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City Council Members and Charter Review Commission
c/o Marian Karr, City Clerk
City of Iowa City
410 E. Washington Street
Iowa City, Iowa 52240

January 14, 2015

Delivered by email to: citycharter@iowa-city.org, council@iowa-city.org, and Eleanor-dilkes@iowa.city.org

Re: Recommendations to Bring Iowa City Charter Provisions Regarding Petition Validity in Line with Statutory and Constitutional Requirements

Dear Council Members and Charter Review Commission,

This letter is written on behalf of the ACLU of Iowa, including the Hawkeye Chapter of the ACLU of Iowa in Iowa City. We are aware that during the Charter Commission meeting on Nov. 25, City Attorney Dilkes responded to the concerns regarding the city’s petition process that we outlined in our Nov. 19 letter. Specifically, we understand it is the position of the City staff that Iowa City is not required to abide by Iowa Code § 362.4, “Petition of eligible electors,” because Iowa City’s petition process is authorized by the Iowa City Charter, rather than the City Code of Iowa.

We respectfully disagree with that interpretation of state law. We believe that state law establishing the validity of petitions is equally applicable to petitions authorized by the City Charter as those authorized by the Iowa Code. However, even beyond the question of preemption, this Commission should extend the right of petition to all eligible voters, because of the clear discriminatory impact of excluding newcomers to the city who are more likely to be younger and more racially and socioeconomically diverse than the registered voter population. Both grounds are discussed in turn below.

The Question of Preemption

As stated at the Nov. 25 meeting, “City Code” as used in this section refers to the “City Code of Iowa.” Iowa Code § 362.2 (2014). As Ms. Dilkes also said, “City Code of Iowa” refers to Iowa Code §§ 362, 364, 368, 372, 380, 384, 388 and 392 (including Iowa Code § 362.4, “Petition of eligible electors”). Iowa Code § 362.1 (2014). Iowa City is

organized under Iowa Code § 372, providing for a Home Rule Charter form of government, which is subject to the City Code of Iowa.

Iowa Code § 362.4, “Petition of eligible electors,” expressly states that all cities that authorize a petition of the voters by city code must treat as valid any petition signed by at least ten percent of *eligible* electors. Iowa Code Ann. § 362.4 (2014 West) (emphasis added). Iowa Code § 362.9 clearly states, “The provisions of this chapter [362] and chapters 364, 368, 372, 376, 380, 384, 388 and 392 are applicable to all cities.” Iowa Code § 362.9 (2014) (emphasis added). Iowa City, as a municipal corporation, is a “city” under Iowa Code § 362.2 and thus subject to § 362.4 governing petition validity.

Indeed, it is unclear what purpose Iowa Code § 362.4, “Petition of eligible electors,” would serve if it is interpreted as suggested (i.e., that it only applies to petitions authorized by the City Code of Iowa, and not to petitions authorized by cities themselves). Such an interpretation runs counter to the guiding principles of statutory interpretation articulated by the Iowa Supreme Court: “If the statutory language is plain and the meaning clear, we do not search for legislative intent beyond the express terms of the statute.” We seek a “reasonable interpretation that will best effect the purpose of the statute and avoid an absurd result.” *State v. Pub. Employment Relations Bd.*, 744 N.W.2d 357, 360-61 (Iowa 2008) (citations omitted).

The Iowa Supreme Court held in *Berent v. Iowa City* that “the legislature has established a substantive and procedural framework with respect to petitions that trigger municipal elections...

In order to invoke the electoral process by petition, the legislature required the petition to “include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.” *Id.* § 362.4. The legislature has declared that a petition is “valid” if it is “signed by eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election....” *Id.*

Berent v. City of Iowa City, 738 N.W.2d 193, 197 (Iowa 2007). While *Berent* addressed the petition process as it pertained to amendments to the City Charter, there is no case law that we are aware of that would allow the City to exclude those same electors who are eligible to sign petitions to alter the form of government of the City through the Charter from participating in the ordinance-generative initiative and referendum process.

In an earlier case, *City of Clinton v. Sheridan*, 530 N.W.2d 690 (Iowa 1995), the Court, in *dicta* recognized that “The power of direct legislation by initiative and referendum frequently is given to qualified voters of a municipality.” *City of Clinton v. Sheridan*, 530 N.W.2d at 693. The Court also cited a well known 1989 legal treatise on municipal law by Eugene McQuillin, *The Law of Municipal Corporations*, which discusses the petition power’s extension to qualified voters of a municipality. Those terms remain undefined and undistinguished from eligible voters in both the case and

treatise, however. Neither speaks to the specific question presented here in the case of Iowa City’s charter: If state law allows eligible electors to have petition power vis-à-vis their city in one context—the charter, may a city limit the petition power to only qualified electors (that is, eligible electors who are already qualified to vote), in another context—municipal ordinances? Thus, the *Berent* case provides the only useful precedent that we are aware of to guide the analysis in determining this question of preemption.

