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TIM SCOTT
DIRECTOR OF ELECTIONS

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

JAIME SOLTERO, an individual,

Petitioner,

v.

JENNY M. MADKOUR, Multnomah
County Attorney,

Respondent.

Case No. 17CV16775

PETITION CHALLENGING BALLOT
TITLE AND EXPLANATORY
STATEMENT OF MULTNOMAH
COUNTY INITIATIVE-NO. 4

(ORS 250.195; Injunctive Relief Requested)

Filing fee authority: ORS 21.135; \$252.00

CLAIM NOT SUBJECT TO MANDATORY
ARBITRATION

I. INTRODUCTION

1.

Multnomah County Initiative-No. 4 ("I-4") seeks to impose a new tax on sugar-sweetened beverages and concentrates in the amount of one and a half cents (\$0.015) per fluid ounce. The tax would be levied on sugar-sweetened beverage products in Multnomah County (the "County"). After deducting the costs of administering and collecting the new tax, revenue from the tax would be segregated to pay for the administration and operation of a new special fund which would, in turn, be used to help pay for health and education initiatives primarily serving children in (1) low-income communities and/or families and (2) communities of color in the County.

2.

Petitioner Jaime Soltero ("Petitioner") files this petition to appeal the I-4 Ballot Title and Explanatory Statement as formulated by the County. Petitioner respectfully submits that the County's proposed language is misleading and fails, in many respects, to accurately inform voters of the effects of I-4. Petitioner respectfully maintains that the language he proposes below would provide appropriate notice to voters of I-4's subject matter, contents, and effects in a concise, impartial, and understandable way as required by Oregon law. See ORS 250.035(1); ORS 251.345.

II. PARTIES

3.

Jaime Soltero is a resident of Portland, Oregon, in Multnomah County. He is an elector pursuant to ORS 250.005 because he is qualified to vote under section 2, Article II of the Oregon Constitution, and he is qualified to vote in Multnomah County.

4.

Jenny M. Madkour ("County Attorney") is the Multnomah County Attorney. Pursuant to ORS 250.175(3) and MCC § 5.101(A)(1), the County Attorney is required to prepare the ballot title for County initiatives.¹ On information and belief, as required by MCC § 5.101(A)(1), the County Attorney prepared the ballot title and explanatory statement for I-4. She is the Respondent in this matter pursuant to ORS 250.195(1).

III. JURISDICTION AND VENUE

5.

This Court has jurisdiction over this action because this Petition was filed within the statutory seven-day time period from the time the ballot title was first filed with the Multnomah

¹ Oregon election law provides that, for initiatives, "the *district attorney* shall prepare [the] ballot title[.]" ORS 250.175(3) (emphasis added). The Multnomah County Code, however, provides that "[t]he *county attorney* has five business days after receiving the prospective petition to prepare a ballot title for the proposed measure and an explanatory statement for the voter's pamphlet." MCC § 5.101(A)(1) (emphasis added).

1 County Director of Elections and notice of receipt was published. *See* ORS 250.195(1);
2 MCC § 5.101(B), (C). The County provided Notice of the Ballot Title and Explanatory
3 Statement for I-4 on or about April 13, 2017. Venue for this action lies in Multnomah County
4 pursuant to ORS 250.195(1).

5 **IV. DESCRIPTION OF INITIATIVE MEASURE**

6 6.

7 I-4 would impose a new tax on “sugar-sweetened beverage products” in the amount of
8 one and a half cents (\$0.015) per fluid ounce. Exhibit 1 § 4(1). I-4 creates a regime where
9 sugar-sweetened products are disfavored and singled out for taxation, thus effectively providing
10 preferential tax treatment for other beverages. It then sets up a rather dizzying array of
11 definitional cross-references for what appears to be the sole purpose of introducing various
12 campaign slogans into the text of the measure itself. *See, e.g., id.* § 3(23) (“‘Sugary drink’
13 means ‘sugar-sweetened beverage product.’”); *id.* § 3(22) (“‘Sugar-sweetened beverage product’
14 means a bottled sugar-sweetened beverage or a concentrate for the preparation of a sugar-
15 sweetened beverage.”).

16 7.

