

STATE OF MINNESOTA

IN SUPREME COURT

A21-1169

A21-1170

Hennepin County

Gildea, C.J.

Took no part, Chutich, J.

Don Samuels, et al.,

Respondents,

vs.

Filed: November 10, 2021

Office of Appellate Courts

City of Minneapolis, et al.,

Appellants,

Mark V. Chapin,

Respondent,

Yes 4 Minneapolis,

Appellant.

Joseph W. Anthony, Norman H. Pentelovitch, Cory D. Olson, Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota, for respondents Don Samuels, et al.

James R. Rowader, Jr., Minneapolis City Attorney, Ivan Ludmer, Assistant City Attorney, Minneapolis, Minnesota, for appellants City of Minneapolis, et al.

Michael O. Freeman, Hennepin County Attorney, Rebecca L.S. Holschuh, Jeffrey M. Wojciechowski, Assistant County Attorneys, Minneapolis, Minnesota, for respondent Mark V. Chapin.

Terrance W. Moore, Thomas H. Priebe, Hellmuth & Johnson, Edina, Minnesota, for appellant Yes 4 Minneapolis.

Christy L. Hall, Gender Justice, Saint Paul, Minnesota, for amicus curiae Naomi Kritzer.

S Y L L A B U S

The essential purpose of a proposed amendment to the Minneapolis City Charter is communicated by the ballot question, and the language of the ballot question is not so vague and misleading as to constitute a palpable evasion of the requirement to submit the proposed amendment to voters. The district court therefore erred in granting a petition to correct the ballot under Minn. Stat. § 204B.44 (2020).

Reversed.

Considered and decided by the court without oral argument.

O P I N I O N

GILDEA, Chief Justice.

Respondents Don Samuels, Sondra Samuels, and Bruce Dachis (collectively, Samuels) filed a petition in Hennepin County District Court under Minn. Stat. § 204B.44 (2020), to correct the language the Minneapolis City Council had approved for a question that is on the ballot for the 2021 city election. The question asks voters whether to remove the Police Department from the City Charter and replace it with a Department of Public Safety that would be responsible for public safety functions.

The district court granted the petition under section 204B.44 on September 7, 2021, enjoining the City of Minneapolis from putting the question on the ballot as then framed. The City Council approved revised ballot language that same day. Samuels then moved to amend the district court's judgment and injunction to encompass the revised ballot language and the next day filed a new petition under section 204B.44, asking the district

court to strike the revised question from the ballot. The district court granted this motion and the petition in an order filed on September 14, 2021, concluding that the revised ballot language was complex, unreasonable, and misleading such that voters could not be expected to understand the meaning or essential purpose of the proposed charter amendment.

We granted the petitions for accelerated review filed by the City of Minneapolis¹ and Yes 4 Minneapolis. Given the impending start of early voting in Minneapolis, *see* Minn. Stat. § 204B.35, subd. 4 (2020), we ordered the parties to file informal memoranda on an expedited schedule, addressing the issues presented in the petitions for accelerated review. On September 16, 2021, we filed an order that reversed the decision of the district court. This opinion explains the reasons for our decision.

FACTS

Minneapolis is a home-rule charter city. *See* Minn. Stat. § 410.04 (2020) (allowing a city to “frame a city charter for its own government”). Residents of a home-rule charter city may seek to amend the charter by submitting a petition that complies with statutory requirements. Minn. Stat. § 410.12 (2020) (explaining the requirements); *see Jennissen v. City of Bloomington*, 938 N.W.2d 808, 813 (Minn. 2020) (explaining that residents of a home-rule charter city can “change their form of city government” by amending the city charter). If the petition is sufficient, the “form of the ballot” is “fixed by the governing

¹ The City appellants include the City Clerk, Casey Joe Carl, and the Minneapolis City Council. Unless otherwise indicated, we refer to these appellants collectively as the City. The Hennepin County Auditor, Mark Chapin, was a party in the district court proceedings and is a respondent in this appeal.

body,” and the proposed amendment is “submitted to the qualified voters at a general or special election.” Minn. Stat. § 410.12, subd. 4; *see* Minn. Const. art. XII, § 5 (stating that proposed amendments to a city charter “shall not become effective until approved by the voters”).

