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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

JAMES L. POSEY, an individual,	)	Case No. 22CV23601
Intervener,	))	
In the case of,	))	**BRIEF IN REGARDS TO THE PETITION TO REVIEW BALLOT TITLE**
WILSON V. TAYLOR 22CV23601	))	
	))	
	))	
	))	
_____	)	

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15   Petitioner submits the following points and authorities in support of the Petition to review

16   the ballot title for the measure, referred by the City of Portland Charter Commission to qualified

17   voters of the City of Portland at the November 8, 2022 General Election, containing amendments

18   of the Portland City Charter (hereinafter referred to as "the Amendment").

19   **INTRODUCTION**

20   This Memorandum is submitted in support of my Petition for Review of the Ballot Title for

21   the Amendment to seek corrections of deficiencies in the Caption, Question and Summary

22   drafted by the City Attorney and to present to the voters, more clearly and completely, the

23

24   expansive changes incorporated in the measure, including changes to:

25   • The administration of the city;

26   • The governance of the city; and,

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1   • The methods of electing city officials.

2   For any ballot measure presented to the voters of a city in Oregon, the ballot title must

3   consist of a 10-word caption, a 20-word question and a 175-word summary.   If the above

4   proposed changes were presented to the voters in three separate measures, each would have been

5   summarized in three separate ballot titles. In this instance, with major changes to the city's

6   administration, governance and election methods combined in one measure, the word limitations

7   of a single ballot title are more challenging. But these limitations should not be used to

8   generalize, obfuscate or minimize all three of the measure's key provisions. Accordingly, all

9   components of the ballot title – the caption, the question and the summary – should inform the

10   voters of all three elements of the Amendment, involving administration, governance and

11   elections.

12   Petitioner is particularly concerned with the need to explain to the voters the complexity and

13   novelty of the new voting and vote-tallying systems proposed in the Amendment, as explained

14   below.

15   **I. PROPOSED CHANGES**

16   **A. Changes Proposed for the Administration of the City**

17   Among the Amendment's chief purposes is a change in the administration of the city, from

18   the commission form of government, in which council members take on the role of

19   commissioners overseeing city bureaus, to one in which the operations of city departments are

20   overseen by an appointed City Administrator, directed by the Mayor.

21   The Amendment would also shift the authority for setting salaries for city officials from the

22   Council to a five-member Salary Commission initially appointed by the Mayor and subsequently

appointed by the City Administrator, and in both instances confirmed by the Council. In a shift

of authority from the Council, the Salary Commission would set the salaries of the Mayor, the

Auditor and the members of the Council every two years, beginning January 1, 2025.

B. Changes Proposed for the Governance of the City

Also among the Amendment's chief purposes are multiple changes in the governance of the city,

including the following.

- The Mayor, now a member of the council, would be removed from the Council but would

  be called to cast tie-breaking votes when and if needed to break deadlocks on the council.

- The Council would be expanded from five members to 12.

- The 12 members would be elected from four geographic districts, the boundaries of

  which would be determined by an independent commission, appointed by the mayor and

  confirmed by the Council.

- Each district would elect three members of the Council.

- The Council would elect its President and Vice-President.

C. Changes Proposed for the Election of Citywide and District Positions

Finally, changes in the methods of voting, tallying votes and determining winners as well as

the timing of elections for the election of city officers comprise the third chief purpose of the

measure.

Section 3-102 of the Amendment begins:

City Councilors, the Mayor and the Auditor are elected in the general election, except as otherwise provided in this Charter, using ranked choice voting. Ranked choice voting means an election method in which voters rank candidates for an office or offices in

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order of the voter's preference and ballots are counted in rounds. The use of ranked choice voting must commence with the November 2024 election.

The changes proposed for the election of city officers are of two distinct types, as explained in the following. Both would end the current practice of holding a primary election in May of even-numbered years, with a runoff between the top two vote getters in the November general election if neither receives a majority of the votes cast. Instead, there would be a single election for city offices in November general elections, beginning in 2024. Both would retain the non-partisan nature of these elections. Both are described as ranked choice voting, but the similarities end there.

C.1. Election of Mayor and Auditor

The Mayor and Auditor would be elected in a single November general election from an unlimited number of candidates by a process the Amendment labels the "instant runoff" method of ranked choice voting.

