

**STATE OF MINNESOTA
IN SUPREME COURT**

Bruce Clark, et al.,

Respondents,

vs.

City of Saint Paul, et al.,

Appellants.

**BRIEF OF AMICUS CURIAE
LEAGUE OF MINNESOTA CITIES**

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STATEMENT OF THE ISSUES

- I. The Waste Management Act authorizes a city's "governing body" to organize the collection of solid waste by negotiated contract after it has completed a detailed, thoughtful decision-making process. Does the Act preempt, by conflict preemption, a municipal voter-approval requirement that would substantively change the statutory process in at least two ways: (1) by substituting the electorate for the governing body as decisionmaker, and (2) by replacing the detailed, thoughtful decision-making process with one based only on the will of the voters?

The district court held that the proposed referendum does not conflict with state law.

- II. Is the proposed referendum manifestly unconstitutional because, if successful, it would result in an unconstitutional impairment of the negotiated organized-collection contract between the City and an organization of waste haulers?

The district court held that a successful referendum would not result in an unconstitutional impairment of the organized-collection contract.

STATEMENT OF THE IDENTITY OF AMICUS CURIAE

The League of Minnesota Cities (League) has a voluntary membership of 832 out of 853 Minnesota cities, including the city of Saint Paul (City).¹ It represents cities' common interests before courts and other governmental bodies and provides a variety of services to its members, including advocacy, information, education, training, policy-development, and risk-management services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities.

STATEMENT OF THE CASE AND FACTS

The League adopts the City's statement of the case and facts.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2016, the City Council began following the detailed, thoughtful decision-making process set forth in Minn. Stat. § 115A.94 of the Waste Management Act for deciding whether to move from a system of open collection of solid waste to one of organized collection.² More than a year later, on November 14, 2017, the City Council

¹ The League certifies under Minn. R. Civ. P. 129.03 that this brief was not authored, in whole or in part, by counsel for either party to this appeal, and that no other person or entity, besides the League, has made a monetary contribution to its preparation or submission.

² The Waste Management Act defines organized collection as a "system for collecting solid waste in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic service area or areas some or all of the solid waste that is released by generators for collection." Minn. Stat. § 115A.94, subd. 1. Open collection generally is defined as a system in which residents are free to contract with any licensed hauler.

organized collection, by executing a negotiated contract (the organized-collection contract) with an organization of waste haulers for a five-year term.³ On September 5, 2018, the City adopted Ordinance 18-39, the ordinance at issue here, which establishes rates and serves as an “appropriate local control” for the establishment of organized collection under the organized-collection contract.⁴

Resident voters timely filed a petition seeking a referendum on Ordinance 18-39. The City Council rejected the petition based on its determination that “the provision of the City Charter allowing referendum for the subject matter of the Petition is preempted by Minnesota Statutes §§ 443.28 and 115A.94, is an unconstitutional interference with the Agreement between the City and the Consortium, and conflicts with state public policy.”⁵

The resident voters challenged the City Council’s decision through a ballot-correction petition and declaratory-judgment action. The district court held that state law does not conflict with the proposed referendum, and that a successful referendum would not result in an unconstitutional impairment of the organized-collection contract.⁶ The

³ Exhibit E to the Petition for Correction of Ballot Error and for Declaratory Judgment; Minn. Stat. § 115A.94, subd. 3(a) (providing that a “local government unit may organize collection as a municipal service or by ordinance, franchise, license, negotiated or bidded contract, or other means”).

⁴ City’s Add.55-62; Minn. Stat. § 443.28 (requiring cities to implement rates for rubbish disposal through ordinance); Minn. Stat. § 115A.94, subd. 4d (providing that “[u]pon execution of an agreement...the city or town shall establish organized collection through appropriate local controls”).

⁵ Resolution 18-1922; City’s Add.64-65.

⁶ City’s Add.8-16.

district court ordered the City to submit Ordinance 18-39 for a referendum on the general-election ballot of Nov. 5, 2019, or on an earlier special-election ballot.⁷ The district court also ordered Ordinance 18-39's enforcement suspended, effective June 30, 2019.⁸ On June 24, 2019, this Court granted the City's Petition for Accelerated Review. On June 27, 2019, the district court agreed to stay its directive suspending Ordinance 18-39's enforcement.

In summary, the League urges this Court to reverse the district court's decision and to uphold the City Council's decision declining to place the proposed referendum on the general-election ballot. This Court should hold that the Waste Management Act preempts, by conflict preemption, any attempt—whether by initiative, referendum, or charter amendment—to add a municipal voter-approval requirement to the statutory process for implementing organized collection under Minn. Stat. § 115A.94. Such a requirement would have significant substantive effects on the statutory decision-making process—effects that would conflict with the express and implied provisions of state law in at least two ways. First, it would substitute the electorate for the “governing body” as decisionmaker. Second, it would replace the detailed, thoughtful decision-making process that the Legislature has mandated with one based only on the will of the voters.