The proposed amendment is presented to the voters in the form of a ballot question. The ballot question must “be sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” Minn. Stat. § 410.12, subd. 4; *see also* Minn. Stat. § 204B.36, subd. 3 (2020) (requiring a “concise statement of the nature of the question” on a ballot).²

Appellant Yes 4 Minneapolis filed a petition with the City of Minneapolis in April 2021, which met the technical requirements to propose an amendment to the Minneapolis City Charter: the petition had the required number of signatures, included necessary identifying information, had the “text of the proposed amendment in full,” and included a summary of the proposed “new scheme or frame work of government.” Minn. Stat. § 410.12, subd. 1. The petition proposes to amend the Minneapolis City Charter by removing “language that requires a police department” and funding for “a police force,” and then “establish a new department of public safety responsible for integrating its public safety functions into a comprehensive public health approach to safety, including licensed peace officers if necessary to fulfill the responsibilities of the department.”

² Under the Minneapolis City Charter, “the Minnesota election law applies to each municipal election” unless it is inconsistent with charter provisions. Minneapolis City Charter § 3.1(a); *see* Minn. Stat. § 200.01 (2020) (defining Minnesota Statutes chapters 200–206 and 208–211C as “the Minnesota Election Law”).

In July 2021, the Minneapolis City Council approved language to put the question on the proposed amendment to the City Charter on the ballot for the November 2021 election in the city, including an explanatory note to accompany the question. Asserting that the City Council does not have the authority to include an explanatory note with a ballot question, Yes 4 Minneapolis filed a petition in district court under Minn. Stat. § 204B.44 to correct the ballot by striking the explanatory note. The district court granted this petition in part, concluding that the City has the authority to include an explanatory note with a ballot question, but the language the City Council had adopted in that note was “problematic.” Following this ruling, the City Council approved a revised ballot question and explanatory note.

Samuels then filed a petition under section 204B.44 and a motion for a temporary restraining order. Samuels asserted that the ballot language as revised was incomplete, misleading, and failed to identify the essential purpose and effects of the proposed amendment to the City Charter. Yes 4 Minneapolis and the City opposed Samuels’s requested relief. After holding a hearing, the district court concluded that the revised ballot language was vague, ambiguous, insufficient to identify the proposed amendment clearly, and misleading. The district court therefore enjoined local election officials from placing that language on the ballot.

The district court’s decision was filed on September 7, 2021. Later that day, the City Council met and approved a different version of the ballot language, as follows:

Shall the Minneapolis City Charter be amended to remove the Police Department and replace it with a Department of Public Safety that employs a comprehensive public health approach to the delivery of functions by the

Department of Public Safety, with those specific functions to be determined by the Mayor and City Council by ordinance; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could include licensed peace officers (police officers), if necessary, to fulfill its responsibilities for public safety, with the general nature of the amendments being briefly indicated in the explanatory note below, which is made a part of this ballot?

We refer to this ballot question as the current ballot language.³

The next day, September 8, 2021, Samuels filed a motion for relief under Minn. R. Civ. P. 60.02, asserting that the current ballot language failed to address the numerous ambiguities the district court had identified when concluding that the earlier revised ballot language was vague and misleading. Samuels asked the district court to modify the injunction and judgment entered on September 7 by encompassing the current ballot language. On September 9, 2021, Samuels filed a new petition under section 204B.44, asserting that the ballot requires correction because the current ballot language failed to clearly identify the essential purpose of the proposed charter amendment.

The district court held a hearing on Samuels's motions and petition on September 13, 2021. In an order filed on September 14, 2021, the court concluded that the current ballot language is misleading and thus failed to ensure that voters would understand the essential purpose of the proposed amendment. The district court therefore granted the

³ The current ballot language includes an explanatory note, which was not challenged in the district court proceedings held after September 7, 2021, and the note is not at issue in this appeal.

petition under section 204B.44 and enjoined local election officials from tallying, counting, or considering votes cast on the ballot question.⁴

Appellants Yes 4 Minneapolis and the City of Minneapolis each appealed from the district court's September 14 order, and then filed petitions for accelerated review, which we granted. See Minn. R. Civ. App. P. 118 (allowing a party to request accelerated review of an appeal pending in the court of appeals).

