STATE OF MINNESOTA

IN SUPREME COURT

A17-0221

Court of Appeals

McKeig, J.
Concurring in part and dissenting in part,
Anderson, J., Gildea, C.J., Hudson, J.

Joel Jennissen, et al.,

Appellants/Cross-Respondents,

vs.

Filed: February 12, 2020
Office of Appellate Courts

City of Bloomington,

Respondent/Cross-Appellant.

Gregory J. Joseph, Halper & Joseph, PLLC, Waconia, Minnesota, for appellants/cross-respondents.

George C. Hoff, Shelley M. Ryan, Hoff Barry, P.A., Eden Prairie, Minnesota, for respondent/cross-appellant.

Susan L. Naughton, League of Minnesota Cities, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

S Y L L A B U S

1. A proposed amendment to a city charter is not improper when the amendment merely modifies the process by which a city council may change the type of trash collection, and supersedes conflicting ordinances.

2. A proposed amendment to a city charter does not violate the Contract Clauses of the United States and Minnesota Constitutions when the amendment only impairs a city's performance under the contract but does not substantially impair the city's contractual obligations.

Affirmed in part and reversed in part.

O P I N I O N

MCKEIG, Justice.

In 2015, respondent and cross-appellant City of Bloomington ("the City") changed from a system of open trash collection to a system of organized collection. A group of residents opposed this change and attempted, through an amendment to the City Charter, to require that voters pre-approve a change in the method of trash collection. The City refused to put the proposed charter amendment on the ballot, reasoning that it: (1) was preempted by state law, (2) was an attempt to exercise the voter referendum power through an improper means, and (3) was manifestly unconstitutional as a violation of the Contract Clauses of the United States and Minnesota Constitutions.

This appeal is the second time we have reviewed this case. In the original proceeding, the district court held that the proposed charter amendment would not violate the Contract Clauses of the United States and Minnesota Constitutions, but was preempted by state law. On appeal, we held that the proposed amendment was not preempted by state law. *Jennissen v. City of Bloomington*, 913 N.W.2d 456 (Minn. 2018) (*Jennissen II*). We remanded the case to the court of appeals for a decision on whether the proposed amendment would violate the Contract Clauses and whether it was, in fact, an "improper

referendum." *Id.* at 462. On remand, the court of appeals held that the proposed charter amendment was not "manifestly unconstitutional," but determined that it was an improper referendum. *Jennissen v. City of Bloomington*, No. A17-0221, 2018 WL 5316187, at *5–6 (Minn. App. Oct. 29, 2018) (*Jennissen III*).

We hold that the proposed amendment is not an improper exercise of the charter amendment power and is not manifestly unconstitutional.

FACTS

The facts of this case are undisputed. The City of Bloomington is a home-rule charter city. Its city charter permits residents to legislate by initiative, recall its elected officials, and veto ordinances by referendum. Bloomington, Minn., City Charter § 5.01 (2019). Residents can also amend the city charter by popular vote. Bloomington, Minn., City Charter § 5.09 (2019); *see* Minn. Stat. § 410.12, subd. 4 (2018).

Before December 2015, Bloomington had an open trash collection system, meaning that residents contracted individually with trash hauler companies to have their waste removed. In October 2014, the City began the statutory process for changing to an organized trash collection system. *See* Minn. Stat. § 115A.94 (2018). Before this process was complete, appellants submitted an initiative petition proposing an ordinance that would require the City to seek voter approval before implementing organized trash collection. Appellants brought suit in Hennepin County on June 16, 2015, to compel the City to put the initiative on the ballot. *Jennissen v. City of Bloomington*, No. 27-CV-15-11494 (Henn. Cty. Dist. Ct. filed Apr. 25, 2016) (*Jennissen I*).

The City continued the process of implementing organized trash collection while *Jennissen I* was pending. On December 21, 2015, the City adopted Ordinance 2015-45, implementing organized trash collection, and the Bloomington City Council approved a contract with the trash haulers for a term of five years, effective that same day.