17 Campaign slogans aside, the new tax appears to apply to two types of products:
18 (1) “Sugar-sweetened beverages,” *id.* § 3(21), and (2) “Concentrates” used to make them,
19 *id.* § 2(3). The term “concentrate” applies to a broad spectrum of products. It includes any
20 product containing one or more caloric sweeteners that is intended to be used in making, mixing,
21 or compounding a sugar-sweetened beverage by combining the concentrate with one or more
22 other ingredients, including (but not limited to) water, ice, gases, coffee, tea, fruit juice and
23 vegetable juice. *Id.* § 3(6).

24 8.

25 The phrase “sugar-sweetened beverage,” on the other hand, applies to a narrower
26 category of products. It is defined to encompass some drinks that contain sugar, while expressly

1 excluding others. *Id.* § 3(21). Specifically, “sugar-sweetened beverage” includes “any
2 nonalcoholic beverage intended for human consumption that has one or more added caloric
3 sweeteners and contains more than six (6) grams of sugar per eight (8) ounce serving.” *Id.* On
4 its face, the definition excludes any beverages that contain alcohol. *Id.* The measure then goes
5 on to explicitly exclude an array of other drinks that otherwise would or might fall within this
6 definition, including milk (sweetened or otherwise), *id.* §§ 3(14), (21)(b)(1); “milk alternatives”
7 regardless of sugar content, *id.* §§ 3(15), (21)(b)(2); “natural” fruit and/or vegetable juice, *id.*
8 § 3(21)(b)(4); infant/baby formula, regardless of sugar content, *id.* § 3(21)(b)(5); beverages for
9 “medical use” as defined, *id.* §§ 3(2), (21)(b)(6); and products “designed as supplemental, meal
10 replacement, or sole-source nutrition,” again regardless of sugar content, *id.* § 3(21)(b)(7).

11 9.

12 The new tax would be paid by the first non-exempt distributor upon distribution of sugar-
13 sweetened beverage products in the County. *Id.* § 4(4). After deducting the costs of
14 administering and collecting the tax, leftover revenue would be segregated into a new special
15 fund. *Id.* § 8(1). Up to five percent of money placed in the fund could be used to pay
16 administrative costs associated with operating the fund. *Id.* § 8(3). Any remaining money would
17 then be used to fund specified initiatives primarily serving children in low-income communities²
18 and communities of color, *id.* § 8(2), with one half of available funds used to support early
19 childhood education and literacy and the other half used to support children’s health. *Id.* § 8(3).

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24 ² It is unclear whether the new tax would fund initiatives for children from “low-income communities” or children
25 from “low-income families,” which, despite potential overlap, are obviously two different things. *Compare id.*
26 § 2(2) (“The money in this fund will be used to fund programs primarily serving children in low-income
communities . . .”) with *id.* § 8(2) (“Money in the [fund] shall be dedicated to the funding of initiatives primarily
serving children in low-income families . . .”).

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V. THE COUNTY'S BALLOT TITLE

10.

The Ballot Title formulated by the County for I-4 reads:

CAPTION: Taxes distribution of sugar sweetened beverages, funds children's health, education.

QUESTION: Should County impose \$0.015/ ounce excise tax on distribution of sugar sweetened beverage products, revenue used for children's health, education?

SUMMARY: Enacts County Ordinance imposing an excise tax of one and a half cent (\$0.015) per fluid ounce on businesses that distribute in Multnomah County Sugar-sweetened beverage products (SSBP), and SSBP concentrates. Distribution is defined as supply, delivery to, or acquisition by retailer, or transport into County by retailer for retail sale. Excludes retail sales to consumers; applies only to first non-exempt Distribution within County. Defines SSBP as nonalcoholic beverages containing added caloric sweeteners and more than 6 grams sugar per 8 ounce serving. Exempts milk, milk alternatives, natural fruit / vegetable juices, "diet" drinks, products intended as supplemental meals or meal replacements, medications. County Tax Administrator to collect, enforce, and administer tax. Revenue dedicated to "Children's Health and Education Fund" used to fund programs primarily serving children in low income communities and communities of color that promote physical fitness, health, nutrition, early childhood education initiatives. Creates Children's Health Fund Advisory Committee to advise Board of County Commissioners on effectiveness of tax on consumption of SSBP's and make recommendations on use of funds.