In addition, if this Court chooses to decide the constitutional question presented here, it should hold that the proposed referendum is manifestly unconstitutional. The City demonstrates that a successful referendum would result in an unconstitutional impairment

⁷ City's Add.1-2.

⁸ *Id.*

of the organized-collection contract. The proposed referendum is also manifestly unconstitutional because it would violate the subject-matter limitation on the power of referendum. State law limits the power of referendum to legislative acts, but the referendum here seeks to invalidate an administrative act—implementation of organized collection by negotiated contract.⁹

These proposed holdings are consistent with this Court’s precedent and with the legislative intent underlying Minn. Stat. § 115A.94. They are also good public policy because the statewide application of a uniform procedure for implementing organized collection will provide certainty for city councils, city staff, residents, waste haulers, and other stakeholders and will ensure that the decision whether to adopt organized collection is based on the detailed, thoughtful decision-making process that the Legislature has mandated.

ARGUMENT

The League concurs with the City’s legal arguments and will not repeat them here. Instead, this brief addresses the legal issues from a broader municipal perspective, with the goal of informing this Court of facts or matters of law that “may have escaped consideration.”¹⁰

⁹ The proposed referendum’s stated purpose is 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)).

¹⁰ *State v. Finley*, 64 N.W.2d 769, 773 (Minn. 1954) (discussing an amicus curiae’s appropriate role).

I. This appeal will have a significant, statewide impact on city councils' ability to effectively manage their governmental operations, to comply with their contractual obligations, and to protect the public health, safety, and welfare.

This appeal will have a significant impact on Minnesota cities. This Court will adopt a rule of law on an issue of first impression that will apply statewide. Any Minnesota city is authorized to adopt organized collection if it follows the procedures in Minn. Stat. § 115A.94. Likewise, any Minnesota city is authorized to adopt a home rule charter if it follows certain statutory procedures.¹¹ Therefore, all 853 cities in Minnesota have a public interest in this appeal's resolution. Furthermore, 107 of the 853 cities currently have home rule charters. These 107 cities have a heightened public interest.

State law limits the power of referendum because it has disruptive effects on governmental operations. The referendum proposed here, if successful, would have a significant disruptive effect: it would invalidate the process by which roughly 74,000 households are currently receiving solid-waste collection—a vital service with direct effects on the public health, safety, and welfare.¹² Therefore, the League has a compelling public interest in advocating for a rule of law that properly interprets the limited power of referendum in a way that protects city councils' ability to effectively manage their

¹¹ See generally Minn. Stat. §§ 410.05-.11. Only home rule charter cities have authority to provide for initiative and referendum; statutory cities do not have similar authority. Minn. Stat. § 410.20.

¹² State law requires cities with a population of more than 1,000 to ensure that every resident in the city has garbage collection service and provides that a city may organize collection to fulfill this statutory obligation. Minn. Stat. § 115A.941(a). In short, the City is statutorily obligated to have an ordinance governing solid-waste collection.

governmental operations, to comply with their contractual obligations, and to protect the public health, safety, and welfare.

II. The proposed municipal voter-approval requirement would have significant substantive effects on the statutory decision-making process for implementing organized collection that would conflict with the express and implied provisions of state law in at least two ways.

In *Jennissen v. City of Bloomington*, this Court held that the Waste Management Act does not preempt, by field-occupation preemption, a charter-amendment petition seeking “to require voter approval before the City can implement organized collection of solid waste.”¹³ This Court reasoned that the Act does not occupy the field of organized collection; instead, it describes “only the minimum steps that a municipality must take to organize collection.”¹⁴

But the proposed municipal voter-approval requirement, when evaluated under a conflict-preemption analysis, is not simply an additional procedural step. Rather, such a requirement would have significant substantive effects on the statutory decision-making process for implementing organized collection—effects that would conflict with state law. This Court recently held that a “conflict exists between state law and a municipal regulation when the law and the regulation contain express or implied terms that are irreconcilable with each other, when the ordinance permits what the statute forbids, or when the ordinance forbids what the statute expressly permits.”¹⁵ A municipal voter-

¹³ 913 N.W.2d 456, 458 (Minn. 2018).

¹⁴ *Id.* at 461.

