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

ELONA WILSON and ISABELA
VILLARREAL,

Petitioners,

v.

ROBERT L. TAYLOR, Portland City Attorney,

Respondent.

No.

MEMORANDUM IN SUPPORT OF:

**PETITION FOR REVIEW OF
BALLOT TITLE and
EXPLANATORY STATEMENT**

(ORS 250.296; ORS 34.010 *et seq*)

1. INTRODUCTION

Petitioners Elona Wilson and Isabela Villarreal seek review of the ballot title and explanatory statement drafted by the Portland City Attorney for the Charter Commission’s proposal to change the structure of Portland’s city government. Petitioner, Elona Wilson, is a Portland elector and the Executive Director of Next Up, a nonprofit organization based in Portland committed to mobilizing young voters and building the next generation of leaders. Isabela Villarreal is a Portland elector and the Policy and Communications Manager for Next Up.

Next Up worked with the Charter Commission to engage young voters in Portland around the possible changes to Portland’s governmental structure. Consistent with the final agreements of the Commission, their research confirmed that an expanded Council with multi-member Districts and ranked choice voting will greatly increase civic engagement by youth, both when they vote and more generally. They also understand that the concept of ranked choice voting is new in Portland –

1 although widely used elsewhere – which makes it critically important that the ballot
2 title and explanatory statement describe this change in simple and understandable
3 terms.

4 As set forth below, Petitioners recognize that crafting a ballot title for this
5 measure is challenging (as are most ballot titles) and believe that Respondent has
6 generally gotten it right. The caption plainly conveys the unifying principle of the
7 measure– to change the structure of Portland’s government. The question properly
8 identifies the three major interdependent components of the comprehensive reform
9 measure. And the summary properly describes current law before describing the
10 proposed changes. However, both the question and the summary fail to meet the
11 statutory standards, particularly as it relates to the changes in voting. In addition, the
12 summary includes speculative, imprecise and misleading cost estimates, information
13 that does not belong in the summary.

14 Similarly, the explanatory statement drafted by Respondent provides useful
15 information but is written in a manner that makes it difficult to understand, particularly
16 ranked choice voting. To meet the statutory standards of being “impartial, simple and
17 understandable,” it must be revised.

18 Below, Petitioners will first provide an overview of the measure itself, and then
19 turn to the flaws in Respondent’s ballot title and explanatory statement.

20 **2. CHARTER COMMISSION’S PROPOSAL TO REFORM PORTLAND**
21 **CITY GOVERNMENT**

22 As required by the current Portland charter, the City Council convened a Charter
23 Commission made up of twenty volunteers to review and recommend amendments to
24 the Portland charter. Portland Charter, Section 13-301. When the Charter Commission
25 recommends amendments supported by a supermajority (at least fifteen (15) out of

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1 twenty (20) members), Section 13-302 provides that those amendments must be
2 submitted to the voters for their approval. That is what has occurred here.

3 It is no secret that many Portlanders believe that Portland’s unique form of
4 “commission” government is not working and that the current system has historically
5 resulted in a lack of representation of all Portlanders and disenfranchisement of voters.
6 The Charter Commission tackled these issues head on. It first developed a set of
7 [desired outcomes](#) which focused on creating an effective, responsive and
8 democratically accountable government structure. An explicit goal was to promote
9 participation in elections and a City Council that is more reflective of the diverse
10 communities within the City. *See*, Desired Outcome #1. The Commission then
11 conducted months of study, community engagement and deliberations to fashion a
12 proposal that would meet those objectives. Petitioners led this community engagement
13 with Portland youth. The Charter Commission’s [website](#) provides detailed
14 information regarding its extensive engagement process.

15 Ultimately, seventeen (17) out of twenty (20) Charter Commission members
16 voted to refer to the voters its comprehensive and unified reform proposal. The
17 referral itself includes the entire [amended charter](#) (labeled as “Attachment 1” on the
18 City Election webpage). In addition, the Charter Commission issued a final [Progress](#)
19 [Report #6](#) (labeled as “Attachment 2” on the City Election webpage) which explains its
20 recommendations and also includes a complete copy of the referred measure.