Exhibit 2.

VI. STANDARDS FOR BALLOT TITLE AND EXPLANATORY STATEMENT

11.

The County Attorney is tasked with formulating the ballot title for County ballot measures. See ORS 250.175(3); MCC § 5.101(A)(1). The ballot title for a county initiative consists of (1) a **caption** of not more than 10 words that reasonably identifies the subject of the measure; (2) a **question** of not more than 20 words that plainly phrases the chief purpose of the

1 measure so that an affirmative response to the question corresponds to an affirmative vote on the
2 measure; and (3) a concise and impartial statement (“summary”) of not more than 175 words
3 summarizing the measure and its major effect. ORS 250.035(1).

4 12.

5 While not part of the ballot title, the explanatory statement is an impartial, simple, and
6 understandable statement explaining the proposed measure and its effect that is printed in the
7 county voters pamphlet. ORS 251.345. The explanatory statement may not exceed 500 words.
8 MCC § 5.101(A)(2).

9 13.

10 Any elector dissatisfied with the ballot title formulated by the County may petition the
11 circuit court seeking a different title by stating the reasons the proposed title is “insufficient, not
12 concise or unfair.” ORS 250.195(1). The circuit court reviews the initiative and ballot title,
13 hears arguments, and certifies a title for the measure to the county clerk that meets the
14 requirements of ORS 250.035. *Id.* Multnomah County allows petitioners to simultaneously
15 challenge explanatory statements along with the ballot title. *See* MCC § 5.101(C).

16 VII. CLAIMS AND OBJECTIONS

17 A. Claims and Objections to the Caption

18 1. Standard Governing the Caption

19 14.

20 As the Oregon Supreme Court has held: “The caption is the headline of the ballot title; it
21 provides the context for the reader’s consideration of the other information in the ballot title and
22 must describe the proposed measure’s subject matter accurately.” *Conroy v. Rosenblum*, 358 Or
23 807, 810 (2016) (quoting *Towers v. Rosenblum*, 354 Or 125, 129 (2013)) (quotation marks
24 omitted). “[T]he subject matter of a ballot title is the actual major effect of a measure or, if the
25 measure has more than one major effect, all such effects (to the limit of the available words).”
26

1 *Id.* (quoting *Towers*, 354 Or at 129) (quotation marks omitted). Further, “the caption must
2 identify the measure’s subject matter in terms that will not confuse or mislead potential petition
3 signers and voters, and it cannot overstate or understate the scope of the legal changes that the
4 measure would enact.” *Buehler v. Rosenblum*, 354 Or 318, 323 (2013) (citations and quotation
5 marks omitted). It should not “introduce[] a ‘loaded term’ into the caption” that may influence
6 voters to vote for or against the measure, even if that term is found in the measure itself.
7 *Caruthers v. Kroger*, 347 Or 660, 667 (2010); *see also Bernard v. Keisling*, 317 Or 591, 596-97
8 (1993) (court will not hesitate to look beyond words of measure if those words obfuscate subject,
9 chief purpose, summary, or major effect of measure). The purpose of ballot title language is thus
10 to fairly, accurately, and neutrally describe the ballot measure so that voters can make an
11 informed decision.

12 **2. The Caption is Inaccurate as Written**

13 15.

14 The caption formulated by the County Attorney reads: “*Taxes distribution of sugar*
15 *sweetened beverages, funds children’s health, education.*” Exhibit 2.³ Petitioner objects to the
16 ballot title’s caption because it is inaccurate in two respects: (1) the tax is not limited to sugar-
17 sweetened *beverages*, as the caption pronounces; it also applies to concentrates, and (2) the tax
18 would not fund children’s health and education *generally* in the County, as the caption implies;
19 instead, it would fund specified health and education initiatives directed at specific
20 subpopulations. As such, the caption can and should be restated to more fully and accurately
21 describe the measure’s effect.

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25 ³ The County omitted the hyphen from the phrase “sugar-sweetened” in the caption, question, and explanatory
26 statement, but included a hyphen in that same phrase in the summary. Except when directly quoting the County’s
ballot title, this brief will use a hyphen, which is consistent with the language of I-4.

