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

WILLIAM B. AITCHISON,
Petitioner,
v.
ROBERT TAYLOR, in his capacity as
City Attorney for the City of Portland,
Respondent.

Lead Case No. 24CV12294
AMICI CURIAE MEMORANDUM OF
LEAGUE OF WOMEN VOTERS OF
PORTLAND AND PORTLAND FORWARD
IN SUPPORT OF PETITIONER HAYNES
Assigned to the Honorable Katherine
von Ter Stegge

LEROY HAYNES, JR., an individual,
Petitioner,
v.
ROBERT TAYLOR, in his official
capacity as City Attorney for the City of
Portland,
Respondent.

Case No. 24CV12434

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Petitioner Haynes is correct that the ballot title of ballot initiative PDX24OL-03 (“Initiative 3”) does not conform with the requirements of ORS 250.035. The City’s version obscures the principal effects of the measure, which are to (1) eliminate the City of Portland Community Police Oversight Board’s (the “Board”) ability to discipline officers and (2) reduce the Board’s scope of its jurisdiction over police misconduct. The City’s version likewise fails to inform voters of the context of Initiative 3.

Amici Curiae League of Women Voters (“the League”) and Portland Forward respectfully submit that the Court should grant the relief that petitioner Haynes seeks and declare

1 that the ballot title for Initiative 3 does not conform with the requirements of ORS 250.270 and
2 certify the ballot title that petitioner Haynes offers.¹

3 **BACKGROUND**

4 Petitioner Haynes has provided a comprehensive overview of Initiative 3 and its context,
5 which Amici incorporate by reference. For ease of the Court’s reference, Amici attach the City
6 Attorney Drafted Ballot Title as **Exhibit 1** and the text of the proposed charter change as
7 **Exhibit 2.**²

8 In short, Initiative 3 proposes a significant overhaul of voter-approved legislation—which
9 has not yet been implemented—regarding the power and resources of the Board to investigate,
10 monitor, and discipline misconduct by Portland Police Officers. Among other significant
11 changes outlined in Petitioner Haynes’s petition and briefing, the measure would eliminate the
12 Board’s ability to discipline Portland Police Officers and reduce the scope of the Board’s
13 jurisdiction to investigate misconduct from a broad range of complaints to only those
14 enumerated. The ballot title, however, does not adequately inform voters of these effects of the
15 measure. Accordingly, the League and Portland Forward support Petitioner Haynes’s petition for
16 the Court’s review of Initiative 3.

17 The League is a nonpartisan political organization whose mission centers on encouraging
18 informed and active participation in government, increasing understanding of major public
19 policy issues, and building citizen participation in the democratic process. The League’s
20 advocacy arm, which is separate from its education fund, also takes advocacy positions on
21 certain issues of public policy.

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24 ¹ For the reasons stated in Petitioner Haynes’s Opening Memorandum, Amici oppose the
proposed ballot title that Petitioner Aitchison proposes.

25 ² These exhibits are from the City’s website, [https://www.portland.gov/elections/2024-
26 november-general-election-petition-and-measure-log/active-petition-pdx24ol-03](https://www.portland.gov/elections/2024-november-general-election-petition-and-measure-log/active-petition-pdx24ol-03) (accessed
April 24, 2024).

1 The League has long been an active participant in the ballot initiative process for
2 statewide, metro, county, and city initiatives. The League’s interest in this case is two-fold.

3 First, the League has an interest in protecting the efficacy of the ballot-initiative system.
4 This coincides with the League’s mission of ensuring that voters are given the tools to make
5 informed policy choices. This requires that ballot titles and summaries clearly explain to voters
6 the context and impact of the initiative.

7 Second, the League’s advocacy arm actively promoted the 2020 charter amendment,
8 Measure 26-217, that established the citizen oversight board that would be substantially limited
9 by the ballot petition at issue here. The League believes that any substantive modifications to
10 Measure 26-217 should be made by voters with a full understanding of the context of any
11 proposed modifications.