Section 3-102 of the proposed Amendment describes this process for the election of these officials as follows:

The Mayor and the Auditor are elected at-large using a method of ranked choice voting known as instant runoff voting. Instant runoff voting elects the candidate who has a majority of the vote after the initial round of counting based on the number of first rankings each candidate receives. If no candidate receives a majority of the vote in the initial round, subsequent rounds are counted in which (i) candidates retain the number of votes counted for them in the first and any subsequent rounds that already occurred; and (ii) the candidates having the fewest votes are successively eliminated in rounds and their votes are counted as votes for the candidates who are ranked next on the ballots that had been counted for the eliminated candidates. The process of eliminating candidates and transferring their votes to the next-ranked candidate on ballots repeats until a candidate has a majority of the vote.

Voters would be allowed to vote for multiple candidates, provided that their votes are ranked by order of preference.

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It is important to note here that the Portland Charter Commission states, "Ranked choice voting would give Portland voters the ability to indicate all of the candidates they support in order of preference by marking their ballots to indicate '1st choice, 2nd choice, 3rd choice, etc.' for as many or as few as they care to rank" (Portland Charter Commission Report #6, page 8.) However, this is not made explicit in the language of the Amendment in Section 3-102 or in any section of Chapter 3 of the Amendment.

If a candidate receives a majority of first choice votes, that candidate is elected and the vote count ceases at that point. If no candidate receives a majority of first choice votes, this is when the reassignment of votes begins. In the second round of vote tallying, the candidate with the lowest number of votes would be eliminated and the second choices of that candidate's voters would be assigned to the remaining candidates. This process would continue through successive rounds until a candidate achieves a majority of the remaining votes, but not necessarily a majority of total votes cast. In some cases, a winner may emerge with less than a majority of votes cast in Round 1 in the event of large fields and/or a drop off in the number of choices exercised by each voter in subsequent rounds of vote counting. This is known as the "instant runoff" version of ranked choice voting and is labeled as such in the Amendment.

The effect of this change would enable the election of a single top vote getter in a single election, rather than relying on a primary election with a general election runoff in order to determine the winner.

If upon implementation of the Amendment, voters are given the option of casting preference votes for all candidates in an election for Mayor and Auditor (and for the election of

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1   Council members as described in the following section of this Memorandum), this method would

2   require the printing of ballots with multiple columns (as many columns as candidates, according

3   to the Commission's description) for voters to indicate their preferences; it would also require

4   the reprogramming of vote tallying machines to be able to reassign votes to candidates in

5   multiple rounds of ranked choice vote counting.

6

7   C-2. Election of Council Members

8   The new Council of 12 members would be elected in a single November general election

9   from an unlimited number of candidates. Three members would be elected in each of four yet-to-

10 be-defined geographic districts.

11   In conducting these district elections, Section 3-102 of the Amendment specifies:

12

13   *"Councilors of each district are elected using a proportional method of ranked choice
           voting known as single transferable vote. This method provides for the candidates to be
           elected on the basis of a threshold. The threshold is determined by the number of seats to
14   be filled plus one, so that the threshold is the lowest number of votes a candidate must
           receive to win a seat such that no more candidates can win election than there are seats
15   to be filled…*

16
           *In the initial round, the number of first rankings received by each candidate is the
17   candidate's vote count. Candidates whose vote counts are at least the threshold are
           declared elected. Votes that counted for elected candidates in excess of the threshold are
18   called surplus. If fewer candidates are elected in the initial round than there are seats to
           be filled, the surplus percentage of all votes for the candidates who received a surplus
19   are transferred to the next-highest ranked candidates in proportion to the total numbers
           of next-highest rankings they received on the ballots that counted for the elected
20   candidate. If, after all surpluses have been counted in a round, no additional candidates
           have a vote count that is at least the threshold, the candidates with the lowest vote counts
21   are successively eliminated in rounds and their votes are counted as votes for the
           candidates who are ranked next highest on the ballots that had been counted for the
22   eliminated candidates, until another candidate has a vote count that is at least the
           threshold or until the number of candidates remaining equals the number of seats that
23   have not yet been filled. The process of transferring surpluses of elected candidates and
           eliminating candidates continues until all positions are elected."*

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PAGE 6 – **BRIEF IN REGARDS TO PETITION TO
         REVIEW BALLOT TITLE**

Although not stated explicitly in the above language, but confirmed in the Charter Commission's final report and in the City Attorney's ballot title summary, the initial threshold in elections of three members in each district would be 25% plus one of the votes cast in that district. (Portland Charter Commission Report #6, page 8.)

