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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.

Case No. 22CV28372

**RESPONDENT’S ANSWERING
MEMORANDUM**

Filing fees deferred pursuant to ORS
20.140

This case arises out of a challenge to a ballot title and explanatory statement prepared by Jenny Madkour, the Multnomah County Attorney (“Respondent”), for a proposed amendment to the Multnomah County Home Rule Charter (“Charter”) relating to ranked choice voting (the “Measure”). The Measure would require Multnomah County (the “County”) to implement instant runoff ranked choice voting in elections for County officers by 2026. Petition, Ex 1, pgs 12-14.

The Multnomah County Charter Review Committee recommended the Measure, along with six other measures proposing to amend the Charter. The Board of County Commissioners referred the measures, as the Charter requires, and certified the ballot titles and explanatory statements. *See* Charter § 12.70, *available at* <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/charter2022.pdf> (requiring referral); Petition for Review of Ballot Title and Explanatory Statement (“Petition”), Ex 1 (Board Resolution).

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1 In its Petition, Petitioner argues that the filed ballot title and explanatory statement do
2 not meet the standards in ORS 250.035, ORS 251.345, and Multnomah County Code
3 (“MCC”) because the ballot title and explanatory statement are not simple and
4 understandable. However, most of Petitioner’s requested changes are editorial and therefore
5 outside the scope of ballot title review; in addition, the requested changes include inaccurate
6 and misleading information. More importantly, those changes are unnecessary because the
7 filed ballot title and explanatory statement meet the legal requirements, and Respondent
8 therefore requests that this Court certify the ballot title and explanatory statement as written.

9 **I. Timeline for Review**

10 The Charter requires the Measure to appear on the November 8, 2022 ballot. Charter
11 § 12.70. Petitioner timely filed its challenge on August 22, 2022, and under state law, the
12 final ballot title and explanatory statement must be filed with the County Elections Division
13 by September 8, 2022. *See* Secretary of State, *County, City, and District Referral Manual 4*
14 *(2022)*, available at <https://sos.oregon.gov/elections/Documents/ReferralManual.pdf>. The
15 Elections Division closes at 5:00 p.m., and Respondent therefore respectfully requests that a
16 final order and general judgment be entered no later than 12:00 p.m. on September 8, 2022.

17 **II. Standard of Review**

18 This Court’s review is limited to determining whether the ballot title “meets the
19 requirements of ORS 250.035” for the form of ballot titles for local measures or instead “is
20 insufficient, not concise or unfair.” ORS 250.195(1). As Petitioner noted, Supreme Court
21 precedent relating to state ballot titles guides circuit court review of local ballot titles.

22 Memorandum in Support of Petition for Review of Ballot Title (“Memo”) 7, 9, 10.

1 The Oregon Supreme Court has recognized that the court’s exercise of restraint in
2 ballot title cases ensures that courts play the proper—and limited—role in the electoral
3 process. As the Supreme Court has explained, “there has to be some play in the joints of the
4 ballot title writing process, if this court is to maintain its status as a law-enforcing court,
5 rather than an editorial board.” *Caruthers v. Myers*, 343 Or 162, 168, 166 P3d 514 (2007).

6 The Supreme Court has shown deference to the ballot title drafter “where reasonable
7 minds can differ” because the drafter “has the responsibility to make the choice in the first
8 instance.” *Oregon Taxpayers Union v. Paulus*, 296 Or 476, 481, 676 P2d 305 (1984).

9 Although Petitioner attempts to avoid the deference recognized in *Oregon Taxpayers Union*
10 by pointing to the current standard for state measures in ORS 250.085, which requires a court
11 to review only for substantial compliance with ORS 250.035, the standard for state measures
12 when the Supreme Court announced its deferential standard of review in *Oregon Taxpayers*
13 *Union* was the same standard used for County measures today. *See id.* (explaining that court
14 reviewed ballot title to determine whether it was “insufficient, not concise, or unfair”).¹

¹ Petitioner’s statement that “[t]here [was] no public comment process” in preparation of the ballot title and explanatory statement for this Measure is inaccurate. Memo 6. Respondent engaged in an extensive process to draft ballot titles and explanatory statements that would comply with the statutory requirements. Although not statutorily required, that process included multiple opportunities for public comments to inform the final ballot title and explanatory statement. All of the proposed ballot titles and explanatory statements were posted on the Charter Review Committee’s website to allow for public comment before submission for Board certification. *See Multnomah County Agenda Placement Request, available at* https://multnomah.granicus.com/MetaViewer.php?view_id=3&clip_id=2563 &meta_id=162538 (describing public comment process). The proposed ballot titles and explanatory statements also were included with the Board agenda posted on the Friday before the Board meeting and there was an opportunity for public comment at the meeting. *See Multnomah County, Board Meetings, available at* http://multnomah.granicus.com/ViewPublisher.php?view_id=3 (describing public comment process and providing Board agendas). The County did not receive any comments from the public on the ballot titles and explanatory statements until the filing of this challenge.

