to the contract was filed with the district court as part of Exhibit K to the Declaration of Megan D. Hafner (filed May 6, 2019).

cannot recover directly from residents, its contractual obligation to satisfy delinquent accounts is impaired and its reasonable expectations frustrated.

- **Placement of trash.** The contract provides that "[t]he City shall require [residents] to place Trash, Yard Waste and Bulky Waste at the Collection Location in accordance with the terms and conditions of this Contract." (Contr. at 12 § 2.1.12.) Ordinance 18-39 sets corresponding, detailed guidelines for residents to place their trash (*see* Add.58-60), and provides that residents have the responsibility to "[f]ollow the City's guidelines and instructions for storing and setting out residential solid waste materials" (Add.59). If Ordinance 18-39 is repealed, the City's ability to satisfy its contractual obligation is impaired.

- **Separate service**. The contract provides that residents may contact the haulers for a separate trash pick-up if trash cannot be collected on the scheduled day and provides that the "[c]onsortium shall have the right to charge the [resident] for an additional pick-up." (Contr. at 12 § 12.1.13.) Ordinance 18-39 contains a corresponding provision that provides: "A [resident] who fails to comply with set-out requirements, who requests the designated hauler to return to pick up trash or yard waste or who requests off day service pickup from the designated hauler may receive such service for a fee." (Add.61.) If Ordinance 18-39 is repealed, haulers may be deprived of their ability to seek payment for off-day service (or, alternatively, the City may have to pay for it).

The district court did not address any of this. Instead, it reasoned there was no contractual impairment because Saint Paul was "well aware of its own charter that provides for a very broad referendum power on any ordinance" and "expressly agreed to terms that contemplated the impairment of the contract due to a legislative, judicial, or executive act." (Add.14.) As support, the district court relied exclusively on the contractual *force majeure* clause, which states:

> 13.6 Force Majeure
>
> The City, the Consortium and the Consortium Members shall not be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or legislative, judicial, or executive acts (each of the foregoing, a "Force Majeure Event"). The time period for performance in question shall be extended for only the actual amount of time said party is so delayed.

(Contr. at 48 § 13.6.)

The district court's analysis is plainly at odds with itself. In Minnesota, as elsewhere, a *force majeure* clause applies only to *unanticipated* events. *See Medford Olsen Honey, Inc. v. Adee*, 452 F.3d 956, 963 (8th Cir. 2006) ("The effect of a *force majeure* clause is to excuse performance in the event an unforeseen circumstance occurs."). As one court described it: "When a party assumes the risk of certain contingencies in entering a contract . . . , such contingencies cannot later constitute a force majeure." *Dunaj v. Glassmeyer*, 580 N.E.2d 98, 101 (Ohio Ct. Com. Pl. 1990); *accord Black's Law Dictionary* 657 (7th ed. 1999) (defining "*force majeure*" as an "event or effect that can be neither anticipated nor controlled"). But the district court concluded that Saint Paul subjectively anticipated a referendum at the time of contracting. (*See* Add.12-14.) This conclusion precludes the district court from relying on the *force majeure* clause to find there was no impairment.

Further, in *Davies*, this Court concluded that the risk of a valid petition for a charter amendment was not a business risk the parties to the contract agreed to assume:

> While the bondholders may have had actual notice of the fact that the appellants' efforts to supersede the special legislation were underway, the mere possibility that a valid petition for charter amendment would be filed cannot be viewed as somehow qualifying or diminishing the contractual rights of the bondholders. If that were the case, a municipality would be able to escape its own contractual obligations with impunity merely by later proposing a city charter amendment to supersede the special legislation which enabled it to act in the first place.

316 N.W.2d at 503.

Davies involved bond financing for the Metrodome stadium. As part of the financing, the City of Minneapolis enacted a hotel-motel liquor tax to provide a revenue stream to repay the bonds. *Id.* at 499. Certain residents objected to the tax and presented the City Clerk with a petition seeking a referendum to amend the City Charter to revoke the tax. *Id*. But before the petitioners filed the petition, the Metropolitan Council had already sold $55,000,000 of revenue bonds to finance the stadium. *Id.*

On appeal, the petitioners argued that they were entitled to have a referendum because their petition met the city requirements. They argued there would be no contractual impairment because Article XII, § 2 of the Minnesota Constitution specifically permitted the voters of Minneapolis to overturn the tax levy by charter amendment. *Id.* at 501. They also argued there would be no impairment of contract because the issuer and the purchasing bondholders knew of the petitioners' challenge to the tax levy. In fact, the offering document required as part of the bond sale disclosed the risk of the potential repeal of the tax that secured the bonds. In short, the petitioners' position was that the voters' potential rejection of the levy was a business risk the

bondholders assumed when they purchased the bonds and, hence, there could be no contractual impairment if the electorate rejected the tax.

This Court rejected the argument and concluded there was an impermissible impairment. *Id*. at 502. The Court reasoned that "[t]he mere possibility that a valid petition for charter amendment would be filed" did not "diminish the contractual rights of the bondholders." *Id*. at 503. In other words, the possibility of a charter amendment defeating the tax levy was not viewed as a "bargained for reality." Further, adopting the reasoning from the United States Supreme Court's decision in *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), this Court concluded that it did not matter that there was no direct evidence of a financial impact on the bondholders (although there is in this case). "The amendment, if approved, would clearly impair the contractual rights of the bondholders." *Id*. at 504.