The "single transferable vote" method proposed by the Amendment requires a complicated process to determine how second and later choice votes received by a candidate who has met the initial threshold of 25% plus one are shifted to the remaining candidates. First, there must be a calculation of the winning candidate's surplus, i.e. the number of votes received above 25% plus one. Next, there must be a calculation of the next-choice votes cast by all of the winning candidate's voters, not just that candidate's surplus voters, as it is impossible, nor does it appear to be the intent of this process, to determine which voters' votes are surplus. From this calculation can be derived percentages of support for the next-choice votes cast by the winning candidate's voters. These percentages can then be used in the aggregate to apportion the number of surplus votes to be shifted to the remaining candidates.

To better understand how this system will work in future council elections, I offer the following simulations based on the recently-concluded primary elections for Positions 2 and 3 on the Portland City Council.

Position 2: Simulation Under Proposed "Single Transferable Vote" Method

Commissioner, Position No. 2 Candidates	Total	Percentage
Dan Ryan	**89,251**	**54.53%**
Michael Simpson	1,756	1.07%

Commissioner, Position No. 2 Candidates	Total	Percentage
Renee Stephens	3,300	2.02%
Sophie Sumney-Koivisto	1,314	0.80%
Alanna (AJ) McCreary	45,721	27.93%
Avraham Cox	326	0.20%
Steven B. Cox	4,802	2.93%
Chris Brummer	3,830	2.34%
Sandeep Bali	12,913	7.90%
Write-in	460	0.28%
Total Votes Cast	163,673	100.00%

In this instance, voters would have been asked to record their preferences in ranked order for as many as nine candidates (ten, with a space for write-ins).

Assuming the votes above reflect voters' top choice, both Dan Ryan and Alanna McCreary would be elected in Round 1, as voters' first-choice votes for each would exceed the 25% plus one threshold, which computes to 40,920 votes. After this determination, the following would occur in Round 2.

Those who voted for Ryan would generate 48,331 surplus votes. These votes would be apportioned based on these voters' second choices as expressed among the total of 89,251 who cast first-choice votes for Ryan. Whatever proportions (in percentage terms) are then determined to reflect the second choices of these 89,251 votes (or fewer, if not all voters expressed a second choice) would then be used to transfer and apportion the 48,331 votes among the remaining candidates (presumably with the exception of co-winner McCreary).

1   Also in Round 1, those who voted for McCreary would generate 4,801 surplus votes.

2 These votes would be apportioned based on these voters' second choices as expressed among the

3 total of 45,721 who cast first-choice votes for McCreary. Whatever proportions (in percentage

4 terms) are then determined to reflect the second choices of these 89,251 votes (or fewer, if not all

5 voters expressed a second choice) would then be used to apportion the 4,801 votes among the

6 remaining candidates (presumably with the exception of co-winner Ryan).

7

8   Presumably, after several rounds of apportioning and reapportioning surplus votes, a third

9 candidate would reach the threshold of 40,920 votes (or a lesser number if there is a drop off in

10 the number of preference votes to be counted).

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12   **Position 3: Simulation Under Proposed "Single Transferable Vote" Method**

Commissioner, Position No. 3 Candidates	Total	Percentage
Peggy Sue Owens	2,046	1.22%
Karellen Stephens	652	0.39%
Chad Leisey	756	0.45%
Dale Hardt	858	0.51%
Jo Ann Hardesty	**73,152**	**43.72%**
Joseph Whitcomb	6,831	4.08%
Jeffrey A. Wilebski	1,075	0.64%
Vadim Mozyrsky	37,218	22.24%
Rene Gonzalez	**38,760**	**23.16%**
Kim Kasch	4,548	2.72%
Ed Baker	1,226	0.73%
Write-In	208	0.12%
Total Votes Cast	167,330	100.00%

23   In this instance, voters would have been asked to record their preferences in ranked order

24 for as many as 11 candidates (12, with a space for write-ins).

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Assuming the votes above reflect voters' top choice, Jo Ann Hardesty would be elected in Round 1, as her voters' first-choice votes would exceed the 25%+1 threshold, which computes to 41,834 votes. After this determination, the following would occur in Round 2.

Those who voted for Hardesty would generate 31,318 surplus votes. These votes would be apportioned based on these voters' second choices as expressed among the total of 73,152 voters who cast first-choice votes for her. Whatever proportions (in percentage terms) were then determined to reflect the second choices of these 73,152 votes (or fewer, if not all of these voters expressed a second choice) would then be used to apportion the 31,318 votes among the remaining candidates.

It is highly likely in this instance that, in Round 2 or subsequent rounds, both Rene Gonzales (with 23.15% in Round 1) and Vadim Mozyrsky (with 22.24% in Round 1) would have eventually reached the 25%+1 threshold and have been elected.