12 Portland Forward is an intergenerational organization working on the big ideas for the
13 future of the Portland region. Its efforts over the last eight years have focused on building a
14 participatory and representative local democracy. In addition to advocating for good governance
15 policies and practices, Portland Forward engages in direct voter education, hosting numerous
16 issue forums on timely topics in front of the regional electorate. Portland Forward attempts to
17 direct the city forward through ground-up voter participation in a transparent political process
18 that includes ballot initiatives. Like the League, Portland Forward has a vested interest in
19 protecting the integrity of the ballot-initiative process and wants voters to be fully informed of
20 the true impact of measures they vote for or against. Portland Forward also endorsed Measure
21 26-217.

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1 DISCUSSION

2 I. Ballot titles must comply with ORS 250.035 to inform voters about the effect of
3 ballot measures.

4 Oregon Revised Statute 250.035 provides the requirements for a “fair and sufficient
5 ballot title.” *Ellis v. Roberts*, 300 Or 133, 136, 707 P2d 1226 (1985). There are three parts of a
6 ballot title: the caption, question, and summary.

7 First, ORS 250.035(1)(a) requires a ten-word caption that “reasonably identifies the
8 subject of the measure[.]” To ascertain the subject matter of a measure, the court typically
9 considers the “changes that the proposed measure would enact in the context of existing
10 law * * *.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). “Because the caption
11 is the ‘cornerstone’ of the ballot title, it must identify the subject matter of the proposed measure
12 in terms that will ‘inform potential petition signers and voters of the sweep of the measure.’”
13 *Kendoll v. Rosenblum*, 358 Or 282, 286, 364 P3d 678 (2015) (quoting *Terhune v. Myers*, 342 Or
14 475, 479, 154 P3d 1284 (2007)).

15 Second, ORS 250.035(1)(b) requires “[a] question of not more than 20 words which
16 plainly phrases the chief purpose of the measure so that an affirmative response to the question
17 corresponds to an affirmative vote on the measure[.]” “‘Chief purpose’” means “the most
18 significant aim or end which a measure is designed” to achieve. *Reed v. Roberts*, 304 Or 649,
19 654, 748 P2d 542 (1988).

20 Third, ORS 250.035(1)(c) requires “[a] concise and impartial statement of not more than
21 175 words summarizing the measure and its major effect[.]” “The function of the summary is ‘to
22 provide voters with enough information to understand what will happen if the measure is
23 approved.’” *Nearman v. Rosenblum*, 358 Or 818, 822, 371 P3d 1186 (2016) (quoting *Caruthers*
24 *v. Kroger*, 347 Or 660, 670, 227 P3d 723 (2010)).

25 The requirements in ORS 250.035 are designed to ensure that voters are informed when
26 voting on initiatives. Voters rely heavily on ballot titles when deciding whether to vote for an

1 initiative, and Amici has a vested interest in ensuring that voters can make informed policy
2 choices. For the reasons explained in petitioner Haynes’s materials and provided below, the
3 ballot title for Initiative 3 does not satisfy the requirements in ORS 250.035.³

4 **II. The ballot title does not inform voters that it eliminates the Board’s ability to**
5 **discipline officers.**

6 The measure proposes a significant change in the law, repealing the authority of the
7 Board to discipline officers. The text of the proposed charter change provides that the initiative
8 would remove the Board’s ability under the existing provisions “to impose discipline as
9 determined appropriate by the Board[.]” Exhibit 2 at 1. Instead, the Board would have the ability
10 to “make disciplinary recommendations about certain complaints * * * *.” Exhibit 2 at 1. The
11 ballot title does not sufficiently educate voters on the impact that the measure, if approved,
12 would have on a voter-approved law that has yet to be implemented.

13 First, the caption does not reasonably identify the subject matter under
14 ORS 250.035(1)(a). The phrase “changes authority, membership and budget for community
15 police oversight board” understates the sweep of the measure, which is to eliminate the Board’s
16 authority to discipline officers. Exhibit 1. Thus, the question fails to accurately inform voters as
17 to the effects of the measure.

