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

MIKE ALFONI,  
Petitioner,  
v.  
JENNY MADKOUR, Multnomah County  
Counsel,  
Respondent.

No.  
**MEMORANDUM IN SUPPORT OF  
PETITION FOR REVIEW OF  
BALLOT TITLE and  
EXPLANATORY STATEMENT**  
(ORS 250.195, Multnomah County  
Code 5.105)

**1. INTRODUCTION**

Petitioner Mike Alfoni, seeks review of the ballot title and explanatory statement drafted by Multnomah County Counsel, Jenny Madkour, for a measure to allow voters to elect county officials (the Multnomah County Chair, County Commissioners, the Auditor and the Sheriff) through ranked choice voting. The proposed amendments were recommended by the Multnomah County Charter Review Committee, which means that they must be referred to the voters. Multnomah County Code, § 5.104(A).

Mike Alfoni is a Multnomah County elector and the Executive Director of [Oregon Ranked Choice Voting Advocates](#), a nonprofit organization which supports the adoption of ranked choice voting in Oregon. As set forth on its website and consistent with numerous studies, ranked choice voting is a process that increases voter participation, encourages coalition building, and brings greater diversity to our government. Petitioner and his organization support the Multnomah County charter referral to adopt ranked choice voting in County elections.

1           In this challenge, Petitioner asks the court to change all sections of the ballot title  
2 and explanatory statement to make it simpler and more understandable. The basic  
3 problem is that the caption and question use the phrase “instant runoff ranked choice  
4 voting” as if that will mean something to voters. It does not. What voters need to  
5 understand is that this proposal would allow them to rank candidates in order of  
6 preference, rather than cast a single vote, with votes tallied in rounds until there is a  
7 majority winner. The summary provides additional detail about how ranked choice  
8 voting works but is difficult to read. The summary also includes unnecessary and  
9 confusing details regarding dates of elections for vacancies, rendering it noncompliant  
10 with the statutory standards. Similarly, the explanatory statement includes substantial  
11 detail about vacancies when that process is not changed by this referral. At the same  
12 time, its description of how the measure works is dense and could be rendered more  
13 understandable through editorial changes.

14           Petitioner’s other concern is that this charter amendment will be submitted to the  
15 voters at the same time as the Portland Charter Commission referral. As part of its  
16 comprehensive set of reforms, the City’s referral also adopts ranked choice voting for  
17 city elections, with city-wide elections tallied using “instant runoff” ranked choice  
18 voting, the same method proposed for county elections. It is therefore important that  
19 the processes be described similarly. To achieve that goal, the alternatives proposed by  
20 Petitioner draw on the ballot title and explanatory statement certified by Judge Bushong  
21 for the city referral (as it relates to this concept), as well as the certified ballot title for  
22 IP’s 49 and 50 (2022), state initiatives to adopt ranked choice voting for certain elections.  
23 Finally, the ballot title and explanatory statement for Benton County Measure 2-100  
24 (2016) provides an excellent example of a plain and understandable description of

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1 ranked choice voting.<sup>1</sup>

2 Below, Petitioner will first provide an overview of the charter amendment itself,  
3 and then turn to the flaws in Respondent’s ballot title and explanatory statement.

4 **2. MULTNOMAH COUNTY CHARTER REVIEW COMMITTEE**  
5 **RECOMMENDATION TO ADOPT RANKED CHOICE VOTING**

6 The Multnomah County Home Rule Charter (“MCHRC”) provides that a Charter  
7 Review Committee (MCCRC) be convened every six years to study the charter and  
8 make recommendations for amendments to be submitted to the voters. MCHRC  
9 Chapter 12.30. The current Charter Review Committee began meeting in September  
10 2021. The “Equitable Representation Subcommittee” considered a variety of changes  
11 designed to make “local democracy more inclusive, equitable and representative.”  
12 [MCCRC Final Report](#), p. 15. Ultimately, it recommended adopting ranked choice  
13 voting. That recommendation was approved by the full Charter Review Committee  
14 and presented to the public and Board of County Commissioners on August 2, 2022.  
15 MCCRC Final Report, p.23. On August 11, 2022, the Commission adopted [Resolution](#)  
16 [2022-076](#). Ex. C to that resolution includes the proposed charter amendment to adopt  
17 ranked choice voting, along with the ballot title and explanatory statement prepared by  
18 Respondent. A copy of Resolution 2022-076 Ex. C is attached to this memo as Ex. 3 for  
19 ease of reference.

20 The substantive change to current law appears in MCHRC, Chapter 11.15 –  
21 Election of Officers. As amended, the proposal states that, beginning in 2026,

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23 <sup>1</sup> A copy of the opinion issued by Judge Bushong on August 15, 2022 in  
24 *Wilson and Villarreal v. Taylor*, Case No. 22CV23601, is attached as Ex. 1. Opinion  
25 (August 15, 2022) (certifying a ballot title and explanatory statement revised by the  
26 court). A copy of the Benton County ballot title and explanatory statement for Benton  
County Measure 2-100 (2016) from the Voters Pamphlet is attached as Ex. 2. The  
certified ballot titles for IPs 49 and 50 (2022) can be found on the [Secretary of States](#)  
[Initiative and Referendum log](#).

1 candidates for elected county offices will be elected at the general election using instant  
2 runoff ranked choice voting. It defines the ranked choice voting as follows:

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4 “Ranked choice voting means an election method in which  
5 electors rank candidates for an office in order or elector’s  
6 preferences and ballots may be counted in rounds.”

7 Proposed Chapter 11.15(4)(a).

8 The proposed charter amendment then describes how votes are tallied under  
9 “instant runoff” ranked choice voting. Proposed Chapter 11.15(4)(b). In plain English,  
10 votes are counted in rounds, starting with all voters’ highest ranked candidates. If no  
11 candidate receives majority of votes (more than fifty percent) in first round, candidate  
12 receiving fewest votes is eliminated, and that candidate’s vote are reassigned to each  
13 voter’s next-highest ranked candidate. The process continues until there is a majority  
14 winner. Instant runoff ranked choice voting allows an official to be elected in a single  
15 election, thus eliminating the current primary and runoff system. Candidates will  
16 generally be elected at the November general election, although an election to fill  
17 certain vacancies may be held in May.