1 implies that money raised by the new tax will be allocated to children's health and education
2 programs accessible to children across all demographics in the County. In reality, once
3 bureaucratic overhead is paid for, tax revenues would be used for the much more specific goal of
4 funding initiatives serving "children in low-income families and communities of color" in the
5 County. Exhibit 1, § 8(2). There is, of course, insufficient room in the 10-word caption to *fully*
6 describe what the new tax would fund. At a minimum, however, the caption should alert voters
7 to the fact that the tax will be used to fund *specified* children's initiatives. Thus, petitioner
8 submits that the phrase: "funds specified children's initiatives" would be more accurate.

9 18.

10 As a result, and in sum, Petitioner respectfully submits that a more accurate caption
11 would be: "*Taxes sugar-sweetened beverages and concentrates, funds specified children's*
12 *initiatives.*"⁴

13 **B. Claims and Objections to the Question**

14 19.

15 The question should plainly phrase "the chief purpose of the measure so that an
16 affirmative response to the question corresponds to an affirmative vote on the measure[.]"
17 ORS 250.035(1)(b). The question formulated by the County Attorney reads: "*Should County*
18 *impose \$0.015/ ounce excise tax on distribution of sugar sweetened beverage products, revenue*
19 *used for children's health, education?"* Exhibit 2. Thus, in the question, the County attempted
20 to fix one of the two deficiencies found in the caption; that is, the question accurately states that
21 the tax will be on sugar-sweetened beverage products, which includes concentrates, as opposed
22 to just beverages. Petitioner submits, however, that the question should make explicitly clear the
23 specific kind of items to which the tax will apply by asking whether the County should impose a

24 _____
25 ⁴ For the Court's convenience, attached as Exhibit 3 is a comparison of the County's ballot title and explanatory
26 statement with Petitioner's proposed revisions. In Exhibit 3, additions are notated in underline and deletions noted
in ~~striketrough~~. Petitioner's proposed caption, question, and summary all fall within the statutory word limits.
Attached as Exhibit 4 is a "clean" version of Petitioner's proposed ballot title and explanatory statement.

1 tax on distribution of sugar-sweetened beverages *and concentrates*. It is likely that many voters
2 may be unaware that the term sugar-sweetened beverage product includes something beyond
3 beverages; *i.e.*, concentrates.

4 20.

5 Further, the question also suffers from the caption's other deficiency, by implying that
6 the tax, if enacted, would fund children's health and education across all demographics. There is
7 more space available in the question to fully describe what the revenue generated by the new tax
8 would be used to support. Thus, the question should be modified to alert voters that the tax will
9 be used to fund *specified* children's health and education initiatives.

10 21.

11 As a result, Petitioner respectfully submits that a more accurate and unbiased 20-word
12 question would be: "*Should County impose \$0.015/ ounce tax on distributing sugar-sweetened*
13 *beverages and concentrates to fund specified children's health, education initiatives?*"

14 **C. Claims and Objections to the Summary**

15 22.

16 The summary should be a "concise and impartial" statement of not more than 175 words.
17 ORS 250.035(1)(c). The 175-word summary formulated by the County Attorney can be read at
18 Exhibit 2. In main, the County's proposed summary fairly describes the measure. It is, however,
19 inaccurate and confusing in certain important respects.

20 23.

21 First, while the County's proposed summary does use the phrase "sugar-sweetened
22 beverage products" (shortened to "SSBP"), it once again conflates the term with "sugar-
23 sweetened beverage." For example, the summary refers to "concentrate" as "SSBP
24 concentrate"—an inaccurate and confusing term given that I-4 defines sugar-sweetened beverage
25 products to include concentrates. *See* Exhibit 1 § 3(22). To avoid confusion, the obfuscating
26

1 acronym SSBP should be eliminated entirely and replaced with a clear statement that the tax
2 would apply to both sugar-sweetened beverages *and* the concentrates used to make them,
3 followed by a description of each term.

4 24.

