

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

ANDREW HOAN, an individual,

Plaintiff,

v.

MARY HULL CABALLERO, City of
Portland Auditor, LOUISE HANSEN, City of
Portland Elections Officer,

Defendants.

Case No. 22CV23479

PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Oral Argument Requested

UTCRC 5.050 STATEMENT

Plaintiff Andrew Hoan ("Hoan") requests oral argument, which the Court set for August 11. Estimated time is 60 minutes. Hoan requests official court reporting services.

MOTION

Pursuant to ORCP 47, and under the briefing schedule agreed by the parties and the Court, Hoan moves for summary judgment on his first claim for relief that Defendants failed to follow their constitutional duty to reject the Charter Commission's proposed ballot measure for violating the single-subject protection.

This motion is supported by the court's entire record, Hoan's Complaint, the Declaration of Andrew Hoan filed in support of this motion ("Hoan Decl."), the Declaration of Steve Elzinga filed in support of this motion ("Elzinga Decl."), and the points and authorities below.

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2			
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POINTS AND AUTHORITIES

I. INTRODUCTION

Expedited review of this matter, agreed to by all parties, allows time for the City to refer multiple single-subject ballot measures to voters this November. Doing so protects voters' constitutional right to evaluate each reform on its own merits. This increases the likelihood for at least some reform by increasing the number of voter choices and allowing for each element of proposed change to be clear, uncomplex, and transparent to voters.

The City of Portland ("City") Charter Commission ("Commission") has spent months evaluating numerous possible reforms to improve city government. Plaintiff Andrew Hoan is a registered Portland voter who, like many Portland voters, supports many of the Commission's proposed reforms, including restructuring City management to increase accountability and performance, an expanded council, and a move to district representation. However, Hoan is undecided on several other reforms the Commission has proposed, such as selecting City councilors through an unprecedented system of three-member (multimember) districts using single transferrable ranked choice voting that allows councilors to assume power after receiving only 25% of the vote (or less).

Rather than sending the voters multiple ballot measures to allow voters the final say in determining which of these very different reforms to adopt or reject, the Commission seeks to proceed in a highly unusual way, placing political expedience over constitutional compliance. The Commission proposed a single ballot measure bundling a vast and novel package of different subjects that are logically unconnected. The Commission is upfront that they want to force voters to accept all or nothing because they are concerned that voters might reject some of the individual reforms included in the

1 package if standing alone. This is precisely the kind of manipulative political shenanigan
2 Oregon’s constitutional single-subject protection for ballot measures is designed to avoid.
3 The Commission’s effort to bundle multiple subjects in hopes of forcing acceptance of
4 otherwise potentially unpalatable reforms violates voter rights and risks defeat of the
5 widely supported parts of the reform package.

6 The Auditor and City Elections Officer (“Defendants”) are constitutionally
7 charged with protecting voting rights by reviewing proposed ballot measures for
8 compliance with the single-subject protection. In 2020, Defendants rejected a similar—
9 but narrower—proposed ballot measure for noncompliance with the single-subject
10 protection because “changing the operations of City Council is not logically connected to
11 changing the voting system for all elected City officials.” Based on Defendants’ own
12 (correct) analysis, they should have rejected the Commission’s even broader proposed
13 ballot measure.

14 In response to a letter requesting that Defendants follow their constitutional duty,
15 Defendants claimed—contrary to almost a century of precedent and their own prior
16 actions—that they have no authority to review and reject the Commission’s proposed
17 ballot measure. Defendants are incorrect. If Defendants are allowed to refuse to exercise
18 their previously admitted authority, then voters will be denied their right to pick and
19 choose those reforms they support guaranteed by the Oregon Constitution.

20 *This case is about protecting voter choices.* This case is not about the merits of
21 any particular reform concept. Hoan fully supports the City referring to voters *all* the
22 Commission’s reform concepts this November in line with the policy intent of the
23 Commission as multiple single-subject ballot measures. He even advocated for a highly
24 expedited briefing schedule to make this possible. Defendants agreed for similar reasons.

Hoan now asks the Court to protect voter choices by determining that the Commission's catchall proposed ballot measure is not consistent with the constitutional single-subject protection.

II. UNDISPUTED FACTS

On December 16, 2020, the City Elections Officer rejected Prospective Initiative Petition ID 2020-PDX01 ("2020-PDX01") for constitutional insufficiency. Elzinga Decl., ¶ 2, Ex. 1 (2020-PDX01 determination letter). The City Elections Officer stated:

Failure to Embrace One Subject Only

Article IV, section 1 (2)(d) requires that a proposed law "shall embrace one subject only and matters properly connected therewith." A two-part framework governs the determination of whether a proposed law comports with the single-subject requirement. First, is there a unifying principle logically connecting all provisions in the measure? Second, if a unifying principle exists, are other matters in the proposed law properly connected to the unifying principle? Here, 2020-PDX01 seeks to, most relevantly:

- Increase the number of City Council members.
- ~~Require mandatory town hall meetings, in addition to weekly Council meetings.~~
- Change Council voting requirements.
- Change Council member qualifications.
- Change the management structure of internal bureaus.
- Change term durations of City Council members.
- Change frequency of elections.
- Change at-large elections to district elections.
- Change the voting system from a simple majority to ranked-choice voting.
- Create elective council districts and a district map.

2020-PDX01 does not comply with the first part of the single-subject analytic framework because it seeks to amend multiple provisions of the City Charter, and not all the amendments are connected by a single unifying purpose. For example, changing the operations of City Council is not logically connected to changing the voting system for all elected City officials.

Id. (bold in original; strikethrough added for single element from 2020 measure that is not also in 2022 proposal; underlining added for emphasis).

Less than a year and one-half later, on June 21, 2022, sixteen members of the Commission voted to combine numerous major charter reforms into a single proposed

1 ballot measure for the November 2020 election. *Id.*, ¶ 3, Ex. 2 (Commission minutes).

2 Two members abstained, and two were absent. *Id.*

3 The proposed ballot measure is extensive. It amends 104 charter sections, replaces
4 one charter section, adds seven charter sections, and deletes two charter sections. *Id.*, ¶ 4,
5 Ex. 3 (Auditor Report). The Auditor's report summarizes changes as follows:

- | | | |
|----|--------------------------------|---------------------------------|
| 6 | • Amend Charter Section 1-104 | • Amend Charter Section 2-601 |
| | • Amend Charter Section 1-106 | • Amend Charter Section 2-602 |
| 7 | • Amend Charter Section 2-101 | • Amend Charter Section 2-603 |
| | • Amend Charter Section 2-102 | • Amend Charter Section 2-604 |
| 8 | • Amend Charter Section 2-103 | • Amend Charter Section 2-606 |
| | • Amend Charter Section 2-104 | • Amend Charter Section 2-611 |
| 9 | • Amend Charter Section 2-105 | • Amend Charter Section 2-701 |
| | • Amend Charter Section 2-106 | • Amend Charter Section 2-801 |
| 10 | • Amend Charter Section 2-108 | • Amend Charter Section 2-802 |
| | • Amend Charter Section 2-109 | • Amend Charter Section 2-1006 |
| 11 | • Amend Charter Section 2-110 | • Amend Charter Section 3-101 |
| | • Amend Charter Section 2-111 | • Replace Charter Section 3-102 |
| 12 | • Amend Charter Section 2-112 | • Amend Charter Section 3-105 |
| | • Amend Charter Section 2-113 | • Add Charter Section 3-107 |
| 13 | • Amend Charter Section 2-114 | • Add Charter Section 3-108 |
| | • Amend Charter Section 2-117 | • Add Charter Section 3-109 |
| 14 | • Amend Charter Section 2-120 | • Add Charter Section 3-110 |
| | • Amend Charter Section 2-124 | • Amend Charter Section 3-201 |
| 15 | • Amend Charter Section 2-125 | • Amend Charter Section 4-301 |
| | • Amend Charter Section 2-126 | • Amend Charter Section 5-102 |
| 16 | • Amend Charter Section 2-127 | • Amend Charter Section 5-103 |
| | • Add Charter Section 2-128 | • Amend Charter Section 5-202 |
| 17 | • Amend Charter Section 2-201 | • Amend Charter Section 5-403 |
| | • Amend Charter Section 2-202 | • Amend Charter Section 7-101 |
| 18 | • Amend Charter Section 2-206 | • Amend Charter Section 7-102 |
| | • Add Charter Section 2-207 | • Amend Charter Section 7-103 |
| 19 | • Amend Charter Section 2-301 | • Amend Charter Section 7-104 |
| | • Delete Charter Section 2-302 | • Amend Charter Section 7-105 |
| 20 | • Delete Charter Section 2-303 | • Amend Charter Section 7-108 |
| | • Amend Charter Section 2-304 | • Amend Charter Section 7-109 |
| 21 | • Amend Charter Section 2-401 | • Amend Charter Section 7-111 |
| | • Amend Charter Section 2-404 | • Amend Charter Section 7-113 |
| 22 | • Add Charter Section 2-406 | • Amend Charter Section 7-202 |
| | • Amend Charter Section 2-502 | • Amend Charter Section 8-101 |
| 23 | • Amend Charter Section 2-503 | • Amend Charter Section 8-102 |
| | • Amend Charter Section 2-504 | • Amend Charter Section 8-104 |
| 24 | • Amend Charter Section 2-508 | • Amend Charter Section 8-105 |

