

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

LEROY HAYNES, JR,

Petitioner,

v.

ROBERT TAYLOR, in his capacity as
City Attorney for the City of Portland,

Respondent.

Consolidated With:

WILLIAM B. AITCHISON,

Petitioner,

v.

ROBERT TAYLOR, in his capacity as
City Attorney for the City of Portland,

Respondent.

Case Nos. 24CV12434 & 24CV12294

OPINION AND ORDER GRANTING IN
PART AND DENYING IN PART THE
HAYNES PETITION, AND DENYING THE
AITCHISON PETITION

I. INTRODUCTION

Oral argument on Petitioners' consolidated challenges to initiative petition PDX-24-OL-03 occurred April 26, 2024. Petitioner LeRoy Haynes, Jr. was present and represented by Alicia LeDuc Montgomery. Petitioner William B. Aitchison, not present, was represented by J. Aaron Landau. Robert Taylor, the Portland City Attorney Respondent, was represented by Maja K. Haium. After considering the oral argument of the parties, the written memoranda and attachments, as well as the *amici curiae* briefing submitted by The League of Women Voters and

Portland Forward in support of Petitioner Haynes, the Court finds that the ballot title approved by the City, while neutral in tone and factually accurate, does not sufficiently convey the measure's major effects.

Haynes' Petition is therefore GRANTED IN PART and DENIED IN PART for the reasons set forth below; Aitchison's petition is DENIED for the reasons set forth below. The ballot title is accordingly revised by this Court.

II. BACKGROUND

On July 30, 2020, the Portland City Council unanimously referred Measure 26-217, a charter amendment to establish a new community-led police accountability and oversight system, to the ballot. The support for the measure was robust: a voters' pamphlet statement from Mayor Ted Wheeler explained that the measure will help "rebuild trust and truly keep ALL Portlanders safe." Other statements in support were signed by members of the Multnomah County Commission, state and federal elected officials, civil rights and community organizations, the Albina Ministerial Alliance Coalition for Justice and Police Reform and other faith leaders, labor unions, and mental health advocates. On November 3, 2020, Portland voters passed Measure 26-217 by an 82 percent margin in favor of independent civilian oversight of police and greater law enforcement accountability to the community they serve. The measure was codified as Chapter 2, Article 10 of the Portland City Charter.

On February 17, 2024, proposed initiative PDX-24-OL-03 was filed by Petitioner Aitchison with the City Attorney's Office; the ballot title at issue in these challenges was prepared by the City Attorney on March 1, 2024. Two cross-petitions were subsequently filed opposing the City's ballot title as not accurately describing the proposed changes to the 2020 charter amendments set forth in PDX-24-OL-03. Petitioner Aitchison is legal counsel for the

Portland Police Association. Petitioner Haynes is the lead pastor at the Allen Temple Christian Methodist Episcopal Church in Portland and chair of the Albina Ministerial Alliance Coalition for Justice and Police Reform.

III. APPLICABLE LAW

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

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

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

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

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IV. SUMMARY OF PETITIONERS' AND RESPONDENT'S ARGUMENTS

Other than both generally supporting the citizen initiative process Oregon, petitioners have diametrically opposed viewpoints—so much so that at times it sounds like they are not even discussing the same measure. Haynes, as a supporter of the 2020 police oversight changes to the City Charter, is opposed to the substance of PDX-24-OL-03. Haynes characterizes it as a “gutting” of popular social justice-driven reforms to police accountability, with the express intention to transform the Board from a “fully independent and empowered community police oversight bureau to an advisory committee.” Aitchison, as counsel for the Portland Police Association and proponent of PDX-24-OL-03, is supportive of the substance of the measure. Aitchison describes PDX-24-OL-03 as proposing “to improve the Police Oversight Board by focusing its efforts where there is particular need: on improvements to the recruitment, training, and retention of Portland’s police officers.” For very different reasons, both Petitioners maintain that the City’s ballot title for PDX-24-OL-03 is not concise, is unfair, and does not conform to the requirements of ORS 250.035. The City, in contrast, takes the position that its ballot title is both neutral, accurate, and complies with the law. Haynes agrees that the City’s language is neutral but argues that it fails to convey the significance of the measure’s major effects. Aitchison also argues that the City fails to capture the major effects, but for the reason that the City’s ballot title is excessively devoted to describing the 2020 Charter provision to the detriment of describing the current measure.

V. BALLOT TITLE APPROVED BY THE CITY

The ballot title approved by the City is as follows:

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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.

VI. FINDINGS

This Court finds that while the City's ballot title is factual, neutral, and

drafted in good faith, it does not sufficiently capture the major effects of the measure and therefore does not comply with ORS 250.035. The Court is persuaded by the arguments set forth by Haynes, the League of Women Voters, and Portland Forward, and agrees that the City's ballot title does not effectively convey the complete repeal of the Board's independence as well as the elimination of its watershed authority to impose discipline, up to and including termination. The Court is not persuaded by Aitchison's arguments that the City has failed by describing the prior measure in detail, or by devoting space in the summary to describing what the current measure would eliminate in the prior measure. The Court is satisfied that the City has described the new authorities and roles proposed for the Board accurately and neutrally.

The Court does not find the ballot title revisions proposed either by Haynes or Aitchison are acceptable substitutes for the City's title. The Court therefore makes the following revisions to the City's ballot title to better convey the major effects of the measure.

VII. BALLOT TITLE AS REVISED BY THE COURT TO COMPLY WITH ORS 250.035

CAPTION

Amends Charter: Reduces authority, changes membership, budget for community police oversight board.

QUESTION

Should Portland eliminate community oversight board authority to impose discipline for police misconduct; 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

- Include board members from diverse communities, particularly with systemic racism, mental illness, substance abuse experience
- Prohibit law enforcement employees and immediate family members as members
- 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:

- No longer have independent authority to impose discipline, including termination, for all sworn officers and supervisors
- Have authority to recommend discipline to Police Chief
- Investigate certain misconduct complaints, eliminating authority to investigate other complaints as they see fit
- Include law enforcement members on board and prioritize professional and geographic diversity; eliminate priority for members with mental illness, substance abuse, alcoholism, systemic racism experience
- Eliminate 5% budget requirement
- Eliminate language regarding independent judgment, noninterference
- Issue annual report:
 - Recommending recruiting, retention, training program improvements
 - Summarizing complaints, with anonymous complainants, subjects, witnesses

Other provisions.

VIII. CONCLUSION

For the reasons set forth above, Haynes' Petition is GRANTED IN PART; it is DENIED IN PART to the extent that changes proposed by Haynes are not incorporated into the Court's ballot title revisions. Aitchison's petition is DENIED. The Court's revised ballot title may now be circulated for signature gathering.

Petitioner Haynes is invited to submit a judgment consistent with this order.

It is SO ORDERED this 23rd day of May 2024.



 Katharine von Ter Stegge
 Circuit Court Judge