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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH
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7 ANDREW HOAN, an individual,

8 Plaintiff,

9 v.

10 MARY HULL CABALLERO, City of
Portland Auditor,

11 LOUISE HANSEN, City of
12 Portland Elections Officer,

13 Defendants.
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Case No. 22CV23479

**DEFENDANTS' CROSS-MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM OF LAW IN SUPPORT
OF CROSS-MOTION FOR SUMMARY
JUDGMENT**

ORAL ARGUMENT REQUESTED

Not Subject to Mandatory Arbitration

The Honorable Stephen K. Bushong

Hearing Date: August 11, 2022 at 3:00 PM

Filing fee – ORS 21.135(1),(2)(f)

Fees deferred at filing pursuant to ORS 20.140

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1 **ORAL ARGUMENT REQUESTED**

2 Pursuant to UTCR 5.050, Defendant Mary Hull Caballero, City of Portland Auditor, and
3 Defendant Louise Hansen, City of Portland Elections Officer (together “Auditor”), respectfully
4 request oral argument on their Motion for Summary Judgment. The Auditor estimates thirty
5 minutes for its motion and thirty minutes for plaintiff’s motion for summary judgment. The
6 Auditor requests that the hearing be recorded. Oral argument has been set by the court for
7 August 11, 2022 at 3:00 p.m.

8 **CROSS-MOTION FOR SUMMARY JUDGMENT**

9 Pursuant to ORCP 47, the Auditor moves for an order granting summary judgment in its
10 favor. There is no dispute as to the material facts recited below. The Auditor is entitled to
11 summary judgment as a matter of law because the Auditor is entitled to prevail on each of
12 plaintiff’s claims as a matter of law.

13 **MEMORANDUM OF LAW**

14 1. **Introduction**

15 For over a century, Oregon courts have affirmed the right of voters to choose the
16 structure of their local government. *State ex rel. Duniway v. City of Portland*, 65 Or 273 (1913).
17 Today, this Court should do the same. The measure referred by the Charter Commission satisfies
18 the single-subject requirement under the Oregon Constitution. *Anantha v. Clarno*, 302 Or App
19 196, 284-285 (2020). All the provisions in the Charter Commission’s measure advance a
20 “unifying principle” and other matters “properly connected” to that principle. *Id.* Namely, “[t]he
21 principal object of the revision is to provide for a ... form of city government.” *Duniway*, 65 Or
22 at 282. The provisions in the Charter Commission’s measure “are all germane to the general
23 purpose sought to be accomplished,” and requiring separate votes on the provisions “might
24 destroy the efficacy of the proposed plan of city government, or very much delay its adoption.”
25 *Id.* at 282, 283 (internal quotation marks omitted). Accordingly, following this precedent, this
26 Court should reject the present challenge and affirm the right of Portlanders to vote on the

1 measure referred by the Charter Commission.

2 **2. Statement of Facts**

3 At least once a decade, a group of twenty Portland residents are appointed by the City
4 Council to review Portland's Charter and recommend amendments. Charter Section 13-301(a).
5 Amendments supported by an affirmative vote of a majority but less than fifteen Charter
6 Commissioners are considered recommendations to the City Council. Charter Section 13-302.
7 Amendments supported by an affirmative vote of at least fifteen of the twenty Charter
8 Commissioners are submitted to the ballot for adoption or rejection by Portland voters without
9 requiring action by the City Council. *Id.*

10 The current Charter Commission was appointed in December 2020. The Commission
11 began its work by agreeing that any potential amendments would be evaluated based on the
12 amendment's ability to advance six outcomes: "1. A participatory and growing democracy with
13 more voices being heard in elections; 2. An accessible and transparent government with
14 Councilors who are easy to reach; 3. A reflective government with Councilors who look like the
15 community they represent; 4. A responsive government with Councilors who understand your
16 community needs; 5. An accountable government with Councilors who answer to the people; and
17 6. A trustworthy government with Councilors who safeguard democracy." Declaration of Maja
18 K. Haium in Support of Defendants' Cross Motion for Summary Judgment ("Haium Decl."), Ex.
19 1, page 3 (Charter Commission Progress Report #6).

20 The Charter Commission conducted extensive community engagement during its work.
21 The Commission received at least 1,600 public comments through an online comment form,
22 email and 15 hours of verbal testimony; hosted or participated in 26 community listening
23 sessions; distributed two multi-lingual surveys and collected data from 4,013 survey responses;
24 met with 34 community-based organizations to discuss policy; met with all but one City bureau
25 director; met with all City elected officials; together with Commission staff gave 119
26 presentations to community-based organizations; offered a series of briefings to local, state and

1 federal partners with 116 participants; and held two town halls for City employees with over
2 1,100 participants. *Id.* at p. 4.