21 As set forth in the Commission’s report, the proposal makes three significant
22 changes to the structure of Portland’s city government which together are designed to
23 make the city “more accountable, transparent, efficient and effective, responsive, and
24 representative of every area of our city.” Charter Commission Progress Report #6, p.

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1 20.¹ First, the proposal shifts management of the city’s day-to-day operations to a
2 professional City Administrator, supervised by the Mayor. Currently, the Mayor and
3 city Commissioners directly manage the city’s bureaus.

4 Second, the measure expands the City Council to twelve members, with three
5 members elected to represent Portlanders within one of four new geographic districts.
6 By having multiple members from each district, City Council will be more
7 representative and responsive to the diverse communities within the City. The Mayor,
8 who is elected citywide, is not a member of the Council but can introduce policy and
9 cast a tie-breaking vote.

10 Finally, the proposal adopts “ranked choice voting” for city elections. This
11 voting system allows voters to rank candidates in order of preference, rather than being
12 forced to vote for only one candidate. This means that voters can truly express their
13 political preferences, without the fear of having their vote be irrelevant. Again, the
14 goal is to make elected leaders more representative and democratically accountable.

15 Textually, the bulk of the proposed changes² are found in the amendments to
16 Chapter 2 - Government Chapter 2 – Government and Chapter 3 – Elections and
17 _____

18 ¹ As reported in the media, the Portland Business Alliance and some elected
19 leaders have asserted that the proposed measure violates the “single subject rule” set
20 forth in Article IV, section 1(2)(d) of the Oregon Constitution. This argument is
21 without merit. Under well-established precedent – recently affirmed in *Anantha v.*
22 *Clarno*, 302 Or App 196 (2020) -- a proposal meets the “single subject” standard when
there is a “unifying principle” logically connecting the parts. Here, each proposed
change serves the overarching goal – the “unifying principle” – of reforming Portland’s
governmental structure to make it more effective, responsive, and democratically
accountable.

23 ² The referral includes the entire charter, as amended, which is lengthy.
24 Because of the change in structure – for example, transferring the administration of day-
25 to-day operation from Commissioners to the Mayor/City Administrator – almost all
26 sections of the charter require some editing. See, [Auditor’s Office Report](#). Petitioners
will focus on the major substantive changes that are properly identified in the ballot
title and explanatory statement and urge the Court to reject any argument from
opponents that other changes should be identified. A closing reference to “other
provisions” is sufficient.

1 Nominations. Taken generally in the order in which they appear, those changes
2 include:

- 3 ■ Allocating the lawmaking authority to the City Council, and the executive and
4 administrative authority to the Mayor. Sections 2-101; 2-104. This includes the
5 Mayor being responsible for proposing the city budget, and the City Council
6 responsible for approving that budget. Section 2-128.
- 7 ■ Changing the size of City Council to twelve (12) Councilors from four
8 geographical districts, with the Mayor not a member of the City Council, but
9 authorized to cast a tie-breaking vote on non-emergency ordinances. Section 2-
10 102. Districts established by the Independent District Committee. Sections 3-
11 107, 3-108, 3-109 and 3-110. Councilors must be residents of the geographical
12 district they are representing. Section 2-201, 2-202.
- 13 ■ Establishing an independent Salary Commission to set salaries for elected
14 officials. Section 2-207.
- 15 ■ Delineating the Mayor’s key responsibilities. Section 2-401.
- 16 ■ Establishing the qualifications and responsibilities of a professional City
17 Administrator, to be supervised by the Mayor. Section 2-406; Section 2-401(g).
- 18 ■ Establishing that all City Councilors, the Mayor and the City Auditor are elected
19 at a general election (i.e., November) using ranked choice voting and then
20 describing how that works for city-wide elections (Mayor and City Auditor) and
21 district-based elections (City Councilors). Chapter 3, Section 3-102. More
22 specifically, Section 3-102 provides that
 - 23 ○ “Ranked choice voting” generally means that voters are allowed to rank
24 candidates in order of preference on the ballot, instead of voting for just
25 one candidate, with ballots counted in rounds until there the is a winner.