On April 25, 2016, the district court in *Jennissen I* granted summary judgment to the City and denied summary judgment to appellants, holding that the proposed initiative was not a proper ordinance. Appellants did not appeal the district court's decision. Instead, on May 18, 2016, appellants filed a petition to amend the city charter with Bloomington's Charter Commission Secretary.[1] The petition proposed adding the following language to the charter:

> Unless first approved by a majority of voters in a state general election, the City shall not replace the competitive market in solid waste collection with a system in which solid waste services are provided by government-chosen collectors or in government-designed districts. The adoption of this Charter amendment shall supersede any ordinances, ordinance amendments, or charter amendments related to solid waste adopted by the City Council in 2015-2016.

The City declined to allow a vote by residents on the amendment, concluding that it was preempted by state law, manifestly unconstitutional because it impaired the obligation of the City's contract with the haulers, and an attempted improper referendum.

Appellants then sued to have the proposed amendment put on the ballot. The parties filed cross-motions for summary judgment, and the district court granted summary

[1] Appellants also attempted to repeal the ordinance by referendum shortly after its passage. That referendum was not placed on the ballot because the petition did not comply with the procedural requirements of a referendum.

judgment to the City. Although the court held that the amendment was not manifestly unconstitutional, it granted summary judgment to the City on the theory that state law preempted the amendment. The district court did not reach the improper referendum question. The court of appeals affirmed, holding that the amendment was preempted without reaching the other issues. We reversed the court of appeals, holding that the proposed amendment was not preempted and remanded for consideration of the remaining issues. *Jennissen II*, 913 N.W.2d at 462.

On remand, the court of appeals held that the amendment was not manifestly unconstitutional because, under an automatic-termination provision, the contract had already terminated and thus could not be unconstitutionally impaired. *Jennissen III*, 2018 WL 5316187 at *4–5. On the improper-referendum issue, the court held that the amendment was impermissible because its second sentence stated an intent to repeal an ordinance by charter amendment. *Id.* at *6. Because the charter already provided a method by which the residents could repeal an ordinance, the court of appeals reasoned, appellants could not use the charter amendment power to accomplish that repeal. *Id.*

Appellants requested review of the decision of the court of appeals on the improper-referendum issue, and the City filed a conditional cross-petition for review on the issue of the constitutionality of the proposed amendment. We granted review on both issues.

ANALYSIS

On appeal from summary judgment, we examine whether any genuine issues of material fact are present and whether the district court erred in its application of the law.

Osborne v. Twin Town Bowl, Inc., 749 N.W.2d 367, 371 (Minn. 2008). This case involves "[t]he application of statutes . . . and local ordinances to undisputed facts," which is "a legal conclusion and is reviewed de novo." *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008); *see also Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 469–70 (Minn. 2016) ("The parties' arguments, requiring us to interpret provisions in state statute and in the City Charter, present a legal question subject to de novo review.").

I.

We first address the City's argument that the charter amendment is an attempt to evade the requirements of a referendum. Municipalities may refuse to put a proposed city charter amendment to a vote if it is not in proper form. *Vasseur*, 887 N.W.2d at 471; *see Hous. & Redev. Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972). To determine whether the City was correct in its refusal, we must look at the powers granted to the residents of the City of Bloomington through its charter and the powers granted to residents of charter cities, more generally, by state law.

A.

We begin with a brief discussion of municipal governance. The Minnesota Constitution permits "[a]ny local government unit . . . [to] adopt a home rule charter for its government." Minn. Const. art. XII, § 4. Subject to the limitations in Minnesota Statutes chapter 410, 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." Minn. Stat. § 410.07 (2018). By adopting or amending a city

charter, residents "may prescribe methods of procedure in respect to the operation of the [city] government thereby created." *See id.*

Charter amendments are a mechanism for residents to change their form of city government. Minn. Stat. § 410.12 (2018). The process for amending a city charter is governed by state statute. According to state law, residents of home-rule charter cities who are registered to vote may petition for a proposed amendment to be placed on their ballots. *Id.*, subd. 1. If the petitioning residents solicit enough signatures, meet filing deadlines, and satisfy other procedural requirements, their proposed charter amendment must be put to a vote. *Id.* If an amendment is not in "proper form," a city may refuse to put it to a vote to avoid the expense of holding an election only to have the results invalidated. *Hous. & Redev. Auth.*, 198 N.W.2d at 536.

