

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0529**

Minnesota Voters Alliance, et al.,
Appellants,

vs.

The City of Minneapolis, et al.,
Respondents.

**Filed January 18, 2022
Affirmed
Klaphake, Judge*
Concurring specially, Connolly, Judge**

Hennepin County District Court
File No. 27-CV-20-12752

Gregory J. Joseph, Joseph Law Office PLLC, Waconia, Minnesota; and

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for
appellants)

James R. Rowader, Jr., Minneapolis City Attorney, Gregory P. Sautter, Caroline Bachun,
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Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellants Minnesota Voters Alliance (MVA), Gregg Sougstand, Marissa Skaja, and Doug Daggett filed a petition for a writ of quo warranto against respondents City of Minneapolis, the Minneapolis City Council, City Clerk Casey Joe Carl, and Assistant City Clerk Grace Wachlarowicz. The petition challenged the appointment of city employees as deputy city clerks for the purpose of including the employees on respondent city's ballot board established under Minn. Stat. § 203B.121 (2020).¹ The district court dismissed the petition under Minn. R. Civ. P. 12.02(e), concluding as a matter of law that respondents did not exceed their authority. Because we conclude that the Minneapolis City Charter authorizes the city to appoint deputy city clerks for the purpose of including them on the ballot board, and appellants have not shown that this authority is precluded by state law, we affirm.

DECISION

Quo warranto is available to challenge official action not authorized by law. *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020). The writ of quo warranto asks whether legal authority exists, not whether legal authority has been misused. *Id.* at 175. Appellate courts review de novo the district court's dismissal of a petition for a writ of quo warranto for failure to state a claim, accepting the facts alleged in the petition as

¹ Minn. Stat. § 203B.121 was amended during the 2021 regular and special sessions. 2021 Minn. Laws ch. 31, art. 3, §§ 4-5, at 835-36; 2021 Minn. Laws 1st Spec. Sess. ch. 12, art. 4, § 6, at 2170-71. We apply the version that was in effect at the time of the district court proceedings.

true and construing all reasonable inferences in favor of the petitioner. *Id.* Statutory interpretation, charter interpretation, and the application of law to undisputed facts are also reviewed de novo. *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 469-70 (Minn. 2016).

Minnesota Statutes section 203B.121, subdivision 1(a), provides that “[t]he governing body of each . . . municipality . . . with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board.” The duties of the ballot board include accepting or rejecting absentee ballot return envelopes, opening accepted envelopes, and storing and counting absentee ballots. Minn. Stat. § 203B.121, subds. 2-5.

In addition to “a sufficient number of election judges trained in the handling of absentee ballots and appointed as provided in sections 204B.19 to 204B.22,” section 203B.121 provides that “[t]he board may include . . . deputy city clerks who have received training in the processing and counting of absentee ballots.” Minn. Stat. § 203B.121, subd. 1(a). There is no definition in Minnesota’s election laws of “deputy city clerks.” And deputy city clerks are not subject to the minimum qualifications of election judges, who must be eligible to vote; able to read, write, and speak English; not a close relative of or living with another election judge serving at the same precinct during the same shift; and not related to a candidate. Minn. Stat. § 204B.19 (2020).

On October 2, 2020, the Minneapolis City Council passed a resolution “[a]pproving the appointment of election judges and deputy city clerks in connection with the November 3, 2020 General Election; and authorizing the Director of Elections to appoint additional election judges and deputy city clerks as necessary.” The resolution specifically provided:

That the list of election judges and deputy city clerks below be appointed to serve polling places, Health Care Facilities, the Absentee Ballot Board, and to serve as seasonal support staff performing duties and functions in connection with the November 3, 2020 General Election.

Be it Further Resolved that appointment of additional election judges and deputy city clerks by the Director of Elections be authorized.