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- 1 ○ For Mayor and City Auditor (at-large citywide offices) ballots are counted
2 in rounds until a candidate receives the majority of votes. If no candidate
3 receives a majority of votes in the first round, then the candidate with the
4 fewest first choice votes is eliminated, with those votes transferred to the
5 next-ranked choice on the ballot until there is a winner.
- 6 ○ For Councilors – where there are multiple seats to be filled -- ballots are
7 counted in rounds until the election threshold for filling those seats is met.
8 This is a proportional method of ranked choice voting – known as “single
9 transferable vote” – with the election threshold based on the number of
10 votes needed to fill each seat. If not all seats are filled in the first round,
11 then a winning candidate’s “surplus” votes are reallocated to their voters’
12 second choice candidates until all three seats are filled.

13 **3. LEGAL STANDARDS**

14 **A. The Ballot Title and Explanatory Statement Preparation and** 15 **Review Process**

16 The Portland City Code delegates to the City Attorney the responsibility to write
17 the ballot title and explanatory statement for a measure referred to the voters by the
18 Charter Commission. PCC 2.05.110. Pursuant to ORS 250.035(1) and PCC 2.04.060, the
19 ballot title for this measure must include:

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

1 Other than the reference to the explanatory statement for Charter Commission
2 referrals, the Portland City Code does not establish standards or even require
3 explanatory statements to be prepared for initiative or referendum petitions. But by
4 using the term “explanatory statement” in PCC 2.04.110, state law standards should be
5 presumed to apply. Specifically, pursuant to ORS 251.215, an explanatory statement
6 should be an “impartial, simple and understandable statement explaining the
7 measure,” not to exceed 500 words.

8 Once drafted, the ballot title is published, and may be challenged as provided in
9 state law. PCC 2.05.070.³ Pursuant to ORS 250.296, an elector may file a challenge in
10 circuit court within seven days of publication of the ballot title “seeking a different
11 ballot title and stating the reasons the title filed with the court is insufficient, not concise
12 or unfair.” Review by the circuit court is “first and final” and must be conducted
13 “expeditiously.” ORS 250.296(3).

14 This process is similar but not identical to that for state initiatives. With the
15 exception of the question, the ballot title requirements are functionally the same.
16 *Compare* ORS 250.035(1) and ORS 250.035(2). Electors then have ten days to submit
17

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19 ³ Neither the Portland City Code nor state law establish a separate judicial review
20 process for explanatory statements prepared for a local initiatives. However,
21 explanatory statements for local initiatives are typically drafted at the same time as the
22 ballot title, and thus addressed as part of the ballot title review process. *See*,
23 Multnomah County Code, §5.101 (local code requires explanatory statements and
24 authorizes review); *Handley v. Lake Oswego City Council*, Case No. 21CV32768
25 (explanatory statement reviewed along with ballot title). Petitioners request that the
26 court do so here. The alternative would be to file a separate Writ of Review pursuant to
ORS 34.010 *et seq.*, which provides for review of the acts of local government bodies
where there is no other statutory mechanism for review. Petitioners have not done so
at this time in the interest of time and judicial efficiency.

1 written comments. ORS 250.067(1). After considering comments, the Attorney General
2 issues a certified ballot title, which usually includes revisions made in response to
3 comments. That certified ballot title is subject to review by the Oregon Supreme Court.
4 ORS 250.085. The Supreme Court reviews for “substantial compliance” with the
5 statutory standards. ORS 250.085(2).

6 A review of the Secretary of State’s initiative and referendum log, as well as
7 Supreme Court ballot title cases make clear that crafting a fair and accurate ballot title is
8 not easy. http://egov.sos.state.or.us/elec/web_irr_search.search_form. Even with the
9 benefit of comments from knowledgeable interested parties and a deferential standard
10 of review, the Court often finds that the Attorney General has made a technical mistake⁴
11 or failed to provide voters with clear, unbiased and understandable information about a
12 measure to enable voters to an informed vote.

13 As set forth below, Petitioners believe that the ballot title question and summary
14 do not meet the statutory standards and must therefore be revised.