18 For purposes of crafting an informative ballot title, voters need to understand  
19 how ranked choice voting differs from the current system. From the voters’  
20 perspective, there are two significant changes. Currently, voters can only cast one vote.  
21 Under ranked choice voting, voters may rank candidates in order of preference on their  
22 ballot, thus allowing them to express their honest political views with less fear that they  
23 are “throwing away their vote.” Notably, ranked choice voting is a process that *allows*  
24 voters to rank multiple candidates; it does not require that they do so. Thus, if a voter  
25 can truly only support one candidate, then they can just vote for that person. The ballot  
26 title and explanatory statement must clearly identify voter choice to rank candidates as  
a key distinguishing feature of the measure. Respondent’s ballot title does not do so.

1 The second significant change relates to the need to hold multiple elections for a  
2 single office. That is, ranked choice voting eliminates the need for runoff elections.  
3 County officials would be elected in a single election, generally in November when  
4 there is the highest turnout but potentially in May to fill a vacancy.<sup>2</sup>

5 **3. LEGAL STANDARDS**

6 **A. The Ballot Title and Explanatory Statement Preparation and**  
7 **Review Process**

8 Under the Multnomah County Code, §5.104, the Commission must refer to the  
9 voters “all amendments proposed by the Charter Review Committee.” As with  
10 initiatives, the Multnomah County Counsel prepares the ballot title and explanatory  
11 statements consistent with state law. Pursuant to ORS 250.035(1), the ballot title for this  
12 referral must include:

- 13 (a) A caption of not more than 10 words which  
14 reasonably identifies the subject of the measure;
- 15 (b) A question of not more than 20 words which plainly  
16 phrases the chief purpose of the measure so that an  
affirmative response to the question corresponds to  
an affirmative vote on the measure; and
- 17 (c) A concise and impartial statement of not more than  
18 175 words summarizing the measure and its major  
effect.

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20 At the same time, County Counsel must prepare an explanatory statement of no  
21 more than 500 words that “consists of a simple and understandable statement  
22 explaining the measure and its effect.” Multnomah County Code §5.101(2); *see also*, ORS  
23 251.215.

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25 <sup>2</sup> In addition to Chapter XI – Elections, this referral also amends Chapter  
26 4.50 (relating the filling of vacancies) to make clear that elections to fill vacancies would  
be filled in a single election (May or November) using instant runoff ranked choice  
voting. No other changes regarding vacancies are made.

1           Once drafted, the ballot title and explanatory statements for a referral are  
2 published and may be challenged in Multnomah County Circuit Court as provided in  
3 state law and Multnomah County Code §5.104(D). Pursuant to ORS 250.195, review by  
4 the circuit court is “first and final” and must be conducted “expeditiously.” ORS  
5 250.195(3).

6           In this case, Respondent may argue that the court should give County Counsel  
7 the same level of deference (“substantial compliance”) as the Supreme Court gives to  
8 the Attorney General. The court should decline to do so. Neither the process for  
9 drafting ballot titles and explanatory statements nor the applicable standard of review  
10 is the same. For statewide measures, there is a robust opportunity for public comment  
11 and input before the Attorney General certifies a ballot title. ORS 250.185.<sup>3</sup> Similarly,  
12 explanatory statements are drafted by committee, with both opponents and opponents  
13 participating. ORS 251.215. In contrast, for this Charter Review Committee referral, the  
14 County Counsel is solely responsible for drafting the ballot materials. There is no  
15 public comment process. This means that the always challenging task of distilling a  
16 complex measure into a simple and understandable ballot title and explanatory  
17 statement language is left to one person without the benefit of input from interested  
18 parties.

19           With regard to judicial review, state law expressly limits the Supreme Court’s  
20 scope of review of ballot titles. ORS 250.085(5). There is no corollary limitation on the  
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22           <sup>3</sup> A review of the Secretary of State’s initiative and referendum log, as well  
23 as Supreme Court ballot title cases make clear that crafting a fair and accurate ballot  
24 title is not easy. [http://egov.sos.state.or.us/elec/web\\_irr\\_search.search\\_form](http://egov.sos.state.or.us/elec/web_irr_search.search_form). Even with  
25 the benefit of comments from knowledgeable interested parties and a deferential  
26 standard of review, the Court often finds that the Attorney General has made a  
technical mistake<sup>3</sup> or failed to provide voters with clear, unbiased and understandable  
information about a measure to enable voters to an informed vote.

1 circuit court’s review. To the contrary, ORS 250.195 specifically authorizes the circuit  
2 court to certify a ballot title that meets the requirements of ORS 250.035(1), a different  
3 charge than certifying a ballot title that “substantially complies” with the statutory  
4 requirements. *Compare* ORS 250.296 and ORS 250.085(8). Accordingly, the circuit court  
5 should not give any special consideration or deference to the ballot title drafted by  
6 County Counsel. *Compare* ORS 250.195 and ORS 250.067. Stated differently, if ballot  
7 titles for statewide initiatives are routinely modified during the drafting process and  
8 then rejected on appeal, it makes sense that this court should have the authority to  
9 make revisions and certify a ballot title and explanatory statements that meet statutory  
10 standards, without deferring to the original drafter. In fact, Judge Stephen Bushong  
11 did exactly that in his review of the ballot title for the Portland Charter Review  
12 Commission. *See, Wilson and Villarreal v. Taylor*, Case No. 22CV23601, Opinion (August  
13 15, 2022) (certifying a ballot title and explanatory statement revised by the court),  
14 attached as Ex. 1; *see also, Short v. Reeve & Voss-Andrea*, Case No. 18CV10104  
15 (consolidated with 18CV09962), [Opinion and Order](#), May 5, 2018.

#### 16 4. APPLICATION

##### 17 A. The Caption Does Not Comply with the Statutory Standards

18 Pursuant to ORS 250.035(1)(a), the ballot title caption is a 10-word statement that  
19 “reasonably identifies the subject of the measure.” Except for word-count, the standard  
20 is identical to that for state measures. Accordingly, the circuit court’s analysis should be  
21 guided by Oregon Supreme Court precedent. That court summarized its methodology  
22 for identifying a proposal’s subject matter:

23 “A caption will reasonably identify the subject matter of a  
24 measure if it describes the “actual major effect” of the  
25 measure or, if there is more than one major effect, all the  
26 major effects that can be described within the word limit.”  
*See Lavey v. Kroger*, 350 Or. 559, 563, 258 P.3d 1194 (2011). To  
identify an “actual major effect,” we consider the “changes

1 that the proposed measure would enact in the context of  
existing law.”

2  
3 *Rasmussen v. Kroger*, 350 Or 281, 285 (2011).