3 On June 14, 2022, seventeen of the twenty Charter Commissioners voted to advance a
4 measure to change the structure of Portland's government to the November 2022 ballot. Haium
5 Decl., Ex. 2 (Auditor's Report). On June 21, 2022, seventeen of the twenty Charter
6 Commissioners voted to clarify the effective dates of the measure. *Id.* On June 29, 2022, the
7 Commission presented the measure to City Council at a Council meeting. *Id.* The margin of the
8 Commission's vote authorized a direct referral of the measure to Portland voters, and Council
9 heard the presentation without taking further action.

10 On July 6, 2022, the Auditor published the measure's ballot title in the *Oregonian* and on
11 the Auditor's webpage. Haium Decl., Ex. 3 (Notice of Receipt of Ballot Title). On July 8, 2022,
12 the Portland Business Alliance – of which plaintiff is the president – requested the Auditor
13 review and reject the measure for allegedly violating the constitutional single-subject
14 requirement. Haium Decl., Ex. 4 (Portland Business Alliance Request). On July 12, 2022, the
15 Auditor declined the Portland Business Alliance's request to review the measure. Haium Decl.,
16 Ex. 5 (Auditor's Denial of Request). The Auditor reasoned:

17 Portland City Code 2.04.055 and ORS 250.270 require the
18 Elections Officer to determine whether a prospective petition
19 meets Oregon's constitutional requirements. A prospective petition
20 is filed by a chief petitioner prior to circulation for signatures. A
21 Charter Commission proposed measure is not an initiative petition
22 and does not require signatures. Portland City Code 2.04.110
23 governs the process for bringing a Charter Commission measure to
24 the voters and requires neither a prospective petition nor a
25 constitutional review. Instead, it states that the Auditor's Office
26 'shall' file the charter Commission measure to be placed on the
ballot.

(Emphasis added). On July 14, 2022, plaintiff filed the current challenge.

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1 3. **Argument**

2 **A. Summary Judgment Standard**

3 ORCP 47C sets forth the standard that governs the determination of a motion for
4 summary judgment:

5
6 The court shall grant the motion if the pleadings, depositions,
7 affidavits, declarations and admissions on file show that there is
8 no genuine issue as to any material fact and that the moving
9 party is entitled to prevail as a matter of law. No genuine issue
10 as to a material fact exists if, based upon the record before the
11 court viewed in a manner most favorable to the adverse party,
12 no objectively reasonable juror could return a verdict for the
adverse party on the matter that is the subject of the motion for
summary judgment. The adverse party has the burden of
producing evidence on any issue raised in the motion as to
which the adverse party would have the burden of persuasion at
trial.

13 Under that rule, “summary judgment is appropriate if the evidence in the record and all
14 reasonable inferences that may be drawn from it, viewed in the light most favorable to the non-
15 moving party, disclose no issue of material fact, and the moving party is entitled to judgment as a
16 matter of law.” *Funkhouser v. Wells Fargo Corp.*, 224 Or App 308, 311-12, (2008) (citing
17 ORCP 47C; *Jones v. General Motors Corp.*, 325 Or 404, 407-08 (1997)).

18 **B. The Single-Subject Requirement Applies to Initiative Petitions and Acts of**
19 **the Oregon Legislature; a Ballot Measure Referred by the Charter**
20 **Commission is Neither an Initiative Petition Nor an Act of the Oregon**
Legislature.

21 The Oregon Constitution’s two single-subject rules are found in Article IV, which
22 regulates the legislative power of the state. Oregon Constitution, Article IV (Legislative Branch).

23 The first rule applies to initiative petitions, and it is the only rule that also applies to local

24 ///

25 ///

26 ///

1 governments: “The initiative and referendum powers¹ reserved to the people by subsections (2)
2 and (3) of this section are further reserved to the qualified voters of each municipality and district
3 as to all local, special and municipal legislation of every character in or for their municipality or
4 district.” Article IV, section 1(5) (emphasis added). The substantive rule is in Article IV, section
5 1(2)(d), and provides: “An initiative petition shall include the full text of the proposed law or
6 amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace
7 one subject only and matters properly connected therewith.” (Emphasis added). Because the
8 second sentence in Article IV, section 1(2)(d) doesn’t repeat the phrase “initiative petition” that
9 is used in the first sentence, plaintiff urges this Court to expand the single-subject requirement to
10 any “proposed law or amendment.” Plaintiff’s reading is inconsistent with the plain language and
11 context of Article IV, section 1. The phrase “initiative petition” in the first sentence of section
12 1(2)(d) must qualify the second sentence, or the second sentence would introduce an independent
13 constitutional requirement for any “proposed law or amendment” when the entirety of section 1
14 is dedicated to the people’s initiative and referendum power.² Plaintiff’s proposed reading of this
15 paragraph is unsupported by any precedent. Further, plaintiff’s reading is also inconsistent with
16 the Secretary of State’s administrative rules and elections manuals.³ Finally, plaintiff’s reading is