A fundamental premise of home-rule city charters is that they may provide for any scheme of municipal government that is "not inconsistent" with the constitution, state law, and state public policy. *See* Minn. Stat. § 410.07. A city charter may grant its citizens broad legislative power or vest legislative power in its city council alone. *See, e.g.*, *Vasseur*, 887 N.W.2d at 471–72. For example, one way a city charter may permit residents to exercise legislative authority is through referenda. Minn. Stat. § 410.20 (2018); *see also Clark v. City of Saint Paul*, 934 N.W.2d 334, 344 (Minn. 2019) ("[A] referendum simply acts as a vote on an ordinance by a broader group—local residents—similar to the vote by elected officials."). The referendum process allows voters to temporarily suspend and, by majority vote, repeal an ordinance passed by city council. *See St. Paul Citizens for Human Rights v. City Council*, 289 N.W.2d 402, 404 n.2 (Minn. 1979). In addition to any powers

granted by city charters, Minnesota state law provides that residents shall have the power to propose amendments to the city charters themselves. Minn. Const. art. XII, § 5.

Here, the Bloomington City Charter grants broad legislative authority to its citizens. The Charter explicitly vests Bloomington residents with the authority to engage in direct democracy through initiatives, referenda, and recalls. Bloomington, Minn., City Charter §§ 5.01, .09. The Charter outlines the proper procedure for exercising the referendum power, specifying the deadlines and signature requirements for completing a petition. Bloomington, Minn., City Charter § 5.10 (2019). Bloomington residents are also able to propose charter amendments "in accordance with the constitution and statutes of Minnesota." Bloomington, Minn., City Charter § 5.09; *see also* Minn. Stat. § 410.12.

B.

Next, we consider the text of the proposed amendment in the context of the authority granted to Bloomington residents. The proposed amendment states:

> Unless first approved by a majority of voters in a state general election, the City shall not replace the competitive market in solid waste collection with a system in which solid waste services are provided by government-chosen collectors or in government-designed districts. The adoption of this Charter amendment shall supersede any ordinances, ordinance amendments, or charter amendments related to solid waste adopted by the City Council in 2015-2016.

1.

First, we must consider whether this proposed amendment is consistent with the constitution, state law, and state public policy. Minn. Stat. § 410.07; *Vasseur*, 887 N.W.2d at 472. A charter provision "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." Minn. Stat. § 410.07. It may also "prescribe methods of procedure in respect to the operation of the government thereby created." *Id.*

Here, the first sentence of appellants' proposed amendment would require prior approval from a majority of voters before the City Council could establish an organized waste-collection system. This amendment changes the procedure by which organized trash collection could be initiated in the City of Bloomington. This exercise of the residents' charter amendment power is proper under Minnesota law. *See Hous. & Redev. Auth.*, 198 N.W.2d at 536 (noting that "there appears to be no reason why" an amendment that "merely implements a right conferred by Minn. Const. art. 11 and by Minn. Stat. [§] 410.20" would be improper).

The City urges us to treat this case similarly to *Vasseur*. In *Vasseur*, we concluded that the Minneapolis City Council properly refused to put a minimum-wage charter amendment to a vote in the general election. 887 N.W.2d at 471. *Vasseur* is inapposite. The minimum-wage amendment at issue in *Vasseur* "constitute[d] an exercise of general legislative authority." *Id.* In contrast, the Bloomington amendment would change the methods of procedure by which its city council can implement organized trash collection. Whether viewed as a procedural safeguard or hurdle, this amendment is within the grant of authority given to residents in Minn. Stat. § 410.07.