15 **3. APPLICATION**

16 **A. The Question Fails to Comply with the Statutory Standards**

17 Under ORS 250.035(1)(b), the ballot title must include a 20-word statement,
18 framed as a question, that plainly identifies the chief purpose of the measure.
19 Although ballot titles for statewide initiatives now require “yes” and “no” vote result
20 statements instead of a question, before 1995 they included a similar requirement. The
21 court interpreted that phrase to mean “the most significant aim or end which a measure
22 is designed to bring about.” *Glerum v. Roberts*, 308 Or 22, 28 (1989). To make that
23 determination,

24 _____

25 ⁴ In that event, the Attorney General may concede the point. *See*, ORAP
26 11.30(6)(b).

1 “the proposed measure should be reviewed for its
2 unambiguous language and the context in which it was
3 drafted and for statements made by its sponsors. Context
would include the legal context, as well as the more
particular circumstances under which a measure is
drafted. “

4 *Reed v. Roberts*, 305 Or 649, 654-655 (1988).

5 Here, the City Attorney submitted the following question:

6 Should City Administrator, supervised by Mayor, manage
7 Portland with twelve Councilors representing four
districts making laws and voters ranking candidates.

8 This question falls short of the statutory standards. As reflected in the unambiguous
9 language of the charter amendments and statements made by the Charter Commission
10 (the proposal’s “sponsor”) there are three interdependent and unified components to
11 this charter reform measure which must be described: (1) adopt ranked choice voting
12 which allows to rank candidates instead of voting for just one, thus increasing voter
13 choice and eliminating the need for runoff elections; (2) expand the City Council to
14 twelve members from four geographical districts, which means that voters in each
15 District get to elect three Councilors who live in their neighborhood or District; and (3)
16 change who is responsible for the day-to-day operation of Portland, with a professional
17 City Administrator, supervised by the Mayor, responsible for managing the city and the
18 City Council focused on setting policy through lawmaking and responding to
19 constituents. Progress Report #6, p. 7.

20 The draft question attempts to identify all three components in one single
21 sentence, but the syntax (lack of semicolons) gets in the way of clarity, and the
22 description of rank choice voting is unhelpful and potentially misleading. Specifically,
23 the phrase “voters ranking candidates” at the end of a sentence in which “the City
24 Administrator” is the subject does not make sense. As drafted, the question creates a
25 false hierarchy, suggesting that ranked choice voting (as well as the new City Council
26 structure) plays a supporting role to the provisions establishing the Mayor/City

1 Administrator management model. But that is not the case. Each component is
2 essential and equal to the other. As explained by the Charter Commission:

3 “The Commission’s recommendations are not just
4 complimentary but incumbent upon each other. If, for
5 example, you separated form of government into its own
6 ballot measure, then you could end up with a situation in
7 which we retain the current commission form of government
8 and we move to district-based elections. This would mean
9 that city commissioners continue to directly manage bureaus
10 and you would have the parks commissioner or the
11 commissioner in charge of the fire department representing
12 one geographic area.”

11 Progress Report #6, p. 20.

12 Relatedly, the phrase “voters ranking candidates” is potentially misleading
13 because it suggests voters are *required* to rank candidates when the fundamental point
14 of ranked choice voting is to give voters more *choice*, i.e., the *option* to rank candidates.
15 Thus, the Charter Commission has consistently used the simple phrase “allowing voters
16 to rank candidates” to describe the change in how voters complete their ballot, in
17 contrast to casting a single vote. Progress Report #6, pp. 7 – 10, p. 30. That should be
18 used here.

19 Petitioners propose the following alternative, which builds on the draft
20 question prepared by Respondent, but uses semicolons and a more parallel structure:

21 Should City Administrator, supervised by Mayor, manage
22 Portland; twelve Councilors representing four districts make
23 laws; voters allowed to rank candidates?

24 This alternative focuses on the impacted actors: the City Administrator/Mayor in
25 the first clause; the City Councilors in the second; and the voters in the third clause.

26 ///

1 **B. The Summary Does Not Comply with the Statutory Standards**

2 ORS 250.035(1)(c) requires that the ballot title contain a 175-word summary
3 which accurately summarizes the measure and its major effects in a concise and
4 impartial manner. With the exception of length, this requirement is also identical to
5 that governing ballot titles for statewide initiatives. *Compare* ORS 250.035(2)(d).
6 Accordingly, this court should be guided by Oregon Supreme Court precedent.