17 ¹ An “initiative” is a measure that is drafted by a private individual and placed on the ballot after a sufficient number
18 of voters’ signatures are gathered. A “referendum” is a measure adopted by a government that is then referred to the
19 ballot after a sufficient number of voters’ signatures are gathered. A “referral” is a measure placed on the ballot
20 directly by the government itself. Here, the Charter Commission’s measure is a referral.

21 ² See ORS 250.255, stating that ORS 250.265 to 250.346 apply to “the exercise of initiative or referendum powers
22 regarding a city measure under section 1, Article IV, Oregon Constitution, unless the city charter or ordinance
23 provides otherwise.” (Emphasis added); ORS 250.270, describing the process a city elections officer must use to
24 determine whether “a prospective petition for an initiative measure” satisfies the requirements of section 1(2)(d) and
25 (5), Article IV of the Oregon Constitution. (Emphasis added).

26 ³ See OAR 165-014-0028, describing the process the Secretary of State must use to determine whether “a proposed
27 initiative measure submitted under the authority of Article IV, section 1 of the Oregon Constitution” satisfies
28 constitutional requirements. (Emphasis added); and contrast the Secretary of State’s elections manual for initiatives
29 and referendums with its manual for local government referrals. The initiative and referendum manual defines
30 initiatives and referendums as a method of direct democracy that allows people to propose local laws or to adopt or
31 reject an ordinance passed by a local governing body, and describes the initiative process as including a
32 constitutional review of initiative petitions by local elections officials. *County, City, and District Initiative and*
33 *Referendum Manual*, (2/2022, p. 3-4, punctuation omitted). The local government referral manual defines a referral
34 as a method a local governing body may use to place a local law on the ballot for voters to decide and describes the
35 referral process by stating “Oregon election law does not govern the specific steps a governing body must take to
36 refer a measure.” *County, City, and District Referral Manual*, (2/2022, p. 3).

1 inconsistent with the cases cited by plaintiff himself because each cited case concerned an
2 initiative measure and not the type of referral at issue in this case. *See Bowers v. Betschart*, 313
3 Or App 294 (2021) (county clerk has authority to review constitutionality of initiative petitions
4 pre-election); *Foster v. Clark*, 309 Or 464 (1990) (courts have authority to determine
5 constitutionality of initiative petitions); *Oregon Educ. Ass’n v. Roberts*, 301 Or 228 (1986)
6 (Secretary of State has authority to determine constitutionality of initiative petitions pre-
7 election); *Geddry v. Richardson*, 296 Or App 134 (2019) (court ordered Secretary of State to
8 certify initiative petition). The single-subject requirement in Article IV, section 1 applies only to
9 initiative petitions and does not apply to measures referred directly by local jurisdictions, like the
10 Charter Commission’s proposal here.

11 The Oregon Constitution’s second single-subject rule applies only to acts of the Oregon
12 Legislature. Article IV, section 20 provides, in relevant part: “Every Act shall embrace but one
13 subject, and matters properly connected therewith, which subject shall be expressed in the title.”
14 Unlike the first single-subject rule governing initiative petitions, the second single-subject rule
15 contains no language extending the rule to local legislative acts.

16 The single-subject requirement applies to state and local initiative petitions and acts of
17 the Oregon Legislature, not to measures referred directly to the ballot by the Charter
18 Commission.

19 **C. The Auditor Lacks Authority to Review Ballot Measures Referred by the
20 Charter Commission.**

21 When fifteen or more Charter Commissioners affirmatively vote to recommend a
22 measure to amend Portland’s Charter, the role of the Auditor is ministerial. Charter Section 13-
23 302; Portland City Code 2.04.110. Here, seventeen of twenty Commissioners voted to advance
24 the measure to the November 2022 ballot for approval or rejection by Portland voters. The
25 margin of the Commission’s vote triggered several ministerial acts by the Auditor, including the
26 filing of the measure as a report from the Commission to the Council and placing the report on
the Council agenda. Portland City Code 2.04.110. After the Commission presented the measure

