

**STATE OF MINNESOTA
COUNTY OF ST. LOUIS**

**DISTRICT COURT
SIXTH JUDICIAL DISTRICT**

Michael Bernstein,
Petitioner,

vs.

Alyssa Denham, in her official capacity as City Clerk of the
City of Duluth; the City Council of the City of Duluth; and
the City of Duluth,
Respondents.

Case Type: Other Civil – Mandamus

Court File No. 69DU-CV-26-1924

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF A PEREMPTORY WRIT OF MANDAMUS
ON PLACEMENT**

INTRODUCTION

This is an expedited action for a peremptory writ of mandamus to place two certified citizen initiatives on the November 3, 2026 general-election ballot. The measures concern roughly 267 acres of the former Lester Park Golf Course — long-held public parkland that the City has moved to convey, at least in part, for eventual private development. More than four thousand Duluth electors signed each petition to reserve to the voters one question: whether Duluth's voters — not the Council alone — will decide the future zoning, and so the future use, of this land. The City Clerk certified both petitions sufficient under Charter Section 51, which then commands the Council to do one of two things — adopt the ordinances without alteration, or submit them to the voters. The Council has done neither. At a special meeting on July 23, 2026, it tabled the administration's resolution declaring the measures void (26-0679R) to its next regular meeting of July 27, while the Charter's own deadlines close around it: adoption by July 28, the call of the election by August 2, and certification to the County Auditor by August 11. Petitioner asks this Court to command placement now.

The argument for the writ has four steps. *First*, the Municipal Planning Act does not preempt these measures — not expressly, not by field, not by conflict. The MPA prescribes *how* a municipality zones, not *whose assent* completes the municipality's act; that allocation has always belonged to the charter, and Duluth's Charter has shared it with the electors since 1912. (Part I.) *Second*, the decisions Respondents invoke hold nothing against these petitions, taken one by one. (Part II.) *Third*, even if the preemption question were thought close, closeness is what pre-election law forbids acting on: from *Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn. 1982), through *Haumant v. Griffin*, 699 N.W.2d 774 (Minn. Ct. App. 2005), to *Jennissen v. City of Bloomington*, 938 N.W.2d 808 (Minn. 2020), certified measures go to the voters unless *manifestly* invalid — invalid beyond serious dispute, whether the asserted defect is

constitutional or statutory — and a preemption theory that must be argued, extended, and adjudicated is not a manifest one. (Part III.) *Fourth*, the petitions are independent enactments that stand or fall separately, and each independently satisfies the standard — Petition 1 — a cleaner voter-approval gate than the measure *Jennissen* twice sustained and sent to Bloomington's ballot — most easily of all. (Part IV.) Nor does this motion arrive on a blank page: the one time the Minnesota Supreme Court has addressed a Duluth council's refusal to submit a certified zoning measure on the city attorney's advice, it affirmed the order compelling the election. *Denney v. City of Duluth*, 295 Minn. 22, 202 N.W.2d 892 (1972). The writ should issue now, commanding placement on the November 3, 2026 general election ballot and certification to the County Auditor by August 11, 2026, with all questions of the measures' ultimate validity expressly reserved for after the election. Separate questions concerning the count itself — the roughly 165 Petition 1 sheets initially set aside and the sheets rejected on form grounds, carrying more than a thousand signatures in all — remain pleaded in Counts VI–VII and X–XII of the Amended Petition and are not resolved by this motion. Am. Pet. Count VIII (validity reserved for post-election review). A proposed order accompanies this memorandum. Petitioner seeks no attorney's fees, costs, damages, or monetary relief of any kind.

THE QUESTION THIS MOTION PRESENTS — AND THE ONE IT DOES NOT

At the July 20 hearing, the Court framed the core issue as whether the MPA preempts these measures. (Tr. 8–9.) Respectfully, this motion presents a narrower question, and the difference between the two decides this motion. The ultimate preemption question — whether, after full briefing on a complete record, state law displaces these ordinances — is not before the Court and need not be answered now; it is expressly reserved — by Charter Section 51 and Count VIII of the Amended Petition — and every defense Respondents hold survives to that day. The question this motion presents is the one *Davies*, *Haumant*, and *Jennissen II* assign to the pre-election posture: whether Respondents can demonstrate that the measures are *manifestly* invalid — invalid on their face, beyond serious dispute — because such a showing, and only such a showing, excuses the Section 51 duty. Petitioner briefs the merits fully in Parts I and II, and not as a formality. Petitioner believes the measures are valid, and Parts I and II demonstrate why. But on this motion their function is narrower and sufficient: they demonstrate that the preemption question is, at minimum, genuinely and seriously disputed. Petitioner therefore wins this motion twice over. If Parts I and II are correct, the measures are valid and belong on the ballot. And even if they are merely *arguable*, they belong on the ballot nonetheless — because the only showing that excuses the Section 51 duty is Respondents', and it is a showing of invalidity *beyond serious dispute*.

A question that must be argued is, by the governing standard, a question for after the election — and Respondents cannot brief their way out of that box, because the lengthier their argument, the more certainly it proves the dispute.

STATEMENT OF FACTS

The petitions. Petition 1 proposes an ordinance providing that no “Covered Rezoning” of the approximately 230 acres of former Lester Park Golf Course parkland authorized for conditional conveyance by Ordinance 25-032-O — “Covered Rezoning” being defined to include any rezoning, land use amendment, or comprehensive plan amendment that would move the Property from a park, open space, or conservation designation to one authorizing private development — “shall be effective unless approved by a majority of the voters voting on the question,” and that the Council shall not adopt any action authorizing a Covered Rezoning until that approval is obtained. Pet. 1, §§ 2–3. Actions strengthening the Property’s park character are expressly excepted, *id.* § 5, and the ordinance is severable by its own terms, *id.* § 7. Petition 2 proposes an ordinance directing the City to rezone the approximately 37.5-acre Lake 9 parcel — previously conveyed to the Duluth Economic Development Authority — to the Park and Open Space District (P-1), “through the City’s standard zoning amendment process,” within 180 days, Pet. 2, § 3, and prohibiting any future rezoning of that parcel for private development “unless approved by a majority of the voters,” *id.* § 4. It, too, is severable by its own terms. *Id.* § 6. Each ordinance takes effect only upon adoption by the voters at an election. Pet. 1, § 8; Pet. 2, § 7.

The transaction. On October 28, 2025, the Planning Commission recommended sale of the property at a special meeting whose minutes remained an unapproved draft as of this filing, and no video of the meeting has been published. (Ex. 25.) In the six weeks that followed — spanning the City’s budget season — the transaction moved through each remaining station: the conveyance ordinance (25-032-O) received its first reading on November 24, 2025 — the same night the Council adopted a resolution of intent to sell or convey the property (Res. 25-0913R). On December 8, 2025, the Council adopted the conditional conveyance ordinance; the accompanying development agreement makes rezoning the property out of park status a condition precedent to a closing contemplated for 2027. The Charter’s thirty-day referendum window on that ordinance closed in early January. No rezoning application has been filed; the City’s own presentation depicts the rezoning as a future step that has not begun. (Ex. 24.) Nor has the comprehensive plan been amended for the property: the City’s own “Comprehensive Plan Amendment to Future Land Use for the Lester Park Golf Course Land Use Study Area” entered its legislative system on July 21, 2026 — thirteen days after the

petitions were certified — and remains pending and unheard, set for the Planning Commission's agenda of August 11, 2026, the very day the ballot questions must be certified to the County Auditor. Legistar File PLCPA-2607-0001 (created July 21, 2026; “Agenda Ready”; no action taken) (Ex. 28).

The count. Petitioners delivered both petitions on June 23, 2026. Certificates issued July 8 — two days after the Charter's deadline — with hundreds of petition sheets set aside uncounted and many missing. On July 17, pursuant to this Court's peremptory writ, the Clerk's amended certificates reflected more than one thousand additional valid signatures and certified 4,220 for Petition 1 and 4,049 for Petition 2 — each above the 3,683 the Charter requires. Both petitions stand certified as sufficient.

The refusal. The City docketed the certified petitions in its own legislative system as proposed ordinances — Files 26-034-O (Petition 1) and 26-033-O (Petition 2), each created July 16, 2026 and designated “Agenda Ready” — while the administration simultaneously docketed Resolution 26-0679R (July 17, 2026), titled a “RESOLUTION FINDING THAT THE SUBJECT OF TWO SEPARATE INITIATIVE PETITIONS . . . ARE PREEMPTED BY STATE LAW AND SHOULD NOT BE PLACED ON THE BALLOT.” On July 23, 2026, at a special meeting, the Council took up Resolution 26-0679R — the administration's resolution finding the measures preempted — and, by a unanimous vote of 9 to 0, tabled it to the Council's regular meeting of July 27, 2026. The companion placement resolution (26-0681R) was tabled as well. Not a single member voted to declare the measures preempted or to keep them off the ballot. The Council has thus neither passed the measures under Section 51(a) — a path the Charter closes on July 28 — nor called the election under Section 51(b) — a path that closes August 2.

