

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

MIKE ALFONI,	)	
	)	
Petitioner,	)	
	)	Case No. 22CV28372
v.	)	
	)	
JENNY MADKOUR, Multnomah County	)	
Counsel,	)	OPINION
	)	
Respondent.	)	
	)	

**INTRODUCTION**

The Multnomah County Charter Review Committee recommended a measure that, if approved, would amend the Multnomah County Home Rule Charter (Charter) to provide for a ranked choice voting process for county elections. The Multnomah County Board of Commissioners (Board) approved a resolution referring this measure (along with six others) to the voters at the November 2022 election. Petitioner brought this action pursuant to ORS 250.195 and Multnomah County Code (Code) § 5.104(d), contending that the ballot title prepared by County Counsel for this measure does not comply with ORS 250.035(1), and the explanatory statement does not comply with ORS 251.345.

Respondent contends that judicial review of the ballot title is limited under ORS 250.195(1) to determining whether the title is “insufficient, not concise, or unfair,” and the court in making that determination should defer to the county. Respondent further contends that the county’s ballot title is fair, concise, and sufficient in compliance with the statute. Similarly,

respondent contends that the explanatory statement complies with ORS 251.345 because it is impartial, simple, and understandable.

For the reasons explained below, the court concludes that the county’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**

### **Standard of Review**

Respondent contends, citing *Caruthers v. Myers*, 343 Or 162, 168 (2007), and *Oregon Taxpayers Union v. Paulus*, 296 Or 476, 481 (1984), that the court must exercise restraint and defer to the county in reviewing the ballot title under ORS 250.195. Petitioner responds that such a deferential standard of review only applies to statewide measures reviewed for “substantial compliance” with statutory standards under ORS 250.085(8). County measures are reviewed under ORS 250.195, which does not include the “substantial compliance” standard specified in ORS 250.085(8). Respondent points out that, at the time of the Supreme Court’s decision in *Oregon Taxpayers Union*, the statute governing review of statewide measures used the same standard that is currently used in ORS 250.195 for county measures. In respondent’s view, that means the deferential standard used for statewide measures in *Oregon Taxpayers Union* should apply to this court’s review of a county measure under ORS 250.195.

The court disagrees. ORS 250.085 was amended in 1985—one year after the Supreme Court’s decision in *Oregon Taxpayers Union*—to add the “substantial compliance” standard for the Supreme Court’s review of statewide measures. 1985 Or Laws c.447, §6. That amendment would have been unnecessary if the “substantial compliance” standard already applied to review of statewide measures under ORS 250.085. The legislature did not also amend ORS 250.195 to

include a “substantial compliance” standard for review of county measures when it added that standard for statewide measures.

Instead, the legislature left the existing standard of review for county measures in place, resulting in the current textual differences between the statute governing judicial review of statewide measures and the statute governing review of county measures. Under ORS 250.195, there is no “substantial compliance” standard for review of county measures. Instead, the statute provides that the court “shall review the title and measure to be initiated or referred, hear arguments, if any, and certify to the county clerk a title for the measure which meets the requirements of ORS 250.035.” ORS 250.195(1). The statute further provides that the circuit court’s review “shall be the first and final review.” ORS 250.195(3).

It appears from the text of the statute, read in context, that the legislature intended for the court’s review of a county ballot title to be the final step in the process for preparing a ballot title that “meets the requirements of ORS 250.035.” ORS 250.195(1). That makes sense because the process of preparing a ballot title for a county measure described in ORS 250.175 through 250.195 is much simpler than the process for preparing a ballot title for a statewide measure as described in ORS 250.065 through 250.085. Providing for a deferential “substantial compliance” standard for Supreme Court review of a statewide measure while continuing a non-deferential standard for circuit court review of a county measure is consistent with the different ballot title processes used for statewide and local measures.

A more deferential standard might be appropriate if, as in *Oregon Taxpayers Union*, a petitioner asks the court “to determine, when a failure-to-include argument is made, which changes are more important than others.” *Oregon Taxpayers Union*, 296 Or at 480. Under those circumstances, the Supreme Court concluded that in determining “which changes are more



important than others,” the court will “follow the judgment of the Attorney General for he has the responsibility to make the choice in the first instance.” *Id.* at 481. *See also Christie v. Paulus*, 292 Or 344, 348 (1982) (deferring to the Attorney General in making “judgments, not of accuracy or clarity, but of the relative weight and importance of different policy changes”).

In this case, petitioner challenges the accuracy, clarity, and understandability of the ballot title, not the relative weight and importance of the measure’s component policy changes. Under the circumstances, the statute does not require the court to defer to the county’s ballot title as part of the process for certifying a ballot title that “meets the requirements of ORS 250.035.” ORS 250.195(1).

**Ballot Title—Caption and Question**

Under ORS 250.035(1), a ballot title for a county 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 county’s ballot title caption and question read as follows:

CAPTION

Amends charter: instant runoff ranked choice voting in county elections

QUESTION

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

Petitioner contends that the caption is “impermissibly confusing” because it does not include an action verb, does not explain what “instant runoff ranked choice voting” means, and does not make it clear that this method is used only for the election of county officials, rather than all elections. Petitioner further contends that the question falls short of statutory requirements because it references the dates of the elections—which do not change—without providing any information about what “instant runoff ranked choice voting” means.

The court agrees with these contentions, in part. Although the county’s caption and question are concise and fair, they are insufficient within the meaning of the statute because they do not clearly include the key information that voters will need to decide whether to vote for this measure. The alternative caption and question proposed by petitioner are better, but still not sufficient.

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

CAPTION

Amends Charter: County officials elected using ranked choice voting; runoff elections eliminated<sup>1</sup>

QUESTION

Should elections for county offices give voters option of ranking candidates in preferred order, with instant-runoff vote-counting process determining results?