1 to Council, the Auditor forwarded the measure to the City Attorney for preparation of a ballot
2 title and explanatory statement and, upon receipt of these documents, the Auditor published
3 notice that any elector may file a petition for review of the ballot title. *Id.* The Auditor has
4 fulfilled each of these ministerial acts and plaintiff does not allege otherwise. Instead, plaintiff
5 argues that the Auditor has a duty to conduct a constitutional review of the measure under the
6 Oregon Constitution and ORS 250.270. As discussed above, the constitutional single-subject rule
7 applies to initiative petitions and acts of the Oregon Legislature. The measure referred by the
8 Charter Commission is neither. Accordingly, the Auditor lacks authority to conduct a
9 constitutional review of the Commission's measure. Where the Auditor does have authority to
10 act, it has done so properly. Plaintiff does not—indeed, cannot—show otherwise, and the
11 Auditor is therefore entitled to summary judgment in this case.

12 **D. The Charter Commission's Measure Satisfies the Single-Subject**
13 **Requirement.**

14 *i. The Single-Subject Requirement Is Liberally Construed.*

15 In any event, and independently of the above, plaintiff's arguments fail on the merits. The
16 Oregon Supreme Court has determined that the Oregon Constitution's two single-subject
17 requirements should be analyzed using an identical two-step framework that is liberally
18 construed to uphold legislation. *Anantha*, Or App 196, 200-02. Under the first step, a court asks
19 whether it can identify a unifying principle logically connecting all provisions in the measure. If
20 the court identifies a unifying principle, the court then asks whether any other matters contained
21 in the measure are properly connected to the unifying principle. *Id.*

22 The recent decision by the Court of Appeals in *Anantha* illustrates how courts should
23 construe the single-subject requirement.

24 As the Supreme Court has explained, the standard should be
25 liberally construed to uphold legislation. The conflict between the
26 constitution and the law should be palpable and clear before the
courts should disregard a legislative enactment upon the sole
ground that it embraces more than one subject. In view of that
liberal construction, a proposed law that addresses a single
substantive area of the law, even if the proposal includes a wide

1 range of connected matters intended to accomplish the goal of that
2 single subject, generally satisfies the single-subject requirement.
3 Said another way, the term subject for purposes of the
4 constitutional single-subject requirements 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.

5 *Id.* at 201 (internal quotations and citations omitted). In *Anantha*, the Court of Appeals overruled
6 Secretary of State Clarno’s determination that a proposed initiative petition failed to comply with
7 the single-subject requirement. The initiative at issue sought to protect forests and included
8 provisions tightening the state’s aerial herbicide spraying laws, restricting logging in landslide-
9 prone areas, and prohibiting conflicts of interest for appointees to the state Board of Forestry.
10 The Court reasoned that “it is relatively easy to identify a logical, unifying principle connecting
11 the provisions of each measure: the regulation and protection of forestlands. All of the provisions
12 in each measure address that subject or * * * are matters ‘properly connected’ to the regulation
13 and protection of forestlands.” *Id.* at 286. Here, the provisions of the Commission’s measure
14 address the subject of restructuring Portland’s government or are matters properly connected to
15 the restructuring of Portland’s government.

16 Courts have also rejected the argument raised by plaintiff that a measure with multiple
17 provisions, including some provisions a voter might support and some a voter might oppose, is
18 the kind of mischief the single-subject requirement guards against. In *Oregon Educ. Ass’n v.*
19 *Phillips*, plaintiffs argued that the measure at issue violated the single-subject requirement
20 because a voter who might support most of the measure would be forced to accept an undesired
21 modification of the authority of local governments to conduct elections regarding property tax
22 issues. 302 Or 87, 101-02; *State v. Jackson*, 145 Or App 27, 32 (1996) (quoting *Oregon Educ.*
23 *Ass’n* with approval). The Court disagreed. “That this may well be true may present that voter
24 with a difficult choice, but if the limitation on elections were not found in the measure, another
25 voter might well face the difficult choice of desiring to vote for most of the measure but not
26 wanting to do so unless it also contained such a limitation. Most measures dealing with a

1 complex and emotional subject will present those kinds of choices, but that does not mean that
2 the measure embraces matters not connected with its subject.” *Id.* Here, the restructuring of
3 Portland’s government may be complex and perhaps emotional, but all provisions advanced by
4 the Charter Commission embrace the single subject of changing the structure of Portland’s
5 government.

6 In view of the single-subject requirement’s liberal construction, the plaintiff instead
7 focuses on a previous determination by the Auditor that a 2020 initiative petition seeking to
8 reform Portland’s government violated the full-text and the single-subject requirements of the
9 Oregon Constitution. Plaintiff, however, ignores another previous determination by the Auditor
10 that a 2015 initiative petition seeking to reform Portland’s government met the full-text and the
11 single-subject requirements of the Oregon Constitution. Significantly, neither the 2020 petitioner
12 nor the 2015 petitioner challenged the Auditor’s determination, so no court has offered an
13 opinion on how the single-subject requirement would have applied to those measures.

