

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

ANDREW HOAN,	)	
	)	
Plaintiff,	)	
	)	Case No. 22CV23479
v.	)	
	)	
MARY HULL CABALLERO, City of	)	
Portland Auditor; LOUISE HANSEN, City	)	OPINION
of Portland Elections Officer,	)	
	)	
Defendants.	)	

**INTRODUCTION**

Pursuant to Chapter 13 of the Portland City Charter (Charter), the Charter Commission referred to the voters a measure that, if approved, substantially changes the structure and operation of City government and the process for electing city officials. Plaintiff brought this action pursuant to ORS 246.910, ORS 250.270, and section 2.04.055 of the Portland City Code (Code), contending that the measure violates the single-subject requirement in Article IV, section 1(2)(d) and Article IV, section 20, of the Oregon Constitution. The case is now before the court on cross-motions for summary judgment.

Defendants and *amici* Portlanders for Charter Reform, Jenny Lee and Caitlin Baggott Davis contend that (1) the constitutional single-subject requirement does not apply to this measure; and (2) even if the single-subject requirement applies, this measure complies with that requirement, as interpreted by the Oregon appellate courts.

For the reasons explained below, the court concludes that the measure does not violate the single-subject requirement, assuming it applies. Based on that conclusion, it is unnecessary

for the court to decide whether the single-subject requirement applies to a measure referred to the voters by the Charter Commission.

## DISCUSSION

### Background

In December 2020, Portland’s City Council appointed twenty Portland residents to serve on the Charter Commission in accordance with Charter Section 13-301(a). The Charter Commission’s task is “to review and recommend amendments to” the Charter. *Id.* In June 2022, after a lengthy public process, seventeen of the twenty Charter Commissioners voted to submit to the voters at the November 2022 election a measure amending the Charter to change Portland’s form of government and the way city officials are elected.<sup>1</sup>

The measure, if approved by the voters, would substantially reform city government in three ways. First, executive duties and day-to-day management of city affairs would be handled by a City Administrator, supervised by the mayor. Second, the City Council—which would retain legislative authority—would be expanded to twelve members, with three Councilors selected from each of the four new districts to be defined by an Independent District Commission. Third, elected city officials—the City Councilors, the Mayor, and the Auditor—would be chosen through ranked choice voting processes described in the measure.

Charter Section 13-302 provides that charter amendments supported by at least fifteen members of the Charter Commission “shall be submitted to the voters of the City of Portland” at the next election. Code Section 2.04.110 describes the process to be followed in submitting a measure referred by the Charter Commission to the voters. Under that code provision, the City Auditor obtains a ballot title and explanatory statement for the measure from the City Attorney,

---

<sup>1</sup> The Charter Commission’s initial vote occurred on June 14, 2022; on June 21, seventeen Charter Commissioners voted to clarify the effective dates of the measure.

publishes notice in the local newspaper, and files the measure, ballot title and explanatory statement with the county election officers.

Here, the Auditor published the ballot title in the *Oregonian* on July 6, 2022. On July 12, the Auditor denied the Portland Business Alliance’s request to review and reject the measure for violating the single-subject requirement. Two days later—on July 14—plaintiff filed this challenge.

### **Jurisdiction**

In his complaint, plaintiff cited ORS 246.910, ORS 250.270, and Code Section 2.04.055 as the jurisdictional bases for judicial review. Alternatively, plaintiff seeks a declaratory judgment under the Declaratory Judgments Act, ORS 28.010 *et seq.* *Amici* contends that ORS 250.270 provides the exclusive method for challenging the measure’s compliance with the single-subject requirement. In *amici*’s view, review under ORS 246.910 is, at most, available to decide whether the City Auditor and/or the city elections officials had a duty to review the measure for compliance with the single-subject requirement. Defendants do not challenge the court’s jurisdiction, arguing only that Auditor had no authority or duty to review the measure for compliance with the single-subject requirement. Defendants assert a counterclaim, seeking a declaratory judgment that (among other things) the measure does not violate the single-subject requirement.