ARGUMENT

I. THE MPA DOES NOT PREEMPT THESE MEASURES — NOT EXPRESSLY, NOT BY FIELD, NOT BY CONFLICT.

Respondents' theory is now stated on the record, twice and in nearly identical terms. Resolution 26-0679R — the resolution by which the administration asked the Council to withhold the measures — recites that the MPA “evinced [the legislature's] intent to occupy the field of the process by which municipal land use and development laws are finally approved or disapproved,” and that charter provisions “encroach[ing] into that occupied field . . . are preempted.” (26-0679R (quoting *Nordmarken*).) Counsel for Respondents argued the same at the July 20 hearing: “state law so occupies the field as to municipal land and zoning processes that any charter provisions on those same topics are preempted,” resting on *Nordmarken*'s holding that “the process for adopting and approving land use

planning and zoning ordinances is so fully covered by state law that it has become solely a matter of state concern,” extended to this non-metropolitan, initiative setting by the unpublished *Abrahamson* decision, with *Bicking* invoked for the proposition that the question must be decided now. (Tr. 15–17.) That is the theory in full, and three features of it — each drawn from Respondents' own words — frame all that follows. It is a *field*-preemption theory. The field it claims is a field of *process* — “the process by which . . . laws are finally approved or disapproved.” And the single binding authority it rests on held that referendum was “preempted by the MPA *and* the MLPA” — the conjunctive holding Respondents' own quotation stops one line short of, and the statute that half of it names has never been applied to Duluth. *Nordmarken*, 641 N.W.2d at 348–49.

Respondents invoke only the second of preemption's three forms. The other two merit a paragraph each — not because Respondents assert them, but because their absence is evidence. Every measure Minnesota has ever withheld fell to an invalidity that could be read off the face of controlling law: a charter amendment impairing fully executed bond contracts in *Davies*, 316 N.W.2d at 504; a measure entering a field the criminal codes of two sovereigns had covered categorically, without exception for municipal regulation, in *Haumant*, 699 N.W.2d at 777–79; an irreconcilable statutory conflict in *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313–15 (Minn. 2017). What no Minnesota court has ever done is withhold a certified measure on a preemption theory that was contested — one the Supreme Court had expressly reserved, that no precedential decision covered, and that could reach the measure only by extending a nonprecedential opinion. (Two decisions require candor, and each survives it. *Nordmarken* concerned a referendum against an already-adopted ordinance — no proposed measure existed to screen — and a court resolved it on full merits adjudication, never citing any manifest standard. Part II.A. *Abrahamson*, the unpublished decision addressed in Part II.F, is the single land-use instance of a proposed measure withheld on a preemption theory — and it is nonprecedential by legislative command. It never cited the manifest-invalidity screen its own court had elaborated eight years earlier in *Haumant*, and its premise was a development proposal then pending that has no counterpart here. One nonbinding opinion that bypassed the governing test is not a rule; it is the reason this Court's *de novo* answer is required.) Respondents have staked everything on the one theory that is facts-and-circumstances by design — and that no precedential decision has ever run to a conclusion on the MPA standing alone.

A. No express preemption. The Act's repealer enumerates what it displaced — the prior enabling statutes, Minnesota Statutes 1961, sections 412.221, subdivision 29, 462.01 to 462.11, 462.18 to 462.23, 465.21 to 465.25, and 471.26 to 471.33 — and nothing else. Laws 1965, ch. 670, § 14. No charter power is on the list. The Act accommodates charters

by name: “municipality” is defined to include “a city operating under a home rule charter,” *id.* § 2, subd. 2; “[a] municipality may by charter or ordinance create a planning agency,” *id.* § 4, subd. 1; and the planning agency’s plan procedures operate “unless otherwise provided by charter or ordinance consistent with the municipal charter,” *id.* § 5, subd. 2. The session law’s one further displacement clause is a study in restraint — inconsistent special laws are superseded only “to the extent of inconsistency.” Minn. Stat. § 462.364 (enacted as Laws 1965, ch. 670, § 14). It reaches special laws and general laws of special application; it says nothing of home-rule charters — and displacement “to the extent of inconsistency” is the vocabulary of conflict, not of field occupation. The same section then names what it spares: “Nothing in this act is to be construed to affect, alter or modify” Special Laws 1887, ch. 108, Laws 1933, ch. 93, or Laws 1963, ch. 405. Repeal by enumeration, supersession by conflict, preservation by name — three displacement devices in one section, each explicit. Occupation of a field of charter powers would be a fourth, and it appears nowhere. A legislature that repeals by careful enumeration does not silently repeal what it left off the list.

B. No field preemption. The MPA is an enabling act. For a rezoning it prescribes referral to the planning agency for study and report — though the governing body may act after sixty days without one, Minn. Stat. § 462.357, subd. 4 — ten days’ published notice, a public hearing, and adoption by “a majority vote of all its members,” rising to two-thirds for rezonings out of residential classification. *Id.*, subds. 2–3. Two features of that scheme decide this case. *First*, the Act fixes the arithmetic of one assent — the governing body’s vote — and nowhere says it is the *only* assent a city may require. It could not: the mayor’s veto, adopted by Duluth’s voters at the March 20, 1956 charter election — nine years before the MPA — lets an ordinance that satisfies subdivision 2 to the letter die at the mayor’s desk unless six votes revive it. Charter § 12. A 1955 special law — its first section captioned “Duluth, may sell park property” — forbids any sale of parkland unless the planning commission first recommends it “by a three-fourths vote” and the council then authorizes it by ordinance adopted “by a four-fifths vote.” These are gates the legislature erected “[n]otwithstanding any statute or rule of law to the contrary, or any provision to the contrary contained in the charter.” Laws 1955, ch. 82, §§ 1–2 — the very authority Ordinance 25-032-O invokes in its title. The lesson is double: the legislature itself stacks extra assents when parkland is at stake, and when it means to displace a charter provision it says so in words. The Minnesota Environmental Rights Act (MERA) subjects even fully approved land-use decisions to a citizen suit protecting “recreational” resources, its remedies expressly “in addition to” all others. Minn. Stat. §§ 116B.02, subd. 4, 116B.12; *Krmpotich v. City of Duluth*, 483 N.W.2d 55, 56–57 (Minn. 1992) (MERA challenge to a Duluth rezoning for private development, adjudicated on the merits). If subdivision 2 were the exhaustive roster of required assents, every

veto charter in Minnesota was silently repealed in 1965; no one has ever held, or argued, any such thing. The statute supplies the process; the charter supplies the assent — an arrangement the Supreme Court of the United States upheld: “[i]n establishing legislative bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature.” *City of Eastlake v. Forest City Enters., Inc.*, 426 U.S. 668, 672 (1976) (citing *Hunter v. Erickson*, 393 U.S. 385, 392 (1969)). *Second*, the Act itself grades assent by the category of land at stake — two-thirds to leave residential. These measures do the same for land the City holds in trust; an Act that grades its own approval thresholds by land category cannot manifestly forbid a charter from doing likewise.

The *Mangold* factors confirm what the text shows. *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813 (Minn. 1966). The subject matter, honestly defined, is not “zoning” writ large but whose assent the City needs before rezoning *its own parkland*, and what one city-owned parcel shall be — subjects on which state coverage is not merely thin but absent: outside the metropolitan area, even adoption of a comprehensive plan is discretionary, Minn. Stat. § 462.355, subd. 2, and nothing in the Act requires zoning to conform to one: the Act’s only command that anything conform to the comprehensive plan is aimed at variances, not rezonings — “[v]ariances shall only be permitted when . . . consistent with the comprehensive plan,” § 462.357, subd. 6(2) — and when the legislature did want zoning brought into conformance with a plan, it said so expressly and for the metropolitan area alone. § 473.858, subd. 1. The legislature has signaled the opposite of exclusivity — an enumerated repealer, express charter accommodations, its own 1955 parkland supermajority, MERA’s cumulative check. And a patchwork of differing local rules — the fourth *Mangold* concern — burdens no one here: no traveler, and no business operating across city lines, is affected, because the measures govern only the City’s own decisions about the City’s own land — land that, by the City’s own account, “will be in the city’s ownership throughout land use study, any rezonings, and through any comprehensive plan updates.” (Ex. 25.) Every factor points to reserved local ground — the very ground *Nordmarken* itself concedes the legislature has “not taken entirely from municipalities.” 641 N.W.2d 343, 350 (Minn. Ct. App. 2002).