Specific Provisions Preempted by State Law

As we stated in our Nov. 19 letter, it is our belief that Section 7.03 of the City Charter of Iowa City is preempted by state law because it is in direct conflict with Iowa Code §362.4 in at least three ways:

1. It requires that petition signatures be from “qualified electors,” thus excluding the signatures from many eligible electors, who are to be allowed petition rights under state law;
2. It requires petitions to contain signatures equal to 25 percent of the number of persons who voted in the last regular city election, thus prohibiting petitions signed by merely ten percent of the number of persons, the number specified under state law; and
3. It requires a minimum of 2,500 signatures for a valid petition, thus prohibiting petitions signed by the minimum 10 people allowed under state law when that number exceeds ten percent of the number of voters in the preceding city election.

Discriminatory Effects that Exclude a Class of Eligible Iowa City Voters

We would, however, challenge the exclusion of eligible electors who are not “qualified” by virtue of already being registered to vote on additional grounds related to the discriminatory impact of the limitation, regardless of the technical question of preemption by the Code.

Section 7.03 of the City Charter by definition excludes Iowa City residents who are eligible to vote but who are not already registered from fully participating in the democratic process in Iowa City. Those who are eligible to vote but not yet registered are especially likely to be students and other newcomers to the City—a younger, more racially and socioeconomically diverse population than the larger Iowa City population. The distinction thus serves to disproportionately exclude and further marginalize Iowa City residents who are eligible but not yet registered to vote. As a result, the current provision, which functions to systematically exclude those eligible voters from equal participation in their local government, has clear, highly problematic, discriminatory effects.

Section 7.03 of the City Charter as it is currently written separates voters into classes and burdens the right to petition the government in ways that are arbitrary and unreasonable. It is unclear what valid government purpose is served by classifying voters as “eligible” and “qualified,” and only allowing signatures from “qualified” voters to

count toward petition requirements.

The Charter Review Commission should take this opportunity to ensure equality and fairness in its petition and initiative process for all Iowa City voters as consistent with the proud tradition of valuing and promoting civil and human rights in Iowa City.

Therefore the ACLU of Iowa strongly urges you to amend these provisions as we outlined in our November letter, which is attached.

Sincerely,

/s/ Rita Bettis
Rita Bettis
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Attachment:
November 19, 2014 Letter, including Proposed Revised Charter Text



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City Council Members and Charter Review Commission
c/o Marian Karr, City Clerk
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November 19, 2014

Delivered by email to: citycharter@iowa-city.org, council@iowa-city.org, and Eleanor-dilkes@iowa.city.org

Re: Recommendations to Bring Iowa City Charter Provisions Regarding Petition Validity in Line with Statutory and Constitutional Requirements

Dear Council Members and Charter Review Commission,

This letter is written on behalf of the ACLU of Iowa, including the Hawkeye Chapter of the ACLU of Iowa in Iowa City. As the city goes through its charter review process, the ACLU of Iowa strongly urges you to amend several provisions of the City Charter of Iowa City (“Charter”). We are specifically concerned with the process for initiative and referendum laid out in the Charter, as well as the prohibition on amending the charter through that process.

Those provisions unnecessarily exclude Iowa City residents who are eligible to vote but who are not already registered from fully participating in the democratic process in Iowa City. These provisions are in direct conflict with state law in numerous ways, and the state has legislated in this area so thoroughly as to demonstrate an intention to preempt local provisions.

These provisions separate voters into classes and burden the right to petition the government in ways that are arbitrary, unreasonable, and likely unconstitutional. It is unclear what valid government purpose is served by classifying voters as “eligible” and “qualified,” and only allowing signatures from “qualified” voters to count toward petition requirements.

Thus, not only is the Charter subject to challenge on grounds that it is statutorily preempted, but the differentiation in the Charter between “eligible” and “qualified” voters may violate some Iowa City residents’ constitutional rights.

I. Section 7.03 of the City Charter of Iowa City is preempted by Iowa Code § 362.4 (2014).

Express preemption of a city ordinance occurs when the general assembly has prohibited local action in an area. Goodell v. Humboldt Cnty., 575 N.W.2d 486, 492 (Iowa 1998). Implied preemption of a city ordinance by Iowa law occurs when an ordinance prohibits an act permitted by statute, or permits an act prohibited by statute. Id. at 493. Field preemption occurs when the legislature has “cover[ed] a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law.” City of Council Bluffs v. Cain, 342 N.W.2d 810, 812 (Iowa 1983). A city’s home rule powers under Iowa law do not extend to those ordinances which are “inconsistent with the laws of the general assembly.” Iowa Code § 364.1 (2014). A local ordinance is inconsistent with a state law when it is irreconcilable with it. Goodell, 575 N.W.2d at 500; see also BeeRightTire Disposal/Recycling, Inc. v. City of Rhodes, 646 N.W.2d 857 (Iowa Ct. App. 2002).