- Amend Charter Section 8-106
- Amend Charter Section 9-103
- Amend Charter Section 9-105
- Amend Charter Section 9-203
- Amend Charter Section 9-302
- Amend Charter Section 9-304
- Amend Charter Section 9-305
- Amend Charter Section 9-406
- Amend Charter Section 9-407
- Amend Charter Section 9-502
- Amend Charter Section 9-601
- Amend Charter Section 9-602
- Amend Charter Section 9-704
- Amend Charter Section 10-104
- Amend Charter Section 10-107
- Amend Charter Section 10-108
- Amend Charter Section 10-203
- Amend Charter Section 10-204
- Amend Charter Section 10-207
- Amend Charter Section 10-209
- Amend Charter Section 10-210
- Amend Charter Section 10-212
- Amend Charter Section 10-215
- Amend Charter Section 10-218
- Amend Charter Section 11-101
- Amend Charter Section 11-102
- Amend Charter Section 11-106
- Amend Charter Section 11-201
- Amend Charter Section 11-301
- Amend Charter Section 11-302
- Amend Charter Section 11-303
- Amend Charter Section 12-101
- Amend Charter Section 12-102
- Amend Charter Section 12-301
- Amend Charter Section 12-302
- Amend Charter Section 13-101
- Amend Charter Section 13-201
- Amend Charter Section 13-301
- Amend Charter Section 15-104
- Amend Charter Section 15-105

Id., Ex. 3 (original report has only one column).

An immediate effective date applies to four added sections, one replaced section, and three amended sections.¹ *Id.*, ¶ 5, Ex. 4 (proposed measure text). All remaining changes take effect on January 1, 2025. *Id.* The text is 185 pages long. *Id.*

Unfortunately, the Commission ignored the City Attorney’s caution that Portland historically ensured “that ballot measures referred to voters by the Portland City Council or by the Portland Charter Commission meet the full-text and single-subject requirements.” *Id.*, ¶ 6, Ex. 5 (Memo from City Attorney). Instead, the Commission was upfront that they want to force voters to accept all or nothing because they believe that a single measure has a greater chance to pass than individual measures. *Id.*, ¶ 7, Ex. 6, p. 20 (Commission report). The Commission strongly implied concern that voters might reject

¹ Sections 2-202; 2-207; 3-101; 3-102; 3-105; 3-108; 3-109; and 3-110.

3 I'm a little bit surprised when I've heard from some folks who, if that's their
4 priority, *they don't actually want to hitch their wagon to the other more popular*
5 *stars . . .* because if you look at the polling, remember the FM3 polling showed
form of government—the mayor-council—starting off at 51 [percent support] . . .
politically, if we want, you know, *if there are folks on the commission or in the*
public who prefer one over the other it just makes sense to put them all together.

Video of Charter Commission Work Session (Hybrid) (June 6, 2022),
<https://www.portland.gov/omf/charter-review-commission/events/2022/6/6/charter-commission-work-session-hybrid> (video at 2:33:18 to 2:33:28). Another Commission member disagreed: “I think we should let people choose what they want our government to look like rather than us 20 people deciding that its either our way or the highway by having it be one ballot measure rather than separating it and letting people have a choice.” *Id.* (video at 2:35:14 to 2:35:29).

14 The Commission’s own report acknowledges that their proposed ballot measure includes at least three “major changes, including:

- 16 • Allowing voters to rank candidates in order of their preference, using ranked
choice voting. . . .
- 17 • Four new geographic districts with three members elected to represent each
district, expanding the city council to a total of 12 members. . . .
- 18 • A city council that focuses on setting policy and a mayor elected citywide to run
the city's day-to-day operations, with the help of a professional city administrator.
. . .”

Id. p. 3 (bolding removed). However, the extensive package of reforms is far broader and includes all the following elements:

// // //

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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18	///
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1 • **City Structure**

- 2 ○ Change the division of power between Council and the Mayor (Sections 2-101, 2-
3 103, 2-104, 2-105, 2-106, 2-108, 2-109, 2-126, 2-128, 2-304, 2-401, 2-604, 8-101,
4 9-502)
- 5 ○ Increase the number of Council members (Section 2-102)
- 6 ○ Change Council leadership (Section 2-110)
- 7 ○ Change Council procedures (Sections 2-111, 2-113, 2-114, 2-117, 2-120, 2-124,
8 2-127)
- 9 ○ Change Council meeting frequency requirements (Section 2-112)
- 10 ○ Change term durations of Council members, including retroactively shortening
11 term durations mid-term for commissioners elected for four years in the
12 November 2022 election (Section 3-101)
- 13 ○ Change Council voting requirements, including minimum thresholds for various
14 types of votes (Sections 1-104, 10-207, 10-218)
- 15 ○ Limit the Mayor's vote on City Council only to tiebreaking (Section 2-401)
- 16 ○ Change Council member qualifications (Section 2-202)
- 17 ○ Change the process for filling vacancies, including eliminating mid-cycle special
18 elections and elevating the mayor's chief of staff to fill a vacancy in the office of
19 Mayor instead of a Councilor in an emergency (Section 2-206)
- 20 ○ Create a new Independent District Commission (Section 3-108)
- 21 ○ Create a new Salary Commission (Section 2-207)
- 22 ○ Change the process for appointing future Charter Commission members (Section
23 13-301)
- 24

- Other Changes (Sections 2-404, 2-502, 2-503, 2-504, 2-508, 2-606, 2-701, 2-1006, 13-101, 13-201, 15-104, 15-105)
- **Management and Administration**
 - Change the management structure of internal bureaus (Sections 2-301; 2-302 repeal, 2-303 repeal, 2-602, 2-603)
 - Create a new City Administrator position appointed by the Mayor, subject to Council confirmation (Section 2-406)
 - Require City Attorney and Chief of Police to be appointed by Mayor, subject to Council approval (Section 2-601)
 - Require City Administrator to prescribe rules and regulations (Section 2-406)
 - Require Mayor to “[a]uthorize, negotiate and execute all contracts and intergovernmental agreements, consistent with the City budget.” (Section 2-401)
 - Increase authority of Mayor to settle claims from \$5,000 to \$50,000 (Section 1-106)
 - Require Mayor and City Administrator to submit a proposed annual budget by May 5, and periodic amendments (Sections 2-128, 2-401)
 - Require Mayor to “[a]nnually, appear before the Council to deliver a general address on the State of the City.” (Section 2-401)
 - Require the City to undertake periodic education campaigns on the new voting structure (Section 3-102)
 - Other changes (Sections 2-611, 2-801, 2-802, 4-301, 5-102, 5-103, 5-202, 5-403, 7-101, 7-102, 7-103, 7-104, 7-105, 7-108, 7-109, 7-111, 7-113, 7-202, 8-101, 8-102, 8-104, 8-105, 8-106, 9-103, 9-105, 9-203, 9-302, 9-304, 9-305, 9-406, 9-407, 9-601, 9-602, 9-704, 9-806, 10-104, 10-107, 10-108, 10-203, 10-204, 10-209, 10-

210, 10-212, 10-215, 11-101, 11-102, 11-106, 11-201, 11-301, 11-302, 11-303,
12-101, 12-102, 12-301, 12-302)

• **Election Processes and Methods**

- Change at-large elections to district elections (Sections 2-102, 2-201)
- Require multi-member council districts (Section 3-107)
- Change the voting system from a simple majority to ranked-choice voting (Section 3-102)
- Eliminate primary elections (Section 3-105)
- Require ranked-choice voting method for Mayor and Auditor (Section 3-102)
- Require single transferrable voting method for councilors (Section 3-102)
- Create elective council districts and a district map (Section 3-109)
- Require periodic redistricting and set restricting process and criteria (Sections 3-108, 3-109, 3-110)
- Change frequency of elections (Sections 3-105, 2-206)
- Other changes (Sections 3-201, 3-308)

• **Setting Values and Policies**

- Require Mayor and City Administrator to “[a]dvance the City’s core values anti-racism, equity, transparency, communication, collaboration and fiscal responsibility.” (Section 2-401)
- Require Mayor and City Administrator to “[a]dvance the City’s efforts to mitigate the human-made climate crisis and prioritize environmental justice initiatives.” (Section 2-401)
- Require Mayor to “[e]ncourage programs for the physical, economic, social and cultural development of the City.” (Section 2-401)

1 ○ Require Mayor to “[a]ctively promote economic development to broaden and
2 strengthen the commercial and employment base of the City.” (Section 2-401)
3 *Id.*, ¶ 5, Ex. 4 (Proposed ballot measure text).