C. No conflict. Conflict preemption asks whether compliance with both enactments is impossible. Here dual compliance is effortless and permanent: the City performs every step the Act prescribes, then submits the question to its electors. No provision of the Act is skipped, shortened, or contradicted. A supplement in the statute’s own protective direction is not a conflict.

D. The City's own transaction forecloses any line between parkland disposition and parkland zoning.

Respondents may answer that parkland safeguards like the 1955 supermajority govern *disposition* — a field apart from zoning. Their own transaction forecloses that line: the December 2025 conveyance ordinance and its development agreement make rezoning the property out of park status a condition precedent to closing, so by the City's own drafting the zoning decision is the operative step of the disposition. Having fused the two fields to structure its deal, the City cannot unfuse them to defeat its electors; a safeguard on the rezoning of parkland is a safeguard on parting with parkland — the domain where, by the legislature's own 1955 judgment, extra protection is ordinary.

E. *Jennissen* dictates both how the preemption question is analyzed and how it is resolved. *Jennissen* supplies both. In *Jennissen I* the Supreme Court held, applying the *Mangold* factors, that a comprehensive regulatory scheme had not occupied the field — reading the statute's express preservation of authority granted by other law, including home-rule charter authority, as a signal against displacement, precisely the kind of accommodation the MPA's own text contains — and reversed the Court of Appeals. 913 N.W.2d 456, 459–62 (Minn. 2018) (“applying the *Mangold* factors, we hold that the Legislature did not intend to occupy the field”). In *Jennissen II* it rejected the city's remaining objections, held the measure not manifestly unconstitutional, and cleared it for the ballot. 938 N.W.2d 808, 811, 815 (Minn. 2020). The method — displacement is never inferred from a statute that accommodates charter power — and the allocation — a council submits; courts decide — are both binding Supreme Court instruction, and both are the opposite of Respondents' course.

F. Where legislatures displace local zoning power, they say so. The broader statutory landscape confirms that silence is not subtraction. Where a legislature means to insulate planning from local initiative, it writes the exclusion into text: Florida's planning statute expressly addresses initiatives concerning development orders and comprehensive-plan amendments, Fla. Stat. § 163.3167(8). California ran Respondents' experiment to completion: an early decision held the state zoning act impliedly excluded the initiative, *Hurst v. City of Burlingame*, 207 Cal. 134, 277 P. 308 (1929), and the California Supreme Court later overruled it, holding the reserved powers fully applicable to zoning notwithstanding a planning scheme far more prescriptive than Minnesota's. *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 557 P.2d 473 (1976). The one jurisdiction that adopted Respondents' theory repudiated it.

II. RESPONDENTS' AUTHORITIES, TAKEN ONE BY ONE, HOLD NOTHING AGAINST THESE MEASURES.

Preemption in Minnesota is decided under *Mangold*'s facts-and-circumstances test, and the two decisions Respondents rely on arose on facts this case does not share. In *Nordmarken*, a metropolitan-area city had adopted a rezoning through the full statutory process, and voters sought by *referendum* to undo it. The court held the field occupied by "the MPA and the MLPA" together, resting the MLPA's role on the interdependence of metropolitan municipalities. 641 N.W.2d at 347–49. That interdependence has statutory teeth: the MLPA separately *commands* that a metro city's zoning conform to its Metropolitan-Council-reviewed plan, Minn. Stat. § 473.858, subd. 1, so a popular reversal would have moved Richfield's zoning away from the state that statute requires. In *Abrahamson*, an unpublished decision, a non-metropolitan city faced an initiated ordinance that would have banned the feedstocks a bioenergy plant then in the city's approval pipeline depended on; the court extended *Nordmarken* to that setting — dropping the MLPA in a footnote — and held the measure preempted as an attempt to dictate the outcome of a specific pending development proposal. This case shares neither decisive fact. Duluth has never been subject to the MLPA, so no statute commands that its zoning conform to any plan and no popular vote can force an illegality; nothing has been adopted for these measures to undo; and no private application is pending for them to derail — the land is the City's own, and the rezoning is a future step the City itself has not begun. Run through *Mangold* honestly, the same test that preempted a metropolitan claw-back referendum and a proposal-targeting initiative leaves untouched a prospective, citywide rule about the City's assent to rezoning its own parkland. The subsections that follow take each authority in turn.

A. *Nordmarken* condemned a different instrument, on different facts, under an additional statute — and reserved the ground these measures occupy. *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002), does not reach these measures — for three reasons plain on the face of the opinion. Its instrument was a *referendum* — an after-the-fact veto of a rezoning already adopted through the completed statutory process. Its holding was *conjunctive* — preempted “by the MPA and the MLPA” — and the conjunction was not decorative: the Metropolitan Land Planning Act commands that metro cities' zoning conform to their comprehensive plans (“the zoning ordinance shall be brought into conformance with the plan,” Minn. Stat. § 473.858, subd. 1), so the Richfield referendum threatened a statutorily *mandated* conformity. The MPA contains no counterpart command, and Duluth has never been subject to the MLPA. *Nordmarken*'s own pages measure how much that difference leaves open: discussing *Denney v. City of Duluth*, 295 Minn. 22, 202 N.W.2d 892 (1972) — where the Supreme Court, seven years into the MPA, held a Duluth zoning amendment to be a legislative act subject to this very Charter's reserved powers and affirmed the order compelling the election — the *Nordmarken* court acknowledged that *Denney* “left that issue

entirely undecided.” 641 N.W.2d at 349–50. The decision Respondents read as closing the question thus records, in its own discussion of this city, that the Supreme Court left it open. And the holding was expressly *fact-bound*: “[t]he question of whether state law has preempted a field depends on the facts and circumstances of each case.” 641 N.W.2d at 348. The same opinion then cabined itself: the legislature “has not taken entirely from municipalities the right to make administrative decisions or even substantive determinations as to land use and zoning.” *Id.* at 350. Its very next sentence drew the boundary of the occupied field in words Respondents cannot use: “the preemption concerns only the process reflected in the single body of uniform procedures in the MPA and MLPA.” *Id.* The process, not the outcomes it produces — and, for Duluth, a “single body” of which one half has never applied. The ground the legislature left to municipalities, *Nordmarken* said, is exactly the ground these two petitions occupy — one petition each. The first thing left untouched is the *content* of zoning: what any parcel is zoned. The Act prescribes the steps for adopting zoning controls but dictates no result — nothing in it says what classification a parcel must carry. Petition 2 makes a choice of exactly that kind: it selects a classification, P-1, for one city-owned parcel — the same choice a council makes whenever it rezones. The second thing left untouched is *whose approval the city must obtain* before it acts. Petition 1 is a rule of exactly that kind: it decides nothing about what the land becomes — only whose consent is required before it becomes anything else. One petition sets an outcome; the other adds a required approval; the Act reserves both.¹ Finally, one adjudication does not freeze the field. If preemption “depends on the facts and circumstances of each case,” no single decision can settle the question for every measure touching the same subject. *Nordmarken* located one instrument on the occupied ground and, in the same opinion, mapped the ground not taken. A decision that itself drew the boundary cannot be read to have erased it.

B. Approval procedures versus objection procedures: the distinction is structural, and advance prescription is no answer. Respondents may object that the referendum, too, is a standing charter mechanism prescribed in advance — every ordinance passes subject to a known thirty-day window, just as every ordinance visits the mayor's desk. But

¹That the reserved power reaches a zoning ordinance does not open every zoning decision to the ballot box. The limits are structural and already law: the reserved powers reach only *legislative* acts, never administrative ones — the line *Denney* drew in holding a zoning-boundary amendment legislative, 295 Minn. at 28–29; it cannot *claw back* a completed rezoning by popular veto of the enactment itself — the vice condemned in *Nordmarken*, 641 N.W.2d at 348 — though, like any later ordinance, it may enact new zoning going forward through the ordinary process; every initiated measure must itself be a lawful ordinance, tested case by case after adoption, and Minnesota preemption is decided on the facts of each case; and reaching the ballot at all requires signatures equal to twenty percent of the last election's voters, followed by a majority of the entire city. Those constraints — not a rule confining the power to one parcel — are why, in the 114 years this power has existed, ballot-box zoning has never taken hold in Duluth: across eleven decades, the reserved powers have reached zoning on the rarest of occasions — *Denney* then, these measures now.

advance prescription is not the line; the two mechanisms differ structurally on three axes, each load-bearing in *Nordmarken*.