14 Instead, case law provides just one lone example of a measure that violated the single-
15 subject requirement. *McIntire v. Forbes*, 322 Or 426 (1996). In *McIntire*, the Supreme Court
16 ruled that even a liberal construction of the requirement could not save a bill enacted by the
17 Oregon Legislature that sought to: (1) provide state funding and land use procedures for light
18 rail; (2) expand the availability of card-lock service stations; (3) promote regional problem
19 solving in land use matters; (4) regulate confined animal feeding; (5) preempt local pesticide
20 regulation; (6) adopt new timber harvesting rules; (7) grant immunity to shooting ranges for
21 noise pollution; and (8) protect salmon from cormorants. *Id.* at 443. The Court was unable to
22 discern a unifying principle in the eight subjects of regulation, so it looked to the bill’s relating
23 clause: “[r]elating to the activities regulated by state government.” *Id.* at 445. The Court rejected
24 the relating clause as identifying a single subject “because – in this extreme case – the relating
25 clause is so global that it does little more than define the universe with respect to which the
26 legislature is empowered to act.” *Id.* The Court then ruled that the bill embraced more than one

1 subject in violation of the Oregon Constitution. In doing so, the Court provided the lone example
2 of a subject so broad it violated the single-subject requirement.

3 Here, the Charter Commission's measure appropriately embraces only one subject. The
4 unifying principle is changing the structure of Portland's government and this unifying principle
5 is clearly identified in both the Act referring the measure to the people and the caption of the
6 measure's ballot title. Changing the structure of Portland's government is a unifying principle
7 that is significantly narrower than the Charter Commission's overall authority to recommend any
8 Charter amendments it chooses. Assuming for argument's sake that the single-subject
9 requirement applies to measures referred by the Charter Commission, it is possible to imagine a
10 measure that – like the legislative bill in *McIntire* – attempted to include many disparate
11 activities regulated by the Charter. For example, if a measure included changing the structure of
12 Portland's government, eliminating Portland's taxing authority, dissolving Prosper Portland,
13 removing Bull Run Watershed Protections, and creating new civil liability and criminal
14 violations under the Charter, a court may find such a measure failed to satisfy the single-subject
15 requirement. However, the measure actually referred by the Charter Commission has one
16 unifying principle – changing the structure of Portland's government – and any other matters
17 contained in the measure are properly connected to this unifying principle. Indeed, the Oregon
18 Supreme Court reviewed a similar measure approved by Portland voters in 1913 and determined
19 that all the measure's various provisions “are all germane to the general purpose sought to be
20 accomplished.” *Duniway*, 65 Or at 282.

21 ii. *The Oregon Supreme Court Upheld a Measure to Change the Structure of*
22 *Portland's Government in 1913.*

23 In addition to the legal authority discussed above, the *Duniway* case from 1913 is
24 particularly instructive. That case involved a challenge to Portland's adoption of a commission
25 form of government over a century ago. The *Duniway* decision begins by describing the new
26 form of government adopted by initiative petition. Notably, the new structure of government
included: “vest[ing] all the legislative, executive, and other powers of the city in a mayor and

1 four commissions, who collectively constitute the city council,” distributing “[t]he executive and
2 administrative duties * * * among the four commissioners and the mayor,” authorizing the city
3 council to “pass a complete code,” and “prescrib[ing] a preferential system of voting” where
4 voters could select their first, second, and third choices among the candidates for office. *Id.* at
5 275-6. In 1913, the ballot title was:

6 An act to amend and generally revise the city charter by providing a commission form of
7 government vesting all legislative power in a council consisting of a mayor and four
8 commissioners, distributing the executive business among five departments, the mayor or
9 a commissioner being at the head of each department, abolishing ward representation,
providing that the mayor, commissioners and auditor shall be elected, all other officers to
be appointed. Shall the present charter of the city of Portland be amended by providing
for a commission form of government?

10 *Id.* at 277.

11 The initiative passed and was immediately challenged on many grounds, including the
12 argument that “the proposed revision is illegal and void because it submits a mass of
13 amendments, having no relation to each other, to be voted upon in one vote, whereas they should
14 have been submitted separately so that a vote could be taken upon each separate section or
15 amendment.” *Id.* at 281.