1 Consistent with *Oregon Taxpayers Union*, ORS 250.195 does not require or authorize
2 this Court to draft a “better” or “improved” title. *See Mabon v. Kulongoski*, 325 Or 121, 126,
3 934 P2d 403 (1997) (explaining that court has “emphasized restraint” in ballot title review
4 and is not authorized to draft a “better” or “improved” title); *Ferry v. Paulus*, 297 Or 70, 77,
5 682 P2d 262 (1984) (“Although it is arguable that one might write a better explanation than
6 has the Attorney General, that is not our function. We certainly cannot say that the provided
7 explanation is insufficient or unfair.”); *Opinion and Order*, pg 7, *Simons v. Madkour*, Case
8 No. 20CV12404 (June 3, 2020) (“The ballot title summary may not be letter-perfect, but the
9 Court finds that it is sufficient, concise, and fair, and therefore meets the required statutory
10 standard.”). Unless this Court determines, in its law-enforcing role, that the ballot title is
11 “insufficient, not concise, or unfair,” it should certify the ballot title and explanatory
12 statement as written.

13 III. Ballot Title and Explanatory Statement Standards

14 The purpose of the ballot title and explanatory statement is to provide voters with an
15 explanation of the subject, purpose, and effect of the text of a measure. In particular, ORS
16 250.035(1) requires that a ballot title contain the following:

17 “(a) A caption of not more than 10 words which reasonably
18 identifies the subject of the measure;

19 “(b) A question of not more than 20 words which plainly
20 phrases the chief purpose of the measure so that an affirmative
21 response to the question corresponds to an affirmative vote on
22 the measure; and

23 “(c) A concise and impartial statement of not more than 175
24 words summarizing the measure and its major effect.”

25 /// /// ///

1 The explanatory statement must provide an “impartial, simple and understandable statement
2 explaining the measure and its effect” in 500 words or less. ORS 251.345;

3 MCC § 5.101(A)(2), 5.104(B).

4 **IV. The caption reasonably identifies the actual major effects of the measure:**
5 **amendment of the Charter to implement ranked choice voting and**
6 **eliminate County runoff elections.**

7 The caption must “reasonably identif[y] the subject of the measure” in not more than
8 10 words by describing the actual major effect that the measure would have on existing law,
9 based on the text of the proposed measure. ORS 250.035(1)(a) (standard for captions);
10 *Carson v. Kroger*, 351 Or 508, 513, 270 P3d 243 (2012) (explaining that caption must
11 describe “the actual major effect of a measure or, if the measure has more than one major
12 effect, all such effects (to the limit of the available words)” and noting that actual major
13 effects are identified by looking to measure text for changes the measure would enact in the
14 context of existing law (internal quotation omitted)).

15 Here, the Measure has three major effects: (1) it amends the Charter; (2) it
16 implements ranked choice voting in County candidate elections; and (3) it implements an
17 instant runoff system, eliminating County runoff elections. The filed caption captures all of
18 those effects.

19 The filed caption and Petitioner’s proposals read:

Filed Caption Amends charter: instant runoff ranked choice voting in county elections	Petitioner’s Proposed Caption Amends Charter: County officers elected in single election by voters ranking candidates
	Petitioner’s Alternative Proposal Amends Charter: Adopts instant runoff ranked choice voting to elect county officers

1 As explained below, the filed caption sufficiently describes the actual major effects of
2 the Measure. Even if it does not, this Court should not adopt Petitioner’s proposed caption
3 because it does not comply with the statutory word limit and is inaccurate and misleading.