Finally, the proposed charter amendment's procedural change is not one that could be accomplished by referendum. A referendum to suspend and possibly repeal the ordinance may have provided short-term relief to the residents and may have been an

obvious means of exercising powers granted to city residents under the charter. But a referendum would not have provided the structural change to government that these residents seek to achieve by amending the charter itself and establishing a new procedure for operating city government.

Because the first sentence of the amendment proposes a new procedure for operating the city government without violating the constitution, state law, or state public policy, the first sentence is a lawful exercise of the charter amendment power.

2.

The City argues that, by allowing the charter amendment to supersede existing ordinances and charter provisions, the second sentence improperly converts the amendment to a referendum. We disagree.

The City misconstrues the nature of the referendum power in two ways. First, a referendum's potency is not merely its capacity to repeal, but its grant of authority to a small group of citizens to *suspend* an existing ordinance pending the final resolution of the matter at the ballot box. *See St. Paul Citizens for Human Rights*, 289 N.W.2d at 404 n.2. No other legislative powers granted to residents have the ability to preliminarily upend the status quo. For that reason, "[t]he right to suspend, and possibly to revoke, as given by the referendum . . . is an extraordinary power which ought not unreasonably to be restricted or enlarged by construction." *Aad Temple Bldg. Ass'n v. City of Duluth*, 160 N.W. 682, 684 (Minn. 1916).

Second, the referendum process is not the exclusive method by which residents may repeal existing ordinances. For example, residents may choose to repeal an existing

ordinance by adopting a replacement ordinance through the initiative process. *St. Paul Citizens for Human Rights*, 289 N.W.2d at 405. The consequences of exercising an alternative form of authority do not convert a lawful initiative into a referendum in disguise. *See id.* Similarly, there may be times, as in the present case, where a proposed modification touches on existing ordinances, but nothing in chapter 410 prevents such a modification from moving forward just because it might result in the repeal of an ordinance.

Minnesota Statutes chapter 410 grants home-rule city residents the power to amend the city charter so that they can establish new procedures for their city's operations. Chapter 410 contemplates broad authority to amend city charters, and nothing in the proposed charter amendment conflicts with such authority. If the charter amendment were adopted, the city council would need to obtain voter approval before exercising its legislative authority in certain circumstances. As a result of the second sentence, the proposed charter amendment would supersede any existing ordinances adopted under conflicting procedures. Whether the proposed charter amendment and its consequences are desirable is for the voters of Bloomington to decide.

For these reasons, we hold that appellants' proposed charter amendment is not an improper referendum.

II.

Next, we turn to the question of the proposed amendment's constitutionality. Municipalities may refuse to put a proposed city charter amendment to a vote when it is "manifestly unconstitutional." *Davies v. City of Minneapolis*, 316 N.W.2d 498, 504

(Minn. 1982). The City argues that the proposed amendment would violate the Contracts Clauses, if enacted, and therefore is manifestly unconstitutional.[2] We disagree.

The Contracts Clause of the United States Constitution states that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. Likewise, the Minnesota Constitution states that "[n]o . . . law impairing the obligation of contracts shall be passed." Minn. Const., art. I, § 11.

We use a three-part test to analyze a contract-impairment claim. *Clark*, 934 N.W.2d at 345; *see Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 750–51 (Minn. 1983) (adopting the three-part test announced in *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983)). First, we consider whether the challenged legislation operates "as a substantial impairment of a contractual obligation." *Clark*, 934 N.W.2d at 345. Second, if a substantial impairment is found, we consider whether there is "a significant and legitimate public purpose behind the legislation." *Id.* Finally, we review the legislation in light of the identified public purpose to see "whether the adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." *Id.*

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[2] The court of appeals held that the contract had terminated by its own terms, and therefore, the proposed amendment could not substantially interfere with the obligations of the contract. *Jennissen III*, 2018 WL 5316187, at *6. The City and the haulers have, in the interim, signed another contract, reaffirming the parties' commitment to the initial contract and amending it to excise the terminating language. We need not consider the legal effect of this reaffirmation because we hold that the proposed amendment does not violate the Contract Clauses, regardless of the validity of the second contract.