18 Second, the question’s reference to a “change” in “police oversight board authority to
19 recommend but not impose discipline” likewise does not accurately disclose that it essentially
20 repeals the Board’s discipline authority. Exhibit 1. Nor does it place the measure into context—

21 ³ In its Consolidated Cross-Brief, the City correctly notes that the scope of review of a City ballot
22 measure is different than for a State measure. State measures are reviewed “for substantial
23 compliance with the requirements of ORS 250.035,” while City ballot measures are reviewed to
24 determine whether the ballot title is “insufficient, not concise, or unfair.” *Compare* ORS
25 250.085(5) (state measures) *with* ORS 250.296(1) (city measures). As the City also notes,
26 however, ORS 250.035 applies to City ballot measures, and ORS 250.296(1) requires a court on
review of a city measure to “certify to the city elections officer a title for the measure which
meets the requirements of ORS 250.035.” For these reasons, the Supreme Court’s interpretation
of the requirements of ORS 250.035 in the context of a state measure is directly relevant to a
determination of whether a city measure is “insufficient, not concise, or unfair” under
ORS 250.296(1).

1 namely, that it would repeal an existing charter provision that has not yet been implemented. *See*
2 *Reed*, 304 Or at 655–57 (requiring context).

3 Finally, the summary does not disclose that the measure eliminates the Board’s ability to
4 impose discipline, a major effect of the measure. The City’s proposed ballot title provides a
5 laundry list of items but glosses over repealing the Board’s authority. The first bullet point
6 references the Board’s ability under the current charter to “impose discipline.” Exhibit 1. The
7 summary, however, does not disclose that the measure would repeal this authority, rather, it
8 provides that the “amended board will: [r]ecommend discipline to the Police Chief who makes
9 all discipline decisions, subject only to City Administrator approval.” Exhibit 1. This text is
10 misleading and obscures from the voters the actual effect that the measure would have on the
11 Board’s ability to impose discipline.

12 **III. The ballot title does not inform voters that it reduces the scope of the Board’s**
13 **jurisdiction.**

14 Another major effect of the measure is to reduce the scope of the Board’s jurisdiction
15 under the current charter. The proposed amendment of Section 2-1007 drastically reduces the
16 scope of the Board’s jurisdiction to investigate and discipline police offers. Under the previous
17 version of the charter, the Board has the power “to receive and investigate complaints including
18 the power to subpoena and compel documents, and to issue disciplinary actions up to and
19 including termination for all sworn members and the supervisors thereof within the Portland
20 Police Bureau.” Exhibit 2 at 2–4. The proposed amendment would sharply limit this authority,
21 leaving the Board with the power to investigate only five specified types of complaints. Exhibit 2
22 at 2–4. The ballot title does not disclose these major effects.

23 First, the caption is out of compliance with ORS 250.035(1)(b) by referring to a “change”
24 in the authority of the Board as opposed to the change that the measure would enact—
25 eliminating investigatory authority. Exhibit 1.

1 Second, the question poses to voters whether “Portland should * * * amend investigatory
2 authority[.]” not whether Portland should eliminate existing authority of the Board. Exhibit 1.
3 This is insufficient under Oregon law because it does not inform voters of the chief purpose of
4 the measure, which is to repeal voter-approved (but not yet implemented) law on the Board’s
5 jurisdiction.

6 Finally, the summary does not educate voters as to the drastic changes in board
7 jurisdiction, a major effect. The summary merely references that the amended board will
8 “investigate certain misconduct complaints, eliminate authority to investigate other complaints as
9 they see fit[.]” Exhibit 1. This is insufficient under ORS 20.035(1)(c).