7 As the Supreme Court has repeatedly stated, the purpose of the summary is to
8 provide voters with enough information to understand what will happen if the measure
9 is approved and the “breadth of its impact.” *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175,
10 777 P2d 406 (1989). To that end, the court requires that the summary identify all
11 significant provisions or effects of a proposed measure, to the extent word space allows.
12 *See, e.g., Cross v. Rosenblum*, 359 Or 136, 375 P3d 123 (2016) (summary was insufficient
13 because failed to tell voters about the measure’s undisputed impact on access to
14 abortion), *Blosser v. Rosenblum*, 358 Or 312, 363 P3d 1280 (2015) (summary was
15 insufficient because it failed to describe the administrative challenge process). To the
16 extent possible, the ballot title should use plain English and avoid “legalese” unless
17 essential to describe a measure. Both formatting and word choice can be helpful.

18 The City Attorney prepared the following summary:

19 The Charter Commission proposed a measure to change
20 Portland’s government.

21 Currently, Council is one Mayor and four Commissioners
22 elected citywide. Council makes laws. Mayor and
23 Commissioners directly manage bureaus. Portlanders vote
24 for one candidate per office in May primaries, possible
25 November runoffs.

26 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

1 Commission would set elected officials' salaries. Council
2 would expand to twelve Councilors and seats would shift
3 from citywide to four new geographic districts – created by
4 Independent District Commission – with three Councilors
5 representing each district. Voters would rank candidates in
6 order of preference, with Councilors elected by district using
7 single transferrable vote ranked choice voting and Mayor
8 and Auditor elected citywide using instant runoff ranked
9 choice voting. Ranked choice voting eliminates primaries.
10 Cost estimate is 0.9 to 8.7 million dollars annually. Other
11 provisions.

12 Once again, while there are aspects of this summary that are sufficient, it fails to
13 meet the statutory standards. There are two problems. First, the description of ranked
14 choice voting fails to plainly describe how voting under this system differs from our
15 current system. That difference can and must be simply described: “Ranked choice
16 voting” allows (but does not require) voters to rank candidates on their ballot in order
17 of preference, instead of the “pick one” system that only allows voters to cast a single
18 vote for an office, with ballots tallied in rounds.

19 The operation and effect of ranked choice voting is further obscured by the
20 summary’s use of the terms “instant runoff ranked choice voting” and “single
21 transferrable vote ranked choice voting” as if those terms have any meaning to voters
22 without further explanation. They do not. Voters reading the summary will have no
23 idea of how the tallying process differs between single citywide offices and multi-seat
24 offices (multiple candidates from a single geographical district elected in a single
25 election) where a proportional methodology is required. Thus, it offers no useful
26 information. To correct these deficiencies, the summary should identify the key
27 difference between the two: an at-large (i.e. citywide) candidate has to receive *majority*
28 *support* to win, while candidates with multiple seats need only receive enough votes to
29 meet a proportional threshold for winning (“the lowest number of votes a candidate
30 must receive to win a seat such that no more candidates can win election than there are
31 seats to be filled.”). Proposed Charter Section 3.102. While word space does not allow a

1 complete description of the process from start to finish, the alternative offered by
2 Petitioners demonstrates that it is possible to provide additional, relevant, and
3 understandable information about this key component of the measure, as required to
4 meet the statutory standards.

5 The second problem is that the summary includes the statement “Cost estimate is
6 .09 to 8.7 million dollars annually.” The Oregon Supreme Court has repeatedly held
7 that the ballot title should not include fiscal impact information that is speculative. For
8 example, in *Unger v. Rosenblum*, 358 Or 1129 (2016), the certified caption for a measure
9 that required the legislature to appropriate \$800 per high school student per year into a
10 “readiness fund” included the statement “reduces funds for other services.” The Court
11 agreed with challengers that this effect was speculative because it was not a *necessary*
12 consequence of the measure. Accordingly, it was misleading to include the statement in
13 any portion of the ballot title. 369 Or at 677. Notably, the Court held that the “yes” vote
14 result statement, which framed the fiscal impact differently (reducing funds *available* for
15 other services) was still improper, even if technically accurate. *See also, Wilson v.*
16 *Rosenblum*, 362 Or 226, 234 (2017). (“A ballot title must state an ‘actual effect’ and may
17 not ‘speculate about the possible effects’ of enactment.” *Internal citations omitted.*)

18 In this case, the City Attorney used estimates provided by the City Budget Office
19 regarding annual ongoing costs that were then discussed by the Charter Commission in
20 its report. Progress Report #6, p. 19. However, as the range of the estimate makes
21 clear, the costs are difficult to predict and based on unproven assumptions. They also
22 do not include any potential cost savings of the reform. In other words, they are
23 speculative and should not be referenced in the ballot title.