What the mechanism operates on. An approval procedure operates on an incomplete act: until the assent collects there is no law — Charter § 12 says so in terms (“[n]o ordinance or resolution shall take effect without the mayor’s approval”) — so the assent is part of the definition of enacted, and nothing yet exists to unsettle. The referendum operates on a complete act, rendering a finished law defeasible for a period by challenge from outside the government. One defines where finality lies; the other suspends it.

Who wields it. An approval procedure names its holder: the act is delivered to a designated assent-holder as a required step, on a schedule anyone can compute — at any moment the city can state exactly whose assent its enactment still awaits and when the question resolves. The referendum names no one: whether a challenge comes depends on whether self-selected petitioners choose to summon one, and until the window closes the law occupies a third status the approval regime never produces — enacted, yet not safe. Petition 1’s election is nobody’s to summon; it occurs automatically, as a required incident of enactment, precisely like presentment to the mayor.

Which direction it moves the city. An approval gate can only delay an arrival: had Richfield’s mayor vetoed the conformance amendment, the city would simply not yet have complied, and the process would have continued forward. The referendum reverses arrivals: it would have moved Richfield backward, out of a compliance state law commanded it to occupy. No approval procedure can unmake an act, and none can un-comply with a command. The sorting test follows: a measure with operative content independent of any particular enacted decision is a rule; a measure with none is a veto. If the pending transaction vanished tomorrow, Petition 1 would still govern every future proposal, from any proponent, under any council; the Richfield referendum, stripped of the ordinance it targeted, was a blank page. And this line is not Petitioner’s invention — the Supreme Court has drawn it: 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,” and “[n]o other legislative powers granted to residents have the ability to preliminarily upend the status quo.” *Jennissen II*, 938 N.W.2d at 815. Among the reserved powers, the referendum alone destabilizes finished law. That is the instrument *Nordmarken* confronted — and it is the feature these measures do not possess. The confusion is not academic; it runs through Respondents’ own theory, which rests entirely on a *referendum* case, *Nordmarken*, and on the vocabulary of referendum — overturning, suspending, unsettling what

has already been decided. But the initiatives before the Court overturn nothing, suspend nothing at any point in any development, and make a gated rezoning more final than any ordinary one. A challenge to a completed zoning decision belongs in district court — which is precisely why the City's challenge to these measures belongs there too, after the election, and not in a pre-election refusal built on the defects of an instrument that is not before the Court.

C. The finality interest at stake in *Nordmarken* cuts for Petitioner. The MLPA is a reliance scheme: regional systems are planned and financed on the premise that each metropolitan municipality's land use is what its mandated plan requires, so conformance must be a dependable fact that other governments can build upon. The referendum attacked the scheme's mechanism of assurance — it appended a revocability term to every commanded conformance act, converting “shall be brought into conformance” into “shall be in conformance unless petitioners unmake it within thirty days.” An assent gate bears the opposite relation to finality: it determines when an act becomes final, never whether it remains final. Under Petition 1 the question “has the parkland been rezoned?” always has a determinate answer — and a rezoning the electors themselves have approved enjoys more repose, not less, than one they never blessed, for no after-the-fact popular challenge remains to be brought. Private reliance points the same way: a referendum window ambushes reliance after commitment, while a standing, disclosed gate — like the charter condition upheld in *Eastlake* — is known to everyone from the outset, so no one can reasonably rely on the parcel's development before the voters have had their say. And here the finality rationale has no object at all: the MPA commands Duluth to rezone nothing, so there is no mandated fact whose repose Petition 1 could threaten. *Nordmarken's* conjunction was not ornamental; subtract the MLPA and the holding loses the very interest it protected.

D. Petition 2 is subsequent legislation, not annulment. Petition 2 changes an existing classification — the Lake 9 parcel was rezoned to mixed use — and Respondents may say that, like the Richfield referendum, it “reverses” a completed act. The comparison mistakes the next act of lawmaking for the annulment of the last. The referendum operated on the prior enactment itself, defeating it through a challenge window. Petition 2 does not mention, void, or suspend the prior ordinance; it is a new ordinance, adopted through the Charter's full legislative channel, directing the parcel's reclassification prospectively — and directing that it be accomplished “through the City's standard zoning amendment process.” Pet. 2, § 3(b). That is what every subsequent enactment does to every prior rule it changes, and what councils do whenever they rezone. Two questions expose the difference. Could Duluth's council lawfully arrive at this zoning? Yes: by ordinary process the council may reclassify undeveloped city land notwithstanding a completed prior rezoning — no statute occupies the destination. Could Richfield's council have lawfully repealed its conformance

amendment? No: section 473.858 forbade maintaining zoning out of conformance, so the backward move was unlawful whoever attempted it. The vice in *Nordmarken* was command-relative, not instrument-relative — and no command touches Lake 9. What remains in dispute about Petition 2 is only who holds the pen, and the pen's allocation is charter ground. The City's own ordinance confirms the device: the conveyance is expressly contingent on “certain future protective designations on a minimum of 1,500 acres,” expressly including “rezoning as a Park and Open Space District (P-1).” Ordinance 25-032-O (title) (first reading Nov. 24, 2025; adopted Dec. 8, 2025). The City thus deploys P-1 rezoning as a protective designation across 1,500 acres as a condition of its own transaction. A device the City's ordinance commands at that scale cannot be manifestly beyond municipal power when a citizen ordinance directs it for the 37.5-acre Lake 9 parcel (Petition 2's subject). Nor can the City's own development code supply what state law does not: if Respondents invoke UDC § 50-37.3.C's criterion that a rezoning be “consistent with the comprehensive land use plan,” that criterion is the City's own ordinance — and self-imposed criteria have no preemption significance, because a city cannot preempt itself. An ordinance cannot cabin the Charter's reserved legislative power; an elector-adopted ordinance is legislation of at least equal rank, later in time; and consistency with a plan the Council may amend by two-thirds resolution, UDC § 50-37.2, is the very opposite of a defect manifest on any measure's face. Nor is the comprehensive plan an obstacle: far from a settled plan these measures would offend, the City's own plan amendment for this very area — “Comprehensive Plan Amendment to Future Land Use for the Lester Park Golf Course Land Use Study Area,” Legistar File PLCPA-2607-0001 — was docketed on July 21, 2026 and is pending before the Planning Commission at this writing, set to be heard August 11, 2026. The plan is a document in motion, amendable by two-thirds resolution at any time, UDC § 50-37.2, and that Petition 2 itself directs be cured — its command to “initiate and complete all actions necessary to rezone,” Pet. 2, § 3(a), encompasses a conforming plan amendment through the City's own processes — is the opposite of a defect manifest on the measure's face. And the City's use of a plan amendment as the first step of converting parkland is precisely why Petition 1's “Covered Rezoning” definition expressly includes comprehensive plan amendments: the gate cannot be circumvented by amending the plan first and calling the rezoning compelled. Pet. 1, § 2(b).

E. *Bicking* is a conflict case with no conflict to cite here — and *Vasseur* presupposes this very vehicle. *Bicking v. City of Minneapolis*, 891 N.W.2d 304 (Minn. 2017), withheld a charter amendment that reallocated a responsibility statute assigns to the city — the duty to defend and indemnify its officers, Minn. Stat. § 466.07, subd. 1 — by making the officers' own insurance the “primary” coverage, a collision the court read off existing text rather than a theory it

had to construct. 891 N.W.2d at 313–15. *Bicking* thus supplies a test, and a simple one: lay the statute beside the measure and identify the sentences that collide. Respondents cannot perform that exercise. No sentence of the MPA provides that a rezoning adopted by the governing body shall take effect without further municipal assent, or that no charter approval may be added — the Act could not say such things and coexist with the mayor's veto. In *Bicking* dual compliance was impossible; here it is effortless. The distance between *impossible* and *effortless* is the distance between a conflict a court reads and a theory a court would first have to build — and only the former can ever be manifest. *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 471–72 (Minn. 2016), locates these measures where the charter's design puts them: it rejected legislation-by-charter-amendment because ordinary legislation belongs to whatever legislative channel the charter provides — and Minneapolis's charter provided its voters none. Duluth's has provided one since 1912, and these measures use it for exactly the purpose *Vasseur* presupposed such a power serves.