4 When a referral seeks to amend the local entities’ charter – the functional  
5 equivalent of a constitution– the court does not count the words “Amends Charter” in  
6 the 10-word limit, consistent with ORS 250.035(2)(a) (“Amends Constitution” not  
7 included in word limit for caption for measure that amends the Oregon Constitution.”).  
8 *See, Wilson and Villarreal v. Taylor*, Multnomah County Case No. 22CV23601, Opinion  
9 (August 15, 2022), page 4, n.3 (not counting “Amends Charter” in 10-word limit for  
10 Portland Charter Commission referral); *see also, Bennett v. City of Portland*, Multnomah  
11 County Circuit Court Case No. 17CVV08376, Opinion (March 15, 2017), n. 2.

12 Here, the County Counsel issued the following caption:

13 *Amends charter: instant runoff ranked choice voting in county elections*

14  
15 There are two problems with this caption. First, the lack of an action verb  
16 renders the statement impermissibly confusing. Second, with additional word space  
17 available by not counting “Amends Charter” in the 10-word limit, the caption can make  
18 clear that ranked choice voting is used for the election of elected county officers – not *all*  
19 elections within Multnomah County. We also believe that, although accurate, it is  
20 unnecessary to include “instant runoff” every time “ranked choice voting” is  
21 mentioned. For voters, they need to understand what ranked choice voting means in  
22 terms of how they complete their ballot (voters may rank candidates in order of  
23 preference) and how votes are tallied (in rounds until a candidate received a majority of  
24 votes cast). The following two alternatives more clearly identify the change:

25 Amends Charter: County officers elected in single election  
26 by voters ranking candidates



1                   **Amends Charter: Adopts instant runoff ranked choice**  
2                   **voting to elect county officers**

3                   **B.       The Question Fails to Comply with the Statutory Standards**

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

11                   “the proposed measure should be reviewed for its  
12 unambiguous language and the context in which it was  
13 drafted and for statements made by its sponsors. Context  
14 would include the legal context, as well as the more  
15 particular circumstances under which a measure is  
16 drafted.”

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

18                   Here, the City Attorney submitted the following question:

19                   *Should county officials be elected at general election (vacancies filled in May or*  
20                   *November) using instant runoff ranked choice voting?*

21                   This question falls short of the statutory standards. Instead of providing voters with  
22 useful information about what this change actually means for voters, the question  
23 spends scarce word space identifying the *date* of election, including the potential  
24 election dates to fill vacancies occurring during a term of office. That detail is  
25 unnecessary and confusing. Voters reading the draft question could assume that  
26 changing the *date* of elections as well as the process for vacancies is a “significant aim or  
end which a measure is designed to bring about.” *Glerum, supra*. But that is simply  
untrue. Ranked choice voting allows county officers to be elected in a single election,

1 but the date of the election is not a significant change. Indeed, under the current  
2 system, elections for most county offices go to runoff in November.

3 More fundamentally, the question does not provide voters with any additional  
4 information about what “instant runoff ranked choice voting” actually means,  
5 particularly as it relates to the current system. Simply repeating the phrase is  
6 insufficient.

7 Petitioner proposes the following alternative:

8 **Should county adopt ranked choice voting allowing voters**  
9 **to rank candidates; votes instantly tallied in rounds until**  
10 **majority winner?**

11 This alternative builds on the alternative caption proposed which makes clear  
12 that the amendment impacts elections for county officials. It states in simple terms the  
13 question before voters – should county adopt ranked choice voting – and then provides  
14 voters with additional information about the essential features of that system. Further  
15 details can then be added in the summary.

16 **C. The Summary Does Not Comply with the Statutory Standards**

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

22 As the Supreme Court has repeatedly stated, the purpose of the summary is to  
23 provide voters with enough information to understand what will happen if the measure  
24 is approved and the “breadth of its impact.” *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175,  
25 777 P2d 406 (1989). To that end, the court requires that the summary identify all  
26 significant provisions or effects of a proposed measure, to the extent word space allows.

1 See, e.g., *Cross v. Rosenblum*, 359 Or 136, 375 P3d 123 (2016) (summary was insufficient  
2 because failed to tell voters about the measure’s undisputed impact on access to  
3 abortion), *Blosser v. Rosenblum*, 358 Or 312, 363 P3d 1280 (2015) (summary was  
4 insufficient because it failed to describe the administrative challenge process). To the  
5 extent possible, the ballot title should use plain English and avoid “legalese” unless  
6 essential to describe a measure. Both formatting and word choice can be helpful.

7 County Counsel prepared the following summary:

8 *Under current charter, candidates for county office appear on*  
9 *primary election ballot; voters can cast one vote per office;*  
10 *candidate receiving majority is elected. If no candidate receives*  
11 *majority, two candidates receiving highest number of voters appear*  
12 *on general election ballot; candidate receiving majority is elected.*  
13 *For vacancies filled by election, candidate receiving majority is*  
14 *elected at next May or November election. If no candidate receives*  
15 *majority, two candidates receiving highest number of votes appear*  
16 *on special election ballot; candidate receiving majority is elected.*

17 *Under amendment recommended by Charter Review Committee,*  
18 *by 2026, officers would be elected at general election, vacancies*  
19 *filled at next May or November election, using instant runoff*  
20 *ranked choice voting (voters rank candidates by preference).*  
21 *Candidate with majority of votes based on first rankings is elected.*  
22 *If not candidate receives majority, ballots are counted in*  
23 *subsequent rounds; candidate retains votes from prior rounds;*  
24 *candidate with fewest votes eliminated each round; votes for*  
25 *eliminated candidate transfer to candidate ranked next on those*  
26 *ballots. Process repeats until candidate with majority is elected.*

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

1           The summary continues to include significant detail about elections to fill  
2 vacancies, making it sound like the proposal changes that process. It does not. Once  
3 ranked choice voting is implemented, all elections for county officials – including those  
4 to fill vacancies – will be in a single election. That election will generally be in  
5 November, with an election to fill a vacancy potentially held in May. To avoid any  
6 suggestion that the proposal changes how vacancies are filled (i.e., whether by  
7 appointment or election), the summary should either omit this detail or focus on the  
8 only significant effect on elections to fill vacancies, which is to eliminate special  
9 elections.

10           In addition, the summary must describe the instant runoff ranked choice voting  
11 process in more streamlined and easier to understand manner. The alternative offered  
12 below tracks the description certified by Judge Bushong for the Portland Charter  
13 Commission referral. Using the same simple language to describe instant runoff ranked  
14 choice voting will help minimize voter confusion.

15           **SUMMARY:** Currently, voters may only cast one vote per  
16 office; candidate must receive majority of votes cast (more  
17 than fifty percent) to win. Candidates first appear on May  
18 primary ballot. If no candidate for office receives majority of  
votes, the top two candidates compete in runoff election in  
November. Elections to fill certain vacancies may require  
special election.