ORS 250.270 expressly applies to “a prospective petition for an initiative measure.” This measure is not a prospective petition for an initiative measure; it is a referral by the Charter Commission, so ORS 250.270 does not apply. ORS 246.910 gives the court jurisdiction to review “any act or failure to act by . . . a city elections officer or any other county, city or district official under any election law, or by any order, rule, directive or instruction made by . . . a city

elections officer or any other county city or district official under any election law.” ORS 246.910(1). Although the Auditor declined to review this measure for compliance with the single-subject requirement, that determination itself may be an “act or failure to act” that would be subject to review under ORS 246.910. Moreover, the parties appear to agree that the court has jurisdiction to consider plaintiff’s single-subject challenge under the Declaratory Judgment Act. Either way, the court has jurisdiction to consider plaintiff’s challenge.<sup>2</sup>

### **Single-subject requirement--applicability**

Under the Oregon Constitution, any state or local legislative act proposed by the people through the initiative must comply with the single-subject requirement in Article IV, section 1. Any statewide legislative act proposed by the Legislative Assembly must comply with the single-subject requirement in Article IV, section 20. Any statewide act referred to the people, either by petition or by the legislature, must comply with the single-subject requirement in Article IV, section 20. *See* Or Const, Article IV, section 1(3)(b) (referendum of legislative act by petition); section 1(3)(c) (referendum of legislative act by the Legislative Assembly). And under Charter Section 2-118, Portland ordinances may not “contain more than one general subject.”

Plaintiff contends that the measure submitted by the Charter Commission to the voters is a legislative act that is subject to the constitutional single-subject requirement in Article IV, sections 1 and 20. Defendant and *amici* disagree, contending that the constitutional single-subject requirement does not apply to a measure referred to the voters by the Charter Commission.

In *Noonan v. City of Seaside*, 97 Or 64, 67 -68 (1920), the Oregon Supreme Court determined that it was “unnecessary to decide” whether the single-subject requirement in Article

---

<sup>2</sup> Code Section 2.04.055, cited by plaintiff, applies to an initiative petition, not a Charter Commission referral.



IV, section 20, applied to an amendment of Seaside’s city charter because the court concluded that the amendment “embraced but one subject and matters properly connected therewith.” This court takes the same approach. Given the court’s conclusion—explained below—that the measure complies with the single-subject requirement, it is unnecessary for the court to decide whether that requirement applies to the charter amendments contained in this measure.

### **Single-subject requirement--compliance**

The Oregon Supreme Court has determined that the single-subject requirements in Article IV, section 1(2)(d), and Article IV, section 20, “should be given the same meaning.” *OEA v. Phillips*, 302 Or 87, 100 (1986). For purposes of the constitutional single-subject requirements, the term “subject” “is to be given a broad and extensive meaning to give legislative drafters full scope to include in one act all matters having a logical or natural connection.” *Anantha v. Clarno*, 302 Or App 196, 201 (2020) (quoting *Lovejoy v. Portland*, 95 Or 459, 466 (1920)). Thus, “a proposed law that addresses a single substantive area of the law, even if the proposal includes a wide range of connected matters intended to accomplish the goal of that single subject, generally satisfies the single-subject requirement.” *Anantha*, 302 Or App at 201 (quoting *State ex rel Caleb v. Beesley*, 326 Or 83, 91 (1997)).

The Oregon Supreme Court has adopted a two-part framework for determining whether legislation complies with the single-subject requirement. *McIntire v. Forbes*, 322 Or 426, 443 (1996). First, the court must determine whether it can “identify a unifying principle logically connecting all provisions in the act.” *Id.* at 444. Second, the court must determine whether any “other matters” contained in the measure are “properly connected” to that unifying principle. *Phillips*, 302 Or at 100. *See also Anantha*, 302 Or App at 201 (describing the analytical framework).