The Contract Clauses only prohibit acts that impair the obligations of a contract, not its performance. *Clark*, 934 N.W.2d 334. "A law impairs the obligations of a contract when it renders those obligations invalid or releases or extinguishes them." *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 435 (Minn. 2014). In contrast, "[a] law does not impair the obligation of a contract, within the meaning of the Constitution, if neither party is relieved thereby from performing anything of that which he obligated himself to do." *State v. Krahmer*, 117 N.W. 780, 783 (Minn. 1908).

Here, whatever the result of the charter-amendment vote, the City's obligations would not be impaired. *See Standard Salt & Cement Co.*, 158 N.W. at 804 (holding that the adoption of a new city charter "did not impair the obligation of the contract in a constitutional sense," but rather "affected the remedy only"); *see also Timmer v. Hardwick State Bank*, 261 N.W. 456, 458–59 (Minn. 1935) (noting that a contract breach may impair the obligor's promise, but that "does not run afoul [of] the constitutional prohibition against 'impairment of contracts' "). A charter amendment that does not terminate the contract that establishes waste collection does not rise to the level of an unconstitutional impairment of a contractual obligation. *See Clark*, 934 N.W.2d at 346–47.

Because we conclude that the City has not demonstrated that a substantial impairment of its contractual obligation will occur with a vote should the proposed charter amendment pass, we need not address the other two factors. *See Acton Constr. Co. v. Comm'r of Revenue*, 391 N.W.2d 828, 833–34 (Minn. 1986) (declining to address the remaining factors

of the *Energy Reserves* test after concluding that no substantial impairment of contractual obligation was shown).

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals in part and reverse that decision in part.

Affirmed in part and reversed in part.

C O N C U R R E N C E & D I S S E N T

ANDERSON, Justice (concurring in part and dissenting in part).

I agree with the court's conclusion that the respondent City of Bloomington did not demonstrate that a substantial impairment of its contractual obligation will occur, and therefore the proposed charter amendment is not manifestly unconstitutional. But because I would conclude that the charter amendment proposed by appellants is an improper referendum, I cannot join that part of the court's decision. The referendum process and the charter amendment process are not two alternative ways to achieve the same end. Appellants concede that the referendum process and the charter amendment process are "fundamentally different" and "convey the authority to do very different things." Because the proposed charter amendment renders the City Charter referendum provisions superfluous, and in substantial part fails to effect a change in government, I respectfully dissent.

I.

I begin by acknowledging that the issue presented here, whether a charter amendment process can be used to repeal a municipal legislative action, is a question of first impression in Minnesota. Thus, some discussion about the difference between referenda and charter amendments is necessary.

Proposed charter amendments "must outline 'any proposed new scheme or frame work of government' and 'inform the signers of the petition as to what change in government is sought to be accomplished by the amendment.' " *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 470 (Minn. 2016) (quoting Minn. Stat. § 410.12 (2018)).

In contrast, a referendum is "designed to review existing legislation." *St. Paul Citizens for Human Rights v. City Council*, 289 N.W.2d 402, 408 (Minn. 1979) (Wahl, J., dissenting).

Although the Bloomington City Charter allows referenda, *see* Bloomington, Minn., City Charter § 5.01 (2019) ("When the council passes an ordinance, the people of the city can require referral to the registered voters for approval or disapproval . . . ."), the process is carefully circumscribed with strict time and signature requirements, *see* Bloomington, Minn., City Charter § 5.10 (2019) ("Within 15 days after an ordinance takes effect, a petition signed by registered voters of the city equal to 15 percent of the total vote at the last regular municipal election can be filed with the city clerk requesting that the ordinance be repealed or be submitted to a vote of registered voters.").