¹⁵ *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313 (Minn. 2017) (quotations omitted).

approval requirement would conflict with the express and implied terms of Minn. Stat. § 115A.94 in at least two ways.¹⁶

First, it would substitute the electorate for the “governing body” as the decisionmaker authorized to determine whether to organize collection.¹⁷ Second, it would replace the thoughtful decision-making process that the Legislature has mandated (a process that allows the public, waste haulers, and other stakeholders to provide input and that requires the city council to consider relevant information and public policies before making a decision) with one based only on the will of the voters (who may be more concerned with their private interests than with those of the community or the environment). In short, a referendum where residents simply cast votes without explanation is the antithesis of the detailed, thoughtful decision-making process that the Legislature has mandated in Minn. Stat. § 115A.94.

Furthermore, it will make it even more difficult and time-consuming for home rule charter cities to organize collection if, in addition to following the statutory process, they must also hold a citywide election. Such a result would frustrate the legislative intent underlying Minn. Stat. § 115A.94.

¹⁶ The City’s Brief describes additional ways in which the proposed referendum would conflict with state law.

¹⁷ The Legislature’s repeated references in § 115A.94 to “local government unit” and to “governing body of the city” demonstrate its intent, through plain, unambiguous language, to designate the city council, and not the electorate, as the authorized decisionmaker.

III. The adoption of a municipal voter-approval requirement would frustrate the legislative intent underlying Minn. Stat. § 115A.94, which was amended in 2013 to simplify the process for organizing collection.

When interpreting statutes, a court’s objective “is to ascertain and effectuate the intention of the legislature.”¹⁸ This Court should reject the adoption of a municipal voter-approval requirement because such a requirement would frustrate the legislative intent underlying Minn. Stat. § 115A.94, which the Legislature amended in 2013 to simplify the process for organizing collection.

Some context helps explain this legislative intent. The detailed process that city councils must follow before they can contract for citywide solid-waste collection is unique. Instead, cities generally have great discretion when contracting for city services. When a city council contracts with a private party to provide citywide service for snowplowing or for the trimming of boulevard trees, for example, it is simply required to reasonably exercise its administrative contracting authority, and a court will review this contracting decision under the deferential “arbitrary, capricious, or unreasonable” standard of review.¹⁹ But because waste haulers have long been vigilant advocates for their interests at the Legislature, there are unique procedural limitations on a city council’s administrative authority to contract with a private party to provide citywide

¹⁸ *Brua v. Minn. Joint Underwriting Ass’n*, 778 N.W.2d 294, 300 (Minn. 2010); Minn. Stat. § 645.16 (providing same).

¹⁹ *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 659 (Minn. 2015) (providing that the arbitrary, capricious, and unreasonable standard of review applies to government contracting decisions); *Griswold v. Ramsey County*, 65 N.W.2d 647, 651-52 (Minn. 1954) (providing same).

service for solid-waste collection—limitations currently codified at Minn. Stat. § 115A.94.

In response to our member cities' concerns about the cumbersome, lengthy process required to organize collection, the League sought legislative amendments to Minn. Stat. § 115A.94 in 2013. These amendments, which received support from independent waste haulers, were designed to strike a balance that would simplify the process to organize collection, while offering protection for the currently licensed waste haulers' interests in maintaining their market share of business.²⁰ The 2013 amendments replaced a lengthy 180-day period of planning and negotiating with a shorter 60-day minimum period of exclusive negotiation, which was designed to give a city's currently licensed haulers the first chance to develop an acceptable proposal for organized collection.²¹

But even if an agreement is reached during the exclusive-negotiation period, the process of organizing collection is still lengthy. The City here, for example, took 14 months to organize collection through exclusive negotiation. Furthermore, in situations where a city does not reach an agreement during the exclusive-negotiation period, it must satisfy several other lengthy procedural requirements before it can implement organized collection.²² In short, if resident voters can force the adoption of an additional municipal requirement to hold a citywide election, it would frustrate the legislative intent

²⁰ *Simplified Process Adopted for Organized Solid Waste Collection*, Cities Bulletin (May 13, 2013). Amicus Add.1-2.

²¹ 2013 Minn. Laws, ch. 45, §§ 1-6.

²² See Minn. Stat. § 115A.94, subds. 4a-4c.

underlying Minn. Stat. § 115A.94, by making it more difficult and time-consuming for home rule charter cities to organize collection. Such a result would also result in an unconstitutional impairment of contractual rights.

IV. The proposed referendum is manifestly unconstitutional.

The City demonstrates that the proposed referendum is manifestly unconstitutional because, if successful, it would result in an unconstitutional impairment of the organized-collection contract.²³ The proposed referendum is also manifestly unconstitutional because, by seeking to invalidate an administrative act (implementation of organized collection by negotiated contract), it would violate state law’s subject-matter limitation on the power of referendum.