F. Abrahamson is nonbinding, standardless, overtaken, and inverted. *Abrahamson v. City of Le Sueur*, No. A13-0389, 2013 Minn. App. Unpub. LEXIS 779 (Minn. Ct. App. Aug. 19, 2013) is the nearest decision to Respondents' theory, and the closer the look, the less weight it bears. The city there faced an initiated “nuisance” ordinance whose blanket prohibitions on feedstock storage — corn silage, manure, potato waste — would have stripped a bioenergy facility, then pending in the city's approval process, of the inputs on which it depended. The Court of Appeals, applying *Nordmarken*, held the measure preempted and no election required, crediting the council's finding that the ordinance was “an attempt by the petitioners to dictate the outcome of a specific local land use issue and development proposal.” Five points, each independently sufficient. *First*, the opinion is unpublished and nonprecedential by legislative command. Minn. Stat. § 480A.08, subd. 3. The only decision reaching Respondents' combination is thus one no court is bound to follow — and a council that elects to follow merely persuasive authority is, by definition, adjudicating a question that remains open; the choice itself is the adjudication the manifest screen forbids a council to perform. And the extension it performed was accomplished in a footnote: acknowledging that *Nordmarken*'s holding rested on “both the MPA and the Metropolitan Land Planning Act,” the court observed that Le Sueur “falls outside of the metropolitan area, so the MLPA is not at issue in this case,” 2013 Minn. App. Unpub. LEXIS 779, at *11 n.1 — and proceeded without ever asking what remains of that field once half of it is removed. *Nordmarken* defined the occupied field as the “single body of uniform procedures in the MPA and MLPA.” Subtract the MLPA — the half carrying the conformance command that made the Richfield claw-back an illegality — and the question becomes what, if anything, the MPA *alone* still occupies. That is the first question this case presents, and it is the one *Abrahamson* never asked. *Second*, the

timing and target are inverted here. *Abrahamson's* ordinance regulated private parties' conduct and materials in order to strangle a development proposal then pending — a live approval process with a specific outcome to dictate. The vice was that the measure resolved a live land-use matter at the ballot box instead of through the Act's channels — an off-process disposition, not any private reliance; the pending proposal mattered only because it made the ordinance an ad hoc decision on a single project, the very work the statutory process exists to do. These measures regulate no private person, no private parcel, and no pending application; none exists, and the City's own timeline depicts the rezoning as a future step. (Ex. 24.) That the measures concern a specific parcel does not make them *Abrahamson's* adjudication of a pending application: rezoning one tract is a legislative act, *Denney*, 295 Minn. at 28–29, and these measures set the rule before any application exists rather than dictating the outcome of one already pending. The City's own comprehensive-plan amendment — docketed July 21, 2026, thirteen days after the petitions were certified — supplies no substitute: *Abrahamson's* concern was that the initiative reached in to resolve a specific, pending land-use matter by popular vote — a decision the Act routes through study, notice, hearing, and council action — so the ordinance usurped the Act's process rather than setting policy for the future. A municipality's own legislative proposal is no such application — it is a rival act of lawmaking, holding no entitlement against the municipality's other lawmakers to any particular outcome — and Petition 1 does not defeat it but completes it, leaving every step of study, hearing, and recommendation intact and requiring only that the voters approve before the City may adopt the amendment — the machinery runs in full, and its work product reaches the electorate that must ratify the result. And a rule under which a city could immunize any subject from initiative by docketing a proposal after certification would hand every council a veto over its own charter — a power no case has ever recognized. Indeed, by the City's own account, the Property “will be in the city's ownership throughout land use study, any rezonings, and through any comprehensive plan updates” (Ex. 25) — so at every moment Petition 1's gate could operate, the land it governs is the City's own. They set the decision rule before any proceeding begins. There is no outcome yet to dictate. *Third*, the standard. *Nordmarken* neither could nor needed to apply the manifest-invalidity screen: it predates *Haumant* by three years, and its referendum targeted an ordinance already adopted, so no proposed measure's facial validity was ever before it. *Abrahamson* has no excuse on either score — it postdates *Haumant* by eight years, it arose in precisely the posture the screen governs, a city refusing to place a certified measure, and it never cites *Haumant* or any manifest standard at all. An unpublished opinion that bypassed the governing screen its own court had announced cannot supply the manifest answer the screen demands. *Fourth*, its borrowed deference cannot be imported without swallowing the screen whole: if a council's own findings

could insulate its own refusal, every council would write findings, and the courts' de novo role in every decision from *Davies* to *Jennissen II* would be a dead letter. *Fifth*, it is overtaken: whatever persuasive force a 2013 unpublished extension of *Nordmarken* once carried, it must now be read against a Supreme Court that has since reversed the Court of Appeals for accepting a comparable displacement-by-implication theory, *Jennissen I*, 913 N.W.2d at 462, and that in 2020 cleared a voter-approval measure for the ballot over a city's objections, *Jennissen II*, 938 N.W.2d at 811.

III. EVEN IF THE PREEMPTION QUESTION WERE THOUGHT CLOSE, THE MEASURES MUST BE SUBMITTED: THEY ARE NOT MANIFESTLY INVALID.

Parts I and II show that Petitioner wins the preemption question outright. But if the Court takes nothing else from them, it should take this: a question requiring that much analysis — statutory text on both sides, a conjunctive holding to parse, a reservation to map, first-impression issues at every turn — is not a manifest one. The Court need not resolve any of it to grant this motion, and the Council was never entitled to resolve any of it at all.

A. The duty is ministerial; a council refuses only at its peril; the question is this Court's, de novo, with the burden on Respondents. Charter Section 51 provides that upon certification the Council “shall, except as herein provided, either pass” the proposed ordinance or submit it to the voters; the exceptions are procedural, and none authorizes rejection. A duty so phrased is ministerial, and mandamus lies to compel it. Minn. Stat. §§ 586.01–.02. The only recognized exception is the judge-made manifest-invalidity screen — and its architecture matters. A council's refusal adjudicates nothing, settles nothing, and receives no deference: in every Minnesota decision in this line, it was a court, deciding de novo, that determined whether a measure could be kept from the ballot, and where a refusal survived it survived only because the court itself then found the measure invalid beyond serious dispute. The screen thus takes nothing from a council that doubts a measure; it channels the doubt to the right forum: for the rare measure invalid beyond dispute the Council may decline to submit — subject to this Court's de novo review, as here — while for every contestable objection its remedy is the courthouse, before the election on an expedited record, *Clark v. City of Saint Paul*, 934 N.W.2d 334 (Minn. 2019), or after, not a unilateral veto; and because submission is not enactment, no council is ever made the author of a law it believes unlawful. A refusal — whether by a resolution the Council adopts or by simply letting the Charter's submission deadlines lapse — would decide nothing of the kind. However it comes, it delivers the question here in its proper form: whether *Respondents* can demonstrate manifest invalidity. A thought experiment tests the architecture. Suppose the measures were placed on the ballot, and the City then directed election officials not to count the votes on the questions, on the ground that the measures are manifestly invalid. No one would

hesitate over that case: officials may not suppress election returns on their own legal opinions. But Respondents' theory cannot explain why not. The path from petition to effective ordinance is a chain of ministerial steps — receive, count, certify, place, print, tally, declare — and each link is ministerial for the same reason: legal objections have their own forum. A validity veto that officials may exercise at one link works equally at every link; the theory that licenses refusing placement licenses refusing the tally, differing only in timing. At the July 20 hearing, Respondents' counsel advanced preemption as bearing on the count as well as on placement. Tr. 15–17, 20 (preemption, on Respondents' view, leaving “no legal duty for the clerk . . . to take any action on the initiative petitions”). The manifest-invalidity screen, strictly applied by courts, is the only principle that arrests that progression. On the loose construction Respondents' position requires, the screen would arrest nothing.