5 Second, the County's proposed summary omits the phrase "100 percent" before "natural
6 fruit / vegetable juices." This is misleading because it would cause voters to assume that *all* fruit
7 and/or vegetable-containing beverages would be exempt from the tax. Under the measure, only
8 fruit and vegetable juices meeting a very specific definition are exempt from taxation. *See id.*
9 § 3(21)(b)(4) (exempting "[a]ny beverage that contains only 100 percent natural fruit juice,
10 natural vegetable juice, or combined natural fruit juice and natural vegetable juice, including
11 natural fruit or vegetable juices diluted with water or carbonated water, so long as there is no
12 other added caloric sweetener"). Adding the phrase "100 percent" to the summary in front of
13 "natural fruit / vegetable juices" is consistent with the language of I-4, and will prevent
14 confusion by voters.

15 25.

16 Third, the summary omits any reference to the administrative costs that would be
17 associated with administering and collecting the new tax and administering the fund,
18 inaccurately implying that *all* revenue from the tax would be dedicated to the "Children's Health
19 and Education Fund." In reality, funds collected through the new tax would first be used to pay
20 "the reasonable costs of administering and collecting the tax[.]" *Id.* § 8(1). After that, an
21 additional 5% of the remaining funds could be spent on "expenses associated with administering
22 the fund and evaluating its effectiveness." *Id.* § 8(3). The summary must contain *some* reference
23 to these administrative costs so as not to mislead voters into thinking that *all* revenue generated
24 by the tax would be spent on health and education initiatives for children in low-income
25 communities and communities of color.

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Fourth, it is unclear from the current summary whether or not the “Children’s Health and Education Fund,” into which net revenue from the tax would be deposited, already exists. This deficiency can be easily remedied by inserting the word “new” in front of the phrase “Children’s Health and Education Fund.” Voters should be informed that they are being asked to create a new special fund, rather than devoting additional resources to an existing government program. Voters may well have a different view of the wisdom of creating a new government program, with a new bureaucratic framework surrounding it, as compared to altering the funding of an existing one with an established infrastructure.

27.

Fifth, the summary needlessly asserts that “distribution” excludes retail sales to consumers. *See* Exhibit 2. This is unnecessary because the summary already contains an accurate and clearly stated definition of distribution. *See id.* (“Distribution is defined as supply, delivery to, or acquisition by retailer, or transport into County by retailer for retail sale[;] . . . applies only to first non-exempt Distribution within County.”). Inserting one of the many things that are *not* subject to the new tax into the middle of an otherwise clear definition unnecessarily complicates that definition and uses up words which could otherwise be used to more accurately describe what the measure *would* do.⁵

28.

The fact that the measure itself notes superfluously that retail sales are not “distribution” does not support including that statement in the summary. In fact, the Oregon Supreme Court has been critical of using wording drawn from a proposed measure in a ballot title if that wording “is not neutral and might mislead voters into supporting the proposal without understanding its true effects.” *See Caruthers*, 347 Or at 667 (quoting *Mabon v. Myers*, 332 Or 633, 638 n 2

⁵ This is the last requested change to the summary requiring substantive explanation. In order to meet the 175-word limit, however, Plaintiff’s proposed language contains several other small, primarily stylistic, changes. *See* Exhibit 3.

1 (2001)). Here, this statement could mislead voters into thinking that the tax would have no effect
2 on retail prices, which is, in fact, one of the clearly intended purposes of the measure. See
3 Exhibit 1 § 9(5)(a) (creating new committee to “evaluate and analyze the impact of the tax on
4 beverage prices, consumer purchasing behavior and health outcomes.”).⁶

5 29.

6 As a result, and in sum, Petitioner respectfully submits that a more concise and accurate
7 175-word summary would be:

8 *Enacts County Ordinance imposing an excise tax of one and a half*
9 *cent (\$0.015) per fluid ounce on businesses that distribute in*
10 *Multnomah County Sugar-sweetened beverages and concentrates*
11 *used to make them. Defines distribution as supply, delivery to, or*
12 *acquisition by retailer, or transport into County by retailer for*
13 *retail sale. Applies only to first non-exempt Distribution within*
14 *County. Defines sugar-sweetened beverages as nonalcoholic*
15 *beverages containing added caloric sweeteners and more than 6*
16 *grams sugar per 8 ounce serving. Exempts milk, milk alternatives,*
17 *100 percent natural fruit / vegetable juices, “diet” drinks, products*
18 *intended as supplemental meals or meal replacements,*
19 *medications. County Tax Administrator to collect, enforce, and*
20 *administer tax. After paying administrative costs, remaining*
21 *revenues dedicated to new “Children’s Health and Education*
22 *Fund” funding programs primarily serving children in low-income*
23 *communities and communities of color that promote health and*
24 *early childhood education initiatives. Creates Children’s Health*
25 *Fund Advisory Committee to advise Board of County*
26 *Commissioners on effectiveness of tax on consumption of*
sugar-sweetened beverages and make recommendations on use of
funds.