The same logic applies here. The ordinance that is the subject of the proposed referendum is the ordinance through which Saint Paul established the local controls to effectuate the statutorily authorized contract. A referendum necessarily impairs the contract. The district court should have followed *Davies*. The court instead relied on a generic and inapplicable *force majeure* clause to conclude there is no contractual impairment. This Court should reverse.

B. The proposed referendum is not justified by an appropriate public purpose.

The second part of the *Christensen* analysis addresses whether the substantial impairment is reasonable and necessary to serve an important public purpose.

Christensen, 331 N.W.2d at 751; *United States Trust Co.*, 431 U.S. at 25. The public purpose must be an important one that benefits society as a whole. *See Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 445 (1934) (recognizing that impairment may be permitted only in situations where the "legislation was not for the mere advantage of particular individuals but for the protection of a basic interest of society"); *Middletown*, 495 N.E.2d at 387-88 (even given the importance of the reserved power of initiative, there was not sufficient public policy justification for the ordinance where the ordinance "did not affect simply a temporary alteration of contractual relationships . . . but worked a severe, permanent and immediate change in those relationships—irrevocably and retroactively") (quoting *Spannaus*, 438 U.S. at 250).

The district court's analysis of this second factor ignores the protections and procedures baked into the statute, which the City followed (and exceeded). Even with substantial impairment, the court declared that the "voting rights granted to the people" justified any impairment. As discussed at length above, the City's implementation of organized collection was the culmination of a lengthy process that included careful balancing of differing interests and substantial public outreach and input. The petitioners may desire an "up or down" vote on the merits of organized collection, but that desire is subsumed in the process the legislature outlined—and the City employed—under Minn. Stat. § 115A.94.

Moreover, the district court's logic is somewhat circular. In *every* case, the challenged legislation (or, in this case, petition) will have been the product of rights granted to the body that produced it. That fact alone cannot justify impairment of a

legitimate, statutorily authorized contract. If that were the case, the result of the impairment analysis would be preordained.

C. The district court failed to give adequate weight to the harms that will befall the City.

The district court's analysis of the third *Christensen* factor was similarly incomplete and superficial. The court was required to weigh the impairment against the need for "remedying of a broad and general social or economic problem." *Jacobsen*, 392 N.W.2d at 874 (quoting *Energy Reserves Group*, 459 U.S. at 412). The district court pointed to no such benefit, merely alluding to the public's general right to vote as paramount.

On the other hand, the City is under a legislative mandate to provide waste-collection services. Minn. Stat. § 115A.941. A repeal of Ordinance 18-39 would create nothing short of a chaotic situation that would leave the City in limbo for months and potentially require the City to spend millions from its emergency reserves to meet the statutory requirement.

The court simply dismissed the City's legitimate concern over a disruption to the collection system, asserting that the City's concerns were unfounded. But the record reflects it took months to implement the current system; it would take months to go back to open collection.

The electorate's right to a referendum is an important one. But precluding a referendum in this specific circumstance does *not* preclude the right of the electorate to seek referenda regarding other ordinances not subject to statutory mandate. Indeed, this

case presents the unique circumstance where the legislature has authorized cities to contract *before* establishing local controls by ordinance. Moreover, the City undertook months of study and public outreach to determine the best way to manage garbage collection. A small percentage of the electorate apparently disagrees with the City's decision, and is seeking to repeal the ordinance, which would strip the contract of important safeguards and other terms protecting the City and the consortium.[17]

The contractual impairment in this case is so severe, and the justification so limited, that submitting the enabling Ordinance to a single "yes-or-no" vote, particularly with no real feasible alternative in place, is unwarranted. This Court should reject the district court's analysis of the third *Christensen* factor and conclude that the public interests favor the City's position.

The *Christensen* factors show that a referendum on Ordinance 18-39 would unconstitutionally impair the City's pre-existing, statutorily-authorized contract that the parties are currently performing. This Court should reverse the decision below for this additional reason.

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[17] The proposed referendum is clear in its intention to impair the City's contract. It states that the referendum intends to challenge the "coordinated collection of trash, including service levels, billing rates and the duties of homeowners." (Hafner Dec. Ex. K (filed May 6, 2019).) As noted above, these items were bargained-for components of the contract.

CONCLUSION

The City of Saint Paul properly declined to put the proposed referendum of Ordinance 18-39 on the November ballot. Its decision is consistent with this Court's precedent. A referendum conflicts with Minnesota law and would constitute an unconstitutional impairment of contract. This Court should reverse the district court's decision to the contrary.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the form and length requirements of Minn. R. Civ. App. P. 132.01. The brief is produced with a 13-point, proportionately spaced font, and the length of this document is 9,659 words, including footnotes and headings. This document was prepared using Microsoft Word 2016 software.

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CERTIFICATE OF SUBMISSION

I hereby certify that the content of the accompanying paper brief and addendum is identical to the electronic version filed and served, except for any binding, colored cover, or colored back, and I understand that any corrections or alterations to a brief filed electronically must be separately served and filed in the form of an errata sheet.

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