4 On July 8, 2022, Hoan’s attorney sent Defendants a letter regarding how the
5 Charter Commission’s proposed measure unconstitutionally combines multiple subjects
6 like 2020-PDX01 and asking that the proposed measure be rejected. *Id.*, ¶ 8, Ex. 7 (Letter
7 to Defendants).

8 On July 12, 2022, Defendants determined that they would not reject the City of
9 Portland Charter Commission proposed measure. *Id.*, ¶ 9, Ex. 8 (Letter from
10 Defendants).²

11 On July 14, 2022, Hoan filed this action to challenge Defendants’ decision under
12 ORS 246.910. Complaint. Although Defendants originally proposed completing briefing
13 by August 22, Hoan pushed for faster schedule to allow sufficient time for the City to
14 refer to voters *all* the Commission’s reform concepts this November in line with the
15 intent of the Commission as multiple single-subject ballot measures. *Id.*, ¶ 10.

16 Hoan is a registered Portland voter who resides in Multnomah County. Hoan
17 Decl., ¶ 2. Hoan supports many of the Commission’s proposed reforms, including
18 restructuring City management to increase accountability and performance, an expanded
19 council, and a move to district representation. *Id.*, ¶ 3. However, Hoan is undecided on
20 several other reforms the Commission has proposed, such as selecting City councilors
21 through an unprecedented system of three-member (multimember) districts using single
22 transferrable ranked choice voting that allows councilors to assume power after receiving
23 only 25% of the vote (or less). *Id.*, ¶ 4.

24

² The Auditor’s office is located in Multnomah County. *Id.*, ¶ 9, Ex. 8.

Hoan believes many other Portland voters also support core elements of the Commission's proposed reforms but not the whole package. *Id.*, ¶ 5. Examples abound, so here are just two: Current City Commissioner Mingus Mapps was quoted in the Willamette Week as taking a similar position:

"When I look at this package, *I see four, if not more, major reforms packed into this proposal.* Some of these ideas I clearly support, some I have questions about, some I think are probably bad ideas," Mapps says. "*Portlanders at least need to have a chance to vote on these ideas separately. Packing them all together literally makes it impossible for me to sort out whether this is going to help the city more or hurt.*"

Mapps tells WW there are parts of the measure he thinks are "bad ideas." He is especially concerned by multi-member districts. "As you layer on these complications after complications...I think it actually might make our government less functional."

Sophie Peel, Willamette Week, *Two Political Action Committees Plan to Push Back Against Portland Charter Reform Ballot Measure: One of them is a PAC launched by Commissioner Mingus Mapps last fall explicitly to support charter reform* (June 28, 2022) <https://www.wweek.com/news/city/2022/06/28/two-political-action-committees-plan-to-push-back-against-portland-charter-reform-ballot-measure/> (emphasis added).

Similarly, the Oregonian recently received a letter to the editor, from someone who rarely agrees with the organization Hoan leads, stating:

... I can't follow the logic of the three proposals being so closely interdependent that they cannot be pulled apart into separate measures. And *I am troubled by the concept that they can't trust the voters to choose between the three ideas and find our own version of the way we want our city to be run.*

As someone who desperately wants a change in the commission form of government, I fear that the whole thing will go down in flames because of the complexity of what we're being asked to agree to and the controversy it's already generated. []

Please trust Portland voters to be the engaged, adult citizens who we are and allow us to support one, two or all three of the proposed changes as we see fit. I think it's sad that this must go to courts to get settled, and *though I rarely agree with the PBA, this time I'm glad they are bringing a suit to allow this decision the discussion it needs.*

Mary Anne Cassin, The Oregonian, *Readers respond: Pull charter proposals apart* (July 22, 2022), <https://www.oregonlive.com/opinion/2022/07/readers-respond-pull-charter-proposals-apart.html> (internal links omitted).

Like others, Hoan is concerned that the coupling of the Commission’s good and expected reforms will be brought down at the ballot by the improvised concepts advanced through the new form of elections that the Commission bundled together into a single proposed measure. Hoan Decl., ¶ 6. Hoan is aware of strong and organized opposition to the experimental election proposals within the Commission’s proposed measure, but sees no such strong or organized opposition to the good reforms to the City’s administration within the Commission’s proposed measure. *Id.*, ¶ 7. Hoan wants the City to re-submit the same charter reforms to voters in multiple measures so that Portland’s voters have the choice to agree with all, none, or some of the charter reforms. *Id.*, ¶ 8.

III. ARGUMENT

1. The Commission’s proposed ballot measure violates the single-subject protection by bundling various logically unrelated subjects and forcing voters to take all or nothing instead of giving voters full control.

a. The single-subject protection ensures voters have the opportunity to evaluate every proposed ballot measure on its own merits.

The single-subject protection “was designed to do away with the several abuses.” *Oregon Educ. Ass’n v. Phillips*, 302 Or. 87, 95, 727 P.2d 602, 606 (1986) (*quoting Lovejoy v. Portland*, 95 Or. 459, 188 P. 207 (1920)). It serves multiple important purposes in protecting voters.

First, the protection prevents bundling unrelated policies and forcing voters to choose all or nothing. A single measure may not combine “incongruous matters and

1 objects totally distinct and having no connection nor relation with each other.” *State ex*
2 *rel. Caleb v. Beesley*, 326 Or. 83, 90, 949 P.2d 724, 728 (1997) (citations omitted).

3 Second, the protection prevents forcing voters to accept poison pills to see desired
4 change through “logrolling.” The single-subject protection prevents measure proponents
5 from “combining subjects representing diverse interests, in order to unite [voters] who
6 favored either, in support of all.” *Nielson v. Bryson*, 257 Or. 179, 186, 477 P.2d 714, 717
7 (1970) (*quoting State v. Shaw*, 22 Or. 287, 288, 29 P. 1028, 1028 (1892)). Logrolling also
8 prevents including in one measure “two or more unrelated provisions so that those
9 favoring one provision could be compelled, in order to secure its adoption, to combine
10 with those favoring another provision.” *State v. Mercer*, 269 Or. App. 135, 138, 344 P.3d
11 109, 111–12 (2015) (citations omitted). Notably, “by this process of log-rolling the
12 adoption of both provisions could be accomplished, when neither, if standing alone,
13 could succeed on its own merits.” *Id.* To prevent “logrolling or hodgepodge” measures,
14 the single-subject protection discourages policy combinations designed to “secure
15 support for a bill of an omnibus nature, with discordant riders attached, which, if acted
16 upon singly, would neither merit nor receive sufficient support to secure their adoption.”
17 *N. Ctys. Inv. Tr. v. Sears*, 30 Or. 388, 400–01, 41 P. 931, 935 (1895).

18 Third, the protection discourages “concealing” from the voters “the true nature”
19 of what is in a measure. *See Oregon Educ. Ass’n*, 302 Or. at 95 (citation omitted). The
20 Commission’s proposed all-or-nothing ballot measure commits all three transgressions
21 and violates voter rights.

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b. The single-subject protection safeguards voters.

The single-subject protection is repeated in two state constitutional provisions:

(1) “Every Act shall embrace but one subject, and matters properly connected therewith,” Art. IV, § 20, and

(2) “A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith,” Art. IV, § 1(2)(d).