19           Under this amendment, recommended by the Charter  
20 Review Committee, elections for county elected officials  
(chair, commissioners, auditor and sheriff) would be by  
21 “instant runoff ranked choice voting,” beginning in 2026.  
22 This process allows voters to rank candidates in order of  
preference instead of casting single vote for the office. Votes  
23 are tallied in rounds, starting with all voters’ highest ranked  
candidate. If no candidate receives majority of votes in first  
24 round, candidate receiving fewest votes is eliminated, and  
that candidate’s vote are reassigned to each voter’s next-  
highest ranked candidate. The process continues until there  
is a majority winner.

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1 Instant runoff ranked choice voting results in one general  
2 election, eliminating primary elections (or special elections  
to fill vacancies)

3 **D. The Explanatory Statement is not “impartial, simple and**  
4 **understandable.”**

5 As required by Multnomah County Code §5.104, Respondent has drafted an  
6 explanatory statement to be published in the Voters Pamphlet. Pursuant to the county  
7 code and state law, the explanatory statement is an “impartial, simple and  
8 understandable statement explaining the measure and its effect.” ORS 251.345. It can  
9 be no longer than 500 words. But it can be shorter.

10 For statewide initiatives, ORS 251.205 sets out a committee structure made up of  
11 proponents and opponents, charged with crafting an “impartial, simple and  
12 understandable statement explaining the measure,” not to exceed 500 words, as  
13 required by ORS 251.215. This committee is only convened once a petition has been  
14 qualified for the ballot (or signatures submitted for review). Given the committee  
15 structure, as well as the limited time for review, the Oregon Supreme Court’s review is  
16 deferential. *Sizemore v. Myers*, 327 Or 456, 467 (1998). But even with that deferential  
17 standard, it has modified explanatory statements where it has concluded that the  
18 statement is “insufficient or unclear” because of bias or inaccuracy. *See, e.g., McCormick*  
19 *v. Kroger*, 347 Or 293 (2009) (modifying legislatively drafted ballot title and explanatory  
20 statement regarding tax measure).

21 Here, the explanatory statement crafted by Respondent, while generally  
22 “accurate,” is not “simple and understandable.” The biggest issue continues to be the  
23 inclusion of significant detail regarding elections to fill vacancies, when there is no  
24 change in that process – except to allow the vacancy to be filled in a single election. It is  
25 also dense and could benefit from formatting changes to make it more readable.

26 Below, Petitioner will set out Respondent’s explanatory statement, with strike-

1 out showing how much is unnecessarily devoted to the timing of the election. He will  
2 then offer an alternative that, once again, tracks those previously certified for ranked  
3 choice voting for the city measure, as well as for the Benton County referral to adopt  
4 ranked choice voting. This alternative adds headers and formatting to make it easier to  
5 read. It also references the process for filling vacancies, but in less detail.

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7           RESPONDENT’S PROPOSED EXPLANATORY STATEMENT (*edits by petitioner*).

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*Explanatory Statement (494/500): Under the current charter, candidates for county elected office (chair, commissioners, auditor, sheriff) appear on the primary election ballot. Voters may vote for only one candidate per office. A candidate who receives a majority of the votes cast in the primary election is elected. If no candidate receives a majority, the two candidates that received the highest number of votes appear on the general election ballot, and the candidate who receives a majority is elected. ~~For vacancies, if the term of office expires one year or more after the vacancy occurs, the replacement is elected at the next May or November election if a candidate receives a majority of the votes cast in that election. If no candidate receives a majority of the votes cast in that election, the board calls a special election in which the names of the two candidates who received the highest number of votes appear on the ballot. The candidate who receives a majority of the votes cast is elected to fill the remainder of the term.~~*

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*This charter amendment recommended by the Charter Review Committee would change the method of electing county officers. By 2026, county officers would be elected at the general election using instant runoff ranked choice voting. Ranked choice voting is an election method where voters rank candidates for an office in order of preference and ballots may be counted in rounds.*

*In the initial round of counting, a candidate who has a majority of the vote based on the number of first rankings each candidate receives is elected. However, if no candidate receives a majority of*

1 *the vote in the initial round of counting, ballots are counted in*  
2 *subsequent rounds. In those subsequent rounds, candidates keep*  
3 *the number of votes counted for them in the first and any*  
4 *subsequent rounds that already occurred. Then, the candidate*  
5 *having the fewest votes in each round is eliminated and ballots that*  
6 *had been counted as votes for the eliminated candidate instead are*  
7 *counted as votes for the candidate who is ranked next on those*  
8 *ballots. That process of eliminating candidates and transferring*  
9 *votes to the next-ranked candidates on those ballots repeats until a*  
10 *candidate has a majority of the vote and is elected. Because the*  
11 *instant runoff ranked choice voting method elects an official in a*  
12 *single election, no primary election would be necessary for county*  
13 *officers. A similar process would be used for filling vacancies*  
14 *where the term of office ends one year or more after the vacancy*  
15 *occurs. In that case, a replacement would be elected at the next*  
16 *May or November election to fill the remainder of the term of office*  
17 *using the instant runoff ranked choice voting method described*  
18 *above. Because the instant runoff ranked choice voting method*  
19 *elects an official in a single election, no special election would be*  
20 *necessary.*

21 *The current system of electing county officers and filling vacancies*  
22 *would remain in place until instant runoff ranked choice voting is*  
23 *implemented*

24 **PETITIONER’S ALTERNATIVE:**

25 **MULTNOMAH COUNTY CHARTER REVIEW**  
26 **COMMITTEE RECOMMENDATION**

The Multnomah County Charter Review Committee recommends amending the county charter to adopt “instant runoff ranked choice voting” in elections for county officers (chair, commissioners, auditor and sheriff) beginning in 2026. This election method allows voters to rank candidates in order of preference, with votes instantly tallied in rounds until a candidate receives a majority of votes cast. This method allows county officers to be elected in a single

1 election – generally in November -- eliminating the need for  
2 primaries.

3 **HOW COUNTY OFFICERS ARE CURRENTLY ELECTED**

4 Currently, candidates for county elected offices (chair,  
5 commissioners, auditor, sheriff) appear on the May primary  
6 election ballot. Voters may vote for only one candidate per  
7 office. A candidate who receives a majority of the votes cast  
8 in the primary election is elected. If no candidate receives a  
9 majority, the two candidates that received the highest  
10 number of votes compete in a runoff election at the  
11 November general election, and the candidate who receives  
12 a majority of votes cast is elected. Elections to fill vacancies  
13 occurring during the term of office may require a special  
14 election.