Minneapolis, Minn., Resolution No. 2020R-258 (Oct. 10, 2020). The list attached to the resolution identified more than 100 deputy city clerks.²

In their petition for a writ of quo warranto, appellants assert that the Minneapolis City Council lacks authority under state law or its home rule charter to designate city employees as “deputy city clerks” to serve on a ballot board under Minn. Stat. § 203B.121.³ The district court determined that respondents have broad authority under the city’s home rule charter and state law to appoint deputy city clerks for this purpose.⁴

² According to the city, a total of 159 people served on the ballot board, 82 deputy city clerks and 77 “partisan election judges.” The difference between the 102 alleged in the petition and 82 asserted by the city does not affect our legal analysis, and the city’s authority to appoint deputy city clerks to serve in other election capacities is not before this court.

³ Appellant Minnesota Voters Alliance made similar arguments in earlier consolidated appeals from the denial of petitions for a writ of mandamus. *Minn. Voters All. v. County of Ramsey*, 962 N.W.2d 667 (Minn. App. 2021) (*MVA*), *rev. granted* (Minn. Aug. 24, 2021).

⁴ The district court also concluded that (1) appellants adequately alleged taxpayer and associational standing, and (2) respondents failed to establish that the petition was barred by res judicata or collateral estoppel. Neither party challenges these rulings on appeal.

Appellants’ specific concern appears to be that the city tasks only deputy city clerks, not election judges, with accepting or rejecting absentee ballot envelopes. Under Minn. Stat. § 203B.121, subd. 2(a):

Upon receipt . . . , *two or more members of the ballot board* shall examine each return envelope and shall mark it accepted or rejected in the manner provided in this subdivision. *Election judges performing the duties in this section* must be of different major political parties, unless they are exempt from that requirement

(Emphasis added.) The city agrees that “[o]nly deputy city clerks were assigned the duties of reviewing and accepting incoming absentee ballots.”

In this court, appellants first argue that section 203B.121 authorizes the city to *include* deputy city clerks on its ballot board, but not to *appoint* them as deputy city clerks solely for that purpose. We agree that section 203B.121 does not expressly authorize cities to hire or appoint deputy city clerks. But this conclusion does not end our analysis. Although appellants focus on whether *state law* authorizes the city to appoint deputy city clerks for the purpose of including them on the ballot board, we conclude that the correct focus is whether the *city charter* authorizes the appointment of deputy city clerks, and if so, whether state law precludes the exercise of that charter authority.

The Minnesota Constitution permits any local government unit, when authorized by law, to “adopt a home rule charter for its government.” Minn. Const. art. XII, § 4; *see also* Minn. Stat. § 410.04 (2020) (authorizing any Minnesota city to adopt a home rule charter).

A city charter “may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions,

as fully as the legislature might have done before home rule charters for cities were authorized”

Jennissen v. City of Bloomington, 913 N.W.2d 456, 459 (Minn. 2018) (quoting Minn. Stat. § 410.07 (2016)). The state may nevertheless limit a home rule charter city’s power to legislate, and cities lack power “to regulate in a manner that conflicts with state law or invades subjects that have been preempted by state law.” *Id.*

Respondents rely on the following charter provisions for the city’s authority to appoint deputy city clerks:

1.4(a): Powers plenary. The City, acting through the boards, commissions, committees, departments, and officers for which this charter or an ordinance provides, may exercise any power that a municipal corporation can lawfully exercise at common law.

. . . .

1.4(d): Unmentioned powers. This charter’s mention of certain powers does not limit the City’s powers to those mentioned.

. . . .

4.1(a): Governing body. The governing body is the City Council, in which the City’s general legislative and policymaking authority resides.

. . . .

4.2(e): City clerk.

(1) Election. The City Council elects the City Clerk, to whose election section 8.4(b) does not apply.

(2) Duties. The City Clerk must—

(A) keep the corporate seal and all municipal papers and records, including (but not limited to) the City Council’s proceedings (section 4.4(e));

(B) administer each election under the City Council’s direction (section 3.1(c))

Minneapolis, Minn., City Charter ch. 1, § 1.4(a), (d); ch. 4, § 4.1(a), 4.2(e) (2020).

