

1 City services is an administrative, not legislative matter. The Initiative is thus unconstitutional
2 because it impermissibly seeks to engage voters on non-legislative matters on multiple subjects
3 within a single City initiative.

4 2.

5 Respecting the Oregon Constitution’s mandate that City initiatives address only a single
6 subject is crucial to allowing voters to engage in direct democracy in a manner that respects
7 their policy decisions on a variety of subject matters independent of other subject matters. In
8 this regard, the single subject rule results in public policy that more accurately reflects the will
9 of the majority of voters on a particular subject.

10 3.

11 In recent years, the public conscious has been awakening to imagine a world with less
12 police involvement in so many facets of public life, including emergency healthcare responses,
13 addiction care, housing, and education. Even police understand that they are not the right
14 professional to respond to every emergency. The Portland Police Association’s President, Sgt.
15 Aaron Schmautz, recently testified to the Oregon legislature stating, “Addiction and mental
16 health concerns are a health issue. We cannot and should not attempt to arrest our way out of
17 these issues.” The State’s own research shows that when two such disparate issues as addiction
18 care and law enforcement are treated with a policy single solution, it often results in disparate
19 impacts on Black communities in Oregon.¹

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21 ¹ See, e.g., Racial & Ethnic Impact Statement – HB 4002-24, OREGON CRIMINAL JUSTICE COMMISSION (Feb. 26,
22 2024), <https://olis.oregonlegislature.gov/liz/2024R1/Downloads/CommitteeMeetingDocument/282856> (“The
Commission predicts that a racial disparity for Black/African American individuals will be present from
legislation” regarding the recriminalization of possession of small amounts of controlled substances by
individuals in active addiction.).

4.

The public has a right to consider and vote on public health investments independent of decisions regarding police investments. Indeed, the City budgets and sets policies for the two services separately. While good intention may drive a desire to promote police involvement in public health issues as a matter of policy, separate consideration of these two subjects at the ballot box ensures the public maintains a freedom of choice in determining how each system should operate. Failing to apply the single subject rule here presents Portland voters with an artificially constrained choice on matters of both administrative and legislative: vote for increased police hiring *and* building and running new detoxification and treatment centers *and* increase social worker staffing *and* implement tax spending changes, or get none of those things. This is not a fair choice.

NATURE OF THE ACTION

5.

This Petition seeks review of the constitutionality determination prepared by Respondent Louise Hansen in their official capacity as City Elections Officer for the City of Portland (“City”) for prospective City Initiative PDX 24OL-02, a proposed initiative petition which would amend the City Charter by increasing the number of Portland Police Bureau sworn patrol officers, adding City-run detoxification and treatment centers, increasing social workers working with police, fire, and medical personnel, changing the uses of cannabis/marijuana tax and licensing revenues, and requiring new annual reporting by the City.

6.

This Petition is brought pursuant to ORS 250.270 and Section 2.04.055 of the Portland City Code.

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PARTIES

7.

Petitioner Joy Alise Davis (“Petitioner”) is an Oregon elector who is registered to vote in Multnomah County and who resides within the city limits of the City of Portland. Petitioner Davis is also the Executive Director for Imagine Black, an organization supporting the Black community to imagine alternatives Black Oregonians deserve and build political participation and leadership to achieve those alternatives. Petitioner is dissatisfied with the determination that Initiative PDX 24OL-02 meets the requirements of section 1 (2)(d) and (5), Article IV of the Oregon Constitution and seeks a review for constitutionality.

8.

Respondent Louise Hansen (“Respondent Hansen”) is the City Elections Officer in the Auditor’s Office for the City of Portland. Respondent Hansen prepared the constitutionality determination for Initiative PDX 24OL-02.

9.

Respondent Simone Rede (“Respondent Rede”) is the Auditor for the City of Portland. Under Section 2.04.055 of the Portland City Code the City Auditor participates in the constitutionality review of prospective initiative petitions filed with the City.

FACTS

A. Proposed Initiatives to Increase Portland Police in 2024

10.

In 2024, three proposed ballot measures were filed with the City of Portland which collectively seek to increase resources and funding for the Portland Police Bureau and expand the degree of influence police exert over various City services. These proposed measures were identified by the City as proposed initiative petitions PDX24OL-01, PDX24OL-02 (the

1 Initiative at issue here), and PDX24OL-03. All three proposed initiatives were filed by Chief
2 Petitioner William B. Aitchison.

