



CITY OF SAINT PAUL
Mayor Christopher B. Coleman

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June 18, 2008

The Honorable Kathy Lantry
City Council President
320C City Hall
Saint Paul, Minnesota 55102

Re: Proposed Charter Amendment - Instant Run-Off Voting

Dear Council President Lantry:

Joseph Mansky, the Ramsey County Elections Manager, by contract providing election services to the City of Saint Paul (hereinafter "City"), informed the City that he has found sufficient a certain petition for an amendment to the City Charter. The proposed amendment to the City Charter calls for City elections to be held using what is commonly called "Instant Run-off Voting" (hereinafter "IRV"). Although Mr. Mansky found the number of signatures sufficient, he expressed five issue of concern with the petition's substance. They are:

1. Uncertainty over the legality of IRV;
2. Creation of conflicting voting systems for the School District and the City;
3. Unavailability of voting equipment and increased costs;
4. Lack of any savings from IRV despite claims to the contrary; and
5. Creation of a need for budget changes by the City.

The City Council will face a decision and a vote about placing the issue presented by the petition on the ballot. You have asked for our opinion regarding the Council's options and the legality of IRV in order to assist the Council in making its decision. You have asked the following questions.

QUESTIONS PRESENTED

1. Does the City Council have the legal authority to not submit a charter proposal to the voters?
2. Is the recently filed petition for a charter amendment that proposes Instant Runoff Voting ("IRV") constitutional and without any legal defects?

3. As the City's chief legal officer, please share with us any legal advice about best managing the City's liabilities and other legal considerations that you may deem important for the City Council to consider in determining whether to put the proposed IRV petition on the 2008 Ballot.

BRIEF ANSWER

This office has anticipated these questions and over the past eighteen (18) months has thoroughly researched, reviewed and considered all of the legal issues associated with IRV. During that time, I enlisted the resources of two assistant city attorneys and the deputy city attorney of the civil division for independent analyses of IRV's legality. Although it is impossible to predict with absolute certainty the judicial response to IRV, all three attorneys independently concluded that IRV is more likely than not to be determined unconstitutional and suffering from other legal defects by a reviewing court.

It is my job as the City Attorney to ensure that City officials hear and consider the civil servant staff attorneys' professional judgment. The professional judgment and advice of civil servant attorneys, who are not subject to political whims and influences, is a valuable part of the public process and should be a part of your considerations. It is also my job, however, to challenge staff attorneys to ensure our professional decisions meet client expectations, take into account public opinion, are unbiased and appropriately focus on legal issues and not on policy.

I am keenly aware that voters in the City of Minneapolis recently approved IRV and the parallel that plays regarding the extraordinary effort put into gathering the petition signatures to place IRV on the ballot in Saint Paul. I am also aware of the intense local public interest in IRV in Saint Paul. It is, however, not this office's role to consider the policy wisdom or popularity of IRV but only to answer the legal question you have presented.

Accordingly, it is the professional opinion of the City Attorney's Office that for the reasons stated herein, IRV is more likely than not to be determined by a reviewing court to be in violation of the Minnesota Constitution. In addition, a reviewing court would likely rule that the City is precluded by Minn. Stat. § 205.02 from enacting IRV as its voting system. If the City Council so chooses, the City is not obligated to place the proposed IRV charter amendment on the ballot.

FACTUAL BACKGROUND

On June 4, 2008, Saint Paul Better Ballot Campaign representatives submitted a petition seeking an amendment to the City of Saint Paul's Charter that would require IRV for city elections. The petition states as follows:

Sec. 7.04. Name on ~~primary~~ ballot.

Not later than six (6) weeks nor more than eight (8) weeks before the ~~primary~~ election, any person eligible may, by filing an affidavit and payment of fifty dollars (\$50.00) to the city clerk, have his or her name placed on the ~~primary~~ election ballot. Each person desiring to have his or her name placed on the ~~primary~~ ballot for councilmember shall state in the affidavit of candidacy the district for which he or she is a candidate.

~~Sec. 7.05. Primary election.~~

~~A primary election shall be held on the first Tuesday after the second Monday in September preceding any municipal election day.~~

Sec. 7.06. City election candidates. The mayor and councilmember(s)¹ the candidate of each party receiving the highest number of votes in the primary election for the office of mayor or the office of councilmember in any district shall be declared the nominee of his party for the office at the next city election and the candidate's name shall be placed on the municipal election ballot, together with the name of any candidate for the office nominated by petition in accordance with the law. shall be elected by the method of Single Transferable Vote, sometimes known as Instant Runoff Voting. The city council shall, by ordinance, establish the ballot format and rules for counting the votes.