4 **A. The filed caption accurately describes the actual major effects of the**
5 **Measure, including amendment of the Charter, use of ranked choice voting,**
6 **and the elimination of runoff elections.**

7 Petitioner identifies three issues with the filed caption: (1) it lacks an action verb;
8 (2) it does not make clear that ranked choice voting would apply only in elections for County
9 officers, rather than in all County elections; and (3) the words “instant runoff” are
10 unnecessary because what voters actually need to know is how they will fill out their ballots
11 and how votes will be tallied. Memo 8. None of Petitioner’s arguments demonstrate that the
12 caption is insufficient, not concise or unfair.

13 First, although Petitioner states that the lack of an action verb in the caption “renders
14 the statement impermissibly confusing,” Petitioner does not explain what about the statement
15 would be confusing to a voter. Memo 8. The action verb “amends” in the statement
16 “Amends charter” signals to voters that the County’s governing document is changing. The
17 phrase that follows “Amends charter” explains to voters what is changing in the Charter—the
18 method of voting in County elections is being amended to provide for ranked choice voting
19 with an instant runoff, meaning there will be no separate runoff election.

20 Second, it is unnecessary for the caption to state that ranked choice voting will be
21 implemented only in elections for County officers and not all County elections. Memo 8. As
22 the plain meaning of the phrase “ranked choice voting” suggests, that method of voting
23 involves a voter ranking their choices, *i.e.*, casting votes in order of preference. When there

1 is a binary choice, as in the case of a measure election, it would be nonsensical to use ranked
2 choice voting. Voters will understand that. In addition, there are no runoffs in measure
3 elections, so the phrase “instant runoff” also signals to voters that the Measure applies only to
4 candidate elections.

5 Third, use of the term “instant runoff” in the caption, which Petitioner acknowledges
6 is accurate, serves another purpose. That phrase is necessary to describe one of the actual
7 major effects of the measure identified by Petitioner: the elimination of runoff elections.
8 Memo 4, 8.

9 Finally, Petitioner argues that the ballot title and explanatory statement, including the
10 caption, must be similar to the ballot title and explanatory statement for a City of Portland
11 Charter amendment that proposes using ranked choice voting in elections for City officials.²
12 Memo 2. That argument does not align with the standards for ballot titles and explanatory
13 statements, which require that they describe the subject, chief purpose, and major effects of
14 the Measure in the context of existing law. ORS 250.035(1); ORS 251.345. There is no
15 requirement that the ballot title for a County measure be driven by ballot titles for different
16 measures impacting different government entities. Because there are differences between the
17 Measure and the City’s proposed amendment, aligning the wording of the ballot titles and
18 explanatory statements could be more misleading than helpful by suggesting that the
19 amendments are the same. This Court should limit its inquiry to the Measure before it,

² Petitioner also points to ballot titles for two statewide initiative petitions that propose ranked choice voting, but neither petition will appear on the November 2022 ballot because the petitions have not even been approved for circulation. See Oregon Secretary of State, *Initiative, Referendum, and Referral Search*, available at https://egov.sos.state.or.us/elec/web_irr_search.main_search.

1 drawing on the City of Portland’s ballot title and explanatory statement only to the extent that
2 they serve as examples of ballot titles and explanatory statements that meet the standards.³

3 For the reasons described above, Respondent’s caption sufficiently describes the
4 major effects of the Measure, and this Court should certify the caption as written.

5 **B. Petitioner’s proposed caption is misleading and inaccurate, and therefore is**
6 **insufficient and unfair.**

7 Petitioner proposes the following caption: “Amends Charter: County officers elected
8 in single election by voters ranking candidates.” Even if this Court determines that the filed
9 caption is insufficient, it should not adopt Petitioner’s proposal because it is misleading and
10 inaccurate.

11 In particular, Petitioner’s proposed statement that County officers will be “elected in
12 single election” is misleading because it could suggest that all County officers will be elected
13 at the same time. However, the terms of office for County officers are staggered so that they
14 are not all elected in a “single election.” See Multnomah County, Metro and City Elected
15 Officials, *available at* [https://www.multco.us/elections/multnomah-county-metro-and-city-](https://www.multco.us/elections/multnomah-county-metro-and-city-elected-officials)
16 *elected-officials* (showing staggered terms of office for County officials).⁴ As a result,
17 Petitioner’s alternative is both misleading and inaccurate.

³ To the extent that this Court does consider those examples, the caption offered by Petitioner uses the phrase “voters ranking candidates,” which was rejected by the Court in *Wilson v. Taylor*, Case No. 22CV23601. See Memo, Ex 1, pg 3-4.