3 11.

4 Upon information and belief, all three proposed initiatives were developed and are
5 being supported by William B. Aitchison and Anil Karia, who are attorneys for the Portland
6 Police Association.

7 **B. The First Proposed Initiative PDX24OL-01 Was Deemed Unconstitutional and
8 Withdrawn**

9 12.

10 On February 7, 2024, pursuant to ORS 250.265 and Section 2.04.050 of the Portland
11 City Code, Petitioner Aitchison filed a prospective initiative petition with the City of Portland
12 entitled “Strengthening Recruitment, Retention, Training, and Accountability for the Portland
13 Police Bureau.” The City assigned the prospective initiative petition number “PDX24OL-01.”

14 13.

15 On February 14, 2024, pursuant to ORS 250.270 and Section 2.04.055 of the Portland
16 City Code, Respondent Hansen completed the constitutional review of prospective initiative
17 petition PDX24OL-01 and determined it “does not meet the requirements of Article IV.”
18 Respondent Hansen concluded that “the petition fails certain PDX24OL-01’s proposed
19 amendments are administrative and not legislative in nature” and “[s]pecifically, we find new
20 Section 2-1005(a) regarding ‘Recruiting and Retaining Police Officers’ to be administrative, as
21 well as new Section 2-1005(b) regarding ‘Training Police Officers.’” A true and correct copy
22 of the PDX24OL-01 constitutional determination, as published on the website maintained by
the City, is attached as Exhibit 1 to this Petition and is incorporated by reference herein.

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14.

1
2 Petitioner Aitchison withdrew Initiative PDX24OL-01 on February 22, 2024 after it was
3 ruled unconstitutional.

4 **C. The Second Proposed Initiative PDX 24OL-02 Was Deemed Preliminarily**
5 **Constitutional but “Veer[s] Towards Administrative”**

6 15.

7 On February 7, 2024, pursuant to ORS 250.265 and Section 2.04.050 of the Portland
8 City Code, Petitioner Aitchison filed the second, related Initiative PDX24OL-02 at issue with
9 the City of Portland entitled “Increases number of Portland Police patrol officers, enhances
10 nonviolent response.” A true and correct copy of Initiative PDX24OL-02, as published on the
11 website maintained by the City, is attached as Exhibit 2 to this Petition and is incorporated by
12 reference herein.

13 16.

14 On February 14, 2024, pursuant to ORS 250.270(1) and Section 2.04.055 of the
15 Portland City Code, Respondent Hansen completed the constitutional review of prospective
16 Initiative PDX24OL-02 and determined it preliminarily met the requirements of Article IV of
17 the Oregon Constitution. A true and correct copy of the constitutional determination, as
18 published on the website maintained by the City, is attached as Exhibit 3 to this Petition and is
19 incorporated by reference herein.

20 17.

21 However, Respondent Hansen noted the “related prospective petition ... PDX24OL-01”
22 “did not meet the requirements of Article IV of the Oregon Constitution because certain
sections of the prospective petition were administrative, and not legislative, in nature.”

Respondent Hansen cautioned:

PAGE 6 – PETITION FOR REVIEW OF CONSTITUTIONALITY DETERMINATION (“Initiative PDX24OL-02”)

1 We find this petition to be a much closer call. In particular, Section 2-1101
2 (governing the number of patrol officers, and requiring what could be interpreted
3 as a one-time increase in their numbers), and Section 2-1105 (requiring Council to
4 issue an annual report, which is the type of activity that has historically been
5 assigned to executive or administrative functions in the City), veer towards
6 administrative, rather than legislative.

7 Respondent Hansen further noted that “this determination is a limited review of constitutional
8 conformity and does not necessarily identify all potential constitutional difficulties that may
9 preclude the proposed measure from proceeding.” Exhibit 3.

10 18.

11 Respondent Hansen forwarded Initiative PDX24OL-02 to the City Attorney for
12 preparation of the ballot title.

13 19.

14 On February 23, 2024, pursuant to ORS 250.275 and Section 2.04.060 of the Portland
15 City Code, the City Attorney prepared the proposed ballot title for Initiative PDX24OL-02 and
16 transmitted it to Respondent Rede, the City Auditor, who inscribed a date of receipt on the
17 ballot title. A true and correct copy of the ballot title indicating the notice and date of receipt,
18 as published on the website maintained by the City, is attached as Exhibit 4 to this Petition and
19 is incorporated by reference herein.