If the law does not provide for election by party designation, the two (2) candidates for mayor receiving the highest number of votes in the primary election for the office and the two (2) candidates for the council in each district receiving the highest number of votes for council in that district shall be declared the nominees and the only nominees for the respective offices at the next city election.

IRV is one of several forms of ranked choice voting.² The mechanics of IRV can be explained in this manner:

[v]oters rank the candidates in order of preference. * * * First choices are counted. If no candidate receives a majority, the candidate with the fewest votes is defeated, and those votes are transferred to the next ranked candidate on each ballot. The votes are recounted. The process continues until one candidate has a majority of the votes and is declared the winner.³

This process eliminates the need for a primary election, hence the name instant run-off. IRV's proponents claim this system guarantees the winner of an election will be chosen by a majority of the voters.⁴

IRV's constitutionality has been a matter of some debate. In 1915, the Minnesota Supreme Court found a ranked-choice voting system used in Duluth unconstitutional. *Brown v. Smallwood*, 153 N.W.2d 953 (Minn. 1915). Proponents of IRV have argued that *Smallwood* is not controlling precedent because the ranked choice voting system found unconstitutional in *Smallwood* is different from IRV.⁵

¹ Note that the petition erroneously omits the clause "If the law prescribes that the election of mayor and councilmember be by party designation". This clause is in the current charter, and the intent of the petition presumably is to delete it.

² "Alternative Voting Systems: Facts and Issues," League of Women Voters of Minnesota Education Fund, September, 2004.

³ FairVote Minnesota website, April 8, 2008, http://www.fairvotemn.org/resources/tools/irvprimer_11142002.html.

⁴ *Id.*

⁵ "Municipal voting system reform: Overcoming the Legal Obstacles." Tony Anderson Solgard and Paul Landskroener, Bench and Bar, October 2002.

LEGAL DISCUSSION

1. The City is not obligated to place the IRV petition on the ballot.

Minnesota law discussed below clearly authorizes the City to refuse to place a charter amendment petition on the ballot where it is manifestly unconstitutional and illegal. Holding an election using IRV only to later have it declared invalid can be futile, frustrating, a waste of time and money, and can create undesirable delay and uncertainty in government. Mr. Mansky's letter further serves to highlight the costs and uncertainty. State statute requires the City to place all sufficient charter amendment petitions on the ballot. Minn. Stat. § 410.12, subd. 4 (2006) (stating "Amendments shall be submitted to the qualified voters at a general or special election and published as in the case of the original charter."). Case law, however, has long recognized a city's right to refuse to place a manifestly unconstitutional charter amendment on the ballot.

Minnesota courts first mention this issue in *State ex rel. Andrews v. Beach*, 191 N.W. 1012 (Minn. 1923). In *Andrews*, the Court held that the City of Mankato could be required through a writ of mandamus to place a charter amendment on an election ballot. The Court explained, however, that a city's charter and all amendments must be "in harmony with the Constitution and all the laws of the state." The Court cautioned, "We do not hold that an amendment to a charter must be submitted even though it is manifestly unconstitutional." *Id.* at 1013. Nine years later the Court held it was proper to enjoin an election on a proposed constitutional amendment which was not in an appropriate form. The Court reasoned that it had the authority "to save the trouble and expense" of holding a vote on a measure which, if adopted, the courts would be compelled to set aside. *Winget v. Holm*, 244 N.W. 331, 332 (Minn. 1932). Based on these two cases, in 1972 the Minnesota Supreme Court upheld an injunction that prohibited the City of Minneapolis from placing a charter amendment on the ballot that would require a vote of the electorate on all low-income housing development projects. *HRA v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972). In 1982, the Minnesota Supreme Court upheld the City of Minneapolis' refusal to place a charter amendment on the ballot that would preclude further levy of an excise tax which was used to partially fund repayment of bonds sold to construct the Hubert H. Humphrey Metrodome. *Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn. 1982). In *Davies*, the Minnesota Supreme Court expressed the following rule:

When a proposed charter amendment appears to be manifestly unconstitutional, the City Council must have the authority to avoid what would amount to a futile election and a total waste of taxpayers' money.