24 Moreover, setting out the potential costs in an absolute number is misleading.
25 Voters may understandably view \$8.7 million (the top of the estimated range) as a lot of
26 money relative to their own budgets. But when placed in the context of the Portland

1 City Budget, that maximum estimated cost is much more modest (1.4% of the Portland’s
2 discretionary funding).⁵ In short, the summary should not include the highly
3 speculative cost estimates. But, to the extent the range of estimated costs is included,
4 those estimated costs must be expressed as a percentage of discretionary spending and
5 not as a dollar figure.

6 Petitioners request that the Court adopt the following alternative. By using
7 bullet points, voters will more easily understand the changes proposed in this charter
8 amendment. In addition, the description of ranked choice voting identifies the key
9 feature of the system – to allow voters to rank candidates – and then provides
10 additional information on how the system works for citywide elections for a single
11 office (Mayor and City Auditor) and for multi-seat elections (Councilors).

12 SUMMARY:

13 Charter Commission proposed to change structure of Portland city
14 government.

15 Currently, Council includes one Mayor and four Commissioners elected
16 citywide. Council makes laws; Mayor and Commissioners directly manage
17 bureaus. Portlanders vote for one candidate per office in May primaries,
18 possible November runoffs.

19 Under proposal:

- 20 ■ City Administrator, supervised by Mayor, manages daily
21 operations, including hiring, firing and supervising most bureau
22 directors.

23 ⁵ The court’s discussion in *Wilson v. Rosenblum, supra.*, of how a tax increase on
24 cigarettes should be described is informative. In that case, the measure imposed the tax
25 per cigarette rather than per pack. The Court held that the ballot title needed to state
26 the tax per pack because that is how the public purchased cigarettes and because it was
important to convey the *magnitude* of the costs. 362 Or at 230-231. The converse is true
here. An absolute number (or range of numbers) is deceptive when it is not placed in
context of the overall budget.

- 1 ■ Council consists of twelve Councilors from four geographic districts (created by Independent District Commission); three Councilors represent each district.
- 2 ■ Council makes laws. Mayor may introduce laws, vote to break tie on non-emergency ordinances.
- 3 ■ Independent salary commission establishes elected official salaries.
- 4 ■ City elections are by “ranked choice voting” which allows voters to rank candidates on ballot in order of preference instead of casting single vote for an office; eliminates primaries.
 - 5 ○ For city-wide offices (Mayor, City Auditor), votes tallied in rounds until single candidate receives majority of votes.
 - 6 ○ For Councilors elected by district, votes tallied in rounds until three candidates meet election threshold.
- 7 ■ Other provisions

8
9 **C. The Explanatory Statement is not “impartial, simple and understandable.”**

10
11 As required by PCC 2.05.110, Respondent has drafted an explanatory statement
12 to be published in the Voters Pamphlet. Again, while state law does not *require* local
13 initiatives to include an explanatory statement, if drafted, it must comply with the
14 statutory and administrative standards for explanatory statements. Specifically, ORS
15 251.345 provides for a 500 word “impartial, simple and understandable statement
16 explaining the measure and its effect.”

17 For statewide initiatives, ORS 251. 205 sets out a committee structure made up of
18 proponents and opponents, charged with crafting an “impartial, simple and
19 understandable statement explaining the measure,” not to exceed 500 words, as
20 required by ORS 251.215. This committee is only convened once a petition has been
21 qualified for the ballot (or signatures submitted for review). Given the committee
22 structure, as well as the limited time for review, the Oregon Supreme Court’s review is
23 deferential. *Sizemore v. Myers*, 327 Or 456, 467 (1998). But even with that deferential
24 standard, it has modified explanatory statements where it has concluded that the
25 statement is “insufficient or unclear” because of bias or inaccuracy. *See, e.g., McCormick*

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1 *v. Kroger*, 347 Or 293 (2009) (modifying legislatively drafted ballot title and explanatory
2 statement regarding tax measure).