ANALYSIS

There is no dispute that the petition to amend the Minneapolis City Charter met the requirements set out in Minn. Stat. § 410.12, subd. 1 (regarding timing, required number of signatures and eligibility of voters, required text for the proposed amendment, and a summary of “the objects and purposes of the amendment proposed”), and therefore was properly submitted to the City's Charter Commission. Thus, the question presented is whether the current ballot language is “ ‘so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.’ ” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006) (quoting *State ex rel. Marr v. Stearns*, 75 N.W. 210, 214 (Minn. 1898), *rev'd on other grounds*, 179 U.S. 223 (1900)). This is a

⁴ By this time, ballots had already been printed with the current ballot language and were soon to be made available to voters who had requested an absentee ballot or wanted to vote early. See Minn. Stat. § 204B.35, subd. 4 (requiring absentee ballots to be delivered starting 46 days before the election). Under the district court's injunction, the question would remain on the ballot, but election officials would provide voters with a notice of ballot change that instructed voters not to vote on the question and indicated that any votes cast would not be counted or reported. At the request of the Hennepin County Auditor and the City of Minneapolis, we relieved election officials of the requirement to provide the notice of ballot change instruction to voters. *Samuels v. City of Minneapolis*, Nos. A21-1169, A21-1170, Order (Minn. filed Sept. 16, 2021).

legal question, subject to de novo review. *See Clark v. City of Saint Paul*, 934 N.W.2d 334, 339 (Minn. 2019).

The petition filed with the City proposes to “amend the Minneapolis City Charter to remove language that requires a police department,” remove other language regarding the police department, and “establish a new department of public safety” with the responsibilities stated in the petition. The proposed amendments to the City Charter are presented to the voters in the form of a ballot question. The current ballot language poses the question to voters in this form:

Shall the Minneapolis City Charter be amended to remove the Police Department and replace it with a Department of Public Safety that employs a comprehensive public health approach to the delivery of functions by the Department of Public Safety, with those specific functions to be determined by the Mayor and City Council by ordinance; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could include licensed peace officers (police officers), if necessary, to fulfill its responsibilities for public safety, with the general nature of the amendments being briefly indicated in the explanatory note below, which is made a part of this ballot?

The City argues that the district court erred in granting Samuels’s petition and injunction motion because the City Council, which holds legislative power, Minneapolis City Charter § 4.1(a), sets the “form” of the ballot question according to Minn. Stat. § 410.12, subd. 4. The City asserts that the current ballot language is sufficient to identify the proposed amendment because voters are asked to decide whether to remove the Police Department from the City Charter and replace it with a Department of Public Safety. The “details” in the current ballot language, according to the City, are sufficient to identify the proposed changes to the City Charter. The City argues that the district court’s concerns

were not about the language of the ballot question but about implementation issues if the proposed amendment passes. Because it “faithfully executed its duty” to identify for voters the changes to the City Charter sought by the amendment, the City argues the district court’s decision must be reversed.

Similarly, Yes 4 Minneapolis asserts that the current ballot language identifies the amendment clearly, distinguishes the question from other questions on the ballot, and communicates the essential purpose of the proposed amendment. Even if the current ballot language does not use the same words as the proposed amendment, Yes 4 Minneapolis asserts that the language is not subject to correction because it is not so unreasonable and misleading as to be a palpable evasion of the requirement to submit the proposed amendment to voters.⁵

Samuels asserts that the district court correctly recognized that the current ballot language is so vague and misleading as to rob voters “of their agency to make meaningful decisions” about city governance. He contends that the “essential purpose” of the proposed amendment, as stated in the petition submitted by Yes 4 Minneapolis, is to take away one thing—the Police Department—and create another—a Department of Public Safety. Nothing in the proposed amendments to the City Charter that are shown in the petition,

⁵ Citing to Minn. Stat. § 410.10 (2020), the City and Yes 4 Minneapolis assert that the proposed charter amendment question must be submitted to voters at the November 2021 election. The City decided to submit the question to voters at the November election, and our decision in this appeal does not depend on that decision. We note, however, that section 410.10 requires a vote “at the next general election” on a “proposed charter,” *id.*, subd. 1, while section 410.12 governs the process to vote on amendments to an *existing* charter. See Minn. Stat. § 410.12, subd. 4 (requiring a proposed amendment to a charter to be submitted to voters “at a general or special election”).

Samuels argues, requires a Department of Public Safety to “replace” any function or responsibility of the existing Police Department—yet the current ballot language tells voters that the Police Department would be “replace[d]” with a Department of Public Safety. Samuels asserts that telling voters the charter provisions that establish the Police Department will be removed, without also explaining that the removed department will not be replaced, is a “massive change,” a “misleading promise” to voters, and a failure to accurately characterize the purpose and effect of the proposed amendment.