⁴ Reference to a “single election” could be particularly misleading because the Charter Review Committee subcommittee “explored the possibility of having all of the commissioners run in the same election cycle,” but ultimately declined to advance such an amendment. *Multnomah County Charter Review Committee Final Report* 18, *available at* <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/MCCRC%20Final%20Report.pdf> (hereafter “Final Report”).

1 In addition, neither of Petitioner’s proposed captions complies with the 10-word limit
 2 in ORS 250.035(1)(a). To be sure, for amendments to the Oregon Constitution, the caption
 3 must include the words “Amends Constitution,” and those words do not count toward the
 4 word limit. ORS 250.035(2)(a). However, although the Charter operates as the County’s
 5 constitution, there is no corresponding statutory requirement for a caption for Charter
 6 amendments to include the words “Amends Charter,” and there similarly is no corresponding
 7 relief from the 10-word limit when those words are included. ORS 250.035(1)(a). As a
 8 result, Respondent could not have drafted either of the captions proposed by Petitioner
 9 because neither complies with the statute. *See* ORS 174.010 (in construing statute, court
 10 cannot “insert what has been omitted”); *State v. Patton*, 237 Or App 46, 50–51, 238 P3d 439
 11 (2010), *rev den*, 350 Or 131 (2011) (“We are prohibited, by statutory command and by
 12 constitutional principle, from adding words to a statute that the legislature has omitted.”).⁵

13 **V. The filed question plainly phrases the chief purpose of the Measure and**
 14 **therefore is sufficient.**

15 The question is limited to 20 words that “plainly phrase[] the chief purpose of the
 16 measure.” ORS 250.035(1)(b). The filed question and Petitioner’s proposal are as follows:

Filed Question	Petitioner’s Proposed Question
Should county officials be elected at general election (vacancies filled in May or November) using instant runoff ranked choice voting?	Should county adopt ranked choice voting allowing voters to rank candidates; votes instantly tallied in rounds until majority winner?

⁵ Respondent recognizes that this Court has declined to count the words “Amends Charter” toward the 10-word limit in ORS 250.035(1)(a) for City of Portland Charter amendments. Memo 8. However, there has been no similar holding for County Charter amendments, and there will be six other measures with proposed County Charter amendments on the ballot with captions that were written without the benefit of a ruling allowing those extra words. Providing a 12-word caption for the Measure would make it an outlier from the other proposed County Charter amendments.

1 Petitioner identifies two issues with the filed question: according to Petitioner, the
2 question focuses too heavily on the date of the election and does not provide additional
3 information about what instant runoff ranked choice voting means. Memo 9-10. As
4 explained below, changing the timing of elections is a chief purpose of the measure that must
5 be described in the question. In addition, the phrase “instant runoff ranked choice voting”
6 provides information to voters on how the system works in a way that mirrors the text of the
7 measure and avoids the risk of misleading voters due to the limited word count, an issue
8 highlighted by the defects in Petitioner’s proposed question. *See Bernard v. Keisling*, 317 Or
9 591, 595, 858 P2d 1309 (1993) (“[G]enerally, and in the absence of a compelling reason to
10 the contrary, the Attorney General should use the words of the measure.”); *see also Conroy v.*
11 *Rosenblum* 358 Or 807, 816, 371 P3d 1180 (2016) (recognizing “it is difficult to explain
12 complex concepts within the word limitations” and allowing phrase “limited
13 representation/bargaining activities” in caption where summary had fuller discussion and
14 phrase was not “unclear or misleading”).

15 As Petitioner acknowledges, eliminating the runoff election system for County
16 officers and holding all elections for County officers at the November general election
17 (except in the case of vacancies) is a chief purpose of the Measure. Memo 4. That represents
18 a significant change because, under the current Charter, a County official can be—and often
19 is—elected outright at the May primary. Charter § 11.15. The Charter Review Committee
20 discussed the fact that the November general election was preferable over the May primary
21 election due to the larger voter turnout, and the full committee intentionally chose that date
22 for County officer elections. Final Report 23; *see also* Meeting Summary, June 28, 2022 at

1 5, available at <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs->
2 public/MCCRC%20Meeting%20Summary%206.28.22.pdf (explaining proposal to eliminate
3 runoff elections and set elections for the November general election, which has larger
4 turnout). The fact that the election will occur at the November general election is a chief
5 purpose of the measure and an important additional detail for voters.