In *McIntire*, the court held that Senate Bill 1156, enacted by the Legislative Assembly in 1995 to address light rail funding and other matters, violated the single-subject requirement. As the court described it, Senate Bill 1156

(1) provides state funding and land use procedures for light rail, (2) expands the availability of card-lock service stations, (3) promotes regional problem solving in land use matters, (4) regulates confined animal feeding, (5) preempts local pesticide regulation, (6) adopts new timber harvesting rules, (7) grants immunity to shooting ranges for noise pollution, and (8) protects salmon from cormorants.

322 Or at 444. The bill violated the single-subject requirement because the Supreme Court was “unable to discern a principle unifying those eight topics.” *Id.* at 445.

In *Anantha*, the Court of Appeals held that three initiative petitions proposing to amend Oregon’s Forest Practices Act did not violate the single-subject requirement. As described by the court, the measures’ main substantive provisions included:

(1) Limits clearcut logging activity near certain bodies of water; (2) Directs the Board of Forestry to adopt rules regulating clearcut logging that apply to small tract forestland; (3) Prohibits the aerial application of pesticides within 500 feet of all forest waters; (4) Creates public notice requirements for certain forest operations involving the aerial application of pesticides to forestland; (5) Increases the buffer (from 60 feet to 500 feet) governing the aerial application of pesticides for forest operations adjacent to dwellings and schools; (6) Restricts logging operations in high-hazard landslide zones; (7) Reduces financial conflicts of interest in the Board of Forestry; and (8) Creates a funding mechanism.

302 Or App at 199 (citations to initiative petitions omitted). The court found it “relatively easy to identify a logical, unifying principle” connecting the provisions of the measures at issue in that case: “the regulation and protection of forestlands.” *Id.* at 203 -04.

In *Lovejoy v. Portland*, 95 Or 459, the Supreme Court held that an act regulating the insurance industry in Oregon did not violate the single-subject requirement. The law at issue in *Lovejoy*

set forth conditions under which local and foreign business could be started and conducted, regulated the insurance department, prescribed jurisdiction and powers

of the insurance commissioner, made provisions for ensuring the solvency of insurance companies, addressed qualification and licensure of agents specified types and forms of insurance various companies could offer, made provisions to prevent rate discrimination, and prescribed various other matters relating to the insurance business, including the preemption of local ordinances.

*Caleb*, 326 Or at 90-91 (citing *Lovejoy*, 95 Or at 461 -62). The court concluded that the point of the legislation was “to regulate and supervise insurance” and that “whatever means may tend directly or indirectly to accomplish this object may properly be included in the act” without violating the single-subject requirement. *Lovejoy*, 95 Or at 467.

In *State ex rel Duniway v. Portland*, 65 Or 273 (1913), plaintiff challenged amendments to the Portland city charter enacted through an initiative that significantly changed Portland’s form of government. As described by Chief Justice McBride, the measure approved by the voters

vests all the legislative, executive, and other powers of the city in a mayor and four commissioners, who collectively constitute a city council. There are no other elective officers except a city auditor. All boards and commissions heretofore existing are abolished, and their powers and duties transferred to the council. The executive and administrative duties are distributed among the four commissioners and the mayor as follows: [listing five departments].

65 Or at 275.

The measure at issue in *Duniway* “also prescribes a preferential system of voting” that allowed voters to indicate their first, second, and third choices for each office. *Id.* at 275 -76. Plaintiff argued that the measure “is illegal and void because it submits a mass of amendments, having no relation to each other, to be voted upon in one vote, whereas they should have been submitted separately so that a vote could be taken upon each separate section or amendment.” *Id.* at 281.