15 **HOW INSTANT RUNOFF RANKED CHOICE VOTING  
16 WORKS**

17 This charter amendment, recommended by the Multnomah  
18 County Charter Review Committee, requires elections for  
19 county officers to use “instant runoff ranked choice voting”  
20 beginning in 2026. Instant runoff ranked choice voting is a  
21 system that gives voters the ability to rank candidates in  
22 order of preference with ballots counted in rounds in a  
23 single election. If no candidate receives over fifty percent of  
24 the votes in the first round, the candidate receiving fewest  
25 votes is eliminated, and that candidate’s votes are instantly  
26 transferred to each voter’s next-highest ranked candidate.  
The process continues for as many rounds as necessary until  
a candidate wins by receiving more than fifty percent of the  
votes cast.

Because the instant runoff ranked choice voting method  
elects an official in a single election, no primary election (or  
special election for certain vacancies) is necessary. Rather,  
except to fill certain vacancies, all elections to fill county  
offices would be held at the November general election/



1                   **TIMING**

2  
3                   The current system of electing county officers and filling  
4                   vacancies would remain in place until instant runoff ranked  
5                   choice voting is implemented by 2026.

6                   **5. CONCLUSION**

7                   To cast an informed vote, voters are entitled to receive an accurate, impartial and  
8                   understandable ballot title and explanatory statement describing how the measure  
9                   works and its effects. The court should find that the ballot title and explanatory  
10                  statement drafted by Respondent fail to meet these standards. As a remedy, it should  
11                  rewrite both the ballot title and explanatory statements as proposed by Petitioners.

12  
13                  Dated this 22<sup>nd</sup> day of August, 2022.

14   BENNETT HARTMAN, LLP

15   s/Margaret S. Olney  
16   Margaret S. Olney, OSB 881359  
17   [margaret@bennetthartman.com](mailto:margaret@bennetthartman.com)  
18   Of Attorneys for Petitioners  
19   Phone: (503) 227-4600

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

ELONA WILSON and ISABELA	)	
VILLARREAL,	)	
	)	
Petitioners,	)	Case No. 22CV23601
	)	
v.	)	
	)	
ROBERT L. TAYLOR, Portland City	)	OPINION
Attorney,	)	
	)	
Respondent.	)	

**INTRODUCTION**

Pursuant to Chapter 13 of the Portland City Charter (Charter), the Charter Commission approved a measure for the November 2022 ballot that, if approved by the voters, would substantially change the structure and operation of city government and the process for electing city officials. Petitioners brought this action pursuant to ORS 250.296 and ORS 28.010, contending that the ballot title prepared by the City Attorney for this measure does not comply with ORS 250.035(1)(c), and the explanatory statement does not comply with ORS 251.215.<sup>1</sup>

Respondent contends that judicial review of the ballot title is limited under ORS 256.296(1) to determining whether the title is “insufficient, not concise, or unfair.” Respondent contends that the City’s ballot title is fair, concise, and sufficient in compliance with the statute. Similarly, respondent contends that the explanatory statement complies with ORS 251.215 because it is impartial, simple, and understandable.

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<sup>1</sup> James L. Posey also submitted a brief opposing the City Attorney’s ballot title. The court will treat Mr. Posey’s brief as an *amicus curiae* (friend of the court) submission and grants Mr. Posey’s request to have his views considered in this action.

For the reasons explained below, the court concludes that the City’s ballot title and explanatory statement do not fully comply with statutory standards. The court modifies the ballot title and explanatory statement as set forth below.

## **DISCUSSION**

### **Background**

In December 2020, the 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 advance to the November 2022 ballot a measure changing the structure and operation of Portland’s City government and the method for electing city officials.<sup>2</sup>

As described in the Charter Commission’s report, the measure, if adopted, would make three significant changes to Portland’s governmental structure designed to make the city “more accountable, transparent, efficient and effective, responsive, and representative of every area of our city.” Charter Commission Progress Report #6, p. 20. First, the measure shifts management of the city’s operations to a City Administrator, supervised by the mayor. Second, the measure expands the City Council to twelve members, with three members elected to represent Portland residents in four geographic districts. Third, the proposal adopts “ranked choice voting” for electing city officials.

Section 2.04.110 of the Portland City Code (Code) requires the City Attorney to prepare a ballot title and explanatory statement for a measure referred to the voters by the Charter Commission. The ballot title and explanatory statement must conform “with the requirements of

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<sup>2</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.

state law.” Code Section 2.04.110 A(1)(c). Under ORS 250.296, any elector dissatisfied with the City’s ballot title may file a petition for judicial review stating the reasons the elector believes the ballot title is “insufficient, not concise or unfair.”

Respondent does not dispute that ORS 250.296 authorizes, by implication, a challenge to the explanatory statement to be published in the Voters’ Pamphlet for compliance with statutory standards. Under ORS 251.215, the explanatory statement for a statewide ballot measure must be an “impartial, simple and understandable statement explaining the measure” in 500 words or less. Similarly, in a county that prepares a county voters’ pamphlet that includes a city measure, the city is required to submit “an impartial, simple and understandable statement explaining the measure and its effect.” ORS 251. 345.

Petitioners timely filed this challenge to the City Attorney’s ballot title and explanatory statement, contending that the ballot title is “insufficient, not concise or unfair,” and the explanatory statement is not “impartial, simple and understandable.

**Ballot Title—Caption and Question**

Under ORS 250.035(1), a ballot title for a city measure must consist of: “(a) A caption of not more than 10 words which reasonably identifies the subject of the measure; (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 corresponds to an affirmative vote on the measure; and (c) A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.”

The City Attorney prepared the following ballot title caption and question:

CAPTION

Amends Charter: Changes the structure of Portland’s government

QUESTION

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

Petitioners contend that the Question does not comply with statutory requirements because the syntax “gets in the way of clarity, and the description of rank choice voting is unhelpful and potentially misleading.” *Amicus* Posey contends that the ballot title does not adequately explain the novelty and complexity of the ranked choice voting processes. The court agrees with those contentions, in part. Although the City Attorney’s Question is concise and fair, it is insufficient because it is not understandable, in part because of its syntax and in part because of its use of the phrase “voters ranking candidates” at the end of the sentence. The alternative Question proposed by petitioners is better, though still somewhat difficult to understand.

