

July 8, 2022

**Via Email:**

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Mary Hull Caballero

City Auditor

**Via Email:**

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Louise Hansen

City Elections Officer

Re: Charter Commission Measure Unconstitutionally Combines Multiple Subjects

Dear Auditor Hull Caballero and Elections Officer Hansen,

On December 16, 2020, you rejected Prospective Initiative Petition ID 2020-PDX01 (“2020-PDX01”) for violating the constitutional requirement that a proposed law must not include multiple subjects.<sup>1</sup> You reasoned that “changing the operations of City Council is not logically connected to changing the voting system for all elected City officials.” *Id.*

Now, the Charter Commission proposes a measure nearly identical to 2020-PDX01, except that the new proposal includes *even more provisions that are not logically connected.*

To quote your letter about 2020-PDX01, as applicable to the Charter Commission proposal, some of the key elements of both proposals are as follows:

- 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.

*Id.* (direct quote from your decision; single difference from 2020 measure in ~~strike through~~).

The Charter Commission has now added even more key elements, which are not logically connected to all the key elements above or to each other:

- Require multimember council districts.
- Require ranked-choice voting for some positions but single transferrable voting for others.
- Require Mayor and City Manager to advance specified values like anti-racism and equity.
- Require Mayor and City Manager to advance efforts to mitigate the human-made climate crisis and prioritize environmental justice initiatives.

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<sup>1</sup> Louise Hansen, City Elections Officer, *Constitutionality Review Determination, City of Portland Prospective Initiative Petition 2020-PDX01: “Portland Council Reformation” – Notice of Insufficiency* – (December 16, 2020), <https://www.portland.gov/sites/default/files/2020/2020-pdx01-constitutionality-determination.pdf> (applying two-part constitutional framework: “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?”).

Under your own analysis, the Charter Commission proposal violates the constitutional single-subject requirement. A city elections officer has authority—indeed a constitutional duty—to conduct pre-election review of proposed measures to ensure they comply with constitutional procedural requirements and to reject those that do not comply.<sup>2</sup>

Put simply, the constitutional requirements for both state and local “initiative and referendum powers” are the same per Article IV, section 5. Those powers include any measure referred by a governing body per Article IV, section 3(c). Most importantly, the single-subject requirement applies to any “proposed law” per Article IV, section 1 (2)(d). *See also* Article IV, Section 20. Thus, the Charter Commission proposal violates the single-subject requirement.

This is the city’s long-time approach. In a legal memo to the Charter Commission in March, the Portland City Attorney noted that Portland has historically ensured that ballot measures referred to voters by the Portland City Council or by the Portland Charter Commission meet the single-subject requirement.<sup>3</sup>

Your duty is especially important since numerous Portland voters, such as members of my client the Portland Business Alliance, support many reforms proposed by the Charter Commission but not others.<sup>4</sup> By rejecting the current proposal promptly, you leave time for the Charter Commission to re-submit the same reforms to the voters in multiple measures that ensure voter choice and follow single-subject requirements.

Allowing voters to express nuanced preferences is part of the very purpose of the single-subject requirement, which stops the abuse of inserting into one measure “two or more unrelated provisions so that those favoring one provision could be compelled, in order to secure its adoption, to combine with those favoring another provision, and by this process of log-rolling the adoption of both provisions could be accomplished.”<sup>5</sup>

Please advise as to your decision by July 13. We urge you to protect voting rights for all Portland voters by ensuring they decide what parts of the Charter Commission reforms to support or reject instead of being forced to accept all or nothing.

Yours truly,

SHERMAN, SHERMAN, JOHNNIE & HOYT, LLP

s/ Steve Elzinga

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<sup>2</sup> *See also* *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); *Foster v. Clark*, 309 Or. 464, 469–71, 790 P.2d 1, 4–5 (1990) (same); *Geddry v. Richardson*, 296 Or. App. 134, 146, 437 P.3d 1163, 1170 (2019) (discussing analogous pre-election duty of Secretary of State).

<sup>3</sup> City Attorney, *Memorandum to Charter Commission re: Oregon Constitutional Requirements for Ballot Measures* (March 2, 2022), <https://www.portland.gov/sites/default/files/2022/memo-to-charter-commission-re-constitutional-requirements-for-ballot-measures.pdf>

<sup>4</sup> *See also* 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/>

<sup>5</sup> *State v. Mercer*, 269 Or. App. 135, 138, 344 P.3d 109, 111–12 (2015) (citations omitted).