Our review of the language of ballot questions is highly deferential. *See League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 646 (Minn. 2012) (referring to the “high degree of deference” in our review); *Breza*, 723 N.W.2d at 636 (referring to the “high standard set out in our precedent for finding a proposed constitutional amendment to be misleading”). This deferential review necessarily imposes on the challenger a “rigorous” standard. *League of Women Voters Minn.*, 819 N.W.2d at 648.⁶

Deference to legislative judgment in this context also dictates that we avoid substituting our judgment for word and form choices made in fixing the language of a question that will be on a ballot. *See State v. Duluth & N. Minn. Ry. Co.*, 112 N.W. 897,

⁶ Relying on the language of Minn. Stat. § 410.12, subd. 4, which states that a ballot question must be “sufficient to identify the amendment clearly,” the City argues that the language of a ballot question need only allow voters to “clearly recognize which amendment is being described.” Under this standard, the City argues, the current ballot language is more than sufficient.

To the extent that the City’s argument suggests that section 410.12, subdivision 4, imposes a different standard on ballot questions for a city charter, we need not address this argument because the City also embraces the standard set out in *League of Women Voters* and *Breza*.

898 (Minn. 1907) (stating that we will not “review the judgment and discretion of the Legislature in prescribing the form and substance of the question to be submitted, simply because . . . the question was not phrased in the best or fairest terms”). We do not judge “the quality of the work” done by those charged with framing the question that will be put before voters on a ballot, even if “badly done.” *State ex rel. Andrews v. Beach*, 191 N.W. 1012, 1012 (Minn. 1923); *see also State ex rel. Marr v. Stearns*, 75 N.W. 210, 214 (Minn. 1898) (declining to consider “whether the form of the ballot selected by the legislature is the best and fairest that could have been framed by a trained lawyer”), *rev’d on other grounds*, 179 U.S. 223 (1900). Because the form and manner of submitting a ballot question to voters is “left to the judgment and discretion” of the legislative body, we have said the only “implied limitation” in the drafting process is that the question “must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Stearns*, 75 N.W. at 214. We will not find a violation if the “clear and essential purpose” of a proposed amendment is “fairly expressed” in the ballot question. *Duluth & N. Minn. Ry. Co.*, 112 N.W. at 898–99.

For example, in *League of Women Voters Minnesota*, we acknowledged that the language of the ballot question did not “explicitly address” certain provisions of the proposed constitutional amendment, did not “use the same words used in the amendment itself,” and did not “list all of the potential effects of implementation,” which were “failures” that could be “criticized.” 819 N.W.2d at 649, 651 (also describing the ballot language as an “amalgamation” of various provisions). Nonetheless, these differences between the proposed constitutional amendment and the ballot question did not make the

question misleading because the “essential purpose” of the proposed amendment was communicated by the language of the question. *Id.* at 651 (also explaining that our “limited role” does not encompass “second-guess[ing] the wisdom of policy decisions” made by the Legislature); *see also Breza*, 723 N.W.2d at 636 (acknowledging that it was “possible that some voters may misinterpret the language” of a ballot question but declining to conclude that the language was unclear or misleading).

The current ballot language is longer than the question on the petition Yes 4 Minneapolis filed, and it does not track the language of the petition question precisely. For example, the petition asks whether the City Charter should be amended “to *remove language* that requires a police department,” (emphasis added), while the current ballot language asks whether the City Charter should be amended “to remove the Police Department.” Similarly, the petition asks whether “a new department of public safety” should be “*establish[ed]*,” while the current ballot language says the Police Department would be “*replace[d]* . . . with a Department of Public Safety.” (Emphasis added.) The City Council could have chosen to mirror the language of the petition question more closely, for example, by using “establish” rather than “replace” in describing the Department of Public Safety. But we will not wordsmith the language of a ballot question, even if “badly done.” *Beach*, 191 N.W. at 1012. We will defer to the judgment and discretion exercised in drafting ballot language if the question fairly communicates the “essential purpose” of the proposed amendment, is not misleading or unreasonable, and is not a palpable evasion of the requirement to submit the proposed amendment to voters. *Breza*, 723 N.W.2d at 636.