B. The screen's origin and pattern confirm its narrowness. The screen's modern articulation is *Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn. 1982) — a petition to repeal the tax pledged to the city's stadium bonds, withheld because repeal would have unconstitutionally impaired the bondholders' contracts: “[w]hen 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.” *Id.* at 504. Four decades of application show a consistent pattern. Measures were withheld only for settled collisions with controlling law: term limits colliding with the constitution’s express guarantee of universal eligibility for office, *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 307–08 (Minn. 1995); marijuana distribution “categorically” prohibited by the criminal statutes of two sovereigns — a field occupied not arguably but completely, *Haumant*, 699 N.W.2d at 777–79; and the *Bicking* conflict. Whenever the objection required analysis, extension, or resolution of an open question, the measure reached the voters: the Bloomington measure, twice, *Jennissen*; and when Saint Paul resisted a certified referendum on statutory-conflict and contract-impairment grounds, the Supreme Court took the merits on accelerated review, rejected the objections, and affirmed the order placing the measure on the ballot. *Clark v. City of Saint Paul*, 934 N.W.2d 334, 336–37 (Minn. 2019). The line the cases draw is precisely the line between a conclusion a court can state and a conclusion a court would first have to reach. In every withholding, the invalidity sat on the face of controlling law — constitutional text, categorical criminal codes, an irreconcilable statute; none rested on a question the Supreme Court had reserved, or on the extension of a nonprecedential decision. (*Nordmarken* and *Abrahamson* are not to the contrary: each decided a contested preemption question on the merits, de novo, in ordinary litigation — and neither applied, or even used the words, the manifest-invalidity standard that governs an official's pre-election refusal. *Nordmarken* is further still from this posture: it arose

from a referendum seeking to undo ordinances the City of Richfield had already adopted, and was decided on cross-motions for summary judgment — not from the pre-election screening of a proposed initiative.) No Minnesota court has ever permitted a measure to be withheld under the screen on a preemption theory the Supreme Court had expressly reserved, that binding precedent stopped short of, and that only a nonprecedential opinion had ever reached. Respondents' theory is all three.

C. Fact-bound preemption cannot produce a manifest answer on these statutes. Manifest invalidity means the answer is obvious *without* adjudication. On rare statutes the *Mangold* method can still yield one — in *Haumant* the criminal codes spoke categorically, and the factors could be run from the statute books alone. But where the factors turn on contested questions, the answer does not exist *until* adjudication — and an analysis that must be conducted case by case, and that has never been conducted for these facts, cannot supply a manifest answer. And the point runs deeper than the answer's being unknown: ruling now would prevent the very inquiry the test commands. *Mangold's* questions are in substantial part empirical — how fully the State has covered the subject in practice, whether local regulation would in fact burden the general public — and this posture affords no discovery, no evidentiary record, and no time to build one. Respondents thus ask the Court to run a facts-and-circumstances test without the facts and before the circumstances. A merits ruling on that footing would not apply *Mangold*; it would truncate it. This point alone decides the motion.

D. The screen's rationale is practical — and it binds with full force here. The manifest-invalidity standard is not a grudging exception to be narrowed; it is sound judicial administration, and its design fits this case exactly. Election calendars compress litigation: certification deadlines arrive in days, and a rule requiring courts to resolve every contested validity question before ballots print would convert every certified measure into emergency merits litigation — and make complexity itself a weapon for the party opposing a measure, which alone benefits from delay: an objector able to generate a sufficiently difficult legal question could defeat a measure simply by outlasting the election calendar. The screen prevents adjudication by deadline. It asks the only question an election timetable can responsibly bear — is the measure invalid on its face, beyond serious dispute? — and routes everything else to the ordinary process: full briefing, a developed record, time. That allocation protects courts no less than petitioners. Preemption under *Mangold* is a facts-and-circumstances inquiry; its sound resolution may require a record no pre-election posture can supply, and no rule of law fairly demands that a litigant prove a first-impression theory correct in a day. Had these petitions been certified on the eve of the deadline, the Court would face the same questions on an impossible clock — the standard

exists so that no court ever has to answer hard questions badly because an election is near. The Charter's other lawmaking channel proves the point. When the Council legislates, its ordinances take effect thirty days after passage with no officer screening them for validity; an objector must go to court and satisfy the demanding standards for interim injunctive relief *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 320–21 (1965) — because the law knows that settling legal questions correctly takes time, and it allocates the interim to the enacted law. The manifest-invalidity screen is the mirror-image rule that keeps the electors' lawmaking on the same footing: the certified measure proceeds to its election unless facially invalid, with genuine disputes resolved on ordinary judicial timelines afterward. The comparison generalizes, because everywhere the law meets a compressed clock it responds the same way: with threshold standards, not merits conclusions. A party seeking emergency injunctive relief need not prove its case — it makes a threshold showing, and the preliminary findings are expressly non-binding on the final adjudication, because questions decided at speed are often decided badly and should not then bind. The alternative design — full merits briefing and a final merits conclusion as the price of any interim order — exists nowhere in the law, because it would let emergencies decide cases. The manifest-invalidity standard is the ordinary architecture applied to the election calendar: the pre-election window bears one threshold question — invalid on the face, beyond serious dispute — and reserves everything deeper to the plenary forum, exactly as a preliminary order reserves the trial. Respondents' position would invert that architecture uniquely for citizen lawmaking: full preemption adjudication, final in practical effect, inside an election window. That is the opposite of how the law treats every other decision made against a compressed clock, and nothing suggests this one is different. And the record shows what those timelines are: in *Jennissen*, the validity of a single charter amendment consumed nearly four years — from the May 18, 2016 petition through *Jennissen I* (2018), a remand, and *Jennissen II* (2020) — and two Supreme Court decisions before the measure was cleared for the ballot. A rule requiring initiative proponents to win that litigation inside an election calendar would not narrow the people's power; it would repeal it — and would silently graft onto a citizens' instrument a standing requirement of counsel able to brief a question of first impression in days. The asymmetry of preparation makes the point concrete. A city's legal department can develop its theory for months — here, the petitions were delivered June 23, and the administration's rejection resolution was drafted and published in advance of the special meeting — while the citizens who proposed the measures learn the government's theory only when it is deployed, days before deadlines the government itself controls. A rule requiring full merits victory pre-election would reward precisely that sequencing: prepare in private, deploy at certification, and let the calendar finish

the argument. The manifest standard neutralizes the ambush — it confines the pre-election contest to the face of the measure, where months of preparation confer no advantage, and remits everything else to a forum where both sides stand on equal time. Nothing in the Act, the Charter, or the case law creates a two-tier legislature in which the Council's enactments enjoy the presumption of validity and the electors' must prove theirs on an impossible clock. And nothing is lost by honoring the design: while the questions are litigated properly, the parkland simply remains parkland, and every defense Respondents possess survives intact. The screen deserves its full force precisely because this is the case it was built for — genuinely contested questions, a fixed calendar, and a status quo that harms no one.

E. Respondents' own publications foreclose manifestness. The City's Board & Commission Handbook — posted to the City's website five weeks before the Planning Commission convened on this sale — instructs the City's own appointees that “[u]nder the Charter, ultimate power is reserved to the voters by way of Charter provisions for recall, initiative, and referendum,” and that “[a]ny decision, plan, or action of the City Council can ultimately be put to a vote of the people through the use of these procedures.” (Ex. 26, City of Duluth Board & Commission Handbook § 4.3 (Sept. 23, 2025), *available at* <https://duluthmn.gov/media/websubscriptions/201/20250923-201-18633.pdf>.) A handbook cannot alter state law, and Petitioner does not offer it for that purpose; he offers it because a proposition cannot be beyond serious dispute when the party urging it published, weeks earlier, that any Council decision — land use included — remains subject to the voters' reserved power. The City's own officials treat that power as live and binding: at the Council's meeting of July 1, 2025, Councilor Forsman acknowledged that “an ordinance adopted by an initiative . . . can only be amended by another public vote or a charter amendment that supersedes it,” and urged the Council to consider “amending our charter to remove ballot [initiative] measures in the future” so the Council could “respond more nimbly.” (Ex. 27, transcript of Council Meeting of July 1, 2025, at 1:01:14–1:02:07.) Whatever the merits of that proposal, its premise is Petitioner's: the reserved power is a live mechanism the Council must live with until the voters themselves withdraw it — and the lawful route to withdrawing it is a charter amendment the voters approve, not a resolution declaring it already void.

F. *Haumant*'s futility rationale is absent. The election in *Haumant* was futile in the strict sense: even a unanimous yes could not lawfully be implemented. Nothing of the kind is true here. If adopted, these measures take effect by their own terms and require no one to do anything unlawful; and pending the election they change nothing at all — while any question is litigated, the 230 acres remain in their current classification and the undeveloped Lake 9 parcel remains undeveloped. And the questions would ride an already-scheduled general-election ballot at, per the placement

resolution the administration itself drafted and published (26-0681R), little or no added cost. A measure whose adoption works no unlawful act and whose operation preserves the existing state of affairs is the antithesis of the futile election the screen exists to prevent.

G. Contested policy is a reason to submit, not to withhold. Respondents' resolution and some of the public discussion urge that conditioning parkland rezoning on a popular vote is unwise. Perhaps; perhaps not — that debate is the election's subject matter, not a ground for canceling the election. The manifest-invalidity screen polices legality, not wisdom: a council may believe a certified measure misguided and must still submit it, remaining free to campaign against it as vigorously as it likes. Policy objections addressed to a measure's merits concede the only point that matters here — that the objection is one the voters are competent to weigh.