10 **IV. The ballot title lacks context to inform voters about the effect of the measure.**

11 As outlined in Haynes’s materials, the ballot title’s failure to provide voters with
12 sufficient context regarding the current charter misleads voters about the effect of voting “yes”
13 on the measure. This is confirmed by the City Attorney’s brief, which correctly asserts that
14 “[v]oters must understand that [they] just voted in a measure to establish a police oversight board
15 in 2020 *and that the board is not yet in existence.*” Respondent’s Consolidated Cross-Brief at 7
16 (emphasis added). The Amici agree. The problem lies in the fact that the ballot title fails to
17 disclose to voters that the board they voted to create in 2020 has yet to convene. Without this
18 context, as the City Attorney notes in its brief, voters cannot ascertain whether voting for this
19 initiative would be a change in the status quo or whether it would preserve the status quo by
20 preventing the 2020 board from beginning its work. Oregon law prohibits such an untenable
21 situation in which voters are left to guess as to the effect of a “yes” or “no” vote on a ballot
22 measure.

23 The Court should, at a minimum, hold the City Attorney to the position it takes in its
24 brief and require additional language to the ballot title to clarify to voters that the board they
25 approved in 2020 has yet to begin its work.

1 **V. Petitioner Haynes’s drafted ballot title is appropriate and informs voters.**

2 In contrast to the City Attorney’s drafted ballot title, the ballot title that petitioner Haynes
3 provides notifies the voters of the changes in the measure. The caption provides that the measure
4 “Repeals voter-approved police oversight board’s independence, disciplinary authority, budget.”
5 See Petitioner Haynes’s Response to Petition for Review of Ballot Title (Initiative PDX-240L-
6 03) at 18. The question provides that a “yes” vote would “repeal voter-approved police oversight
7 board’s independence, power to discipline officers/supervisors, investigation authority,
8 membership diversity and minimum budget[.]” Petitioner Haynes’s Response at 18. The
9 summary also discloses that, if the measure is approved, it “[r]epeals authority to discipline;
10 replaces with authority to make discipline recommendations” and “[r]epeals authority to
11 investigate all manner of complaints, including power to compel information; replaces with
12 authority to investigate certain types of complaints with some power to seek information[.]”
13 Petitioner Haynes’s Response at 19. These disclosures are appropriate because they educate
14 voters about the subject (repealing disciplinary authority), the chief purpose (to repeal the power
15 of discipline officers and investigation authority), and major effect (repealing the authority to
16 discipline and replacing it with the authority to make discipline recommendations and limiting
17 the authority to investigate). Accordingly, Amici supports Haynes’s proposed ballot title.

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1 **CONCLUSION**

2 For the reasons set forth above, this Court should certify the proposed ballot title that
3 petitioner Haynes provides.

4
5 DATED this 24th day of April, 2024.

6 MILLER NASH LLP

7
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Ballot Title

CAPTION

Amends Charter: Changes authority, membership and budget for community police oversight board.

QUESTION

Should Portland change police oversight board authority to recommend but not impose discipline; amend investigatory authority; revise membership, budget requirements?

SUMMARY

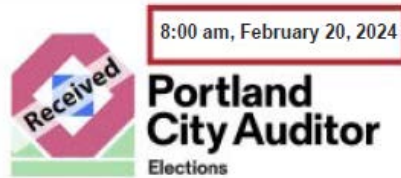
In 2020, voters added new community police oversight board to Charter to:

- Impose discipline, including termination, on police employees
- Investigate certain misconduct complaints, other complaints as they see fit
- Recommend police policies, focused on community concerns
- Include board members from diverse communities, particularly with systemic racism, mental illness, substance abuse experience
- Prohibit board members who are current law enforcement employees and immediate family members, or former law enforcement employees
- Operate with budget proportional to 5% of Police Bureau's operating budget
- Exercise independent judgment in executing assigned duties

If measure approved, amended board will:

- Recommend discipline to Police Chief who makes all discipline decisions, subject only to City Administrator approval
- Investigate certain misconduct complaints, eliminate authority to investigate other complaints as they see fit
- Include board members from diverse communities, eliminate emphasis on certain experiences, remove prohibition on law enforcement employees, family members
- Eliminate 5% budget requirement, Council sets budget
- Eliminate language regarding independent judgment, noninterference
- Issue annual report:
 - Recommending recruiting, retention, training program improvements
 - Summarizing complaints, with anonymous complainants, subjects, witnesses

Other provisions.