We conclude that the current ballot language meets these standards. The essential purpose of the proposed amendment to the City Charter is fairly communicated: references to the Police Department will be removed from the City Charter and a Department of Public Safety will be established. Further, read as a whole, the current ballot language is not misleading or vague—it states that the Department of Public Safety will use a “comprehensive public health approach,” states that the Mayor and City Council will decide on the “specific functions” of the new department, states that the new department “will not be subject to exclusive mayoral power,” and directs voters to “the explanatory note” that accompanies and is “part of” the ballot question.⁷ These details expand on the “remove” and “replace” clauses in the current ballot language and are a fair, reasonable summary of the proposed amendments to specific sections of the City Charter that are shown in the Yes 4 Minneapolis petition. *See League of Women Voters Minn.*, 819 N.W.2d at 649 (explaining that the challenged ballot question fairly captured the proposed constitutional amendment even though it was “an amalgamation” of individual provisions in that proposal).

⁷ The explanatory note states:

This amendment would create a Department of Public Safety combining public safety functions through a comprehensive public health approach to be determined by the Mayor and Council. The department would be led by a Commissioner nominated by the Mayor and appointed by the Council. The Police Department, and its chief, would be removed from the City Charter. The Public Safety Department could include police officers, but the minimum funding requirement would be eliminated.

Samuels views the “replace” term in the current ballot language differently. He asserts that what voters are told—the Police Department will be replaced with a Department of Public Safety—is inconsistent with reality. He contends that the new department will be a shell that may or may not have defined functions that may or may not include those performed by the current Police Department. The district court acknowledged that all the effects of a proposed amendment need not be included in the ballot language, but relying on *League of Women Voters Minnesota*, 819 N.W.2d at 651, noted that we said the meaning and effect of a proposed amendment may need to be part of a ballot question to ensure that voters understand the essential purpose of a proposed amendment.

In *League of Women Voters Minnesota*, the ballot question for a proposed constitutional amendment asked whether voters should be required to present “valid photo identification.” 819 N.W.2d at 640. The proposed constitutional amendment would have allowed a voter who could not provide that identification to cast a provisional ballot that would be counted only if certified as required by law. *Id.* The petitioners, who sought relief from our court under Minn. Stat. § 204B.44, argued in part that the ballot question was misleading because it omitted “an ‘effect’ ” of the proposed amendment, specifically, language explaining the provisional ballot process. 819 N.W.2d at 650. We clarified references made in a prior case to the “meaning and effect” of a proposed amendment as comments “made in the context of ensuring that voters [are] able to understand the ‘essential purpose’ of [a] proposed constitutional amendment.” *Id.* at 651 (quoting *Breza*, 723 N.W.2d at 636). We stated that we do not “require, as a condition of upholding [a]

ballot question,” that “the effects of the amendment at issue be included on the ballot.” *Id.* at 650–51; *see also id.* at 650 n.9 (stating that “our precedent does not require” that the effects of a proposed amendment “be stated in the ballot question in order for that question to pass constitutional muster”).

The changes in city governance that could result if the proposed amendment to the Minneapolis City Charter is passed may well be dramatic, massive, and extensive, as Samuels has argued. The City may well be criticized for failing to call out these impacts in greater detail in the ballot language. *See League of Women Voters Minn.*, 819 N.W.2d at 651. Minneapolis voters, however, must judge whether that criticism is fair; we do not “second-guess the wisdom of policy decisions” committed to a legislative body. *Id.*; *see also Jennissen*, 938 N.W.2d at 816 (“Whether the proposed charter amendment and its consequences are desirable is for the voters . . . to decide.”); *Beach*, 191 N.W. at 1012 (stating that even though the drafting may be “badly done, that is no reason why the [voters] should not be given an opportunity to approve or disapprove of it”); Minn. Const. art. XII, § 5 (conferring on voters the right to approve proposed amendments to a city charter). The essential purpose of the proposed amendment to the Minneapolis City Charter is fairly communicated in the current ballot language, and the objections to that question simply do not meet the high standard for us to conclude that the language is misleading, unreasonable, or a palpable evasion of the constitutional requirement to submit the question to a vote. *See, e.g., League of Women Voters Minn.*, 819 N.W.2d at 650–51; *Breza*, 723 N.W.2d at 636.

CONCLUSION

For the foregoing reasons, we conclude that the district court erred in granting the petition under Minn. Stat. § 204B.44, to correct the ballot, and erred in granting an injunction. We therefore reverse.

Reversed.

CHUTICH, J., took no part in the consideration or decision of this case.