6 As to Petitioner’s second argument, the filed question does not include other
7 information about how “instant runoff ranked choice voting” works because that description
8 itself contains valuable information for voters about the chief purpose of the measure. Under
9 the current Charter, there is a runoff election if no candidate receives a majority of the vote in
10 the May primary; the term “instant runoff” signals to voters that a runoff can occur instantly,
11 *i.e.*, at the same election, rather than at a later election. The phrase “ranked choice voting”
12 signals to voters that the method of voting will involve ranking candidates. In the limited 20-
13 word question, the details of how the tallying of votes will work cannot be included without
14 creating confusion, as seen in Petitioner’s proposed question.

15 For example, Petitioner’s proposed question states “votes instantly tallied in rounds
16 until majority winner.” Memo 10. However, the phrase “votes instantly tallied” is
17 misleading because it suggests that something about the timing of tallying votes is changing,
18 which is not the case. In addition, that wording suggests that votes always are tallied in
19 rounds, which is not the case if a candidate gets a majority of first rankings when votes
20 initially are tallied. Memo, Ex 3, pg 2.

21 Petitioner’s proposed question is also redundant and does not provide any meaningful
22 new information. The phrase “adopt ranked choice voting allowing voters to rank

1 candidates” is redundant in its repeated use of the word “rank.” The fact that voters can
2 “rank candidates” is indicated in the term “ranked choice voting”—voters can rank their
3 choices. In addition, the statement that votes are “tallied in rounds” provides no information
4 about how votes are tallied during those rounds, or how those tallies result in a “majority
5 winner.” As a result, that information is more likely to be misleading and create confusion
6 than to assist voters.

7 For those reasons, this Court should reject Petitioner’s proposed question and certify
8 the question as written.

9 **VI. The filed summary sufficiently describes the Measure and its major effects.**

10 The summary is required to be a “concise and impartial statement of not more than
11 175 words summarizing the measure and its major effect.” ORS 250.035(1)(c). “The
12 function of that summary is to provide voters with enough information to understand what
13 will happen if the measure is approved, *i.e.*, to advise voters of the ‘breadth’ of a measure’s
14 impact.” *Caruthers v. Kroger*, 347 Or 660, 670, 227 P3d 723 (2010). The filed summary
15 accurately explains the major effects of the Measure in the limited words provided.

16 Similar to the caption and the question, the filed summary uses the text of the
17 Measure where possible, while also providing additional information about the major effects
18 of the Measure. In particular, the filed summary identifies the fact that runoff elections will
19 be eliminated by explaining that officers will be elected at the general election, except in the
20 case of vacancies, which will be filled at the next May or November election. It also
21 identifies the new method of voting—ranked choice voting—and explains what that method
22 is and how votes will be tallied, tracking the text of the Measure to ensure accuracy.

1 Petitioner argues that the summary would benefit from changes in “formatting and
2 word choice” to make it more streamlined. Memo 11-12. However, it is not Petitioner’s role
3 or this Court’s role to act as an editorial board. *Caruthers*, 343 Or at 168. Unless the
4 formatting and word choice of the filed summary are “insufficient, not concise or unfair” the
5 filed summary should be certified as written, even if Petitioner prefers different wording.

6 In arguing for editorial changes, Petitioner states that the summary does not plainly
7 describe how ranked choice voting differs from the current system, and does not state that
8 ranked choice voting allows but does not require voters to rank candidates in order of
9 preference. Petitioner’s argument is inaccurate in two respects. First, the filed summary
10 does describe how ranked choice voting differs from the current system, first by explaining
11 that “[u]nder current charter * * * voters can cast one vote per office,” and then by explaining
12 that under the amendment, officers would be elected “using instant runoff ranked choice
13 voting (voters rank candidates by preference).” Memo, Ex 3, pg 4. Second, nothing in the
14 text of the filed summary suggests that voters are *required* to rank candidates. The text of the
15 summary tracks the text of the Measure, which does not speak in terms of what is allowed or
16 required and instead simply provides, “Ranked choice voting means an election method in
17 which electors rank candidates for an office in order of electors’ preferences and ballots may
18 be counted in rounds.” Memo, Ex 3, pg 2. Stating that voters are “allowed” to rank
19 candidates is unnecessary to accurately and sufficiently describe the Measure.