These examples are simulations used to walk through the steps of this new voting method. Many other diverse outcomes could result. We have developed and offer these simulations as useful exercises to illustrate the steps entailed in the "single transferable vote" process.

As with the comparatively simpler "instant runoff" method of ranked choice voting proposed for the election of the Mayor and Auditor, the logistics of the "single transferable vote" method could require the printing of ballots with multiple columns (as many columns as candidates, according to the Commission's description) for voters to indicate their preferences. But the process of vote tallying would, as shown above, be exponentially more complicated.

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C-3. Implementation and Costs

The costs, effects and the complexity of implementing these changes would be significant. If, as the Charter Commission proposes at Page 8 of its Report, voters are allowed to rank as many as all of the candidates in a given election for a city office, the printed ballot would have to display as many columns next to the name of a candidate as there are candidates for an office – as many as 19 such columns in the example of the most recent mayoral primary.

Finally, the reprogramming of vote tallying systems would involve the elections offices in Multnomah, Clackamas and Washington counties for voters who reside within the city of Portland.

The Charter Commission estimates that the one-time costs of implementing the changes in election methods and other changes proposed in the Amendment would amount to $4.0 million to $5.9 million per year over three years (Portland Charter Commission Report #6, page 18).

The Charter Commission estimates that the ongoing costs for sustaining the changes in election methods and other changes proposed in the Amendment would amount to $0.9 to $8.7 million annually (Portland Charter Commission Report #6, Page 19).

II. ARGUMENT

Voters should be alerted to the complexity and novelty of these changes in the city's election laws in as much detail as possible within the statutory word limits of the ballot title along with the need to describe the measure's other changes to the administration and governance of the city.

A. Deficiencies in the City Attorney's Caption, Alternative Caption Proposed

The caption of the City Attorney's ballot title fails to meet the statutory standard "reasonably identifying the subject of the measure."

The City Attorney's caption – "changes the structure of Portland's government" – is overly broad and could be pasted over any number of major or minor changes to the structure of the city's government, including the administration, governance and electoral systems currently in place in the city.

In this instance, the measure proposes changes to all three of those elements of city government. The caption should make this clear.

Further, even if one could discern that "the structure of Portland's government" likely involves changes to its administrative and/or its governance structures, the term "structure of government" does not imply the method of voting and counting ballots for the city's elected officials.

Ideally, the caption should identify for voters that the subject matter of the measure involves changes to its method of conducting voting in elections for the city's elected officials as well as the administration and governance of the city.

Such a caption would read as follows:

Amends Charter: Restructures city administration, expands council, changes election methods (10 words)

At a minimum, the caption should include a reference to changes in election methods within the scope of its identified subject.

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B. Deficiencies in the City Attorney's Question, Alternative Question Proposed

The question of the City Attorney's proposed ballot title fails to "plainly phrase(s) the chief purpose of the measure..." as required by state law.

In fact, the measure has multiple chief purposes which are reflected in the proposed question. However, not all of its chief purposes are plainly and understandably phrased.

Finally, the wording of the question errs in referring to a City Administrator supervised by the Mayor. The Amendment states, at Section 2-401(f) that the Mayor shall "give direction to the Administrator." Also, at Section 2-406(h)(i) and (m), the Amendment conditions certain enumerated responsibilities of the Administrator as "under the direction of the Mayor" and "as may be directed by the Mayor…." Nowhere does the Amendment use the term "supervise" to describe the Mayor's authority over the City Administrator.

Petitioner's proposed alternative proposed alternative corrects the errant terminology of the City Attorney's question and seeks to accomplish the plain phrasing required by state law for the chief purposes of the measure, with a focus on the inadequacy of the proposed terminology used to describe ranked choice voting.

As best as possible given the word limitations of the Question, the changes in election methods should be made known to the voters in the statement of the Question.

A question that would meet the statutory standard for plain phrasing of all of the chief purposes of the measure would read as follows:

Should administrator manage city, directed by Mayor, with 12-member council representing four districts, elections determined by apportioning multiple voter preferences? (20 words)

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C. Deficiencies in the City Attorney's Summary, Alternative Summary Proposed

State law requires that the summary be a concise and impartial statement summarizing the measure and its major effect. Although it is customary in summaries of ballot measures to begin with a statement of current law, this is not a statutory requirement. In this instance, given the measure's many major effects, Petitioner submits that it would be better to dispense with the statement of current law in order to provide a more complete description of the measure's effects within the word limits of the summary.