Because the Iowa City Charter is irreconcilable with Iowa law setting forth petition requirements that a municipality may impose, it is preempted by state law and must be revised.

Iowa Code § 362.4, “Petition of eligible electors,” sets forth the requirements of a petition of the voters if such a petition is authorized by municipality: “If a petition of the voters is authorized by the city code, the petition is valid if signed by *eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election, but not less than ten persons, unless otherwise provided by state law.*”

In Berent v. City of Iowa City, 738 N.W.2d 193, 197 (Iowa 2007), the Iowa Supreme Court interpreted § 362.4 as establishing the validity of petitions that are “signed by *eligible* electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election...” *Id.* (emphasis added.) It held that “[t]here are no other statutory requirements for validity ... Our legislature, moreover, has directed that if a petition meets these two statutory requirements, it is ‘valid’ under section 362.4 and the city council ‘must’ submit the proposed amendment to the voters.” *Id.* at 200. Because the Berent case, which dealt with amendments to the Iowa City Charter, interpreted the code section that is equally applicable to all petitions, it is highly likely the Court would apply it the same way to initiative and referendum petitions.

The City Charter violates the requirement established by Iowa Code § 362.4. The text of § 7.03, subsection “A” of the City Charter of Iowa City, “Petitions; Revocation Of Signatures,” states that “[i]nitiative and referendum petitions must be signed by *qualified electors equal in number to at least twenty-five percent of the number of persons who voted in the last regular city election, but such signatures shall be no fewer than two thousand five hundred qualified electors.*” A “qualified elector,” in turn, is defined by the Charter as “a resident of Iowa City who is registered to vote in Iowa City.” This is notably a much smaller class of voters than all “eligible electors,” which the charter defines as those who are “eligible to register to vote in Iowa City.”

Thus, this section of the City Charter of Iowa City is preempted by state law because it is in direct conflict with Iowa Code §362.4 (2014) in at least three ways:

- (1) It requires that petition signatures be from “qualified electors,” thus excluding the signatures from many eligible electors, who are to be allowed petition rights under state law;
- (2) It requires petitions to contain signatures equal to 25 percent of the number of persons who voted in the last regular city election, thus prohibiting petitions signed by merely ten percent of the number of persons, the number specified under state law; and
- (3) It requires a minimum of 2,500 signatures for a valid petition, thus prohibiting petitions signed by the minimum 10 people allowed under state law when that number exceeds ten percent of the number of voters in the preceding city election.

II. Proposed Revised Charter Text

Below, please find suggested text to cure the current deficiencies in the Charter.

DEFINITIONS

As used in this charter:

1. "City" means the city of Iowa City, Iowa.
2. "City council" or "council" means the governing body of the city.
3. "Councilmember" means a member of the council, including the mayor.
4. "Shall" imposes a duty.
5. "Must" states a requirement.
6. "May" confers a power.
7. "Eligible elector" means a person eligible to register to vote in Iowa City.
8. ~~"Qualified elector" means a resident of Iowa City who is registered to vote in Iowa City.~~
9. 8. "Board" includes a board, commission, committee or other similar entity however designated.

~~10.~~ 9. "Person" means an individual, firm, partnership, corporation, company, association, political party, committee or any other legal entity.

~~11.~~ 10. "Ordinance" means a city law of a general and permanent nature.

~~12.~~ 11. "Measure", except as provided in article VII, means an ordinance, amendment, resolution or motion. (Ord. 76-2792, 1-2-1976; amd. Ord. 85-3227, 3-12-1985; Ord. 05-4152, 3-1-2005)

...

Section 7.03. Petitions; Revocation Of Signatures.

A. Number Of Signatures. Initiative and referendum petitions must be signed by ~~qualified-eligible~~ electors equal in number to at least ~~twenty-five~~ *ten* percent of the number of persons who voted in the last regular city election, but such signatures shall be no fewer than ~~two thousand five hundred~~ *ten* ~~qualified-eligible~~ electors. Any petition that does not, on its face, contain the minimum required signatures defined herein shall be deemed insufficient for filing under this article, and no supplementary petition shall be permitted.

III. Conclusion

Given the statutorily preempted and likely unconstitutional nature of the current language governing eligible and qualified electors in the Charter, the ACLU of Iowa strongly urges you to amend these provisions as provided above.

We would be happy to provide additional information and answer any questions you may have regarding this letter or the text we suggest be adopted in the Charter. You may call or email me directly at the contact information provided below my signature.

Sincerely,

/s/ Rita Bettis

Rita Bettis

Legal Director

ACLU of Iowa

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