Courts give both provisions the same meaning. *Oregon Educ. Ass’n*, 302 Or. at 100.

The City has a similar single-subject protection in its charter: “No ordinance, except one making an appropriation, shall contain more than one general subject; ordinances making appropriations shall be confined to the subject of appropriations.” Portland Charter Section 2-118.

The single-subject protection prohibits a measure “from combining in one act subjects wholly incongruous, diverse in their nature, and having no perceptible or necessary connection with each other.” *Spaulding Logging Co. v. Indep. Imp. Co.*, 42 Or. 394, 397, 71 P. 132, 133 (1903). “A measure must first be scrutinized to determine whether it embraces more than one subject. If it does, it offends the constitutional limitation even if the subjects are ‘properly connected,’ and that is the end of the inquiry.” *Oregon Educ. Ass’n*, 302 Or. at 100.

A “subject” is given a broad meaning to give measure drafters “full scope to include in one act all matters having a logical or natural connection.” *Anantha v. Clarno*, 302 Or. App. 196, 201, 461 P.3d 282, 285 (2020) (*citing Lovejoy*, 95 Or. at 466).

Although a ballot measure may have a comprehensive subject, for the ballot measure to “embrace one subject, there must be a unifying principle, referred to variously as ‘one

1 general subject,’ ‘one general object,’ ‘one general idea,’ or ‘the object in view’ . . . [and]
2 there must exist among its parts some logical connection relating each to the others.”³
3 *McIntire v. Forbes*, 322 Or. 426, 443, 909 P.2d 846, 856 (1996), *abrogated on other*
4 *grounds by Kellas v. Dept. of Corrections*, 341 Or. 471, 486, 145 P.3d 139 (2006).⁴

5 For example, a law that violated the single-subject protection included eight
6 topics: “(1) provides state funding and land use procedures for light rail, (2) expands the
7 availability of card-lock service stations, (3) promotes ‘regional problem solving’ in land
8 use matters, (4) regulates confined animal feeding, (5) preempts local pesticide
9 regulation, (6) adopts new timber harvesting rules, (7) grants immunity to shooting
10 ranges for noise pollution, and (8) protects salmon from cormorants.” *McIntire*, 322 Or.
11 at 444 (internal brackets and quotes removed).

12 In *McIntire*, advocates for the law argued that a proposed subject—activities
13 already regulated by state government and not including activities regulated by local
14 government—was sufficient. *McIntire*, 322 Or. at 445–46. However, the court found that
15 this was too “broad and general” to constitute a single subject since it “logically connects
16 all provisions in the Act only in the meaningless sense that it announces a connection
17 among nearly all things in the legislative universe.” *McIntire*, 322 Or. at 445–46.

18 On the other hand, a ballot measure did not violate the single-subject protection
19 when it had a subject of “enhanced punishments for offenders repeatedly convicted of
20 specified crimes” because that “subject identifies (1) the precise sphere of regulation
21 (namely, the criminal justice system); (2) the targeted persons (repeat offenders); and (3)

23 ³ “One general subject” is identical to the language in Portland Charter Section 2-118.

24 ⁴ *Kellas* abrogated *McIntire* on the issue of constitutional justiciability, which is entirely
unrelated to *McIntire*’s import in the current case. *See Couey v. Atkins*, 357 Or. 460, 514–
15, 355 P.3d 866, 898 (2015).

1 the intended outcome (enhanced punishments) . . . [and] is not so ‘global’ as the proposed
2 unifying principle rejected in *McIntire*.” *Mercer*, 269 Or. App. at 141–42.

3 Here, as in *McIntire*, the sole supposedly unifying principal seems to be issues
4 related to governing the City. As in *McIntire*, this amounts to “announc[ing] a
5 connection among nearly all things in the [City’s] legislative universe,” a standard
6 rejected by the Oregon Supreme Court as far too broad. *McIntire*, 322 Or. at 445.

7 **c. Under Defendants’ own (correct) reasoning, the Commission’s proposed**
8 **ballot measure violates the single-subject protection.**

9 The Commission’s proposed ballot measure includes all but one of the key
10 elements from rejected 2020-PDX01:

- 11 • Increase the number of City Council members.
- 12 • ~~Require mandatory town hall meetings, in addition to weekly Council meetings.~~
- 13 • Change Council voting requirements.
- 14 • Change Council member qualifications.
- 15 • Change the management structure of internal bureaus.
- 16 • Change term durations of City Council members.
- 17 • Change frequency of elections.
- 18 • Change at-large elections to district elections.
- 19 • Change the voting system from a simple majority to ranked-choice voting.
- 20 • Create elective council districts and a district map.

21 (direct quote from City Elections Officer, except strikethrough added for single element
22 from 2020 measure that is not also in 2022 proposal). The Commission’s proposal is even
23 more expansive and includes many additional key elements, such as creating new City
24 policy on addressing climate change in the Charter.

Just like with Defendants’ reasoning in 2020-PDX01, the Commission’s proposal
for “changing the operations of City Council is not logically connected to changing the
voting system for all elected City officials.” Through their decision in 2020-PDX01,
Defendants also implicitly recognized that the Oregon Supreme Court’s development of
single-subject case law over the past century (especially *McIntire*) has effectively

1 abrogated the centenarian case of *State ex rel. Duniway v. City of Portland*, 65 Or. 273,
2 281–83, 133 P. 62, 65 (1913).⁵

3 **d. The Commission itself admits it combined at least three different “major**
4 **changes” to try to pass the measure due to concern that at least one major**
5 **change could not pass on its own.**

6 The Commission “combin[ed] subjects representing diverse interests, in order to
7 unite [voters] who favored either, in support of all.” *Nielson v. Bryson*, 257 Or. 179, 186,
8 477 P.2d 714, 717 (1970) (citation omitted).

9 Most damningly, the Commission itself admitted that the Commission wanted to
10 force voters to accept all major changes or nothing because the Commission was
11 concerned that voters might reject at least one of the major individual reforms standing
12 alone. This is the very definition of logrolling that the single-subject protection is
13 designed to prevent.

14 The Commission’s own report acknowledges that their proposed ballot measure
15 includes at least three “major changes,” including ranked choice voting, multimember
16 districts, and City management changes. The Commission’s use of different effective
17 dates for different section changes further shows that all the provisions are not
18 inseparably interconnected.

19 **e. The Commission’s proposed ballot measure bundles a cacophony of**
20 **provisions in at least four distinct and logically unrelated categories.**

21 The following chart summarizes the key elements from the Commission’s
22 proposed measure that (1) align with the 2020 measure (italicized) and (2) those that are
23 additional (regular text).

24 ⁵ The *Duniway* decision did not reference either Art. IV, § 20 nor any cases citing that
provision. It noted that the authorities it considered related to “the issuance of municipal
bonds or creating municipal indebtedness, and each case cited turns upon some statutory
or constitutional provision not found in this state.” *Id.*, 65 Or. at 282.

City Structure	Management and Administration	Election Methods	Setting Values and Policies
<ul style="list-style-type: none"> • Change the division of power between Council and the Mayor • <i>Increase the number of Council members</i> • Change Council leadership • Change Council procedures • Change Council meeting frequency requirements • <i>Change term durations of Council members</i>, including shortening term durations mid-term for some Commissioners • <i>Change Council voting requirements</i>, including minimum thresholds for various types of votes • Limit the Mayor's vote on Council only to tiebreaking • <i>Change Council member qualifications</i> • Change the process for filling vacancies, including eliminating mid-cycle special elections and elevating the mayor's chief of staff to fill a vacancy in the office of Mayor instead of a Councilor in an emergency • Create a new Independent District Commission • Create a new Salary Commission • Change the process for appointing future Charter Commission members 	<ul style="list-style-type: none"> • <i>Change the management structure of internal bureaus</i> • Create a new City Administrator position appointed by the Mayor, subject to Council confirmation • Require City Attorney and Chief of Police to be appointed by Mayor, subject to Council approval • Require City Administrator to prescribe rules and regulations • Require Mayor to "[a]uthorize, negotiate and execute all contracts and intergovernmental agreements, consistent with the City budget." • Increase authority of Mayor to settle claims from \$5,000 to \$50,000 • Require the City to undertake periodic education campaigns on the new voting structure • Require Mayor and City Administrator to submit a proposed annual budget, and periodic amendments • Require Mayor to annually "appear before the Council to deliver a general 	<ul style="list-style-type: none"> • <i>Change at-large elections to district elections</i> • Require multi-member Council districts • <i>Change the voting system from a simple majority to ranked-choice voting</i> • Eliminate primary elections • Require ranked-choice voting method for Mayor and Auditor • Require single transferrable voting method for councilors • <i>Create elective council districts and a district map</i> • Require periodic redistricting and set restricting process and criteria • <i>Change frequency of elections</i> • Other changes 	<ul style="list-style-type: none"> • Require Mayor and City Administrator to "[a]dvance the City's core values anti-racism, equity, transparency, communication, collaboration and fiscal responsibility." • Require Mayor and City Administrator to "[a]dvance the City's efforts to mitigate the human-made climate crisis and prioritize environmental justice initiatives." • Require Mayor to "[e]ncourage programs for the physical, economic, social and cultural development of the City." • Require Mayor to "[a]ctively promote economic development to broaden and strengthen the commercial and employment