Here, there is little difference between the initial attempt by appellants to repeal organized collection through initiative, the procedurally defective attempt to repeal organized collection through referendum, and the current attempt to repeal organized collection through a charter amendment. Only minor edits distinguish the proposed initiative from the proposed charter amendment at issue. Compare the appellants' proposed initiative, which states:

> Unless first approved by a majority of the voters in a state general election, the City shall not replace the competitive market in solid waste collection with a system in which solid waste services are provided by government-chosen collectors or in government-designed districts. The adoption of this ordinance shall supersede any ordinances or ordinance amendments related to solid waste adopted by the city council in 2015-16.

with the proposed charter amendment, which states:

> Unless first approved by a majority of voters in a state general election, the City shall not replace the competitive market in solid waste collection with a

> system in which solid waste services are provided by government-chosen collectors or in government-designed districts. The adoption of this *Charter amendment* shall supersede any ordinances, ordinance amendments, or charter amendments related to solid waste adopted by the City Council in 2015-2016.

(Emphasis added.) The only difference between the proposed charter amendment and the original initiative request, as the City asserts, is that the phrase 'charter amendment' is substituted for "this ordinance."

In my view, we should not allow residents to bypass the carefully circumscribed limits to referenda. I would hold that appellants must use the referendum process to repeal the Bloomington ordinance because by doing so we ensure that the limits to referenda intended by the people of Bloomington are meaningful. *See* Minn. Stat. § 645.16 (2018) ("Every law shall be construed, if possible, to give effect to all its provisions."); *see also Aad Temple Bldg. Ass'n v. City of Duluth*, 160 N.W. 682, 684 (Minn. 1916) ("The right to suspend, and possibly to revoke, as given by the referendum . . . is an extraordinary power which ought not unreasonably to be restricted or enlarged by construction."); *cf. St. Paul Citizens for Human Rights*, 289 N.W.2d at 402 (holding that voters may "repeal existing ordinances by enacting new ordinances through the initiative process *unless the grant of authority provides otherwise*" (emphasis added)).[1]

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[1] Views on the effectiveness of referenda to represent the voice of the people are shifting back to the vision of the founding era of representative democracy. *See, e.g.*, Sherman J. Clark, *A Populist Critique of Direct Democracy*, 112 Harv. L. Rev. 434, 478 (1998) (arguing that representation is a better means than direct democracy of expressing the voice of the people and checking the power of the majority); Marci A. Hamilton, *The People: The Least Accountable Branch*, 4 U. Chi. L. Sch. Roundtable 1, 6 (1997) ("A collection of individuals, each voting for his own preferences without reference to the greater good, is decidedly less desirable than a system of representation wherein

I conclude that the legislative proposal made by appellants in the form of a charter amendment fails the requirements of a referendum, and we should not countenance the ability to do indirectly that which is prohibited directly. 2 Edward Coke, The First Part of the Institutes of the Laws of England; or, a Commentary upon Littleton 223b (Francis Hargrave et al. eds., 1st Am. ed. 1812) ("*[Q]uando aliquid prohibetur fieri, ex directo prohibetur & per obliquum.*").

II.

Independent of the charter amendment versus referendum analysis, the proposed charter amendment substantially fails to effect a change in the form of municipal government and thus does not qualify as a charter amendment. I agree with the court that charter amendments are intended to change the form of municipal government. My concern here is that the court's holding expands the scope of permissible charter amendments beyond this purpose, which may promote the use of the charter amendment process as a way to circumvent strict referendum requirements; indeed, that is exactly what happened here. Having first failed to secure a ballot initiative on the issue by submitting it prematurely, then missing the deadline to submit a referendum to repeal the ordinance, appellants now seek to use the charter amendment process to achieve their goals. The court today endorses this expansion of the scope of charter amendments. Instead, I would tread carefully and narrowly interpret Minn. Stat. §§ 410.07, .12 (2018). The scope of charter amendments is carefully circumscribed by law and should remain so.

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representatives are held accountable to the public good for every substantive decision reached.").