16 The *Duniway* court flatly rejected that argument. Instead, the *Duniway* court held, “The
17 amendments amount to a general revision of the city charter, and are all germane to the general
18 purpose sought to be accomplished.” *Id.* at 282 (emphasis added). Moreover, the *Duniway* court
19 understood the necessity and propriety of having all the proposed changes decided by voters in a
20 single vote, since holding separate votes on different sections ““might destroy the efficacy of the
21 proposed plan of city government, or very much delay its adoption.”” *Id.* at 283 (*quoting City of*
22 *Eugene v. Willamette Valley Co.*, 52 Or 490, 494 (1908)). As the *Duniway* court explained:

23 The principal object of the revision is to provide for a commission form of city
24 government. To do this it was deemed necessary, and in fact was necessary, to so revise
25 the charter as to adapt its provisions to the conditions involved by the change. It would
26 not suffice to submit an amendment declaring that Portland should have a commission
form of government consisting of a mayor and four commissioners without wiping out
those provisions of the charter which divided the city into wards and provided for the
election of a councilman in each ward or that portion which provided for an executive

1 board, and the other boards, officers, and commissions theretofore existing. It was wholly
2 proper that in a general way the powers, authority, duties, and jurisdiction of the
commission should be outlined; and, if any criticism is to be indulged in, it should be that
the outline is not drawn as clearly as it should have been.

3 *Id.* at 282 (emphasis added).

4 Now, in 2022, the voters are being asked to decide whether to replace the current
5 commission form of government with a new structure proposed by the Charter Commission.
6 Today, just as the *Duniway* court held in 1913, this Court should conclude that the provisions in
7 the measure proposed by the Commission “amount to a general revision of the city charter, and
8 are all germane to the general purpose sought to be accomplished.” *Id.* at 282. In 1913, the
9 revisions included the consolidation of executive and legislative authority, the composition of
10 Council as five citywide elected officials to replace the old ward system that elected a
11 councilmember from each ward, and a preferential system of voting where voters could rank
12 candidates on the ballot, which were found to be “all germane to the general purpose” of
13 structuring Portland’s government. *Id.* Today, in 2022, the proposed Charter changes include the
14 separation of executive and legislative functions, the composition of Council as twelve members
15 elected from four districts, and a system of voting that allows voters to rank candidates according
16 to their preference, which are likewise “all germane to the general purpose” of structuring
17 Portland’s government. *Id.*

18 Indeed, as demonstrated by public testimony, the different aspects of the Commission’s
19 measure all work together in an interrelated system to create a new structure of government:

20 This proposal works as a whole to create a more responsive, accountable, and
21 representative city government. A Mayor-Council government will create the
22 infrastructure that is necessary for our city government to better respond to community
23 needs. The consistent leadership of a City Administrator will improve the delivery of
24 services long-term and allow bureaus to better coordinate. City Council members now
25 representing geographic districts will be able to focus on meeting with the communities
26 of their districts to solve issues and pass laws. Lastly, the Mayor elected at-large will be
able to champion citywide priorities, carry out laws, and break Council ties. Portlanders
will know who is accountable for what, and within their districts will have multiple
avenues to make their concerns heard. No community is a monolith, and this proposal
ensures that all voters within each district have more choices to elect a representative that

1 will champion their issues. Ranked choice voting is a tested and a proven voting method
2 that has led to election outcomes more reflective of the people....It's clear that this
3 proposal will help to create a city government that can more responsibly meet community
4 needs, fix the city's challenges, and also provide a more reflective outcome in our
5 democracy.

6 *Civic Engagement Manager for the Coalition for Communities of Color, eGov PDX City*
7 *Council Afternoon Session (June 29, 2022) Testimony of Sol Mora available at:*
8 <https://youtu.be/TanS484Se9o?t=2550>.

9 I'm here to actually talk about really just one thing, and that's the really important step
10 the Commission made in bringing these recommendations forward as one full proposal. I
11 think this was a critical part of their decision-making, and I want to explain just briefly
12 why. I'm not sure they would describe it this way. The Commissioners are here, some of
13 them are here, and so maybe they might have a different perspective. But I ultimately
14 think they took a "systems approach" to the set of reforms that need to happen in the City
15 of Portland, and they thought about each of these aspects of this one proposal partly in
16 relationship to each other. So the notion that we could pull out parts of this – these
17 different aspects of the proposal as if they could go forward without the energy and
18 what's gained from having the other aspects – I think is faulty logic. Ultimately, this is an
19 important measure because it has all of these working together moving forward. To take
20 any of them out is to undermine our movement towards better governance, better
21 representation, more diverse representation in the City of Portland....These are not
22 individual sort of pieces, as much as they are interconnected, synergistic aspects of
23 reform Portland needs.

24 *Associate Professor of Political Science at Washington State University, eGov PDX City*
25 *Council Afternoon Session (June 29, 2022) Testimony of Mark Stephan available at:*
26 <https://www.youtube.com/watch?v=TanS484Se9o&t=3168s>.