1	•Other Changes	address on the State of the City.”		base of the City.”
2		•Other changes		

3 While a few of the key elements in the bullet points above might fit under
4 multiple subjects—such as some overlap between structure and management—no single
5 subject covers all key elements. For example, (1) setting values and priorities on climate
6 change and anti-racism cannot fit under “structure;” (2) eliminating primaries, adopting
7 multi-member districts, and using the single transferrable vote system cannot fit under
8 “administration;” (3) adding a new salary commission cannot fit under “elections
9 methods;” and (4) increasing the Mayor’s authority to settle claims from \$5,000 to
10 \$50,000 is not part of “structure.” There is no possible “subject” that encompasses all key
11 elements in the Commission’s proposed ballot measure without being too “global.”
12 *Mercer*, 269 Or. App. at 141–42.

13 OPB quoted one Commission member as stating that the proposed ballot
14 measure’s subject was “changing the structure of the city government.” Rebecca Ellis,
15 OPB, *Portland mayor and commissioner raise doubts about proposed charter changes*
16 (June 29, 2022), [https://www.opb.org/article/2022/06/29/portland-oregon-government-](https://www.opb.org/article/2022/06/29/portland-oregon-government-charter-november-ballot/)
17 [charter-november-ballot/](https://www.opb.org/article/2022/06/29/portland-oregon-government-charter-november-ballot/) Several advocates for the proposed ballot measure, who filed a
18 ballot title challenge on this proposed measure and are represented by the same attorney
19 representing amicus in this matter, stated in a footnote that they believed the subject was
20 “reforming Portland’s governmental structure to make it more effective, responsive, and
21 democratically accountable.” Memorandum in Support of Petition for Review of Ballot
22 Title, *Wilson v. Taylor*, Case No. 22CV23601 (July 15, 2022). Like the single-subject
23 violation in *McIntire*, both proposed subjects are too “broad and general” to constitute a
24 single subject since each “logically connects all provisions in the [proposed ballot

1 measure] only in the meaningless sense that it announces a connection among nearly all
2 things in the [municipal] legislative universe.” *McIntire*, 322 Or. at 445–46.

3 Here are a few hypothetical examples of other reforms—mirroring the eight found
4 unconstitutional in *McIntire*—that would “fit” within these global and unreasonably
5 broad so-called “subjects” at least as well—or better than—some changes already in the
6 currently proposed ballot measure:

- 7 • Require a minimum amount of City “funding for . . . light rail” each year;
- 8 • Create new “land use procedures for light rail” to allow more democratic
9 participation in the comment process;
- 10 • Create a streamlined approval process that “expands the availability of card-
11 lock service stations;”
- 12 • Create an independent commission that “promotes ‘regional problem solving’
13 in land use matters;”
- 14 • Create an independent commission that “regulates confined animal feeding;”
- 15 • Create a duty for the Mayor to advance the City’s efforts to secure new “local
16 pesticide regulation;”
- 17 • Create a duty for the City Manager to “adopt[] new timber harvesting rules”
18 through a transparent process that is responsive to public input;
- 19 • Prohibit City ordinances “grant[ing] immunity to shooting ranges for noise
20 pollution;” and
- 21 • Create a duty for the Mayor to encourage programs to “protect[] salmon from
22 cormorants.”

23 *Mercer*, 269 Or. App. at 141–42 (quoting *McIntire*, 322 Or. at 443).

Such extensive log rolling was rejected in *McIntire*, and should be rejected here where even more and bigger policies are bundled together, and there is no dispute, intended to force voters to accept provisions they dislike or reject much-needed reforms altogether.

2. “The initiative and referendum powers reserved to the people” include the single-subject protection that applies to the Commission’s proposed ballot measure.

a. The text of the single-subject protection applies broadly.

The single-subject protection applies to “Every Act,” Art. IV, § 20, and any “proposed law,” Art. IV, § 1(2)(d). Further, Art. IV, § 1(5) says “[t]he initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to *all* local, special and *municipal legislation of every character* in or for their municipality or district” (emphasis added).⁶ The broad language establishing the sweeping scope of the applicability of the single-subject protection leaves no room for the exception asserted by the Commission.

b. The single-subject protection has always applied to both initiative and referendum measures, including referrals.

Courts have applied the single-subject protection in Art. IV, § 20 to both initiatives and referendum, including referrals, since the inception of the initiative and referendum powers. *State ex rel. Gibson v. Richardson*, 48 Or. 309, 318–19, 85 P. 225,

⁶ Art. XI, § 2 similarly says “The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, *subject to the Constitution* and criminal laws of the State of Oregon.” (emphasis added). This wording limits the state legislature’s ability to interfere with city home rule, but it does not exempt cities from other state constitutional requirements. Nothing in this provision changes application of the single-subject protection to municipal legislation under Art. IV, §§ 1 and 20.

229 (1906) (applying to initiative); *Turnidge v. Thompson*, 89 Or. 637, 651, 175 P. 281, 285–86 (1918) (same); *State ex rel. Umatilla Cnty. v. Hawks*, 110 Or. 497, 502–03, 222 P. 1071, 1073 (1924) (applying to referendum ordered by referral); *State v. Putney*, 110 Or. 634, 646–47, 224 P. 279, 283–84 (1924) (same).

In 1906, the state initiative and referendum rights first “reserved to the people” in 1902 were extended to the “voters of every municipality.” *Long v. City of Portland*, 53 Or. 92, 94–96, 98 P. 149, 150–51 (1908), *aff’d*, 53 Or. 92, 98 P. 1111 (1909) (noting that the “right of the referendum is reserved to the people of a city or town, regardless of any provisions of the city charter. It is superior to the charter.”).

Oregon voters reorganized the sections setting out initiative and referendum powers in 1968, adding a second reiteration of the single-subject protection in Art. IV, § 1(2)(d) consistent with Art. IV, § 20, without reducing any of the prior referendum and initiatives rights. *Harisay v. Clarno*, 367 Or. 116, 124–25, 474 P.3d 378, 382–83 (2020) (citation omitted); *see also Oregon Educ. Ass’n*, 302 Or. at 99–100 (before “1968, this court had ruled that [Art. IV,] section 20 was just as applicable to initiative measures as it was to those adopted by the legislature.”). All this is on top of the City charter’s single-subject protection. Again, well established case law leaves no room to read the application of the single-subject protection narrowly to make room for the exception asserted by the Commission.

**c. The single-subject protection applies to both types of referendum—
referendum by petition and referendum by referral.**

“There are two types of referenda: the citizen referendum and the legislative referendum.” *Am. Energy, Inc. v. City of Sisters*, 250 Or. App. 243, 247–48, 280 P.3d

1 985, 987 (2012). What the Commission and Defendants call a “referral” is really a
2 legislative referendum, also known as a referendum by referral.

3 Art. IV, § 1(3) sets this out clearly. The referendum power includes referendum
4 by petition in subsection (b) and referendum by referral in subsection (c):

5 (3)(a) The people reserve to themselves the referendum power, which is to
6 approve or reject at an election any Act, or part thereof, of the Legislative
7 Assembly that does not become effective earlier than 90 days after the end of the
8 session at which the Act is passed.

9 (b) **A referendum on an Act or part thereof may be ordered by a petition
10 signed by a number of qualified voters** equal to four percent of the total number
11 of votes cast for all candidates for Governor at the election at which a Governor
12 was elected for a term of four years next preceding the filing of the petition. A
13 referendum petition shall be filed not more than 90 days after the end of the
14 session at which the Act is passed.