---

<sup>1</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 Or Const. Article VI, section 10 (home rule county’s charter is, in effect, the county’s constitution). *See Bennett v. City of Portland*, Multnomah County Circuit Court case no. 17CV08736, opinion dated March 15, 2017, at n. 2; *Wilson v. Taylor*, Multnomah County Circuit Court case no. 22CV23601, opinion dated August 15, 2022, at n. 3 (applying principle).

## **Ballot Title—Summary**

The county's summary reads as follows:

### **SUMMARY**

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.

Petitioner contends that the county's summary is not concise or sufficient because it goes into too much detail about the process for filling vacancies (which is largely unchanged except for using ranked choice voting) and does not clearly describe how ranked choice voting differs from the current system. Petitioner proposes an alternative summary patterned after the summary this court certified for a measure that would, among other things, amend Portland's City Charter to use a ranked choice voting process to elect city officials.

The court agrees that petitioner's proposed summary—with some modification—more clearly describes the ranked choice voting and vote-counting processes. Accordingly, the court approves the following summary:



## SUMMARY

Currently, candidates for county offices appear on the May primary election ballot. Voters may vote for one candidate per office; any candidate receiving a majority (more than fifty percent) of votes is elected. If no candidate receives a majority, the top two candidates compete in a runoff election in the November general election. Vacancies during a term of office are filled at the next regular election or a special election.

Under the Charter Review Committee's recommended amendment, county officials (Chair, Commissioners, Auditor, Sheriff) would be elected in one election using an "instant runoff ranked choice voting" process. This process gives voters the option of ranking multiple candidates in order of preference instead of casting a single vote for each office. Votes are counted in rounds, starting with all voters' highest ranked candidate. If no candidate receives a majority in the first round, the candidate receiving the fewest votes is eliminated, and that candidate's votes are reassigned to those voter's next-highest ranked candidate. The process continues until there is a majority winner. Runoff elections are eliminated.

### **Explanatory Statement**

The county issued a 494-word explanatory statement to be published in the Voters' Pamphlet pursuant to ORS 251.345 and County Code § 5.104. The statute requires the statement to be an "impartial, simple and understandable statement explaining the measure and its effect." ORS 251.345. Petitioner contends that the county's explanatory statement, while accurate, is not simple and understandable. Petitioner proposes an alternative statement designed to make the explanation more understandable, including format changes that would make it more readable.

The court concludes that a revised explanatory statement, based in part on both the county's statement and petitioner's proposed statement, with some changes in formatting and phrasing, would make the statement more understandable and more useful to the voters. Accordingly, the court approves the following explanatory statement:

## MULTNOMAH COUNTY CHARTER REVIEW COMMITTEE RECOMMENDATION

The Multnomah County Charter Review Committee recommends amending the county charter to adopt an “instant runoff ranked choice voting” process for elections to county offices (Chair, Commissioners, Auditor and Sheriff). This process gives voters the option to rank multiple candidates in order of preference, with votes instantly tallied in rounds until a candidate receives a majority of votes cast. County officials are elected in a single election, eliminating the need for separate primary and runoff elections.

### HOW COUNTY OFFICERS ARE CURRENTLY ELECTED

Currently, candidates for elected county offices appear on the primary election ballot. Voters may vote for one candidate for each office. A candidate who receives a majority (more than fifty percent) of the votes cast is elected. If no candidate receives a majority, the two candidates that received the highest number of votes compete in a runoff at the next general election. The candidate who receives a majority at the runoff election is elected. Elections to fill a vacancy that has more than one year remaining in the term of office are held at the next May or November election. If no candidate receives a majority, the two candidates receiving the most votes compete in a special runoff election called by the board.

### HOW INSTANT RUNOFF RANKED CHOICE VOTING WORKS

Under the charter amendment recommended by the Charter Review Committee, elections for county offices will use an “instant runoff ranked choice voting” process beginning in 2026. This process gives voters the option of ranking multiple candidates in order of preference. Votes are counted in rounds. If no candidate receives more than fifty percent of the 1<sup>st</sup> choice votes in the first round, the candidate receiving fewest votes is eliminated. Ballots that had been counted as votes for the eliminated candidate are instead counted as votes for the candidate who is ranked next on those ballots. The process of eliminating candidates and transferring votes to the next-ranked candidates on those ballots repeats for as many rounds as necessary until a candidate wins by receiving more than fifty percent of the votes for that office.

Because the instant runoff ranked choice voting process results in the election of each county official in a single election, separate primary and runoff elections to fill these offices would be unnecessary. Instead, candidates for county offices would run in one election with the winner chosen using the instant runoff ranked choice voting process. A similar process would be used to fill a vacancy that has more than one year remaining in the term of office. The replacement to serve the remainder of the term would be elected at the next May or November election



using the instant runoff ranked choice voting process, so a separate special runoff election would not be necessary.

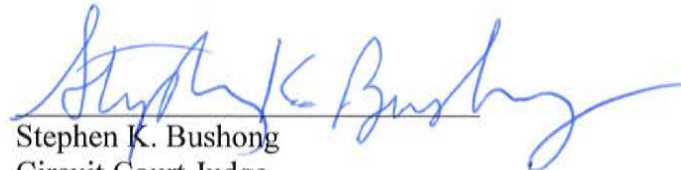
#### TIMING

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

#### CONCLUSION

Pursuant to ORS 250.195, the court approves the ballot title and explanatory statement as modified in this opinion.<sup>2</sup> Respondent's counsel should submit a form of judgment consistent with this opinion.

Dated this 6<sup>th</sup> day of September, 2022.

  
Stephen K. Bushong  
Circuit Court Judge

---

<sup>2</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 489 words.