Constitutional Requirements for Ballot Measures

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Two Oregon Constitutional Requirements

An *initiative petition* shall include the **full text** of the proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace **one subject only** and matters properly connected therewith.

- Article IV, section 1(2)(d)

1. Full-Text Requirement
2. Single-Subject Requirement

Maja's Fun Experience

2018 Portland Clean Energy Fund Initiative Petition
- Full-Text Challenge
- Ballot Title Challenge

2022 Charter Commission Reform Ballot Measure
- Single-Subject Challenge
- Ballot Title Challenge

Application of Requirements?

YES: Initiative Petition
- Citizen petitioner and a certain number of signatures

NO: Referral
- Majority vote of the governing body of a local government
- No case law explicitly applies constitutional requirements to local referrals, BUT most likely to avoid legal challenge by meeting requirements

Who Reviews for Constitutional Compliance?

Initiative Petition

- City elections officer
- ORS 250.270(1). Not later than the fifth business day after receiving a prospective petition for an initiative measure, the **city elections officer shall determine in writing whether the initiative measure meets the requirements of section 1(2)(d) and (5), Article IV of the Oregon Constitution**.
- Portland City Code 2.04.055.
- Circuit Court is first and final review, to be conducted expeditiously to ensure the orderly and timely circulation of the petition

Local Referral

- No statute confers authority to review for constitutional compliance
- No Portland City Code confers authority to review for constitutional compliance
- Portland City Code sets out process for Charter Commission measure, no review for constitutional compliance

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Potential Trap for Unwary #1

Oregon Constitution has two single-subject requirements!

Initiative Petitions
- Article IV, section 1(2)(d) establishes requirement for state petitions
- Article IV, section 1(5) applies requirement to local petitions

Legislative Acts
- Article IV, section 20 establishes requirement for acts of the Oregon Legislature
- No provision applies requirement to acts of local governments

Potential Trap for Unwary #2

Single-Subject v. Separate-Vote Requirement!

Single-Subject Requirement
- Article IV. Applies to local and state initiative petitions, acts of Oregon Legislature.

Separate-Vote Requirement (more strenuous)
- Article XVII, section 1. Applies to proposed amendments to Oregon Constitution.
- "When two or more amendments shall be submitted to the voters of this state at the same election, they shall be submitted so that each amendment shall be voted on separately."

Potential Trap for Unwary #3

Check your city charter and code for additional requirements!

Portland
- No requirements for charter amendments
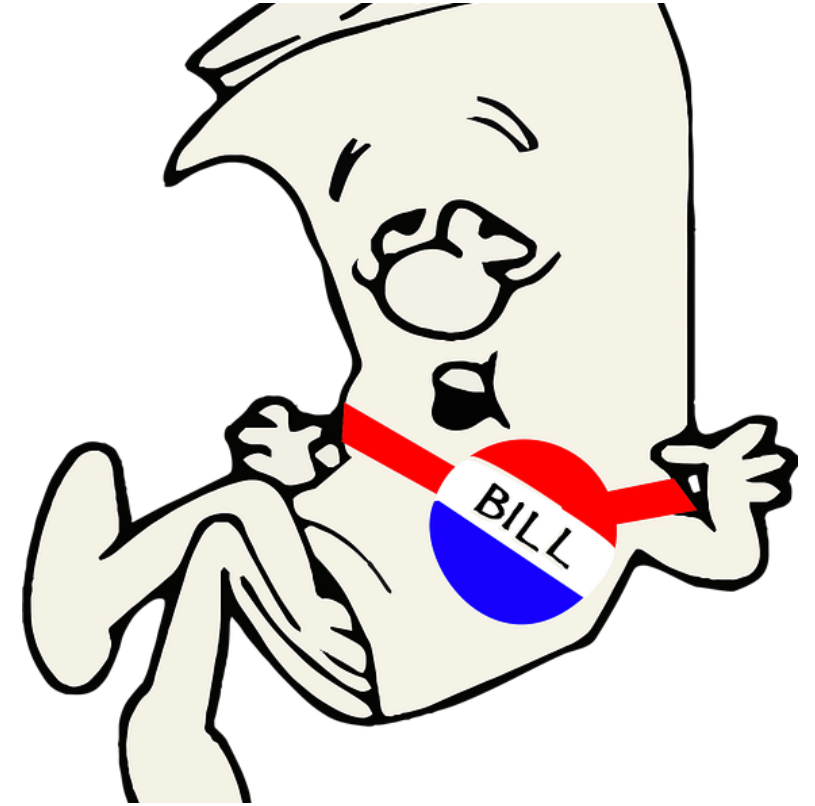- Single-subject requirement for ordinances

Full-Text Requirement

- "An initiative petition shall include the **full text** of the proposed law."