15 (c) **A referendum on an Act may be ordered by the Legislative Assembly**
16 by law. Notwithstanding section 15b, Article V of this Constitution, bills ordering
17 a referendum and bills on which a referendum is ordered are not subject to veto
18 by the Governor.

19 . . .

20 (bolding added).

21 Notably, both types of referendum can only be held “on an Act,” and any such
22 “Act shall embrace but one subject, and matters properly connected therewith” per Art.
23 IV, § 20. Thus, both types of referendum rights reserved to municipalities under Art. IV,
24 § 1(5) incorporate the single-subject protection.

A referral, or legislative referendum, is subject to the single-subject protection per
Art. IV, § 20, as well as per the application of the single-subject protection to any
“proposed law” under Art. IV, § 1(2)(d). The single-subject protection is directly
extended to city referrals via Art. IV, § 1(5), leaving no room for the exception the
Commission seeks to establish so it can force voters to approve unpalatable proposals if
they want reform.

///

d. Defendants' argument that the single-subject protection only applies to initiatives is wrong.

The single-subject protection in Art. IV, § 1(2)(d) is textually located in the constitution among provisions focused on initiatives in Art. IV, § 1(2):

(2)(a) The people reserve to themselves the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly.

(b) An initiative law may be proposed only by a petition signed by a number of qualified voters equal to six percent of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for a term of four years next preceding the filing of the petition.

(c) An initiative amendment to the Constitution may be proposed only by a petition signed by a number of qualified voters equal to eight percent of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for a term of four years next preceding the filing of the petition.

(d) 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.***

(e) An initiative petition shall be filed not less than four months before the election at which the proposed law or amendment to the Constitution is to be voted upon.

Art. IV, § 1(2) (emphasis added). However, this textual location does not limit the single-subject protection to just initiatives for three key reasons.

i. The single-subject protection in Art. IV, § 20 applies to both initiatives and referendum regardless of how the single-subject protection in Art. IV, § 1(2)(d) applies.

The single-subject protection exists in two places. The single-subject protection in Art. IV, § 20 applies to both initiatives and referendum. *See Anthony v. Veatch*, 189 Or. 462, 501, 220 P.2d 493, 509 (1950) (collecting cases). The language in Art. IV, § 20 does not share similar textual location near initiative provisions like Art. IV, § 1(2)(d). “Although the 1968 amendment made some changes to the number of required signatures and imposed a single subject requirement, it ‘did not purport to alter the nature of the

1 people's power of initiative and referendum.” *Harisay*, 367 Or. at 124–25 (quoting
2 *Stranahan v. Fred Meyer, Inc.*, 331 Or. 38, 60, 11 P.3d 228 (2000)). Therefore, the
3 location of Art. IV, § 1(2)(d)’s single-subject protection near provisions focused on
4 initiatives is irrelevant since Art. IV, § 20 applies the single-subject protection to both
5 initiatives and referendum.

6 **ii. For over a century, Oregon courts have applied the single-subject**
7 **protection to referendum, mostly to referendum ordered by**
8 **referral.**

9 In 1920, when considering a referral of a city charter amendment by a city
10 council, the Oregon Supreme Court found that it was “unnecessary to decide whether the
11 [single-subject protection in Art. IV, § 20] of the Constitution . . . is applicable to such
12 proceeding or not” since the referred “act amending the charter of Seaside, embraced but
13 one subject and matters properly connected therewith.” *Noonan v. City of Seaside*, 97 Or.
14 64, 67–68, 191 P. 651, 652–53 (1920).

15 In 1924, the Oregon Supreme Court evaluated two different referenda—both
16 ordered by legislative referral—for single-subject compliance. *State ex rel. Umatilla*
17 *Cnty.*, 110 Or. at 502–03; *Putney*, 110 Or. at 646–47 (same). In these cases, however, the
18 Court no longer used language reserving the issue like in *Noonan*.

19 In 1933 the Oregon Supreme Court considered a referral of a city ordinance by a
20 city council, which voters had approved, and found that it only contained a single subject
21 instead of dual subjects. *City of Salem v. Oregon-Washington Water Serv. Co.*, 144 Or.
22 93, 111–12, 23 P.2d 539, 545 (1933)

23 In 1950, the Oregon Supreme Court cited several prior cases in noting that the
24 single-subject requirement that applied to initiatives also applied to referenda. *Anthony*,
189 Or. at 501.

1 It is in this context that Oregon voters reorganized the initiative and referendum
2 provisions in 1968, strengthening the single-subject protection by adding it to Art. IV, §
3 1(2)(d). Importantly, the 1968 change “did not purport to alter the nature of the people's
4 power of initiative and referendum.” *Harisay*, 367 Or. at 124–25 (quoting *Stranahan*, 331
5 Or. at 60).

6 If there was any doubt on whether the single-subject protection still applied to
7 referendum after the 1968 amendment, it was soon removed. In 1975, the Oregon Court
8 of Appeals evaluated a state statute enacted through a referendum ordered by petition for
9 compliance with the single-subject protection. *State v. Liles*, 22 Or. App. 132, 133–36,
10 537 P.2d 1182, 1183–84 (1975).⁷

11 In 1990, the Oregon Supreme Court once again recognized that “Courts have
12 jurisdiction and authority to determine whether a proposed initiative or referendum
13 measure is one of the type authorized by Oregon Constitution, Article IV, section 1(5) to
14 be placed on the ballot.” *Foster v. Clark*, 309 Or. 464, 471, 790 P.2d 1, 5 (1990). The
15 Commission seeks to circumvent these well-established principals, in its effort to “log
16 roll” unpalatable provisions with favored reforms in hopes getting voters desperate for
17 reform to swallow the bad with the good.

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22 ⁷ The opinion in *Liles* notes that the case concerned a referendum but does not specify the
23 type of referendum. The applicable voters’ pamphlet for the measure analyzed in the case
24 shows that it is was a referendum ordered by petition. See Oregon Secretary of State,
State of Oregon Voters’ Pamphlet: General Election, pp. 50-54 (Nov. 5, 1974), available
at <https://digital.osl.state.or.us/islandora/object/osl%3A64344/datastream/OBJ/view>
(page 50 notes Measure 13 submitted by referendum petition; compare with page 45
noting that measure 12 referred by legislature).

iii. **The actual wording of the single-subject protection in Art. IV, § 1(2)(d) itself is not limited to initiatives in the city context.**

The single-subject protection in Art. IV, § 1(2)(d) applies to any “proposed law.” As applied to City municipal legislation under Art. IV, § 1(5), this includes initiatives and both types of referendum, which all are “proposed laws.” The textual location of IV, § 1(2)(d) near initiative provisions does not override the meaning of the actual text of the provision itself.

To interpret a constitutional provision, Oregon courts “examine the text, in its historical context and in light of relevant case law, to determine the meaning of the provision at issue most likely understood by those who adopted it, with the ultimate objective of identifying relevant underlying principles that may inform our application of the constitutional text to modern circumstances.” *Harisay*, 367 Or. at 123 (citations omitted). When interpreting “the initiative and referendum power, [courts] consider the meaning understood by the voters when they adopted that power.” *Id.* The 1968 primary voters’ pamphlet serves as the best evidence of what the voters understood when the single-subject provision was reiterated in Art. IV, § 1. It demonstrates no intent whatsoever to override decades of cases and limit the pre-existing single-subject protection to just initiatives. Zero. Zilch.

The voters’ pamphlet is clear that the primary purpose of the amendment was modifying signature and timeline requirements. These two purposes were the only effects discussed in the ballot title and single argument in favor. Oregon Secretary of State, *State of Oregon Voters’ Pamphlet: Democratic Party Primary Nominating Election*, pp. 9, 11 (May 28, 1968), available at <https://digital.osl.state.or.us/islandora/object/osl%3A955229/datastream/OBJ/view>.

1 Neither mentioned anything about the reiterated single-subject protection in Art. IV, §
2 1(2)(d). *Id.* Neither mentioned anything about narrowing the longstanding single-subject
3 protection in Art. IV, § 20. *Id.* Neither even mentioned rearranging provisions. *Id.*

4 The explanatory statement noted the amendment had three main purposes: (1)
5 modifying signature requirements; (2) rearrangement generally; and (3) modifying
6 deadlines. Under the second purpose, it noted:

7 . . . The repeal also would remove archaic and redundant language from existing
8 section 1 a, Article IV, and would *combine the initiative and referendum powers*
9 *reserved to the legal voters of municipalities and districts with the initiative and*
10 *referendum powers reserved to the people of the state.* These repealed sections are
11 purely “clean-up” of the wording and ***in no way do they diminish the power of***
12 ***the people.***

13 *Id.* at 8 (emphasis added).