Again, the City Attorney's summary errs in using the term "supervise" to describe the Mayor's authority over the City Administrator. This should be corrected.

Further, the City Attorney's summary omits any reference to the Charter Commission's estimate of a three-year transition cost of $12 million to $17.7 million. Instead, the Summary references the Commission's estimate of ongoing costs of $0.9 to $8.7 million annually. The former is at least as important to be cited as the latter and should be included.

Petitioner recommends the following Summary:

Charter amendment would change city administration, governance and methods for electing city officials.

If approved, City Administrator, appointed/directed by Mayor and confirmed by City Council, would manage city bureaus, enforce laws, prepare budgets. Council would expand from five to 12 members, three each from four geographic districts to be mapped by Independent District Commission appointed by Mayor, confirmed by Council. Mayor would be removed from Council, but could break tie votes on non-emergency ordinances. Appointed Salary Commission would set elected officials' salaries.

Future elections consolidated in single November election, beginning 2024. For the election of Mayor and Auditor, voters would rank candidates in order of preference in single-winner citywide elections. For the election of Council members, voters would rank candidates in order of preference, with initial threshold of 25% plus one needed to elect members. "Surplus votes" over 25% plus one redistributed to lower ranked candidates until three members elected in each district. Costs of implementing changes estimated at $12 million to $17.7 million. Ongoing costs estimated at $0.9 to $8.7 million annually. Other provisions. (175 words)

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NOTE - Exhibits are attached, not within the body of the document. Therefore, I renamed this to "Example". You can make it an exhibit but it would need to be a separate document labeled as such

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Example A compares the City Attorney's Ballot Title with the Ballot Title offered as an alternative.

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Example A. Side-by-Side Comparison of Ballot Titles	
City Attorney's Ballot Title	**Title Proposed by Petitioners**
Caption: Amends Charter: Changes the structure of Portland's government	**Caption:** Amends Charter: Restructures city administration, expands Council, changes election methods
Question: Should City Administrator, supervised by Mayor, manage Portland with twelve Councilors representing four districts making laws and voters ranking candidates?	**Question:** Should administrator manage city, directed by Mayor, with 12-member Council representing four districts, elections determined by apportioning multiple voter preferences?
Summary: The Charter Commission proposed a measure to change Portland's government. Currently, Council is one Mayor and four Commissioners elected citywide. Council makes laws. Mayor and Commissioners directly manage bureaus. Portlanders vote for one candidate per office in May primaries, possible November runoffs. If measure is approved, City Administrator – supervised by Mayor – would manage daily operations, including hiring, firing and supervising most bureau directors. Council makes laws. Mayor would not be part of Council, but could break tie votes on non-emergency ordinances. Independent Salary Commission would set elected officials' salaries. Council would expand to twelve Councilors and seats would shift from citywide to four new geographic districts – created by Independent District Commission – with three Councilors representing each district. Voters would rank candidates in order of preference, with Councilors elected by district using single transferrable vote ranked choice voting and Mayor and Auditor elected citywide using instant runoff ranked choice voting. Ranked choice voting eliminates primaries. Cost estimate is 0.9 to 8.7 million dollars annually. Other provisions.	**Summary:** Charter amendment would change city administration, governance and methods for electing city officials. If approved, City Administrator, appointed/directed by Mayor and confirmed by City Council, would manage city bureaus, enforce laws, prepare budgets. Council would expand from five to 12 members, three each from four geographic districts to be mapped by Independent District Commission appointed by Mayor, confirmed by Council. Mayor would be removed from Council, but could break tie votes on non-emergency ordinances. Appointed Salary Commission would set elected officials' salaries. Future elections consolidated in single November election, beginning 2024. For the election of Mayor and Auditor, voters would rank candidates in order of preference in single-winner citywide elections. For the election of Council members, voters would rank candidates in order of preference with initial threshold of 25% plus one needed to elect members. "Surplus votes" over 25% plus one redistributed to lower ranked candidates until three members elected in each district. Costs of implementing changes estimated at $12 million to $17.7 million. Ongoing costs estimated at $0.9 to $8.7 million annually. Other provisions.

PAGE 16 –**BRIEF IN REGARDS TO PETITION TO REVIEW BALLOT TITLE**

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CONCLUSION

Based on the above, and to ensure that the democratic process is honored and preserved, Petitioner requests that this Court reject the City's Ballot Title, and instead certify to the city elections officer Petitioner's proposed ballot title as set forth above in Example A, and, enjoin Respondents from submitting the ballot title as currently proposed to the county.

DATED: August 09, 2022

JAMES L. POSEY

_____
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