Under this Court’s precedent, the decision to award a city contract is an administrative act. In *Nielsen v. City of Saint Paul*, this Court concluded:

The awarding of a contract is an administrative act of discretion vested by law in the governing authorities of the city. The courts cannot direct the authorities as to how they shall exercise that discretionary power, nor direct to whom they must let a contract. They may only enjoin them from doing so illegally, which must include an arbitrary, capricious, or unreasonable exercise of power.²⁴

Furthermore, under this Court’s precedent, the power of initiative and referendum are limited to legislative acts.²⁵ The rationale for such a limitation is there are certain

²³ City’s Brief pp. 27-39. Both the constitutions of the United States and Minnesota prohibit the passage of laws that impair contracts U.S. Const. art. I, § 10, cl. 1; Minn. Const. art. 1, § 11. *See Minneapolis Term Limits Coalition v. Keefe*, 535 N.W.2d 306, 307 (Minn. 1995) (providing that a city may refuse to put a proposed charter amendment on the ballot when it is “manifestly unconstitutional”).

²⁴ 88 N.W.2d 853, 854-55 (Minn. 1958).

²⁵ *Vasseur v. City of Minneapolis*, 887 N.W.2d 467 (Minn. 2016); *Housing and*

administrative decisions that must belong solely to the city council if our representative form of government is to function effectively. In *Oakman v. City of Eveleth*, this Court noted:

To allow [a referendum] to be invoked to annul or delay executive conduct would destroy the efficiency necessary to the successful administration of the business affairs of a city. In many cases it would entirely prevent the exercise of executive power necessary to carry out the acts determined upon by the legislative department. In the absence of a very clear declaration to the contrary, it must be presumed that the power of referendum was intended solely to apply to the legislative powers of the city.²⁶

And in *Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, this Court rejected a proposed charter amendment as “manifestly unconstitutional” because it would allow a referendum on “any action” of a city, including the “entering of contracts.”²⁷ This Court reasoned:

[T]he proposal would confer the right of referendum with respect to ‘any action’ taken by the city council, not limited to the adoption of ordinances. This broad referendum right not only appears to be without statutory authority...but, as the trial court suggests, might well create ‘a chaotic situation’ in city government. Some types of ‘action’ taken by the city without the adoption of an ordinance are the settlement of lawsuits, entering of contracts, acceptance or rejection of bids, sale of municipal bonds, appointment of city officials, levying of taxes, granting of licenses and permits, and the adoption of budgets.²⁸

The proposed referendum here is challenging Ordinance 18-39, but it is also necessarily challenging an administrative act—the City Council’s implementation of organized

Redevelopment Auth. of Minneapolis v. City of Minneapolis, 198 N.W.2d 531 (Minn. 1972); *Oakman v. City of Eveleth*, 203 N.W. 514 (Minn. 1925); See also, *Hanson v. City of Granite Falls*, 529 N.W.2d 485 (Minn. Ct. App. 1995).

²⁶ 203 N.W. at 517 (quotation omitted).

²⁷ 198 N.W.2d at 536-37.

²⁸ *Id.*

collection by negotiated contract. Indeed, a review of the relevant statutory language confirms that the proposed referendum cannot achieve its stated purpose of invalidating the “coordinated collection of trash” without also invalidating the administrative act that implemented organized collection.²⁹

The Waste Management Act expressly authorizes a city council to “organize collection as a municipal service or by ordinance, franchise, license, *negotiated or bid* contract, or other means, using one or more collectors or an organization of collectors.”³⁰ The City Council organized collection by negotiated contract and then adopted Ordinance 18-39, which adopts rates and serves as a local control to establish organized collection under the organized-collection contract.³¹ Therefore, the proposed referendum cannot achieve its stated purpose without invalidating an administrative act. In short, the proposed referendum will either be ineffective at accomplishing its purpose, or it will violate the subject-matter limitation on the power of referendum.

This Court may prefer to avoid deciding the constitutional question presented here, and, instead, to simply hold that conflict preemption applies.³² But if this Court chooses to answer the constitutional question, the League urges it to hold that that the City

²⁹ Again, the proposed referendum’s stated purpose is 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)).

³⁰ Minn. Stat. § 115A.94, subd. 3(a) (emphasis added).

³¹ The Waste Management Act directs city councils to “establish organized collection through appropriate local controls.” Minn. Stat. § 115A.94, subd. 4d.