20 20.

21 Because this Petition is filed no later than seven business days after the ballot title for
22 Initiative PDX24OL-02 was filed with the City Auditor, it is timely pursuant to ORS
250.270(4) and Section 2.04.055 of the Portland City Code.

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CONSTITUTIONALITY REVIEW

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21.

The constitutionality determination prepared by Respondent Hansen for Initiative PDX24OL-02 does not comply with the requirements of ORS 250.270 because Initiative PDX24OL-02 does not meet the requirements of Article IV, sections 1 (2)(d) and (5) of the Oregon Constitution.

22.

Article IV, section 1(2)(d) of the Oregon Constitution requires that an “initiative petition shall include the full text of the proposed law . . . shall embrace one subject only and matters properly connected therewith.”

23.

Article IV, section 1(5) of the Oregon Constitution further provides that the initiative powers reserved to the people in subsection (2) “are further reserved to the qualified voters of each municipality . . . as to all local, special and municipal legislation of every character in or for their municipality or district.”

24.

Oregon Courts construe Article IV of the Oregon Constitution’s “limitation of the initiative and referendum powers to ‘municipal legislation’ . . . as creating a dichotomy between ‘administrative’ matters, as to which the initiative and referendum were unavailable, and ‘legislative’ matters, as to which such powers are available.” *Foster v. Clark*, 309 Or 464, 472 (1990) (citing cases).

25.

Initiative PDX24OL-02 does not meet the constitutional requirements under section 1(2)(d), Article IV of the Oregon Constitution because the proposed amendments contained in PAGE 8 – PETITION FOR REVIEW OF CONSTITUTIONALITY DETERMINATION (“Initiative PDX24OL-02”)

1 Initiative PDX24OL-02 violate the single subject rule by concerning multiple wide-ranging
2 topics with no unifying principle or logical connection between the provisions of the Petition.

3 26.

4 Initiative PDX24OL-02 does not meet the constitutional requirements under Article IV,
5 Sections 1 (2)(d) and (5) because the proposed amendments contained in Initiative PDX24OL-
6 02 concern matters which are administrative, and not legislative, in nature. In particular,
7 “Section 2-1101. Police Services” would require the City Council to engage in a one-time
8 increase and maintenance of undetermined number of sworn police officers in patrol services.
9 As the City already noted, Exhibit 1, the recruiting and retention of Portland Police Bureau
10 officers is the subject of collective bargaining under the Public Employee Collective
11 Bargaining Act (“PECBA”), and the City’s bargaining and resulting collective bargaining
12 agreements are administrative actions carried out under the overall PECBA statutory
13 framework, and the City’s administrative purview pursuant to Charter Section 2-603
14 “Subordinate Offices and Employments,” and thus cannot be dictated by initiative petition.
15 Requiring a one-time action of increasing the number of officers in an unspecified amount
16 concerns an administrative decision implementing a general, existing policy of maintaining a
17 police department and does not make a law of general applicability.

18 27.

19 For the reasons stated in Paragraph 18 above, Initiative PDX24OL-02 does not comply
20 with Article IV, section 1 (2)(d) and (5) because its provisions concern administrative rather
21 than legislative matters.

22 28.

For the reasons stated in Paragraphs 25-27 above, the constitutionality determination for

1 Initiative PDX24OL-02 prepared by Respondent Hansen should be overturned as provided in
2 ORS 250.070(4).

3 29.

4 As required by ORS 250.296(2), no later than 5:00 p.m. on Wednesday, March 6, 2024,
5 Petitioner will give written notice to the City Elections Officer that this Petition has been filed.

6 WHEREFORE, Petitioner prays for a judgment as follows:

- 7 1. Declaring Initiative PDX 2424OL-02 does not comply with Sections 1 (2)(d)
8 and (5), Article IV of the Oregon Constitution and does not conform with the
9 requirements of ORS 250.270;
- 10 2. Awarding Petitioner their costs and disbursements; and
- 11 3. Awarding any other relief the Court considers just and equitable.

12 DATED: March 5, 2024.

13 AMERICAN CIVIL LIBERTIES UNION
14 FOUNDATION OF OREGON, INC.

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