20 Petitioner also argues that the summary should omit detail about how vacancies will
21 be filled, or alternatively focus on the elimination of a special election to fill a vacancy, to
22 avoid suggesting that the proposed amendment changes how vacancies are filled. Contrary

1 to Petitioner’s argument, the filed summary describes both the existing process for filling
2 vacancies and the proposed amendments to that process, clarifying for voters what is
3 changing and what is remaining the same. For example, the filed summary provides that,
4 under the current charter, “[f]or vacancies filled by election, candidate receiving majority is
5 elected at next May or November election,” with the possibility for the Board to call a special
6 election if a runoff is required. Memo, Ex 3, pg 4. It goes on to explain that under the
7 proposed amendment “vacancies [will be] filled at next May or November election, using
8 instant runoff ranked choice voting.” *Id.* There is no suggestion that anything is changing
9 other than the method of voting (single vote versus ranked choice voting) and the elimination
10 of runoff elections. The filed summary is sufficient as written.

11 Indeed, Petitioner’s effort to streamline the summary results in multiple inaccuracies.
12 For example, in describing the current process, the summary addresses vacancies by stating
13 “Elections to fill certain vacancies may require special election.” Memo 12. As written,
14 Petitioner’s summary makes it sound like the filling of vacancies falls on the same May
15 primary election with November general election runoff schedule, except that “certain
16 vacancies” require a special election. It does not address the fact that vacancies can be filled
17 at *any* May or November election and that the special election that may be required is a
18 runoff election called by the Board. That is misleading.

19 In addition, Petitioner’s summary states that ranked choice voting would be used
20 “beginning in 2026.” The Measure provides that ranked choice voting must be implemented
21 “[n]o later than 2026,” which leaves intentional flexibility to allow the Elections Division to
22 implement ranked choice voting earlier if possible. Memo, Ex 3, pg 2; *see also* Final Report

1 17 (explaining that recommendation includes a “requirement that [ranked choice voting] be
2 adopted by 2026 to give the county’s elections division flexibility in its implementation
3 timeline, but [the subcommittee] supports earlier implementation if possible”).

4 Similar to the proposed question, Petitioner’s proposed summary also inaccurately
5 states that “[v]otes *are* tallied in rounds,” contrary to the plain text of the Measure, which
6 provides that “ballots *may be* counted in rounds,” accounting for the fact that a candidate can
7 win outright if the candidate receives a majority of first rankings. Memo, Ex 3, pg 2
8 (emphasis added). Petitioner’s summary also states that the vote tally starts with “all voters’
9 *highest ranked* candidate,” whereas the text of the Measure provides that the initial round of
10 counting is “based on the number of *first rankings* each candidate receives.” *Id.* (emphasis
11 added). Although perhaps unlikely, it is possible that a voter would not rank any candidate
12 first, but might nonetheless rank candidates second or third:

Name	1	2	3
Candidate A	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Candidate B	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Candidate C	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

13 The text of the Measure does not expressly resolve how such a ballot would be counted, and
14 whether the vote for Candidate A would be considered a “first ranking” given that the vote is
15 in the second position. As a result, Petitioner’s statement that the voter’s “highest ranked”
16 candidate would be counted in the first round is speculative based on the text of the Measure
17 and therefore should not be included in the ballot title. *See Conroy*, 358 Or at 815 (“When
18 the legal effect of a measure is unclear, we will not speculate about it.”).

19 /// /// ///

1 Finally, the last sentence in Petitioner’s proposed summary is misleading and
2 inaccurate. It provides, “Instant runoff ranked choice voting results in one general election,
3 eliminating primary elections (or special elections to fill vacancies).” Memo 13. As noted
4 above, the statement that there would be “one general election” could be read to suggest that
5 all County officers will be elected at the same election and that vacancies will be filled only
6 at general elections, neither of which is accurate.