³² *Kline v. Berg Drywall, Inc.*, 685 N.W.2d 12, 23 (Minn. 2004) (noting that the constitutional-avoidance canon provides a presumption that a statute is constitutional, and that a court is required to place such a construction on the statute that if possible).

properly declined to place the proposed referendum on the general-election ballot because it is manifestly unconstitutional. Such a holding is consistent with the Court's precedent and it is good public policy.

V. It would be good public policy to reject the adoption of a municipal voter-approval requirement.

There are three primary reasons why it would be good public policy to reject the adoption of a municipal voter-approval requirement. First, it would provide certainty that will protect the contractual rights of cities and their contractors. It is important to provide certainty for organized-collection contracts because they are significant, long-term contracts for a vital public service with direct effects on the public health, safety, and welfare. Indeed, the Legislature has expressed its intention to provide certainty for these contracts by requiring that an initial contract for organized collection be for a seven-year term.³³

Second, it would allow city councils, city staff, residents, and other stakeholders to move forward and take necessary action in reliance on the decision to organize collection. Once a city adopts organized collection, for example, it may need to spend significant public funds to educate the public about the new process or to purchase the garbage carts that will be provided to residents. The City here, for example, spent approximately 5 million dollars to purchase garbage carts.³⁴ Likewise, residents will need to take steps to

³³ Minn. Stat. § 115A.94, subd. 4d. When the City executed the organized-collection contract, the statute required an initial organized-collection contract to be for a term of three to seven years. *See* 2018 Minn. Laws, ch. 177, §§ 1-8.

³⁴ City's Brief p. 4.

contract with the waste hauler that is assigned to their service area. It is bad public policy to allow a city council's decision to organize collection to be overturned months or years after significant public resources have been expended to implement the decision.

Third, it would ensure that the decision whether to organize collection is based on a thoughtful decision-making process. It is true that the Waste Management Act does not mandate cities to adopt organized collection. Instead, even after a city council engages in the statutory process—whether in whole or in part—it remains free to decide not to organize collection. But the Act does expressly require a city council to use a detailed, thoughtful decision-making process to implement organized collection.³⁵

It is good public policy to require such a thoughtful decision-making process by the governing body, especially given the important public policy considerations at issue in deciding whether to organize collection. Individuals who are willing to serve on a city council are generally motivated to do so because they care about their community's future. Such a motivation is essential for making a sound planning decision based on a community's long-range interests. In contrast, resident voters may be more concerned with their immediate private interests and may not have the time or the interest to engage in a thoughtful decision-making process before casting a vote at a referendum.

³⁵ Similarly, state law does not mandate the outcome for a city's land-use decisions; the city of Ada is free to adopt different zoning regulations from the city of Zumbrota. But state law does require all city councils to follow a uniform, rational decision-making process to adopt their zoning regulations. *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002) (holding state law has preempted the process for adopting, amending, and repealing zoning ordinances).

And finally, it is important to remember that the Legislature is free to adopt a referendum requirement for the implementation of organized collection if it sees fit. The Legislature knows how to include statutory language requiring the ratification or reversal of a city council's decision by referendum, but it did not include such language in the organized-collection statute.³⁶

³⁶ The Legislature has expressly authorized voter-approval requirements with respect to other city council actions. *See, e.g.*, Minn. Stat. § 340A.413, subd. 3 (mandating a referendum if a city wants to issue additional on-sale intoxicating liquor licenses); Minn. Stat. § 412.301 (creating a reverse referendum right for a city council's issuance of certain certificates of indebtedness or capital notes); Minn. Stat. § 205.07, subd. 3 (authorizing a referendum when a city council adopts an ordinance to change the year of a city election).

CONCLUSION

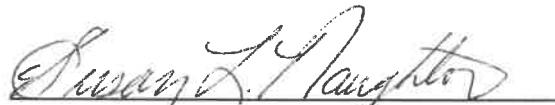
The League respectfully requests this Court to reverse the district court's decision and to uphold the City Council's decision declining to place the proposed referendum on the general-election ballot. This Court should hold that the Waste Management Act preempts, by conflict preemption, any attempt—whether by initiative, referendum, or charter amendment—to add a voter-approval requirement to the statutory process for implementing organized collection. In addition, if this Court chooses to answer the constitution question presented here, it should hold that the proposed referendum is manifestly unconstitutional.

These proposed holdings are consistent with this Court's precedent and with the legislative intent underlying Minn. Stat. § 115A.94. They are also good public policy.

Respectfully submitted,

League of Minnesota Cities

Dated: July 19, 2019



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STATE OF MINNESOTA
IN SUPREME COURT

Bruce Clark, et al.,

**CERTIFICATION OF
LENGTH OF DOCUMENT**

Respondents,

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Appellants.

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