These modern public voices echo the holding in *Duniway* from over a century ago, which
is that different elements of a measure changing the structure of government are "all germane to
the general purpose sought to be accomplished," and separating those elements into different
ballot measures "might destroy the efficacy of the proposed plan of city government, or very
much delay its adoption." *Duniway*, 65 Or. at 282, 283 (internal quotation marks omitted).

The United States Constitution itself provides an example of how various provisions are
interrelated to form a comprehensive government structure, all of which are bound together by
the unifying principle to, as the Framers put it, "form a more perfect Union." U.S. Const.,
Preamble (1787). For example, as offered by the Constitutional Convention to the states for

1 ratification in 1787, the United States Constitution included the following elements, among many
2 others, to form our national government: the separation of powers, the composition of the
3 legislative body, and the unique system for selecting officials to represent the people in the
4 federal government.

5 All of those provisions were bound together by a “logical, unifying principle connecting
6 the provisions,” which was to form a new structure of the national government. *Anantha*, 302 Or
7 App at 284-285. The Constitution separated the Executive Branch from the Legislative Branch.
8 U.S. Const., Art 1, Sec. 1-10 (Legislative Branch); Art. II, Sec. 1-4 (Executive Branch). The
9 Constitution also provided for the composition of the legislative body empowered to make laws,
10 namely the Congress of the United States. U.S. Const., Art. I, Sec. 1. Moreover, the Constitution
11 divided the Congress into a “Senate and House of Representatives,” with two Senators from each
12 state and Representatives “apportioned among the several states ... according to their respective
13 Numbers.” *Id.*; Art. I, Sec. 2; Art. I, Sec. 3. In addition to separating the executive and legislative
14 functions and providing for the bicameral composition of our national legislature, the
15 Constitution also provided the specific and unique manner by which the officials of the
16 government would be selected. The President would be selected by the Electoral College (Art. II,
17 Sec. I), the Senators from each state would be “chosen by the Legislature thereof” (Art. I, Sec. 3
18 (1787); *but see* Amendment XVII (1913) (direct election of Senators)), and Representatives
19 would be chosen “by the People of the several States” (Art. I, Sec. 2).

20 As discussed in *The Federalist Papers*, these elements crafted in 1787 were all
21 interrelated and unified in their purpose to establish a new federal government that might
22 function better than the Articles of Confederation. *See The Federalist Papers*, No. 47 (discussing
23 “the political maxim, that the legislative, executive, and judiciary departments ought to be
24 separate and distinct ... [as an] essential precaution in favor of liberty”); No. 51 (discussing how
25 a divided legislative branch “with different modes of election and different principles of action”
26 supports the separation of powers because “the legislative authority necessarily predominates”

1 over the “weakness of the executive”); No. 39 (different selection methods for President, Senate,
2 and House of Representatives create a government “of a mixed character, presenting at least as
3 many Federal as National features”). As the Framers of the U.S. Constitution understood, any
4 structure of government in a democracy must provide for the inherently interrelated means by
5 which power flows from the voters to the elected officials and into the legislative and executive
6 functions of government.

7 Likewise, the Charter Commission’s measure contains the various provisions necessary
8 to achieve the “unifying principle” of a comprehensive structure of municipal government by
9 which power flows from the voters to the elected officials and into the legislative and executive
10 functions of local government. In doing so, the Charter Commission like the drafters of the U.S.
11 Constitution provided for the separation of powers, the composition of the legislative body, and
12 how officials are selected to represent the people in the municipal government. Like the U.S.
13 Constitution, the Commission’s measure separates the executive and legislative functions of the
14 government. Here, the measure places the executive power in the Mayor who is charged with
15 supervising the City Administrator, while the City Council is empowered to make
16 laws.⁴ Similarly, the measure provides for the composition of the City’s legislative body, just
17 like the U.S. Constitution provides for the composition of the U.S. Congress. Here, the City’s
18 legislative body would be composed of a total of 12 Councilors, with three Councilors each
19 elected from four new districts.⁵ Moreover, just as the Constitution provides distinct and unique
20 methods for selecting the President (by the Electoral College), Senators (originally by state
21 legislatures), and Representatives (by the People), the Commission’s measure provides for how
22 the Mayor, Auditor and Councilors will be selected. Here, the Mayor and Auditor will be elected
23 citywide by voters using instant runoff ranked choice voting, while the Councilors will be

24 ⁴ Proposed Charter, Sec. 2-101 (Municipal Powers Allocation); 2-104 (General Powers); 2-106
25 (Enumeration of Powers not a Limitation); 2-301 (The Bureaus); 2-304 (Codes); 2-401
26 ([Mayor’s] Duties); 2-406 (The City Administrator).