14 By 1968, there had been decades of court cases applying the single-subject
15 protection for referendum, including referrals and for municipal legislation. Cases after
16 1968 continued this. And, the Oregon Supreme Court has recognized that the 1968
17 amendments “did not purport to alter the nature of the people’s power of initiative and
18 referendum.” *Harisay*, 367 Or. at 124–25 (citation omitted).

19 Defendants effectively argue that, directly contrary to *Harisay*, Oregon voters in
20 1968 voted to *reduce* their own choices by ending the single-subject protection for city
21 referendum. And, that voters did this based entirely on textual organization supposedly
22 inconsistent with the plain text application of Art. IV, § 1(2)(d) to every “proposed law.”
23 And, that voters intended to override decades of caselaw applying Art. IV, § 20 to
24 referendum and municipal legislation. And, that voters did this without mention of such
impacts *anywhere* in the voters’ pamphlet. And, that voters did this despite the voters’

1 pamphlet explicitly stating that “*in no way do [the changes] diminish the power of the*
2 *people.*” Nonsense.

3 iv. *Armatta* does not govern here; that would require reliance on (1)
4 out-of-context quotes (2) from a section of dicta (3) in a partially
5 overturned case (4) that supposedly overturned decades of caselaw
6 (5) without even noting this overruling of prior cases.

6 *Armatta* did not consider the issue in the present case—the application of single-
7 subject protections to referrals for *municipal legislation*. *Armatta v. Kitzhaber*, 327 Or.
8 250, 959 P.2d 49 (1998), *overruled on other grounds by Swett v. Bradbury*, 335 Or. 378,
9 67 P.3d 391 (2003). Nothing in *Armatta* discusses or even mentions the many decades of
10 prior cases recognizing that Art. IV, § 20’s single-subject protection applies to
11 referendum, including referendum by referral and municipal legislation. Nothing in
12 *Armatta* indicates an overruling of such cases. Those prior cases stand and control this
13 case.

14 The Oregon Supreme Court later noted that *Armatta* stood for “three
15 conclusions:” (1) “the word ‘amendment’ refers to a specific or particular change to the
16 constitution;” (2) “the separate-vote requirement for initiated laws and constitutional
17 amendments imposes a more restrictive test than the single-subject requirement set out in
18 Article IV, section 1(2)(d), of the Oregon Constitution;” and (3) “although the separate-
19 vote requirement is more restrictive than the single-subject requirement, it is not
20 inflexible.” *Lincoln Interagency Narcotics Team v. Kitzhaber*, 341 Or. 496, 504–07, 145
21 P.3d 151, 155–57 (2006) (quoting multiple passages from *Armatta*). None of these
22 conclusions decide the present case.

23 Regardless, the dicta discussion in *Armatta* noted that the single-subject
24 protection does not govern legislative referrals of *state constitutional amendments*

1 because “the separate-vote requirement of Article XVII, section 1, imposes a narrower
2 requirement than does the single-subject requirement of Article IV, section 1(2)(d).”
3 *Armatta*, 327 Or. at 276. Thus, to the extent that Defendants or Amicus might
4 misinterpret out-of-context dicta from *Armatta* as somehow removing the single-subject
5 protection from applying to referrals of City charter amendments—which is not one of
6 the conclusions that *Armatta* stands for according to *Lincoln Interagency Narcotics*
7 *Team*—then the even higher separate-vote protection would apply.

8 Several parts of the dicta discussion in *Armatta* reference single-subject
9 requirements in comparison to separate-vote requirements. For example:

10 In order to fully understand the interplay between the separate-vote and
11 single-subject requirements, it is helpful to determine whether the single-subject
12 requirement pertains only to amendments proposed by initiative, or also to
13 amendments proposed by the legislature under Article XVII, section 1. The
14 answer is not clear from the text of Article IV, section 1(2)(d). However, when
15 viewed in context with the first sentence of subsection (2)(d) and the rest
16 of section 1(2) of Article IV, which pertain only to the initiative process, it
17 appears that the single-subject requirement in Article IV, section 1(2)(d) applies
18 only to “law[s] or amendment[s]” proposed by initiative.

19 Article IV, section 20, offers further support for that conclusion. It
20 provides, in part:

21 “Every Act shall embrace but one subject, and matters properly connected
22 therewith, which subject shall be expressed in the title.” (Emphasis
23 added.)

24 Because Article IV, section 20, imposes a single-subject requirement
upon legislative enactments, it is logical that, as to statutory enactments, the
single-subject requirement in Article IV, section 1(2)(d), applies to only laws
enacted by initiative. It follows, as a textual matter, that the single-subject
requirement in Article IV, section 1(2)(d), applies to only constitutional
amendments adopted by initiative, rather than those adopted pursuant to
legislative proposal under Article XVII, section 1.

Armatta, 327 Or. at 270–71 (emphasis and brackets in original). If anything, the
reasoning in this dicta further supports the application of the single-subject protection in
Art. IV, § 20 to the present case, which involves *municipal legislation*.

1 City charter amendments dealing with “laws of general applicability and
2 permanent nature” are “municipal legislation” within the meaning of Art. IV, § 1(5). *Beal*
3 *v. City of Gresham*, 166 Or. App. 528, 536–37, 998 P.2d 237, 241–42 (2000); *see also*
4 *State ex rel Dahlen v. Ervin*, 158 Or App 253, 257 (1999) (proposed county charter
5 amendment changing “framework within which the county makes siting decisions” was
6 legislation). Thus, even under *Armatta*, the single-subject protection applies to the
7 Commission’s proposed ballot measure.

8 Further, any other interpretation would contravene the separate-vote protection’s
9 furtherance of the longtime “policy of this state that all election laws and procedures shall
10 be established and construed to assist the elector in the exercise of the right of franchise.”
11 ORS 247.005. This rule is “pertinent in the construction of these constitutional provisions
12 relating to the ‘referendum powers’ of the people;” specifically:

13 Election laws should be liberally construed to the end that *the people may have*
14 *the opportunity of expressing opinion concerning matters of vital interest to their*
15 *welfare. Expression, not suppression, tends towards good government.* The great
16 constitutional privilege of a citizen to exercise his sovereign right to vote should
not be taken away by narrow or technical construction. If the statute is of doubtful
construction, we think the doubt should be resolved in favor of free expression of
opinion.

17 *Multnomah Cnty. v. Mittleman*, 275 Or. 545, 558, 552 P.2d 242, 248 (1976) (*quoting*
18 *State ex rel. v. Hoss*, 143 Or. 383, 22 P.2d 883 (1933) (emphasis added). Accordingly,
19 *Armatta* does not support the Commission’s effort to create an exception to the single-
20 subject protection so that it may obtain from the voters what the Commission admits they
21 are likely to reject if presented alone.

22 ///

23 ///

24 ///

v. **The City Charter’s single-subject protection applies in addition to the state constitutional single-subject protection.**

For the same reasons as already discussed for why Oregon courts have long applied Art. IV, § 20 to state initiatives and referendum, including referendum by referral, the City charter’s single-subject protection also applies to all City ballot measures for municipal legislation. The City’s own Charter prohibits the Commission’s proposal to limit voter choices with an all-or-nothing ballot measure. Portland Charter 2-118. The Commission’s efforts to circumvent the City Charter’s own single-subject protection should be rejected, and voters allowed to vote for those reforms they value, not those reforms the Commission seeks to force them to accept in an all-or-nothing package.

3. The Auditor, as City Elections Officer, has a duty to protect voters through a pre-election review of proposed ballot measures for compliance with single-subject protections.

a. All elections officers have a constitutional duty to protect voters through a pre-election review of proposed ballot measures for compliance with single-subject protections.

For nearly a century, the Oregon Supreme Court has recognized that Portland’s Auditor has a duty not to place a proposed measure on the ballot if the proposed measure does not comply with the municipal initiative and referendum protections in Art. IV. *Monahan v. Funk*, 137 Or. 580, 583, 588, 3 P.2d 778, 779, 781 (1931) (upholding Portland Auditor’s decision to reject referendum petition for failure to comply with municipal legislation requirement); *Whitbeck v. Funk*, 140 Or. 70, 76, 12 P.2d 1019, 1021 (1932) (“The act of the [Portland] auditor in refusing to receive the petition for referendum was proper”); *Foster*, 309 Or. at 469–71 (proposed City of Portland ballot measure could not appear on ballot due to violating protections in Art. IV, § 1(5)).