Id. at 504. As recently as 1995, the Minnesota Supreme Court found this rule to be "well established" when it upheld the City of Minneapolis' refusal to place a term limit charter amendment on the ballot. *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995).

It should be noted that a charter amendment need not be unconstitutional beyond a reasonable doubt to be "manifestly unconstitutional." In *Haumant v. Griffin*, the City of Minneapolis refused to place a proposed charter amendment on the ballot for legalizing medical marijuana. 699 N.W.2d 774 (Minn. Ct. App. 2005). The plaintiff argued that *Davies* and *Term Limits* authorized the City to refuse to place a proposed charter amendment on the ballot only if the measure was unconstitutional beyond a reasonable doubt. *Id.* at 779. The Court of Appeals rejected this argument, saying:

Appellant's argument, which is based on a dissenting opinion, relies on an overly strict reading of the limits that have historically been imposed on charter amendment proposals by Minnesota courts. Our review of the few cases dealing with this issue indicates that appellant's limitations on the "manifestly unconstitutional" analysis are artificial and misguided. * * *

It is clear that although courts have often used the phrase "manifestly unconstitutional" in their analysis, this phrase has never been interpreted as barring only those proposed amendments that are proved to be unconstitutional beyond a reasonable doubt. Appellant's attempt to add an additional element to the term "manifestly" is not persuasive. As the City of Minneapolis pointed out, there are no such gradations in our analysis. Courts have never said that a proposal, being only "somewhat unconstitutional" should be allowed to pass. Such a distinction would be illogical.

Id. at 779-80 (citations omitted).

2. IRV is not permissible under the laws of Minnesota.

Elections for Saint Paul municipal offices are governed by Minnesota statutes and the Minnesota Constitution as well as by the City Charter. In our opinion, state election law precludes the City from establishing its own voting system in this case. Further, to change from the City's current voting system to IRV requires a constitutional amendment.

A. The City may not establish its own voting system for general elections.

As a Minnesota home-rule charter city, the City of Saint Paul has broad authority to manage its affairs. The Minnesota Supreme Court in *State v. City of Crookston*, said:

The general rule is that, in matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld. The adoption of any charter provision contrary to the public policy of the state . . . is also forbidden. The power conferred upon cities to frame and adopt home rule charters is limited by the provision that "such charter shall always be in harmony with and subject to the constitution and laws of the state" (citation omitted.) But these limitations do not forbid the adoption of charter provisions as to any subject appropriate to the orderly conduct of municipal affairs, although they may differ from those of existing general laws.

91 N.W.2d 81, 83 (Minn. 1958); *see also A.C.E. Equipment Company v. Erickson*, 152 N.W.2d 739 (Minn. 1976).

In particular, Minn. Stat. § 410.21 (2006) grants home-rule charter cities authority to control their own elections. It states:

The provisions of any charter of any such city adopted pursuant to this chapter shall be valid and shall control as to nominations, primary elections, and elections for municipal offices, notwithstanding that such charter provisions may be inconsistent with any general law relating thereto, and such general laws shall apply only in so far as consistent with such charter.

Id. Minn. Stat. § 205.02 (2006), however, directly contradicts Minn. Stat. § 410.21, stating:

Subdivision 1. Minnesota Election Law.

Except as provided in this chapter the provisions of the Minnesota Election Law apply to municipal elections, so far as practicable.

Subd. 2. City elections.

In all statutory and home rule charter cities, the primary, general and special elections held for choosing city officials and deciding public questions relating to the city shall be held as provided in this chapter, except that sections 205.065, subdivisions 4 to 7 (primaries); 205.07, subdivision 3 (effect of ordinance changing day of municipal general election); 205.10 (special elections); 205.121 (nominating petitions); and 205.17, subdivisions 2 and 3 (ballot forms), do not apply to a city whose charter provides the manner of holding its primary, general or special elections.