⁵ Proposed Charter, Sec. 2-102 (City Council); 2-201 (Elective Officers); 2-110 (Organization);
2-111 (Rules of Procedure); 2-112 (Meetings and Journal); 2-113 (Calendar); 2-114 (Quorum);
2-117 (Transaction of Business).

1 elected from districts by voters using single transferable vote ranked choice voting.⁶

2 Just like the various provisions of the United States Constitution work together to form
3 our federal government, the provisions recommended by the Charter Commission all work
4 together to form a new municipal government. The provisions are “all germane to the general
5 purpose sought to be accomplished,” and separating those elements into different ballot measures
6 “might destroy the efficacy of the proposed plan of city government, or very much delay its
7 adoption.” *Duniway*, 65 Or at 282, 283 (internal quotation marks omitted). As a result, the
8 Commission’s measure is animated by a “logical, unifying principle connecting the provisions”
9 of the measure. *Anantha*, 302 Or App at 286.

10 Much has been said about Portland’s current structure of government, and much will be
11 said in the coming months about the proposed structure advanced by the Charter Commission.
12 And like the *Duniway* court, this Court need not commit itself to the “unqualified declaration”
13 that every part of the Charter Commission’s proposed structure is “unassailable.” 65 Or at 283.
14 Instead, this Court need only follow the precedent of *Anantha* and *Duniway* to conclude that the
15 measure satisfies the single-subject requirement of the Oregon Constitution and that the wisdom
16 of the Charter Commission’s proposal should be decided by Portland’s voters.

17 *iii. The Circuit Court’s Single-Subject Review is Final.*

18 Under state law and the Portland City Code, an elector who is dissatisfied with the
19 Auditor’s determination that an initiative petition satisfies the single-subject requirement may
20 appeal that determination to the circuit court and the “review by the circuit court shall be the first
21 and final review, and shall be conducted expeditiously to ensure the orderly and timely
22 circulation of the petition.” ORS 250.270(5); Portland City Code 2.04.055 D (elector’s appeal
23 process for initiative petitions is determined by state law). The Charter Commission’s measure is
24 not an initiative petition that must be circulated for sufficient signatures before it can be placed
25

26 ⁶ Proposed Charter, Sec. 3-102 (Ranked Choice Voting); 3-105 (Nonpartisan Elections, eliminating primaries); 3-108 (Independent District Commission); 3-109 (Powers and Duties of the Independent District Commission); 3-110 (District Plan Criteria).

1 on the ballot, but the finality of this Court’s review is similarly critical. Since an appeal to a
2 higher court would not be permitted if this Court were being asked to decide a single-subject
3 challenge to an initiative petition, such an appeal is likewise not permitted for the Court’s review
4 of this present challenge.

5
6 **CONCLUSION**

7 This Court should follow the precedent set by *Anantha* and *Duniway* and reject the current
8 challenge to the Charter Commission’s referred measure. Like the Charter initiative petition in
9 *Duniway* and the United States Constitution itself, the Charter Commission’s measure includes
10 the necessary elements to form a comprehensive government structure. The measure’s changes
11 are interrelated and advance a “unifying principle” and matters “properly connected” to that
12 principle. Therefore, this Court should reject the single-subject challenge, declare its single-
13 subject determination final, and affirm the ability of Portlanders to decide on their own
14 government structure, as the Supreme Court did over a century ago in *Duniway*.

15 DATED: July 27, 2022.

16 Respectfully submitted,

17 /s/ Maja K. Haium

18 Maja K. Haium, OSB No. 101042

19 Senior Deputy City Attorney

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20 *Of Attorneys for Defendants*
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT on the following parties by the method indicated:

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Steve Elzinga Sherman, Sherman, et al. 693 Chemeketa St. NE PO Box 2247 Salem, OR 97308-2247 steve@Shermlaw.com <i>Attorneys for Plaintiffs</i> | Margaret S. Olney Bennett Hartman, LLP 210 SW Morrison Street, Suite 500 Portland, OR 97204 margaret@bennetthartman.com <i>Attorneys for Amicus</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

on July 27, 2022, by causing a full, true and correct copy thereof, addressed to the last-known address (or fax number) of said attorney, to be sent by the following method(s):

- ☒ by e-filing using the court's Odyssey File and Serve system.
- ☐ by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service in Portland, Oregon.
- ☐ by **hand delivery**.
- ☐ by **facsimile transmission**.
- ☒ by **email**.

DATED: July 27, 2022.

Respectfully submitted,

/s/ Maja K. Haium

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