There is similar authority for all local election officials. *Bowers v. Betschart*, 313 Or. App. 294, 311-14, 496 P.3d 1034, 1044-46 (2021), *review denied*, 369 Or. 504, 506 P.3d 412 (2022) (local elections officer authority); *Boytano v. Fritz*, 321 Or. 498, 503, 901 P.2d 835, 838 (1995) (city elections officer duty to reject initiatives for procedural constitutional noncompliance); *State ex rel. Allen v. Martin*, 255 Or. 401, 405–06, 465 P.2d 228, 230 (1970) (recognizing prior cases); *Tillamook Peoples' Util. Dist. v. Coates*, 174 Or. 476, 486, 149 P.2d 558, 562 (1944) (county clerk may not place a referendum on the ballot if it does not concern municipal legislation). This Court recognized and applied this authority only a few months ago. *Dixon v. MacLaren*, Multnomah County Circuit Court Case No. 22CV13078, General Judgment (June 10, 2022) and Opinion (May 24, 2022) (Bushong, J.) (upholding Metro’s decision to reject initiative that didn’t comply with Art. IV, § 1(5)).

There is similar authority for the Secretary of State as the state elections officer.⁸ *Oregon Educ. Ass’n v. Roberts*, 301 Or. 228, 235, 721 P.2d 833, 836 (1986) (analogous pre-election duty of Secretary of State to reject constitutionally insufficient proposed ballot measures even absent a statute so providing); *Geddry v. Richardson*, 296 Or. App. 134, 146, 437 P.3d 1163, 1170 (2019) (same); *Harisay*, 367 Or. at 121 (same).

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⁸ For decades, the Secretary of State has performed pre-election procedural constitutional review of proposed ballot measures and rejected those that are procedurally constitutionally insufficient based on constitutional authority rather than explicit statutory authority. *See* OAR 165-014-0028 (noting procedural constitutional compliance review for whether proposed ballot measure “embraces one subject only and matters properly connected therewith” is not a review for “substantive constitutional or legal sufficiency”); OAR 165-014-0005 (adopting State Initiative and Referendum Manual revised 02/2022); Secretary of State, *State Initiative and Referendum*, p. 10 (Rev. 02/2022) (citing sources of authority for procedural constitutional review as “Oregon Constitution, Art. IV, §1, Art. XVII and OAR 165-014-0028”).

b. Portland’s Auditor has an additional duty under the City charter and code to protect voters through a pre-election review of proposed ballot measures for compliance with single-subject protections.

The City’s “City Elections Officer” is the City Auditor or designee. Portland City Code (“PCC”) 2.02.010(A), (C) and 2.02.020(A). The Auditor exercises authority independent of other City officers. Portland Charter (“PC”) 2-503, The Auditor is responsible for City elections as provided by state law and Chapter 3 of the Charter, as well as for other duties assigned by the Council. PC 2-507(a). The council adopts procedures for conducting elections by ordinance in the City code under Chapter 3 of the Charter. PC 3-106.

Under the Charter, initiative and referendum rights “shall be exercised within the City of Portland in the manner provided by the Constitution and general laws of the State, and ordinances of the City of Portland, enacted in pursuance thereof.” PC 3-201. This language continues to mirror what the Charter provided in 1931 when the Oregon Supreme Court found that it incorporated the requirements of Art. IV, § 1 and upheld pre-election review. *Monahan*, 137 Or. at 584 (“Section 19 of the charter of Portland provides that the referendum shall be exercised within the city of Portland in the same manner as provided by the Constitution and general laws of the state and ordinances of the city of Portland enacted in pursuance thereof.”). A referendum occurs when a measure is “approved by the electors of the City when submitted under the referendum.” PC 3-202.

All documents involving proposed ballot measures, including initiatives and referendum, must be filed with the City Elections Officer. PCC 2.02.010(C). The City Elections Officer “may accept for filing and verify elections documents.” PCC

1 2.02.010(B). Because the wording is “may accept,” not “must accept,” the City code
2 anticipates that the City Elections Officer will reject constitutionally defective filings.

3 Most importantly, the City Elections Officer “shall verify the sufficiency of the
4 content and form of [proposed ballot measure] documents.” PCC 2.02.010(D). In
5 contrast, this “review does not include . . . verification that filings are free of substantive
6 legal defects.” *Id.*

7 The Constitutional and City charter single-subject requirements govern the
8 sufficiency of the content and form of a proposed ballot measure, *i.e.*, the ballot
9 measure’s procedural constitutionality, rather than a proposed ballot measure’s
10 substantive constitutionality or substantive legal defects.

11 Similarly, the Secretary of State’s analogous procedural constitutional compliance
12 review for whether a proposed ballot measure “embraces one subject only and matters
13 properly connected therewith” is not a review for “substantive constitutional or legal
14 sufficiency.” OAR 165-014-0028; *see also Geddry*, 296 Or. App. at 146.

15 Although there is a more detailed process in PCC 2.04.055 for pre-election review
16 of City initiatives for constitutional procedural compliance, that code provision does not
17 detract from the general review required by PCC 2.02.010, which also includes
18 referendum and referral. *Cf. Monahan*, 137 Or. at 583, 588 (upholding Portland Auditor’s
19 decision to reject referendum petition for failure to comply with municipal legislation
20 requirement).

21 **c. When a City elections officer fails their duty, this Court must step in and**
22 **defend voter rights under the single-subject protection.**

23 This Court has “jurisdiction and authority to determine whether a proposed
24 initiative or referendum measure is one of the type authorized by Oregon Constitution,

1 Article IV, section 1(5) to be placed on the ballot.” *Foster*, 309 Or. at 471. Further, since
2 Hoan’s voting rights are violated along with all Portland voters, he is a “person adversely
3 affected by any act or failure to act by . . . a city elections officer . . . under any election
4 law, or by any order, rule, directive or instruction made by . . . a city elections officer . . .
5 under any election law.” ORS 246.910(1). Thus, Hoan can bring this action to “appeal
6 therefrom to the circuit court for the county in which the act or failure to act occurred or
7 in which the order, rule, directive or instruction was made,” which is Multnomah County.
8 *Id.* The court should exercise its jurisdiction and authority to protect voters from being
9 log-rolled by the Commission, assuring voters are able to approve those reforms they
10 want, and reject those they do not.

11 **IV. CONCLUSION**

12 For the reasons stated above, the Court should grant summary judgment that
13 Defendants failed to follow their constitutional duty to reject the Commission’s proposed
14 ballot measure for violating the single-subject protection. Hoan urges the Court to notify
15 the City of the Court’s opinion with all possible haste so that the City has sufficient time
16 to refer the Commission’s proposals in multiple single-subject ballot measures. This
17 outcome does the most to protect voter choices, as Oregon’s Constitution requires here.

18 DATED this 27th day of July, 2022.

19 SHERMAN, SHERMAN, JOHNNIE & HOYT, LLP

20 s/ Steve Elzinga

21

Steve Elzinga, OSB No. 123102
22 Of Attorneys for Plaintiff
23
24

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2022, I served or caused to be served a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** on the following at their last-known addresses as shown below:

Maja K. Haium	Margaret Olney
Senior Deputy City Attorney	Bennett Hartman, LLP
1221 SW 4 th Avenue, Room 430	210 SW Morrison Street, Ste. 500
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Of Attorneys for Defendants	Of Attorneys for Proposed Amicus

☐ **BY REGULAR MAIL:** I placed copies of the document(s) in a sealed envelope and caused such envelope to be deposited in the United States Mail at Salem, Oregon, with postage thereon fully prepaid and addressed as listed above.

☐ **BY HAND DELIVERY:** I arranged for the documents to be hand delivered to the address(es) listed above.

☒ **BY ELECTRONIC MAIL:** I served the documents by electronic mail to the electronic mail address(es) listed above.

☐ **BY FACSIMILE:** I served the documents by facsimile to the facsimile number(s) listed above.

BY E-FILING USING THE COURT'S ODYSSEY FILE AND SERVE SYSTEM.

SHERMAN, SHERMAN, JOHNNIE & HOYT, LLP

s/ Steve Elzinga

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