AN ACT

BE IT ENACTED BY THE PEOPLE OF THE CITY OF PORTLAND

The City Charter of the City of Portland is amended as follows (additions in underlined bold text; deletions in strikethrough):

1. Amend Chapter 2, Article 10 by amending Section 2-1001 to read as follows:

Section 2-1001. City of Portland Community Police Oversight Board. A Board is hereby authorized and shall be established upon compliance with any legal obligations the City may have under the Public Employees Collective Bargaining Act, other state and federal laws, and upon adoption by City Council of an implementing Ordinance. The mission of the City of Portland Community Police Oversight Board (Board) is to review and recommend improvements to recruiting, retaining, and training efforts by the Portland Police Bureau, and to independently receive, investigate, and make disciplinary recommendations about certain complaints against Portland Police Bureau sworn employees and supervisors thereof promptly, fairly, and impartially, ~~to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies and directives to the Portland Police Bureau and with a primary focus on community concerns.~~ The final name of this Board will be established by City Code.

2. Amend Chapter 2, Article 10 by amending Section 2-1002 to read as follows:

Section 2-1002 Nature of the Board. Board members shall be appointed by approval of Council to a term of years established in City Code. Members may not be removed from the Board prior to the completion of their term except for cause. Successors to an unexpired term shall be appointed by approval of Council for the remainder of the term. The Board shall make provisions to ensure its membership includes representation from diverse communities, ~~including those from diverse communities and with diverse lived experiences, particularly those who have experienced systemic racism and those who have experienced mental illness, addiction, or alcoholism~~ various professional backgrounds, and from different geographic areas within the City. Board members must live or work in the City. Board members shall receive briefing on best practices surrounding recruiting, retaining, and training police officers and investigating complaints against police officers.

3. Delete Chapter 2, Article 10, Section 2-1003:

~~**Section 2-1003 Restrictions on Board Membership.** People currently employed by a law enforcement agency and their immediate family members are not eligible for service on the Board. People who were formerly employed by a law enforcement agency are not eligible for service on the Board.~~

4. Amend Chapter 2, Article 10, Section 2-1004 to read as follows:

Section 2-1004~~3~~ Budget of the Board. Funding for the Board shall be proportional to be no less than 5 percent of the Police Bureau's Annual Operational Budget **set by Council so that the Board will provide sufficient focus on recruiting, retaining, training, and investigating complaints against police officers.**

5. Amend Chapter 2, Article 10, Section 2-1005 to read as follows:

Section 2-1005~~4~~ Professional Staff of the Board. The Board shall hire a Director to manage the professional ~~administrative~~ staff and ~~professional~~ investigators, and to make operational and administrative decisions. The Director is a "Bureau Director" for purposes of Charter section 4-301 and shall be appointed by, and serve at the will and pleasure of, the Board. Professional staff of the Board, other than the Director, shall be appointed by and serve under the direction of the Director as classified employees. **The Director and Professional staff will receive the same briefing as Board members.**

6. Delete Chapter 2, Article 10, Section 2-1006:

Section 2-1006 Independent Authority. ~~The Board shall have authority to exercise independent judgment in performing all legally assigned powers and duties. The Mayor, City Council, Auditor, and City departments, bureaus and other administrative agencies shall not interfere in the exercise of the Board's independent judgment. The physical office of the Board shall be located outside of a Portland Police Bureau facility.~~

7. Amend Chapter 2, Article 10, Section 2-1007 to read as follows:

Section 2-1007~~5~~ Powers of the Board.

