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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.
)	
Petitioner,)	
)	PETITION TO REVIEW BALLOT
v.)	TITLE
)	
ROBERT TAYLOR, CITY ATTORNEY OF)	(ORS 250.296 and ORS 251.345;
THE CITY OF PORTLAND)	Injunctive Relief Requested)
)	Amount of filing fee pursuant to ORS
MARY HULL CABALLERO, CITY)	21.135: \$252.00
AUDITOR OF THE CITY OF PORTLAND)	
)	
Respondents.)	(Not Subject to Mandatory Arbitration)
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Petitioner alleges as follows:

1.

This is an action pursuant to O.R.S. §250.296 seeking review of the ballot title for a measure, referred by the City of Portland Charter Commission to qualified voters of the City of Portland at the November 8, 2022 General Election, containing amendments of the Portland City Charter (hereinafter referred to as “the Amendment”).

2.

Petitioner (JAMES L. POSEY) is a registered voter and elector within the City of Portland. Petitioner has standing to petition for review of a proposed ballot title for a City of Portland ballot measure pursuant to ORS 250.055(2).

3.

1 Respondents are City Attorney Robert Taylor and City Auditor Mary Hull Caballero. The
2 offices of the City Attorney and the City Auditor are located within Multnomah County, Oregon,
3 and within the City of Portland, Oregon. The City Attorney and City Auditor are named herein
4 only in their capacity as employees of the City of Portland, pursuant to O.R.S. §250.296 (1), and
5 not in their individual capacity.
6

7 4.

8 On information and belief, the ballot title for which Petitioner seeks review herein was
9 prepared by the City Attorney and filed with and published by the City Auditor on July 6, 2022
10 as the ballot title for the Amendment of the Portland City Charter; therefore, the City Attorney
11 and the City Auditor are proper respondents, pursuant to O.R.S. §250.296 (1).
12

13 5.

14 The Multnomah County Circuit Court has jurisdiction over this matter, and venue is
15 proper in this court, pursuant to O.R.S. §250.270 (4), which directs that this petition be filed in
16 “the circuit court of the judicial district in which the city is located[.]”
17

18 6.

19 The Portland Charter Commission adopted the Amendment for referral to the voters by a
20 vote of 17-3 on June 14, 2022, Section 13-302 of the City Charter. At the same time, the
21 Commission adopted a final report, Progress Report #6, attached hereto as Exhibit 1, which
22 included the full text of the Amendment.
23

24 7.

25 The Commission voted again on June 21, 2022, by the same margin of 17-3, to clarify
26 effective dates of, and make minor technical changes to the full text of the Amendment.

1 8.

2 Pursuant to Section 13-302 of the City Charter, the margin of the Commission’s vote
3 authorized a direct referral of the Amendment to the voters at the November 2022 general
4 election without further action by the City Council.

5 9.

6 The City Auditor reported this action as an information item to the Portland City Council
7 by memorandum dated June 29, 2022. The Auditor’s report, attached hereto as Exhibit 2,
8 contains the final and complete text of the Amendment.

9 10.

10 The City Attorney drafted and submitted the ballot title for the Amendment to the City
11 Auditor, who published it on July 6, 2022. The City Attorney’s ballot title is attached hereto as
12 Exhibit 3.
13
14

15 11.

16 Petitioner(s) timely filed this petition within seven business days after the ballot title was
17 filed with the city elections office.

18 12.

19 ORS 250.035 (1) provides: “The ballot title of any measure, other than a state measure, to
20 be initiated or referred shall consist of:

- 21
- 22 (a) A caption of not more than 10 words which *reasonably identifies the*
subject of the measure;
 - 23 (b) A question of not more than 20 words which plainly phrases *the chief*
purpose of the measure so that an affirmative response to the question
24 corresponds to an affirmative vote on the measure; and
 - 25 (c) A concise and impartial statement of not more than 175 words
summarizing the measure and its major effect.” (Emphasis added)
- 26

1 13.

2 Oregon courts have held, “the caption is the 'headline' of the ballot; it 'provides the
3 context for the reader's consideration of the other information in the ballot title' and must
4 describe the proposed measure's subject matter accurately." *Towers v. Rosenblum*, 354 Or
5 125, 129 (2013). The "subject matter" of a measure refers to "the 'actual major effect' of a
6 measure or, if the measure has more than one major effect, all such effects (to the limit of
7 the available words)." *Buehler v. Rosenblum*, 354 Or 318, 323 (2013). "The caption must
8 also identify the measure's subject matter in terms that will not 'confuse or mislead potential
9 petition signers and voters,' and it cannot overstate or understate the scope of the legal
10 changes that the measure would enact." *Id.* (internal citations omitted). "A caption may
11 describe the major effect of a measure and still not comply with the requirements of the
12 statute if the description is 'too vague and gives voters no clear picture of what is at stake.'" *Girod v. Kroger*, 351 Or 389, 397 (2011).

16 14.

17 Petitioner’s Memorandum in Support of Judgment for Relief (“Memorandum”), filed
18 herewith, provides a description of the changes proposed in the Amendment involving the
19 administration and governance of the city and methods of electing city officials. The
20 Memorandum also provides a comparison of the language of the ballot title certified by the City
21 Attorney to the Amendment’s subjects, chief purposes and major effects.

23 15.

24 Based on points and authorities cited within the Memorandum, Petitioner respectfully
25 submits that the proposed ballot title is insufficient and deficient to satisfy the requirements of
26

1 ORS 250.035 (1), because: the caption fails to reasonably identify the multiple subjects of the
2 measure; the twenty-word question fails to plainly phrase the multiple chief purposes of the
3 measure; and, the 175-word summary fails to concisely summarize the measure and its multiple
4 major effects.

5
6 16.

7 Petitioner’s Memorandum provides an alternative ballot title for the Amendment that
8 corrects the insufficiencies and deficiencies of the City Attorney’s ballot title and that
9 Petitioner(s) believe(s) meets the standards established in ORS 250.035(1). This ballot title
10 would read as follows:

11 **Caption:**

12 Amends Charter: Restructures city administration, expands Council, changes election
13 methods.

14 **Question:**

15 Should administrator manage city, directed by Mayor, with 12-member Council
16 representing four districts, elections determined by apportioning multiple voter
17 preferences?

18 **Summary:**

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

21 If approved, City Administrator, appointed/directed by Mayor and confirmed by City
22 Council, would manage city bureaus, enforce laws, prepare budgets. Council would
23 expand from five to 12 members, three each from four geographic districts to be mapped
24 by Independent District Commission appointed by Mayor, confirmed by Council. Mayor
25 would be removed from Council but could break tie votes on non-emergency ordinances.
26 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,

1 17.

2 **CONCLUSION**

3 To ensure that the democratic process is honored and preserved, voters should be alerted
4 to the complexity and novelty of these changes in the city’s governance, administration and
5 methods of elections in as much detail as possible within the statutory word limits of the ballot
6 title. Petitioner believes that the alternative ballot title presented herein accomplishes that
7 purpose in compliance with ORS 250.035(1)
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner prays for the following relief:

- 11 1. For judgement disapproving the proposed ballot title and adopting Petitioner’s
12 alternative ballot title presented herein;
13 2. Awarding Petitioner their costs and disbursements; and,
14 3. For such other relief as the Court deems just and proper.

15
16 DATED: July 15, 2022

17 JAMES L. POSEY

18
19 _____
20 James L. Posey,
21 posej@comcast.net
22 Elector, City of Portland
23
24
25
26