- Purpose:
  - Provide sufficient information so that voters can intelligently evaluate whether to sign the initiative petition

Full-Text Requirement

Sufficient information?

- "No useful purpose would be served by quoting at length *** the related statutes referred to in the proposed measure but left unchanged thereby[.]" *Schnell v. Appling*, 238 Or 202 (1964)

- If initiative petition would change the <u>meaning</u> of existing statutes, even though the petition did not seek to change any of the <u>words</u> of those statutes, petition must include those statutes. *Kerr v. Bradbury*, 193 Or App 304 (2004)

Full-Text Requirement

Kerr v. Bradbury, 193 Or App 304 (2004)

- Petition sought to amend two existing statutes, but only set out subsections to be amended and not full statutes

- Court: proposed amendments would have changed the meaning of existing statutes, and those statutes <u>and</u> the statutes with textual amendments should be set forth in petition

Full-Text Requirement

Short v. Caballero, Case No. 18CV10103 (2018)

- P: petition fails full-text requirement b/c enacting clause inaccurate and initiative's definition section referenced code definitions w/o setting them out in full

- Court: full-text requirement met b/c petition on its face would enact a stand-alone chapter and no definition in existing code is changed, textually or in meaning

Full-Text Requirement

Legal Development of Note

- 2022
  - Relying on *Kerr*, Secretary of State Fagan rejected three petitions for failure to include the full text of the law at issue, including the complete text of a statute that would remain textually unchanged

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Full-Text Requirement

Recommended Strategy

- Include all possibly-related charter or code sections as exhibit to local government's resolution or ordinance referring ballot measure to ballot

Single-Subject Requirement

"A proposed law or amendment to the Constitution shall embrace **one subject only** and matters properly connected therewith."

- Purpose:
  - Discourage policy combinations designed to secure support for bill of an omnibus nature

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Single-Subject Requirement

Two-step analysis

1. Is there a unifying principle logically connecting all provisions in the measure?

2. If a unifying principle exists, are other matters in the proposed law properly connected to the unifying principle?

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Single-Subject Requirement

Anantha v. Clarno, 302 Or App 196 (2020)

- Petition sought to tighten state's ariel herbicide spraying laws, restrict logging in landslide-prone areas and prohibit conflicts of interest for appointees to the state Board of Forestry

- Court of Appeals overturned Secretary of State Clarno's determination that initiative petition failed to comply

Single-Subject Requirement

Anantha v. Clarno, 302 Or App 196 (2020)

- Single-subject requirement "should be liberally construed to uphold legislation" and the term subject "'is to be given a broad and extensive meaning' to give legislative drafters 'full scope to include in one act all matters having a logical or natural connection."

- Court: "[I]t is relatively easy to identify a logical, unifying principle connecting the provisions of each measure: the regulation and protection of forestlands. All of the provisions in each measure address that subject or *** are matters 'properly connected' to the regulation and protection of forestlands."

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Single-Subject Requirement

McIntire v. Forbes, 322 Or 426 (1996) (relating to activities regulated by state)

- Lone example of failure to comply with single-subject requirement
- Bill enacted by Legislature
  - Provide state funding and land use procedures for light rail
  - Expand availability of card-lock service stations
  - Promote regional problem solving in land-use matters
  - Regulate confined animal feeding
  - Preempt local pesticide regulation
  - Adopt new timber harvesting rules
  - Grant immunity to shooting ranges for noise pollution
  - Protect salmon from cormorants

Single-Subject Requirement

Hoan v. Caballero, Case No. 22CV23479 (2022)

- Portland Charter Commission Ballot Measure
  - Council-Mayor form of government
  - Expanded Council selected by district
  - Ranked-choice voting
- City Elections Officer had no authority to review measure
- *Noonan v. City of Seaside*, 97 Or 64 (1920)
  - Unnecessary to decide whether requirement applies, b/c requirement met

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Single-Subject Requirement

Hoan v. Caballero, Case No. 22CV23479 (2022)

- Court:
  - *State ex rel Duniway v. Portland*, 65 Or 273 (1913)
  - Unifying principle = reforming the structure and operation of city government, and all other matters in measure are properly connected to that unifying principle

Full-Text Requirement

Legal Developments of Note

- 2022
  - Secretary of State Fagan rejected petitions because petitions actually geared at changing several constitutional statutes
- 2020
  - Marion County Circuit Court overturned Secretary of State Clarno's rejection of petitions, finding that labor standards and clean-energy mandates could be encompassed within single measure because labor standards for were for clean-energy projects

Single-Subject Requirement

Recommended Strategy

- Find analogous Supreme Court opinion finding that your measure complies with full-text and single-subject requirements
- When in doubt, break measure up and refer multiple ballot measures to ballot

Thanks for listening.