(a) **Recruiting and Retaining Police Officers. Annually, the Board shall review and issue a report regarding the effectiveness of, and provide recommendations to further improve, the recruiting and retention programs for sworn police officers of the Police Bureau.**

(b) **Training Police Officers. Annually, the Board shall review and issue a report regarding the effectiveness of, and provide recommendations to further improve, training programs for sworn police officers of the Police Bureau.**

(c) **Investigating and Disciplining Police Officers.**

(1) The Board, **by and through its Director and Professional Staff,** shall have the power to the full extent allowed by law to receive and investigate complaints including the power to subpoena and compel documents, and to issue disciplinary action up to and including termination for **against** all sworn members and the supervisors thereof within **employees of the Portland Police Bureau for:-**

- a. **All deaths in custody and uses of deadly force;**
- b. **Complaints of excessive force;**
- c. **Complaints of discrimination against a protected class;**
- d. **Complaints of violations of constitutional rights; and**
- e. **Complaints of bias-based policing.**

(b) The Board shall have the authority to make policy and directive recommendations to the Portland Police Bureau and City Council. The Portland Police Bureau shall consider and accept or reject all policy or directive recommendations made by the Board. If the Portland Police Bureau rejects a policy or directive recommendation, then at the request of the Board, City Council must consider and vote to accept or reject the policy recommendations received from the Board. Council's decision will be binding on the Portland Police Bureau.

(2) (c) For cases within its jurisdiction, the The Board, **by and through its Director and Professional Staff,** shall have the authority and ability, **to the extent allowed by federal and state law and collective bargaining agreements,** to gather and ~~compel~~ all evidence; ~~to access all police records; to the extent allowed by federal and state law,~~ and the ability to ~~compel~~ **seek** statements from **complainants, subjects, and witnesses, including officers; and subpoena documents and witnesses. Such investigations must respect the legal rights of all complainants, subjects, and witnesses, including officers.**

(3) The Board, by and through its Director and Professional Staff, shall provide to the Chief of Police full, fair, and objective investigation reports and recommended levels of discipline, if any, for complaints within its jurisdiction. The Chief of Police shall have final and sole authority to impose discipline against Portland Police Bureau sworn employees, subject only to the approval of the City Administrator, and consistent with applicable law and collective bargaining agreements.

(4) Annually, the The Board shall make provisions for regular and open meetings, public transparency, and **issue a public** reporting on the Board's activities **surrounding its receipt, investigation, and disciplinary recommendations for complaints against Police Bureau sworn employees within its jurisdiction, while taking all reasonable and necessary steps to anonymize the identities of complainants, subjects, and witnesses.** One of the goals of the Board will be to remove barriers for Board members to fully participate in the work of the Board.

(d) The Board shall have the power to ~~compel~~ sworn members of the Portland Police Bureau and their supervisors to participate in investigations and to ~~completely and truthfully answer all questions.~~ Refusal to truthfully and completely answer all questions may result in discipline up to and including termination.

8. Delete Chapter 2, Article 10, Section 2-1008:

Section 2-1008 Duties of the Board. The board shall have the authority to investigate certain Police actions, including but not limited to;

(a) All deaths in custody and uses of deadly force.

(b) All complaints of force that result in injury, discrimination against a protected class, violations of federal or state constitutional rights.

(c) The Board may investigate other complaints or incidents of misconduct as they see fit or as mandated by City Code.

9. Amend Chapter 2, Article 10, Section 2-1009 to read as follows:

Section 2-1009 Severability. For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing *AMICI CURIAE* MEMORANDUM
3 OF LEAGUE OF WOMEN VOTERS OF PORTLAND AND PORTLAND FORWARD IN
4 SUPPORT OF PETITIONER HAYNES on:

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DATED this 24th day of April, 2024.

- First-class mail, postage prepaid
- Facsimile, pursuant to ORCP 9 F
- Hand-delivery
- Overnight courier, delivery prepaid
- Email, pursuant to ORCP 9 G
- Email copy, as a courtesy only
- Electronic service, by the Court's OJD eFiling system, at the email address as recorded on the date of service in the eFiling system pursuant to ORCP 9 H
- Other: _____

/s/ Sophia C. von Bergen
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4873-4161-1192.5