Minn. Stat. § 205.02 (2006)(parentheticals added). Thus, one general law of the state expressly authorizes home-rule charter cities to control municipal general elections while another expressly prohibits it. We found no Minnesota case law harmonizing these two statutes. The Minnesota Attorney General has taken the position that Minn. Stat. § 205.02 controls over Minn. Stat. § 410.21. Op. Att’y Gen. (Oct. 27, 1995); Op. Att’y Gen. (Feb. 10, 2003); Op. Att’y Gen. (Aug. 23, 2007). The Attorney General reasoned that with regard to a general election, neither of these two statutes is more specific than the other. They cannot be reconciled and consequently, applying Minn. Stat. § 645.26, subd. 4 (2006) dealing with irreconcilable laws, Minn. Stat. § 205.02 controls because it is the most recently enacted law. Based on this, the Attorney General concluded that home rule charter cities have the ability to enact IRV for primary elections, but not for general elections.

Representatives of FairVote Minnesota and St. Paul Better Ballot Campaign have argued⁶ that the Attorney General is wrong. They contend that a home-rule charter provision authorizing IRV prevails over the general election laws for two reasons. First, they claim that Minn. Stat. Ch. 205 requires compliance “unless law expressly provides otherwise.”⁷ A charter provision is a law, and therefore it would take precedence. Second, they argue that the legislature has not so occupied the field of municipal elections as to pre-empt municipal control via a home-rule charter. They do not cite sources for these reasons and our legal research does not support the views expressed by FairVote Minnesota and St. Paul Better Ballot Campaign.

Opinions of the Attorney General are not usually binding. *Star Tribune Co. v. Univ. of Minnesota Bd. Of Regents*, 683 N.W.2d 274, 289 (Minn. 2004). In this case, however, the Attorney General’s reasoning is sound and would likely be adopted by the courts.

Addressing the first argument against the Attorney General’s opinion, we agree that a charter provision generally has the same status as a state statute. That does not mean, however, it trumps all general law. We do not read the relevant cases so broadly as to create plenary powers for home-rule charter provisions. As noted in *City of Crookston*, and many other similar cases, a

⁶ Memorandum to Saint Paul Charter Commission, from Jeanne Massey, Executive Director FairVote Minnesota, Ellen Brown, Board Member, FairVote Minnesota, Beth Mercer Taylor, Campaign Manager, St. Paul Better Ballot Campaign, dated February 4, 2008, p. 5.

⁷ Our review of Chapter 205 finds no such language. This language appears to be taken from “Municipal voting system reform: Overcoming the Legal Obstacles.” Tony Anderson Solgard and Paul Landskroener, Bench and Bar, October 2002. However, the problem of irreconcilable conflict appears in any event.

home-rule charter's broad power to regulate local matters is constrained by the limitation that the legislature may expressly withhold powers. 91 N.W.2d at 83. In this instance, Minn. Stat. § 205.02 expressly limits home-rule charter cities. Thus, in answering the second argument against the Attorney General's opinion, Minn. Stat. § 205.02 expressly pre-empts the City from enacting conflicting election laws. One commentator has argued that in the case of IRV home-rule charter provisions ought to prevail against general state election laws because a municipal election has no impact on the rest of the state. Consequently, this allows for small-scale experimentation with improvements to democracy.⁸ Although these reasons are consistent with sound public policy, we find they are not supported by Minnesota law as to general election voting systems. If Saint Paul adopted IRV and it was subsequently challenged in court, we would use these reasons to argue for a change in existing law. At this time, however, we opine based on the current law, not the law as it might become.

Conflict analysis requires conflicting statutes to be reconciled if possible. One statute expressly authorizes municipal control of municipal elections under a home-rule charter, while the other expressly prohibits it. We, like the Attorney General, see no plausible reconciliation between them. Being irreconcilable provisions passed at different sessions of the legislature, Minn. Stat. § 645.26 subd. 4. mandates that the one last adopted, Minn. Stat. § 205.02, is controlling. Therefore, the City of Saint Paul does not have the legal authority to adopt IRV for general city elections.

B. IRV is unconstitutional.

In 1915, the Minnesota Supreme Court held that the ranked-choice voting system used in Duluth was unconstitutional. *Brown v. Smallwood*, 153 N.W. 953 (Minn. 1915). W.H. Smallwood was elected municipal judge under a preferential voting system established by the Duluth City Charter. *Id.* at 954. John Brown, a voter, contested the election on the grounds that the Duluth preferential voting system was unconstitutional. *Id.* The district court ruled in favor of Smallwood and Brown appealed. *Id.* The Minnesota Supreme Court reversed, finding the system unconstitutional. *Id.* at 957.