The court concludes that the ballot title caption and question set forth below will be sufficient to comply with statutory requirements:

CAPTION

Amends Charter: Changes Portland’s government structure and process for electing city officials<sup>3</sup>

QUESTION

Should Administrator manage city government, 12-member Council (three from each district) make laws, voters elect officials using ranked choice process?

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<sup>3</sup> The court does not count the words “Amends Charter” in the 10-word limit for the caption, consistent with ORS 250.035(2)(a) (“Amends Constitution” not included in word limit for caption for measure that amends the Oregon Constitution), and *Portland Police Assn. v. Civil Serv. Brd.*, 292 Or 433, 440 (1982) (“A city’s charter is, in effect, the city constitution”). See *Bennett v. City of Portland*, Multnomah County Circuit Court case no. 17CV08376, opinion dated March 15, 2017, at n. 2 (applying principle).

**Ballot Title—Summary**

The City Attorney prepared the following summary:

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.

Petitioners contend that there are two problems with the City Attorney’s summary: (1) the description of ranked choice voting—especially the use of the terms “instant runoff ranked choice voting” and “single transferrable vote ranked choice voting”—fails to plainly describe how voting under this system differs from our current system; and (2) the cost estimate of 0.9 to 8.7 million dollars annually is speculative and misleading. Petitioners also propose using bullet points to make the summary more understandable. *Amicus* Posey contends that the City Attorney’s summary does not adequately explain the processes for tallying and reallocating votes under the two ranked choice methods proposed by the measure.

The court agrees with petitioners’ first point; the court also agrees that bullet point organization will make the summary more understandable. The court agrees with respondent

that the cost estimates provided by the City Budget Office should be included in the summary.

The court further agrees with petitioners and *amicus* Posey that the ranked choice processes are not adequately explained. Accordingly, the court approves the following summary:

#### SUMMARY

Charter Commission's proposal to change structure of Portland city government.

Currently, City Council includes one Mayor and four Commissioners elected citywide. Council makes laws; Mayor and Commissioners directly manage bureaus. Voters choose one candidate per office in citywide primary elections with runoff elections if necessary.

If measure is approved:

- City Administrator, supervised by Mayor, manages daily operations, including hiring, firing, and supervising bureau directors
- Council expanded to twelve members; City divided into four geographic districts created by Independent District Commission; three Councilors elected to represent each district
- Council makes laws. Mayor may introduce laws, vote to break ties on non-emergency ordinances
- Independent Salary Commission sets elected officials' salaries
- City elections use "ranked choice voting" process that allows voters to rank candidates in order of preference instead of casting a single vote; primary elections eliminated. For citywide offices (Mayor, Auditor), votes tallied in rounds until single candidate receives majority. For Councilors, votes tallied and reallocated in rounds until three candidates in each district meet election threshold.
- Cost estimate: \$900,000 to \$8.7 million annually
- Includes other provisions

#### **Explanatory Statement**

The City Attorney drafted a 500-word explanatory statement to be published in the Voters' Pamphlet pursuant to ORS 251.215 and Portland City Code Section 2.04.110. Petitioners contend that the City Attorney's explanatory statement does not comply with the statute, which requires the statement to be an "impartial, simple and understandable statement explaining the measure." Petitioners propose an alternative statement that, in

petitioner's view, makes the explanation simpler and more understandable by making changes in format, syntax and organization. Respondent does not object to petitioners' non-substantive formatting and syntax changes, but objects to the proposed re-organization of the measure's three primary changes to city government.

The court agrees with petitioners that the City Attorney's explanatory statement can be simplified and made more understandable by making non-substantive changes in formatting, syntax, and wording. The court agrees with respondent that the organization should be consistent with the organizational structure of the ballot title. Accordingly, the court approves the following explanatory statement:

The Portland Charter Commission recommends amending the City Charter to reform the structure and operation of city government. The recommendations, made after months of study and community engagement, are supported by seventeen of the twenty Charter Commission members.

The measure includes three interdependent reforms:

**(1) City Administrator, supervised by Mayor, manages City**

**Currently:** City Council, consisting of Mayor and four Commissioners, exercises legislative and executive powers. Executive power includes managing city bureaus.

**If measure is approved:** City Council continues to exercise legislative power to make laws. A City Administrator hired by Mayor and confirmed by Council exercises executive power to implement laws and manage city bureaus. City Administrator hires, fires, and supervises bureau directors. Mayor is not a member of City 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.

**(2) City Council expanded to 12; three from each of four new geographic districts**

**Currently:** City Council consists of five members—one Mayor and four Commissioners—elected citywide.



**If measure is approved:** City Council expands to 12 members, elected from four new geographic districts, with three Councilors representing each district. An Independent District Commission draws district boundary lines, to be adjusted every decade beginning in 2030 based on census population data.

**(3) City officials to be elected using “ranked choice voting” process**

**Currently:** Qualified Portland voters cast one vote for each candidate for each office in citywide election for Mayor, Auditor, City Council members. If no candidate for an office receives more than 50% of votes at May primary, the top two candidates compete in November runoff election.

**If measure is approved:** Voters may rank candidates in order of preference, with votes tallied in rounds until there is a winner. Ranked choice voting results in one general election, eliminating primary elections.

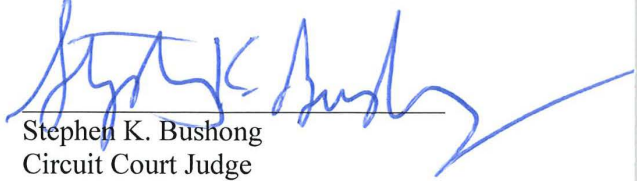
Ballot tallying methods depend on the office. For officials chosen at a citywide election—Mayor and Auditor—an “instant runoff” process is used to count ballots in rounds. If no candidate receives over 50% of the votes in the first round, the candidate receiving fewest votes is eliminated, and that candidate’s votes are transferred to each voter’s next-highest ranked candidate. The process continues for as many rounds as necessary until a candidate exceeds a 50% majority. For City Council seats, a “single transferrable vote” method is used. Candidates win when they exceed a threshold set by the number of available positions. Ballots are counted in rounds; any candidate exceeding the threshold is elected, and that candidate’s votes above the threshold are proportionally transferred to other candidates based on voters’ preference. The candidate receiving the fewest votes each round is eliminated, and that candidate’s votes are transferred to other candidates based on voters’ preferences. The process continues for as many rounds as necessary until all positions are filled.

The City Budget Office estimates the cost of implementing the measure is about \$900,000 to \$8.7 million annually, representing about 0.1 to 1.4% of Portland’s discretionary funding.