H. Permanence is not invalidity. Respondents have suggested the measures are objectionable because, once adopted, they would govern until changed. That is a property of all legislation, not a defect of these measures: every ordinance binds until amended or repealed, and these measures are amendable and repealable through the same charter processes that created them. If durability invalidated lawmaking, no law would survive the objection.

I. The development agreement supplies no manifest invalidity. Nor can the conditional development agreement be converted into a *Davies* problem — an unconstitutional impairment of contract, of the kind that justified withholding the measure in *Davies v. City of Minneapolis*, 316 N.W.2d 498, 504 (Minn. 1982). That agreement makes rezoning a condition precedent to closing: by its own architecture it contemplates — and allocates the risk of — a world in which the rezoning does not occur, in which case no duty to close ever arises. Respondents' own record says so: at the October 28, 2025 Planning Commission meeting, DEDA's director explained that “the conveyance and closing of the property are two different things,” that the arrangement “is operating as a purchase agreement, meaning there are contingencies to closing,” and that “[t]his conveyance is initiating the entire process.” (Ex. 25, Planning Commission Special Meeting draft minutes, Oct. 28, 2025.) A law bearing on whether a condition precedent is satisfied does not impair a contract; it is one way the contract's own contingency resolves. Nor could any agreement term promise a future rezoning: a municipality cannot contract away its legislative power, and the counterparty's position is accordingly a conditional expectancy, not a vested right. The council itself could tomorrow decline the rezoning, or reclassify the undeveloped parcel, notwithstanding the agreement — and what cannot bind the council's future legislative votes cannot bind the electors', who hold the same power under the Charter. *Davies* is the contrast, not the analogue: the

bondholders there had fully executed their side — money irrevocably lent against pledged revenues — while here nothing has been performed: no closing, no conveyance, no application, no construction, with closing not due until 2027. Nor can the transaction be recast as a completed act the petitions somehow claw back: Ordinance 25-032-O stands untouched — no petition repeals, suspends, or so much as references it; what the measures reach is the future act the ordinance’s own text left contingent. And the City’s planning expenditures change nothing. The land-use study it commissioned is an input to a decision, not reliance on one — it exists precisely because the decision remains to be made, and it feeds a comprehensive-plan amendment the City docketed only on July 21, 2026, still pending before the Planning Commission. Planning costs vest nothing: even a landowner who purchases property in reliance on existing zoning acquires no right against its amendment. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 294 (Minn. 1980) (in zoning cases even “the mere possession of a building permit, the incurring of some expense and the assumption of obligations preliminary to construction . . . create no vested right”). Money spent to inform a future legislative choice entitles no one — least of all the spender — to a particular outcome of that choice. If a study could freeze the lawmaking that follows it, every study would repeal the legislative power it serves, the council’s no less than the electors’. And in all events, an impairment theory would require construing the agreement, classifying its conditions, and weighing reliance and public purpose — a fact-intensive analysis never performed by any court, which is the opposite of manifest. Even fully credited, the theory reaches at most one directive of one petition, and walks directly into Part IV’s severance.

As to the Lake 9 parcel — where a prescribed rezoning has already occurred — the analysis is the same one step later. Whatever the agreement prescribed, it received; a completed contractual step entitles no one to its permanence, because contracts purchase performance, not perpetuity, and no valid term can promise that zoning will remain unchanged. A landowner without permits or construction holds no vested right in a classification — and the landowner here is DEDA, the City’s own subordinate authority, as to which Petition 2 disclaims any effect on title. Pet. 2, § 1. If a subsequent rezoning were thought to carry contract consequences, those would sound in damages or in the agreement’s own conditions, after enactment — questions about an ordinance’s effects, not its validity. No measure is manifestly invalid because legislating may cost something; if it were, no council could ever legislate near its own contracts, and every development agreement would quietly repeal the police power.

J. Respondents' construction closes every door — an absurd result the law presumes was never intended.

Respondents' resolution states the construction in its own words: the MPA “preempts the city charter right to petition

for the adoption of ordinances that attempt to regulate municipal land use planning and zoning.” (26-0679R.) Taken at its word, that forecloses every reserved-power channel that touches land use. Consider what it does to the Charter’s reserved powers at every point in this transaction’s timeline. *Before*: the conveyance ordinance passed through a Planning Commission special meeting whose minutes remained an unapproved draft as of this filing (Ex. 25), was adopted December 8, 2025, and carried a thirty-day referendum window that expired in early January — and on the City’s theory of the MPA’s reach, even that referendum would apparently have been preempted, because the ordinance’s central condition is a rezoning. *During*: the certified initiatives now before the Court are, on the City’s theory, preempted as well. *After*: a referendum on the eventual rezoning would be *Nordmarken* itself. Every instrument, at every moment, closed. And note who remains inside the circuit: the Planning Commission and DEDA are appointed, not elected, bodies — their members named by the mayor and approved by the Council, Charter § 7(C); see Minn. Stat. § 469.095, subd. 2 (economic development authority commissioners “appointed by the mayor with the approval of the city council”) — so on Respondents’ reading the sole popular check remaining on the disposition of 267 acres of parkland is the periodic election of councilors — precisely the channel the 1912 Charter’s reserved powers were adopted to supplement. That result inverts the Charter’s own architecture. Section 6 vests the council’s legislative powers expressly “subject to the limitations hereinafter set forth,” and Sections 50 through 52 are among those limitations; the City’s own Handbook instructs its appointees that “[a]ny decision, plan, or action of the City Council can ultimately be put to a vote of the people through the use of these procedures.” (Ex. 26.) A construction under which the reserved powers can never operate on the disposition of hundreds of acres of long-held public parkland — at no point in this transaction, before it, during it, or after it — is a construction Minnesota law presumes was never intended. Minn. Stat. § 645.17(1) (the legislature “does not intend a result that is absurd, impossible of execution, or unreasonable”). The fork is complete: either the people had a lawful channel that the calendar functionally closed, or no channel ever existed — and under the second branch, the Charter’s promise of 1912 was repealed by silence, which is the one thing a court applying the manifest-invalidity standard can be certain never happened.

K. The tradition locates the wrong in the refusal to hear. The distinction at the heart of this motion — between the Council’s duty to *submit* a certified measure and any duty to *adopt* it — is among the oldest in Anglo-American law, and the tradition has always located the wrong in the refusal to hear. The English Bill of Rights of 1689 secured “the right of the subjects to petition the King,” protecting access to the sovereign, not any particular outcome. 1 W. & M., Sess. 2, c. 2 (1689) (Eng.). Nearer home, the United States House of Representatives operated for eight years under

“gag rules” that received anti-slavery petitions and automatically tabled them — denying them any airing — until John Quincy Adams's long campaign prevailed and the House rescinded the rule in 1844. See The House “Gag Rule,” *Off. of the Historian, U.S. House of Representatives* (gag rule adopted 1836; rescinded Dec. 3, 1844). The gag rule's vice was never a judgment about any petition's merits; it was the refusal to let the petitions be heard at all. Duluth's initiative is that tradition's later chapter, reserved to the city's voters when they adopted the Charter's initiative provisions in 1912. Section 51 codifies the same settlement in its own terms: on a sufficient petition the Council must either “[p]ass said ordinance without alteration” or “call an election.” Charter § 51. The Council owes the petitioners no agreement — it may enact the ordinances outright, or oppose them openly before the voters — but the one course the Section does not offer is to decline to act on a measure duly certified. The July 23 deferral, should it harden into refusal, would dispose of certified petitions precisely by declining to submit them. The Charter's text and four decades of manifest-invalidity decisions run the same direction: a grievance presented this lawfully is heard — here, by the electorate the Charter designates to decide it.