Under Minnesota law, a city charter may provide a scheme of municipal government that is not inconsistent with our state constitution. Minn. Stat. §§ 410.07, .16 (2018). The charter may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions. *See* Minn. Const. art. XII, § 4 (permitting "[a]ny local government unit . . . [to] adopt a home rule charter for its government"); Minn. Stat. §§ 410.04 (authorizing "[a]ny city in the state" to "frame a city charter for its own government in the manner" prescribed by chapter 410), .07 ("Subject to the limitations" in chapter 410, a 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.") (2018).

City voters may amend a municipal charter through citizen petition. Minn. Stat. § 410.12, subd. 1 ("The charter commission . . . shall [propose amendments to the charter] upon the petition of voters equal in number to five percent of the total votes cast at the last previous state general election in the city."). But we have held that there are limits to the scope of a charter amendment. A charter amendment, for example, may not be manifestly unconstitutional. *Hous. & Redev. Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972). A charter amendment cannot be "contrary to the public policy of the state." *State ex rel. Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958).

The distinction between a referendum and a charter amendment is critical here and overlooked in the court's analysis. A leading treatise on the law of municipal corporations

states: "[D]etailed legislation cannot be implemented through the guise of a charter amendment." 2A Eugene McQuillin, The Law of Municipal Corporations § 9:26, at 262 (3d ed. 1996) (citing *Cheeks v. Cedlair Corp.*, 415 A.2d 255, 261 (Md. 1980) (stating that "[a] charter amendment, therefore, differs in its fundamental character from a simple legislative enactment" because "[i]ts content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation")); *see also Vasseur*, 887 N.W.2d at 471 (citing *Cheeks* for the same proposition as cited in McQuillin). The Iowa Supreme Court aptly summarized the scope of charter amendments as follows:

> [B]asic structural proposals truly involving the form, not the substance, of government are subject to voter approval through the charter amendment process. Matters of policy or administration, however, are to be processed through the ordinary channels of representative democracy with its Madisonian virtues. *The Federalist No. 10* (James Madison) (advocating deliberation by representative bodies). Policy and administrative matters are thus subject to the give and take of the deliberative processes of representative government and are not to be implanted in a city charter by transient majorities.

Berent v. City of Iowa City, 738 N.W.2d 193, 212–13 (Iowa 2007).

Under our constitution, municipal charters may, but are not required to, include referendum and initiative powers that, once enacted, are legislative in character.[2] The referendum process, which is the legislative power relevant here, is simply another way of repealing no longer desired legislation. *See Oakman v. City of Eveleth*, 203 N.W. 514, 516

[2] Minneapolis is an example of a city with a municipal charter that does not permit either referendum or initiative. Its charter reserves legislative and policymaking authority to the city council. *See Vasseur*, 887 N.W.2d at 471 ("[T]he form of the municipal government adopted in a charter defines the powers held by that government and by its residents. In Minneapolis, that form vests legislative and policymaking authority solely in the City Council." (emphasis omitted)).

(Minn. 1925) ("The right of initiative and referendum is ordinarily limited to acts of legislation.").

It is certainly conceivable that some form of municipal waste removal, such as an amendment to establish a municipal waste commission, could impinge on, or otherwise relate to, the form of government, and at least raise the possibility that a charter amendment would be a permitted approach. But here, the charter amendment, as discussed earlier, is nothing more than a referendum dressed up as a charter amendment.

The Legislature has carefully limited the scope of charters to provide for a scheme of government, the establishment and administration of city departments, and the regulation of local municipal functions. Minn. Stat. § 410.07. We also should narrowly limit the scope of charter amendments to those purposes. Allowing charter amendments to be misidentified as referenda makes superfluous the choice of voters, a choice provided by the Legislature, as to whether referendum and initiative are permitted as a means to effect legislation and, if so, under what terms and conditions. I would hold that because the proposed charter amendment is legislative in nature, it is not the proper subject matter of a charter amendment. Therefore, I respectfully dissent and would affirm the court of appeals.

GILDEA, Chief Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Anderson.

HUDSON, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Anderson.