## CONCLUSION

Pursuant to ORS 250.296, the court approves the ballot title and explanatory statement as modified in this opinion.<sup>4</sup> Respondent's 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

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<sup>4</sup> Non-substantive formatting changes can be made to the ballot title and explanatory statement approved by the court as needed for printing ballots and publishing the Voters' Pamphlet efficiently. According to the Word Count tool included in the Microsoft Word application used by the court, the ballot title and explanatory statement approved by the court comply with the statutory word limits. The court's ballot title uses 10 words in the caption, 20 words in the question, and 175 words in the summary. The court's explanatory statement uses 500 words.

## BENTON COUNTY MEASURE 2-100

**BALLOT TITLE**

**CAPTION: Amends County Charter to elect officials using ranked choice voting**

**QUESTION:** Should County Charter be amended to elect countywide officials by ranking candidates in order of preference using ranked choice voting?

**SUMMARY:** The measure would amend the Benton County Charter to specify that all elected officers of the County be elected by a process known as ranked choice voting, also known as instant runoff voting or the alternative vote. Currently, the Benton County Commissioners and Benton County Sheriff are the only elected County officers.

Ranked choice voting would allow voters to rank candidates in order of preference and uses those rankings to elect candidates. The measure provides that ranked choice voting would be used for general and special elections; not for primaries.

The measure would require the County to enact an ordinance implementing the ranked choice voting process no later than 120 days prior to the date of the first election using ranked choice voting.

Ranked choice voting would be implemented only after the County has received up to \$200,000 from the State of Oregon, or other sources, for the costs of implementation. Ranked choice voting would be used during the first election at least twelve months after funding has been received.

**EXPLANATORY STATEMENT****Summary**

This measure would implement Ranked Choice Voting for elected positions in Benton County government. Ranked choice voting is an elections system that would give voters the ability to rank candidates in order of preference; 1, 2, 3, and so on. If no candidate receives a majority (more than fifty percent) of first choice votes, voters whose preferred candidate receives the fewest votes will have their votes automatically recast for their second choice candidate. This process will repeat until one candidate receives a majority of votes cast.

**Current Election Law**

Currently in Benton County, the candidate who receives the most votes wins the election. Under the current system, there is no requirement that a candidate receive a majority of votes cast to be elected. This means candidates could be elected to office with less than fifty percent of the votes cast in that contest. This may occur when more than two candidates run for the same office and split the votes among them; potentially resulting in a successful candidate receiving less than a majority of the votes cast.

**How Ranked Choice Voting Works**

Ranked Choice Voting is a system that gives voters the ability to rank candidates in order of preference. If no first choice candidate receives more than fifty percent of the votes, the candidate who receives the fewest first choice votes is eliminated from the race. If a voter's first choice candidate is eliminated, the voter's ballot is then instantly recast for the voter's second choice in the ranked choice contest. This process repeats until one candidate receives more than fifty percent of the votes cast. A candidate must have a majority, greater than fifty percent, of the votes cast to be elected to county office under this system.

If passed and funded, this Benton County Charter amendment measure would require Ranked Choice Voting to be used only to elect countywide officials during General and Special Elections. Ranked Choice Voting would not be used during party primaries. Currently, the only countywide elected offices are the County Commissioners and the County Sheriff.

**Implementation**

This measure does not require the county to spend county funds for the initial implementation of Ranked Choice Voting. If the measure is enacted, the county will request up to \$200,000 from the state or other sources within 60 days of the election date, to educate voters and implement the system. With state-approved modifications, the county's current vote tabulation equipment can be adapted to handle Ranked Choice Voting contests. This system would be implemented at the first general election that is held twelve months or more past the date when funding is secured.

**TEXT OF MEASURE****The People of Benton County adopt the following Amendment to the Benton County Charter:**

A new Section shall be added to Chapter VII Elections, to read as follows:

Section 25. Method of Election.

- (1) Elected officers of the County shall be elected in the general election, and at any special election, by a process of ranked choice voting, also known as instant runoff voting or the alternative vote.
  - (a) The County Commissioners shall, by ordinance, establish rules necessary for the orderly administration of the election as soon as practicable but not later than one hundred twenty days prior to the first election using ranked choice voting.
  - (b) Within sixty days of the passage of the initiative establishing this Section 25 of the Charter, the County shall request not more than \$200,000 in funding from the State and, if necessary, other sources, to pay for the initial implementation of ranked choice voting, which shall include an initial education campaign for County voters. The County Clerk shall implement ranked choice voting at the first general election held twelve months or more past the date funding is secured, and at each general and special election of elected officers thereafter.

(Submitted by Benton County)

**NO ARGUMENTS AGAINST THIS  
MEASURE WERE FILED**

## EXHIBIT C

### Instant Runoff Ranked Choice Voting Charter Amendment Text

(Language ~~stricken~~ is deleted; underlined language is new.)

#### CHAPTER IV. COUNTY OFFICERS IN GENERAL

- 4.10.           **Qualifications.**
- 4.20.           **Terms Of Office; Successive Terms; Running For Office In Midterm.**
- 4.30.           **Compensation Of The Chair, Commissioners, Sheriff and District Attorney.**
- 4.40.           **Vacancies -- Causes.**
- 4.50.           **Vacancies -- Filling.**

\* \* \*

#### **4.50. Vacancies -- Filling.**

(1) If a vacancy occurs in an elective office of the county and the term of office expires:

(a) One year or more after the vacancy occurs, then a person shall be elected using instant runoff ranked choice voting, as described in section 11.15, at the next May or November election date to fill the vacancy for the remainder of the term of office.

(i) If a vacancy occurs before instant runoff ranked choice voting is implemented under section 11.15, then the election to fill the vacancy will be conducted under the terms of this subsection 4.50(1)(a)(i). If no candidate receives a majority of votes cast at that election, the board of county commissioners shall call for a special election in which the names of the two candidates receiving the highest number of votes shall appear on the ballot. The candidate receiving a majority of votes cast will be deemed elected to fill the balance of the unexpired term.

(ii) Subsections 4.50(1)(a)(i) and (ii) are repealed when instant runoff ranked choice voting is implemented under section 11.15.

(b) Less than one year but 90 days or more after the vacancy occurs, then the board of county commissioners shall appoint a person to fill the vacancy for the remainder of the term of office.

(c) Less than 90 days after the vacancy occurs, the vacancy shall not be filled.

(2) For purposes of this section 4.50, "term of office" means the term of office of the last person elected to the office which is vacant.

(3) In the event of a vacancy in an elective office, the board shall by ordinance prescribe procedures to designate an interim occupant of the office. The person so designated shall serve as acting chair, commissioner, sheriff or auditor, as the case may be, until the office is filled by election or appointment, as appropriate under section 4.50(1).