The Supreme Court rejected that argument, explaining that its underlying premise—submission of “a mass of amendments having no relation to each other”—was



“incorrect.” *Id.* at 282. Rather, the court explained, the “principal object of the revision is to provide for a commission form of city government. To do this it was deemed necessary, and in fact was necessary, to so revise the charter as to adapt its provisions to the conditions involved by the change.” *Id.* at 282. The court concluded that the charter revision was properly submitted to the voters as one measure because the amendments “amount to a general revision of the city charter and are all germane to the general purpose sought to be accomplished.” *Id.*<sup>3</sup>

Here, defendants identify a single unifying principle connecting the provisions of the measure referred by the Charter Commission: changing the structure of Portland’s government. *Amici* add that the changed structure of government is designed to achieve six identified desired outcomes: (1) a growing participatory democracy with more voices being heard in elections; (2) an accessible and transparent government with Councilors who are easy to reach; (3) a reflective government with Councilors who are part of the communities they represent; (4) a responsive government with Councilors who understand community needs; (5) an accountable government with Councilors who answer to the people; and (6) a trustworthy government with Councilors who safeguard democracy.

Plaintiff contends that the measure includes provisions in four distinct and logically unrelated categories: (1) the structure of city government; (2) the management and administration of city government; (3) the method for conducting election of City Council members; and (4) setting values and policies for city government. Plaintiff further contends that submitting these provisions to the voters in a single measure denies the voters the right to pick

---

<sup>3</sup> Plaintiff argues that *Duniway* does not apply here because the court did not specifically reference Article IV, section 20, or any cases applying that provision. The *Duniway* court did not reference Article IV, section 20, but the court’s analysis was consistent with the constitutional test the Supreme Court expressly adopted 83 years later in *McIntire*. This court finds *Duniway* to be helpful and illuminating even if not fully controlling.



and choose separately the reforms they might or might not support, in violation of the single-subject requirement.

The court concludes that (1) there is a unifying principle—reforming the structure and operation of city government—that logically connects all provisions in the measure; and (2) all other matters in the measure—including the election reforms, the value and policy statements, and other provisions—are properly connected to that unifying principle. This measure is more like the amendments to the Forest Practices Act at issue in *Anantha* and the insurance statute at issue in *Lovejoy* than the “disconnected hodgepodge of legislation” struck down in *McIntire*. *Anantha*, 302 Or App at 203. This measure is also analogous to the package of charter amendments upheld in *Duniway*. The court concludes that the measure complies with the single-subject requirement.

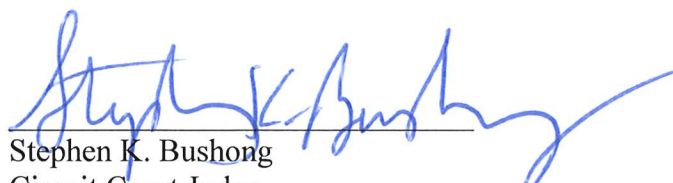
Many voters might prefer to vote on the three main reforms—establishing a City Administrator management structure, expanding City Council with councilors selected by district, and adopting ranked choice voting procedures—separately. But the Charter Commission chose to submit these reforms as a single package. All the provisions in this package of reforms are properly connected to the unifying principle of reforming the structure and operation of city government. As in *Anantha*, none of the provisions in this measure “share the grab-bag quality that led the *McIntire* court to invalidate the light-rail funding measure at issue in that case.” *Anantha*, 302 Or App at 204. Voter preference is important in setting public policy, but it is not the legal test for determining compliance with the constitution’s single-subject requirement.

## CONCLUSION

The only issue before the court is whether the Oregon Constitution prevents voters from casting a ballot for or against this reform package as a single measure. Applying well-established principles of law, the court concludes that the constitution does not prevent the voters from considering this measure in its current form. That conclusion allows, but does not require, the city to submit this package to the voters as a single measure. Nothing in this opinion prevents the city from choosing to submit these reforms to the voters separately if that is how the Council decides to proceed.

Assuming without deciding that the measure is subject to pre-election review for compliance with the constitutional single-subject requirement, the court concludes that the measure does not violate that requirement for the reasons stated in this opinion. Plaintiff's motion for summary judgment is denied; defendants' cross-motion for summary judgment is granted. Defendants' counsel should submit a form of judgment consistent with this opinion.

Dated this 15<sup>th</sup> day of August, 2022.

  
Stephen K. Bushong  
Circuit Court Judge