Appellants do not address these charter provisions in their appellate briefs, despite the district court's acceptance of the city's arguments based on them. We conclude that the appointment of deputy city clerks falls within the plenary authority in section 1.4, the specific authority in section 4.1 establishing the city council as the governing and policymaking body, and the city council's specific authority in section 4.2 to select a city clerk, whose duties include "administer[ing] each election under the City Council's direction." The appointment of deputy city clerks under these provisions falls within the city's authority to "provide for any scheme of municipal government not inconsistent with the constitution" and to "provide for the establishment and administration of all departments of a city government." *See Jennissen*, 913 N.W.2d at 459 (quotation omitted); Minn. Stat. § 410.07 (2020).

Appellants appear to argue that section 203B.121 limits any charter authority that might exist to appoint deputy city clerks. Appellants specifically argue that a 2013 amendment to section 203B.121, subdivision 1(a), proves that the legislature intended to eliminate the possibility of city staff serving on a ballot board. Appellants do not identify an ambiguity in section 203B.121 that would support consideration of legislative history, and we discern none. *See In re Welfare of Child. of J.B.*, 782 N.W.2d 535, 545 (Minn. 2010) ("Resort to legislative history to interpret a statute is generally appropriate only where the statute itself is ambiguous."); *Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013) ("A statute is only ambiguous if its language is subject to more than one

reasonable interpretation.”). In the absence of an ambiguity, our task is to apply the plain language of the statute. *See Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001) (“Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute’s plain meaning.”). The plain language of section 203B.121 does not limit the authority of the city to appoint employees as deputy city clerks.

Appellants next argue that the city lacks authority to appoint multiple deputy city clerks to its ballot board because Minnesota Statutes section 412.151 (2020) authorizes the appointment of a single “deputy clerk,” whose duties do not include serving on a ballot board.⁵ Generally, “litigants are bound [on appeal] by the theory or theories, however erroneous or improvident, upon which the action was actually tried below[,]” *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957), and an appellate court generally will not consider the applicability of a statute unless the district court first addressed that question, *In re Tr. of Schwagerl*, 965 N.W.2d 772, 783 (Minn. 2021). We decline to reach this issue because it was not raised to, or decided by, the district court.⁶

Appellants last argue generally that any exercise of local charter authority to appoint deputy city clerks for inclusion on a ballot board under section 203B.121 “would almost

⁵ We rejected a similar argument based on the common meaning of “deputy” in *MVA*, 962 N.W.2d at 674.

⁶ Although appellants argued in their reply brief that an exception to this general rule applies, the only mention in their principal brief is a single sentence in a footnote. Appellate courts decline to reach issues that are inadequately briefed. *State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). And generally, issues not raised or argued in appellant’s principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010).

certainly be preempted and thus void.” They argue that any charter authority must be preempted because Minnesota election law “applies to all elections held in this state unless otherwise specifically provided by law,” citing Minn. Stat. § 200.015 (2020) and Minn. Stat. § 203B.121, subd. 1(c). Under appellants’ reasoning, no city has authority to appoint the (plural) “deputy city clerks” that may be included on ballot boards under section 203B.121. Because appellants identify no other government entity authorized to appoint deputy city clerks, the net result of their preemption argument is to allow only election judges to serve on ballot boards. Although appellants may prefer this result from a policy perspective, it is contrary to the plain language of section 203B.121, and we reject it.

Affirmed.

CONNOLLY, Judge (concurring specially)

I completely agree with the thoughtful and well-reasoned majority opinion. I write separately to point out that the wisdom of the city's allocation of tasks among ballot board members is not before this court; the only question is the city's authority to appoint employees as deputy city clerks. Nor is the wisdom of allowing ballot boards to include deputy city clerks of unknown political affiliation before this court, since the language of Minn. Stat. § 203B.121, subd. 1(a) (2020), allows it. Whether in this day of heightened skepticism of governmental action, this practice is a good idea is for a different branch of our government to decide. The role of the judiciary is to simply apply the law as written.