Under the Duluth scheme:

All candidates go upon the official ballot by petition. The ballot provides for first choice, second choice and additional choice, votes. If the result of the first choice is a majority for a candidate, he is elected. If a count of the first choice votes brings no majority, the second choice votes are added to the first choice votes, and if a candidate then has a majority of the first and second choice votes, he is elected. If there is not a majority, the first and second choice votes are added to the additional choice votes, and the candidate having a plurality is elected. Each voter may vote as many additional choice votes as he chooses, less the first and second choice votes; that is, he may vote as many additional choice votes as there are candidates, less two.

Id. at 955. Four candidates stood for the election. *Id.* William L. Windom had the most first place votes at 4,408, but he did not have a majority of the 12,313 votes cast. *Id.* at 955. The first and second place totals found a plurality for Smallwood. *Id.* Finally, the first, second, and additional choice total of 6,581 out of a total of 18,860 resulted in a plurality for Smallwood of and he was declared the winner. *Id.*

⁸ Briffault, Richard, "Home Rule and Local Political Innovation," 22 J. Law & Politics 1 (2006).

The Court considered Minnesota Constitution, article 7, section 1 granting the right “to vote.” The Court stated:

When the Constitution was framed, and as used in it, the word "vote" meant a choice for a candidate by one constitutionally qualified to exercise a choice. Since then it has meant nothing else. It was never meant that the ballot of one elector, cast for one candidate, could be of greater or less effect than the ballot of another elector cast for another candidate. It was to be of the same effect. It was never thought that with four candidates one elector could vote for the candidate of his choice, and another elector could vote for three candidates against him. The preferential system directly diminishes the right of an elector.

Id. at 956. The Court then looked to other jurisdictions for guidance. After considering other states’ handling of various voting systems, specifically cumulative voting and restrictive voting, the Court focused upon preferential voting systems stating,

We know of but two cases involving the preferential system. One is *State v. Portland*, 65 Ore. 273, 133 Pac. 62. The Constitution of Oregon distinctly authorizes such system and it is of course valid. The other is *Orpen v. Watson (N.J.)* 93 Atl. 853. The court there reached a conclusion directly opposed to our views. We have given it full consideration. It does not accord with our views, and we do not follow it.

Id. at 957. The Court, concluded by saying,

Here the purpose is to adopt a different plan of voting, necessarily affecting what we think to be the clearly granted constitutional rights of the citizen. If the preferential system is adopted, it must be after a constitutional sanction by the people.

Id. at 957. Mr. Solegard and Mr. Landskroener argue that *Smallwood* should be given a narrow reading. They state that the system in *Smallwood* is called the Bucklin system. IRV is different from the Bucklin system in that a person’s vote ultimately counts once; either for the first choice, or for a subsequent choice only after one’s first choice is defeated. This difference may address some objections mentioned in *Smallwood*. Specifically, the Court in *Smallwood* noted that the Bucklin system allowed one voter to have his vote count for more than one candidate and that one’s second choice could end up defeating one’s first choice. Further, some one’s vote may only count for the first choice while another’s may be counted for the first, second, and even for additional choices. Solegard and Landskroener argue that IRV does not suffer from these infirmities.

On the other hand, opponents argue that IRV suffers from the same infirmity as the Bucklin system.⁹ They argue that the issue is not how votes are counted, but rather how many votes each voter is allowed to cast. They read *Smallwood* to forbid any elector from casting more than a single expression of opinion or choice. Therefore, they conclude IRV, like Bucklin, is unconstitutional.

In our view, the details of the two systems are not dispositive because the Minnesota Supreme Court is not likely to read *Smallwood* so narrowly. The rule of *Smallwood* is that, “[i]f the preferential system is adopted, it must be after a constitutional sanction by the people.” *Id.* at

⁹ Minnesota Voters Alliance Litigation Backgrounder, undated.

957. The Court cited favorably *State ex rel. Duniway v. Portland*, 133 P. 62 (Ore. 1913) (preferential voting allowed by express constitutional provision), *Rouse v. Thompson*, 81 N.E. 1109 (Ill. 1907) (cumulative voting allowed by express constitutional provision), *Maynard v. Board of District Canvassers*, 47 N.W. 756 (Mich. 1890) (cumulative voting unconstitutional without express constitutional provision), *State v. Constantine*, 42 Oh. St. 437 (1884) (cumulative voting unconstitutional without express constitutional provision).