7 More importantly, the Measure does not have the effect of “eliminating primary
8 elections,” and that statement is particularly misleading because it could suggest to voters
9 that ranked choice voting will result in significant cost savings by eliminating entire
10 elections. However, regardless of how the County elects its officials, the Measure will not
11 have the effect of “eliminating primary elections” because primary elections will be held for
12 other offices and for measures. *See* ORS 254.056(2) (“The primary election shall be held on
13 the third Tuesday in May of each even-numbered year.”). Indeed, the Measure will not
14 necessarily eliminate primary elections or special elections for County officials because an
15 election to fill a vacancy can occur at *any* May or November election, which could include a
16 primary, *i.e.*, an election in May of an even-numbered year, or a special election, *i.e.*, an
17 election in May or November of an odd-numbered year. *See* ORS 254.016 (describing the
18 three types of elections as primary, general, and special elections); ORS 254.056 (describing
19 primary election as occurring in May of even-numbered years and general election as
20 occurring in November of even-numbered years, meaning all other elections are special
21 elections). Given those inaccuracies, Petitioner’s summary is insufficient and unfair and
22 should be rejected in favor of the filed summary, which meets the statutory requirements.

1 **VII. The filed explanatory statement is impartial, simple, and understandable.**

2 An explanatory statement must be an “impartial, simple and understandable statement
3 explaining the measure and its effect” in 500 words or less. MCC 5.101(A)(2); MCC
4 5.104(B); ORS 251.345. The filed explanatory statement meets that standard.

5 Petitioner asks this Court to make more editorial formatting changes and reiterates its
6 argument that the filed explanatory statement provides too much detail about changes to the
7 process for filling vacancies. As noted above, the level of detail provided about changes to
8 the process for filling vacancies is necessary to address the change in how those elections
9 will be conducted.

10 Petitioner provides no additional argument or explanation to support the significant
11 rewrite that it is proposing, leaving Respondent to guess at Petitioner’s arguments as to why
12 the filed explanatory statement does not meet the statutory standard.

13 Moreover, Petitioner’s proposed explanatory statement carries forward the
14 deficiencies cited above and introduces new ones including:

- 15 • Stating twice that ranked choice voting will be implemented “beginning in 2026,”
16 which is inaccurate because the Measure requires that it be implemented “[n]o later
17 than 2026;”
- 18 • Stating that votes are “instantly tallied,” suggesting that the timing of counting of
19 votes is changing, which it is not;
- 20 • Stating that votes are “tallied in rounds,” which does not account for a candidate who
21 wins in the initial vote tally, negating the need for tallying votes in rounds;

- 1 • Stating that County officers will be “elected in a single election—generally in
2 November” which could suggest that all County officers will be elected at the same
3 election and also could suggest that some elections that do not involve filling
4 vacancies will occur at a time other than at a November general election;
- 5 • Stating that the Measure has the effect of “eliminating the need for primaries,” even
6 though primary elections will continue to occur for other offices and measures, and
7 could be the election at which a County officer vacancy would be filled;
- 8 • Suggesting that, under the current Charter, all candidates, including candidates to fill
9 a vacancy, appear on the May primary election ballot, which is not accurate;
- 10 • Failing to explain how votes will be tallied during the initial tallying of votes.

11 In light of those deficiencies, this Court should reject Petitioner’s explanatory statement and
12 certify as written the filed explanatory statement, which meets the statutory standard.

13 **CONCLUSION**

14 For the reasons explained above, Respondent respectfully requests that this Court
15 certify the filed ballot title and explanatory statement as written through entry of a final order
16 and general judgment by 12:00 p.m. on September 8, 2022.

17 DATED this 26th day of August, 2022.

18 Respectfully submitted,

19
20 JENNY M. MADKOUR, COUNTY ATTORNEY
21 MULTNOMAH COUNTY, OREGON

22
23 */s/ Katherine Thomas*

24 Katherine Thomas, OSB 124766
25 Assistant County Attorney
26 *Of Attorneys for Respondent*

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2022, I served the foregoing
RESPONDENT’S ANSWERING MEMORANDUM on:

Margaret Olney, OSB No. 881359
Bennett Hartman, LLP
210 SW Morrison Street, Suite 500
Portland, OR 97204
margaret@bennetthartman.com

- by mailing to said persons a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said persons at the last known address for said persons as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- by causing a true copy thereof to be hand delivered to said persons at the last known address for said person as shown above, on the date set forth above.
- by mailing via certified mail, return receipt requested, to said persons a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said persons at the last known address for said persons as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- by facsimile to said persons a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said persons on the date set forth above. A copy of the confirmation report is attached hereto.
- by emailing to said persons a true copy therefore at the email address shown above, which is the last known email address for said persons on the date set forth above.

/s/ Katherine Thomas
Katherine Thomas, OSB 124766
Of Attorneys for Respondent