\* \* \*

## CHAPTER XI. ELECTIONS

- 11.15. Election Of Officers.
- 11.20. Tie Votes.
- 11.30. Initiative And Referendum.
- 11.40. Recall.
- 11.50. Charter Amendment And Repeal.
- 11.60. Campaign Finance.

### 11.15. Election Of Officers.

- (1) All elective county offices shall be nonpartisan.
- (2) The manner of nominating and electing officers shall be the same as that established by state law for nominating and electing circuit court judges, except as this charter provides to the contrary.
- (3) Petitions or declarations of candidacy shall contain no reference to any political party ballot or to the political party affiliation of the candidate.
- (4) No later than 2026, and except as provided in section 4.50 for elections to fill a vacancy, all elective county officers will be elected at the general election using instant runoff ranked choice voting.
  - (a) Ranked choice voting means an election method in which electors rank candidates for an office in order of electors' preferences and ballots may be counted in rounds.
  - (b) 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 of counting, ballots are counted in subsequent rounds 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 candidate having the fewest votes in each round is eliminated and ballots that had been counted as votes for the eliminated candidate instead are counted as votes for the candidate who is ranked next on those ballots; and

(iii) The process of eliminating candidates and transferring votes for eliminated candidates to the next-ranked candidates on those ballots repeats until a candidate has a majority of the vote and is elected.

(5) Until instant runoff ranked choice voting is implemented, the names of all candidates shall appear on the primary election ballot. If a candidate receives a majority of the votes cast for a position at the primary election; the candidate shall be elected to the position. If no candidate for a position at a primary election receives a majority of the votes cast for the position, the two candidates receiving the highest number of votes shall be declared nominees and their names shall appear on the general election ballot. This subsection 11.15(5) is repealed when instant runoff ranked choice voting is implemented.

#### **11.20. Tie Votes.**

In the event of a tie vote for candidates for an elective office of the county, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the board of county commissioners.

## **Instant Runoff Ranked Choice Voting Ballot Title & Explanatory Statement**

**Caption (10/10):** Amends charter: instant runoff ranked choice voting in county elections

**Question (20/20):** Should county officials be elected at general election (vacancies filled in May or November) using instant runoff ranked choice voting?

**Summary (174/175):** Under current charter, candidates for county office appear on primary election ballot; voters can cast one vote per office; candidate receiving majority is elected. If no candidate receives majority, two candidates receiving highest number of votes appear on general election ballot; candidate receiving majority is elected. For vacancies filled by election, candidate receiving majority is elected at next May or November election. If no candidate receives majority, two candidates receiving highest number of votes appear on special election ballot; candidate receiving majority is elected.

Under amendment recommended by Charter Review Committee, by 2026, officers would be elected at general election, vacancies filled at next May or November election, using instant runoff ranked choice voting (voters rank candidates by preference). Candidate with majority of votes based on first rankings is elected. If no candidate receives majority, ballots are counted in subsequent rounds: candidates retain votes from prior rounds; candidate with fewest votes eliminated each round; votes for eliminated candidate transfer to candidate ranked next on those ballots. Process repeats until candidate with majority is elected.

**Explanatory Statement (494/500):** Under the current charter, candidates for county elected office (chair, commissioners, auditor, sheriff) appear on the primary election ballot. Voters may vote for only one candidate per office. A candidate who receives a majority of the votes cast in the primary election is elected. If no candidate receives a majority, the two candidates that received the highest number of votes appear on the general election ballot, and the candidate who receives a majority is elected. For vacancies, if the term of office expires one year or more after the vacancy occurs, the replacement is elected at the next May or November election if a candidate receives a majority of the votes cast in that election. If no candidate receives a majority of the votes cast in that election, the board calls a special election in which the names of the two candidates who received the highest number of votes appear on the ballot. The candidate who receives a majority of the votes cast is elected to fill the remainder of the term.

This charter amendment recommended by the Charter Review Committee would change the method of electing county officers. By 2026, county officers would be elected at the general election using instant runoff ranked choice voting. Ranked choice voting is an election method where voters rank candidates for an office in order of preference and ballots may be counted in rounds.

In the initial round of counting, a candidate who has a majority of the vote based on the number of first rankings each candidate receives is elected. However, if no candidate receives a majority of the vote in the initial round of counting, ballots are counted in subsequent rounds. In those subsequent rounds, candidates keep the number of votes counted for them in the first and any subsequent rounds that already occurred. Then, the candidate having the fewest votes in each round is eliminated and ballots that had been counted as votes for the eliminated candidate instead are counted as votes for the candidate who is ranked next on those ballots. That process of eliminating candidates and transferring votes to the next-ranked candidates on those ballots repeats until a candidate has a majority of the vote and is elected. Because the instant runoff ranked choice voting method elects an official in a single election, no primary election would be necessary for county officers.

A similar process would be used for filling vacancies where the term of office ends one year or more after the vacancy occurs. In that case, a replacement would be elected at the next May or November election to fill the remainder of the term of office using the instant runoff ranked choice voting method described above. Because the instant runoff ranked choice voting method elects an official in a single election, no special election would be necessary.

The current system of electing county officers and filling vacancies would remain in place until instant runoff ranked choice voting is implemented.



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 Jenny Morf Madkour  
5 Multnomah County Counsel  
6 501 SE Hawthorne Blvd., Ste. 500  
7 Portland, OR 97214  
8 [Jenny.m.madkour@multco.us](mailto:Jenny.m.madkour@multco.us)

9 Katherine Thomas  
10 Assistant Multnomah County Attorney  
11 501 SE Hawthorne Blvd., Ste. 500  
12 Portland, OR 97214  
13 [Katherine.thomas@multco.us](mailto:Katherine.thomas@multco.us)

14 Of Attorneys for Respondents

15 Tim Scott, Multnomah County Director of Elections  
16 [Tim.scott@multco.us](mailto:Tim.scott@multco.us)

17 by the following indicated method or methods:

18  
19 X by **emailing** a copy thereof to the attorney(s) at the email address(s) shown  
20 above, on the date set forth below.

21 DATED this 22<sup>nd</sup> day of August, 2022.

22 BENNETT HARTMAN, LLP

23 s/Margaret S. Olney \_\_\_\_\_  
24 Margaret S. Olney, OSB 881359  
25 [margaret@bennetthartman.com](mailto:margaret@bennetthartman.com)  
26 Of Attorneys for Petitioners  
Phone: (503) 227-4600