After reviewing these cases, the Court said,

The quotations made from the different cases are not chance expressions. They are indicative of the idea, which permeates all legal thought, that when a voter votes for the candidate of his choice, his vote must be counted one, and it cannot be defeated or its effect lessened, except by the vote of another elector voting for one. A qualified voter has the constitutional right to record one vote for the candidate of his choice, and have it counted one. This right is not infringed by giving the same right to another qualified voter opposed to him. It is infringed if such other voter is permitted to vote for three opposing candidates.

Id. at 957. Thus, under *Smallwood*, plurality voting is constitutionally mandated and no other system is impliedly authorized. *Id.* Changing to any other voting method requires a constitutional amendment.

The one case the Court cited unfavorably is *Orpen v. Watson*, which the dissent called “directly in point”. *Id.* at 958. In *Orpen v. Watson*, the City of New Brunswick, New Jersey, elected its commissioners using a rank-ordered system. 93 A. 853, 854 (N.J. 1915). The vote count method was different than either the Duluth/Bucklin system or IRV. The New Jersey state constitution, like Minnesota, did not expressly authorize rank-ordered voting. The New Jersey Supreme Court, however, found it to be constitutional. *Id.* at 855. It reasoned:

The conclusion I have arrived at is, that as it is only the choice votes which go to make a majority that are counted as effective votes, and as no voter can vote for the same person but once in expressing his different choices, he can in no way cast more than one vote which can be counted for each office to be filled, because none of his other choice votes enter into or influence the result.

Id. The Minnesota Supreme Court expressly rejected this reasoning saying:

The court there reached a conclusion directly opposed to our views. We have given it full consideration. It does not accord with our views, and we do not follow it.

Smallwood, 153 N.W. at 957. Thus, the Minnesota Supreme Court considered and rejected the argument that a rank-ordered voting system where the voter’s vote only counts once is valid without an express constitutional provision. Therefore, even if a voter under IRV “can in no way cast more than one vote which can be counted for each office to be filled”, we conclude IRV still requires express constitutional authorization under Minnesota law.

We also point out that the majority of courts who have considered the matter require express constitutional authorization for non-plurality voting systems. See *State ex rel. Duniway v. Portland*, 133 P. 62 (Ore. 1913), *Rouse v. Thompson*, 81 N.E. 1109 (Ill. 1907), *Maynard v. Board of District Canvassers*, 47 N.W. 756 (Mich. 1890), and *State v. Constantine*, 42 Oh. St. 437 (1884). But see also *Orpen v. Watson*, 93 A. 853, 854 (N.J. 1915).

Finally, we note that although the Attorney General declined to issue an opinion, she expressed serious doubt as to IRV’s constitutionality. Op. Att’y Gen. (Aug. 28, 2007).

3. Legal considerations the Council may deem important to consider in determining whether to put the proposed IRV petition on the 2008 Ballot.

The Council is faced with two permissible options: to place the IRV petition on the ballot; or to refuse to place it on the ballot. While most petitions are placed on the ballot as a matter of course, the Minnesota Supreme Court has repeatedly recognized a city's legitimate need to avoid "a futile election and a total waste of taxpayers' money." *Davies*, 316 N.W.2d at 504. This concern is particularly compelling for two reasons: First, as described in Mr. Mansky's letter, IRV's cost is particularly high; and second, the City of Minneapolis is currently in litigation over the validity of an IRV provision adopted by its voters.¹⁰ That case, likely to be appealed regardless of the outcome at the district court level, should resolve the question of IRV's legality and constitutionality. The Council could reasonably conclude to wait for a decision in that case before placing the IRV petition on the ballot.

CONCLUSION

Based on the foregoing, we answer your questions as follows: The City is not obligated to place the proposed IRV charter amendment on the ballot. The City is expressly precluded from enacting IRV as its voting system by Minn. Stat. § 205.02, and it is not impliedly authorized by the Minnesota Constitution. The Council, to avoid "a futile election and a total waste of taxpayers' money", could wait to act until it knows the outcome of the pending litigation regarding IRV.

Sincerely,



John J. Choi
City Attorney



Gerald T. Hendrickson
Deputy City Attorney

cc: Mayor Chris Coleman
Members of the City Council
City Clerk Shari Moore
Joseph Mansky, County Elections Manager

¹⁰ *Minnesota Voters Alliance, et al., v. City of Minneapolis, et al.*, Fourth Judicial District, State of Minnesota, Court File No.: 27-CV-08-35