3 Here, the explanatory statement crafted by Respondent, while generally
4 “accurate,” is not “simple and understandable.” For example, the opening sentence
5 repeats the confusing and misleading syntax of the ballot title question. While
6 awkward sentences are often necessary in the ballot title due to word limits, the
7 additional words available in the explanatory statement mean that it is possible – and
8 indeed required – that the measure be described in a simple and easily understood
9 manner. Petitioners’ alternative explanatory statement, set out below, does so
10 primarily by making changes in formatting and organization. Thus, the status quo in
11 each area of reform is set out first in italics, with the law, if enacted, set out immediately
12 below. This allows voters to clearly see and understand what is being changed – which
13 is exactly the purpose of the explanatory statement.

14 **Petitioner’s Proposed Explanatory Statement**

15 The Portland Charter Commission recommends that the city’s charter be
16 amended to reform the structure of Portland’s government. Its
17 recommendations, made after months of study and community engagement, are
18 supported by seventeen out of twenty members of the Commission.

19 The Commission proposes three interdependent reforms.

20 **■ Allows Voters to Rank Candidates**

21 *Currently:* Portlanders can only vote for one candidate per office. If no candidate gets a
22 majority of votes at May primary, top two candidates face runoff election in November.

23 **Under proposal:** Voters are allowed to rank candidates in order of voter
24 preference, with votes tallied in rounds until there is a winner. Ranked choice
25 voting results in one general election, eliminating primaries.

26 The method of tallying ballots depends on whether election is for single office or
multiple seats.

- For single citywide election (Mayor and Auditor), candidate receiving majority of votes wins. Ballots are counted in rounds. If no

1 candidate wins, candidate receiving fewest votes in that round is
2 eliminated, and votes for eliminated candidate transferred to voter’s next-
3 highest ranked candidate until a single candidate has a majority.

4 ○ For elections to fill multiple seats (City Councilors), candidates win
5 when they exceed the election threshold, which is based on the number of
6 positions to be filled in that single election. Ballots are counted in rounds,
7 using a process to proportionally transfer surplus votes of elected
8 candidates to next-highest ranked candidates. Candidates with the fewest
9 votes are successively eliminated and their votes are transferred to the
10 next-highest ranked candidates until all positions are elected.

11 A new Council, Mayor and Auditor would be elected by ranked choice voting in
12 November 2024 and take office January 1, 2025, when other amendments become
13 effective. Half the Council and Auditor would serve initial two-year term.
14 Thereafter, terms are four years.

15 The City will conduct voter education to familiarize voters with ranked choice
16 voting.

17 **■ Council Makes Laws; City Administrator, Supervised by Mayor,
18 Manages City**

19 *Currently:* City Council holds both legislative and executive powers. As a body,
20 Council makes laws. Individual members (Mayor and four Commissioners) directly
21 manage bureaus.

22 **Under proposal:** The City Council is responsible for making laws, adopting
23 budget and engaging constituents. Mayor implements laws passed by Council,
24 with help from professional City Administrator hired by Mayor and confirmed
25 by Council. City Administrator hires, fires and supervises most bureau directors.
26 Mayor is not a member of Council but may introduce laws and break tie votes on
non-emergency ordinances. An Independent Salary Commission of human
resource professionals sets elected officials’ salaries.

■ Councilors Elected by Geographical Districts

Currently: The City Council consists of five members, elected citywide – one Mayor and
four Commissioners.

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing **MEMORANDUM IN SUPPORT OF**
3 **PETITION FOR REVIEW OF BALLOT TITLE AND EXPLANATORY STATEMENT:**

4 Robert Taylor
5 Portland Office of City Attorney
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14 by the following indicated method or methods:

15 X by **emailing** a copy thereof to the attorney(s) at the email address(s) shown
16 above, on the date set forth below.

17 DATED this 15th day of July, 2022.

18 BENNETT HARTMAN, LLP

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