IV. EACH PETITION STANDS INDEPENDENTLY — AND PETITION 1'S PLACEMENT FOLLOWS A FORTIORI FROM JENNISSEN.

The petitions are two independent ordinances — certified separately, each on its own count of valid signatures. Each stands or falls on its own, and an objection peculiar to one is no objection to the other. Petition 1, moreover, presents the easiest question in this case. It commands no statutory actor to do anything: it does not direct the Planning Commission to study, recommend, or refrain; it instructs the Council to adopt nothing; it alters no notice, hearing, referral, or other step the Act prescribes; it changes no parcel's classification. It is a pure gate — and it stands at the threshold of the Act's process, not inside it. Section 3 forbids the Council to “adopt any action authorizing a Covered Rezoning until that approval is obtained,” Pet. 1, § 3: the City must carry the voters before it may exercise the rezoning power at all. Once that precondition is met, the rezoning proceeds through referral, study, notice, hearing, and adoption exactly as the MPA prescribes — every step of the Act's machinery intact, none altered, reordered, or displaced. The voters' assent is not a stage within the process by which the City finally approves a rezoning; it is a condition on the City's authority to set that process toward this parkland in motion. *Jennissen* sustained that architecture twice — on a harder record than this one. Bloomington's charter measure barred the city from replacing competitive waste collection with organized collection unless the voters first approved — a decision governed by Minn. Stat. § 115A.94's detailed statutory process — yet it was filed months after the city had already adopted and implemented organized collection, and it carried a

clause superseding the enacted ordinances, the feature that led three justices to call it a referendum in disguise. The Court sustained it anyway: not preempted, *Jennissen I*, 913 N.W.2d 456, 462 (Minn. 2018); not manifestly unconstitutional, and cleared for the ballot, *Jennissen II*, 938 N.W.2d 808, 811 (Minn. 2020). Petition 1 presents the same prospective gate with neither complication: it supersedes nothing, repeals nothing, and arrives before any rezoning exists. A statute that prescribes a decision process, the court twice concluded, coexists with a charter rule about whose assent the City must secure to exercise the power the process serves. Nor does the initiative route skip any step the Act requires. The Act asks two things before a zoning amendment: that the planning agency study and report on it (subdivision 4), and that a public hearing be held before the measure is adopted (subdivision 3). Neither is skipped here. The referral rule speaks by its terms to amendments the governing body acts on, and takes the city's lawmaker as the Charter defines it. And the hearing rule is met because an initiated measure is not adopted when it is circulated, certified, or placed on the ballot — it is adopted only when the voters approve it, on November 3. Every day before that election is open to the Act's machinery: nothing stops the City from referring these measures to the Planning Commission for study and a public hearing weeks before the vote — the sixty-day clock fits easily — so that the Commission's analysis reaches the actual adopters, the voters, before they decide. That is the hearing requirement served in full. A step the objector itself controls, and can perform on its own schedule within the statute's own order, is not a conflict; it is a calendar entry. (That the measure's text is fixed changes nothing: a council hearing does not redraft a rezoning application either, and Section 51 fixes an initiated measure's text for the council no less than for the voters.) *Denney v. City of Duluth*, 295 Minn. 22, 202 N.W.2d 892 (1972), confirms the path — on facts this Court will recognize.² Duluth rezoned 21.7 acres by ordinance; a petition invoking the Charter's reserved powers was filed; the city clerk examined it and “found it proper in all respects”; and the council, “acting upon the advice of the city attorney, determined not to call for” the election. *Id.* at 25–26, 202 N.W.2d at 894. The Supreme Court affirmed the order compelling the vote: seven years into the MPA, amending Duluth's zoning ordinance was a legislative act subject to the Charter's reserved powers, entitled “to the same dignity and protection” as the comprehensive plan's original enactment — with no suggestion that the Charter route violated the Act's hearing requirement. *Id.* at 28–29, 202 N.W.2d at 895–96. (The court declined to reach the city's preemption argument, raised for the first time on appeal, *id.* at 26 n.8, 202 N.W.2d at 894 n.8 — the reservation *Nordmarken* noted, 641 N.W.2d at 349–50; but the judgment itself

²*Denney's* age does not lessen its force. A decision of the Minnesota Supreme Court governs until overruled or superseded, and *Denney* is neither — it remains good law, treated as authoritative by the Court of Appeals in *Nordmarken* three decades later, see 641 N.W.2d at 349–50, and its principle runs unbroken to *Jennissen v. City of Bloomington*, 913 N.W.2d 456 (Minn. 2018), and 938 N.W.2d 808 (Minn. 2020).

sent a Duluth zoning ordinance to Duluth's voters over the advice of Duluth's city attorney.) And as to Petition 2 the objection never arises at all: that measure adopts no zoning amendment itself — it directs one, “through the City's standard zoning amendment process,” Pet. 2, § 3(b), so commission review, notice, hearing, and council action all run by the measure's own command. The petitions are two separate legislative proposals, separately certified, each on its own signature count; an objection peculiar to one is no objection to the other, and severance — not pre-election rejection — is the traditional remedy for partial defect, and each ordinance is severable by its own terms. Pet. 1, § 7; Pet. 2, § 6; Minn. Stat. § 645.20; *Bicking*, 891 N.W.2d at 320–21 (Stras, J., dissenting) (“by striking the city-charter amendment before it is enacted, we have foreclosed the possibility of severance”).

V. THE WRIT SHOULD ISSUE NOW.

The refusal Petitioner's motion anticipated has not been voted; it is being assembled from the calendar. The Council deferred the question to July 27 — one day before the Charter closes the adoption path, and six before it closes the only other lawful one. If Monday produces placement, this motion becomes moot, and no one will welcome that mootness more than Petitioner. If Monday produces refusal, or more silence, every day thereafter is borrowed from the August 11 certification deadline — and silence completes the refusal by operation of the Charter itself no later than August 2. The duty is ministerial, the right clear, and no other adequate remedy exists: certification to the County Auditor is due August 11, and no later election can substitute for the one the statutes fix. Minn. Stat. § 586.02. The equities are asymmetric. If the writ issues and a court later concludes, after full briefing, that some provision exceeds municipal power, the remedy is complete — the provision does not operate, and Respondents will have lost nothing but the cost of printing two questions, which their own placement resolution recites is little or none. If the refusal stands on a theory that later proves wrong, the injury is irreparable: August 11 passes, the election happens without the questions, and no order can restore to the more than 4,000 Duluthians whose signatures were certified on each petition the vote the Charter promised. Post-election review preserves every defense Respondents have; pre-election rejection destroys the electors' rights even if Respondents are wrong. And the equities reach beyond these parties. The Charter's petition power is exercised by volunteers: the signatures behind these measures were gathered one doorstep at a time, over months, in all weather, by residents with jobs and families, to a threshold the Charter fixes at twenty percent of the vote — a harder road by design than the one the Council walks when it legislates in an evening. A ruling that measures of this kind are *manifestly* invalid would not merely decide this case; it would price the next one. If petitions that displace no statutory step and unmake no enacted law can be adjudged manifestly void on a first-impression theory, no future

proponent can know what survives — prudent citizens would need a legal opinion before gathering the first signature, against a first-impression standard no one could reliably predict in advance. Reserved powers whose exercise requires that kind of insurance are not reserved; they are licensed. The manifest standard, strictly applied, is what makes the people's harder road worth walking: it assures petitioners that months of lawful work cannot be erased except for defects apparent on the face of what their neighbors signed. That assurance is part of what the writ protects. Nor should the Court overlook what a declaration of manifest invalidity would validate. The record is what it is: certification issued two days late; hundreds of petition sheets — more than a thousand signatures — were set aside without evaluation; and the count was corrected only under this Court's peremptory writ. Respondents' position, reduced to practice, is that none of this matters — that a measure they deem illegal did not require a careful count, and that invalidity declared now would moot any accounting for signatures never evaluated. Equity does not reward that sequence, and the lesson would outlive this case: every future clerk facing a petition the administration disfavors would learn that legal doubt excuses arithmetic diligence, because invalidity found later forgives counting never done. The Charter's counting and certification duties are unconditional precisely so that no official's legal theories can infect the ministerial count. Citizens who gather signatures are entitled to officials who reserve their legal opinions for the courtroom — and the writ, by keeping the validity question where it belongs, keeps the counting duty where the Charter put it. Petitioner's remaining requests, including the rejected-sheets question and the accounting, proceed on the ordinary course pleaded in the Amended Petition and are not waived by this memorandum's focus on placement.

CONCLUSION

The Court should declare that Charter Section 51 imposes a mandatory, ministerial duty; that the Council may not adjudicate the measures' validity by resolution; and that the measures are not manifestly invalid — that is, not invalid on their face beyond serious dispute, the standard *Davies* fixed to avoid a “futile election,” 316 N.W.2d at 504 — all questions of ultimate validity being expressly reserved — and should issue the peremptory writ forthwith, in the form of the proposed order submitted herewith, commanding Respondents to place both measures on the November 3, 2026 general election ballot and to certify them to the County Auditor by August 11, 2026 — or, at minimum, should order that unless Respondents call the election by August 3, 2026 (the Charter's own final day, its nominal August 2 falling on a Sunday, Minn. Stat. § 645.15), the peremptory writ shall issue without further hearing, so that no question in this case is ever again decided against the clock.

Dated: July 24, 2026.

/s/ Michael Bernstein

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