21 **D. Claims and Objections to the Explanatory Statement**

22 30.

23 The explanatory statement is an “impartial, simple and understandable statement
24 explaining the measure and its effect” that is printed in the county voters pamphlet,

25 _____
26 ⁶ See Paragraphs 33-34 of the Petition for a more comprehensive discussion of this point with regard to similar language in the measure’s explanatory statement.

1 ORS 251.345, and which may not exceed 500 words. MCC § 5.101(A)(2). A petitioner may
2 simultaneously challenge an explanatory statement along with the ballot title. *See id.* § 5.101(C).
3 The explanatory statement formulated by the County, which is 496 words, can be read at Exhibit
4 2. The measure before the Court is complex. It creates a complicated new scheme of taxation,
5 as well as a new special purpose tax fund and a nine-member committee to advise the County on
6 how to spend money generated by the tax. The County's existing language is misleading and
7 inaccurate in several respects and should be modified.

8 31.

9 First, when defining the phrase "sugar-sweetened beverage product," the explanatory
10 statement should employ the term's actual definition, rather than an incomplete, colloquially
11 phrased, illustrative list of beverages that would be subject to the tax. *See* Exhibit 2 (stating that
12 ordinance applies to "[d]istribution of [s]ugar sweetened beverage products (SSBP), which
13 include but are not limited to beverages commonly referred to as soda, pop, cola, soft drinks,
14 sports drinks, energy drinks, sweetened iced teas or sweetened coffee drinks").⁷ In other words,
15 the explanatory statement should explain that the phrase "sugar-sweetened beverage product"
16 consists of two types of products, sugar-sweetened beverages and the concentrates used to make
17 them. *See* Exhibit 1 § 3(22). In turn, the phrase "sugar-sweetened beverage" should be defined
18 based on the actual definition contained in I-4. *See id.* § 3(21) (defining "[s]ugar-sweetened
19 beverage" as "any nonalcoholic beverage intended for human consumption that has one or more
20 added caloric sweeteners and contains more than six (6) grams of sugar per eight (8) ounce
21 serving[.]").

22 32.

23 The fact that the language of I-4 itself contains the same illustrative list of beverages does
24 not make it appropriate for the explanatory statement.⁸ Stated bluntly, "[p]roponents of a

25 ⁷ In fact, the explanatory statement never even explicitly states that "concentrates" would be taxed, let alone giving
26 voters any information about *which* concentrates would be taxed.

⁸ *See* Exhibit 1 § 3(21)(a) ("Sugar-sweetened beverage" includes, but is not limited to, all added caloric drinks and

1 measure are not entitled to engineer a favorable ballot title by incorporating politically inflated
2 terms or phrases in the text of the measure in order to advance its passage.” *Earls v. Myers*, 330
3 Or 171, 176 (2000). Courts have thus “been critical of using wording drawn from a proposed
4 measure in a caption if that wording ‘is not neutral and might mislead voters into supporting the
5 proposal without understanding its true effects.’” *Caruthers*, 347 Or at 667 (quoting *Mabon*, 332
6 Or at 638 n 2). The same logic applies equally to explanatory statements. For example, in
7 *Mabon*, the Oregon Supreme Court noted that the phrase “innocent human life,” as contained in
8 a ballot measure, was likely “not neutral and might mislead voters.” *Id.* at 638 n 2. Likewise, in
9 *Earls*, the Supreme Court rejected the Attorney General’s argument that its inclusion of the
10 phrase “freedom to choose” simply mirrored the measure’s language because that phrase was
11 “likely to prejudice voters regarding the measure.” 330 Or at 176; *see also Marr v. Thornton*,
12 237 Or 503, 504 (1964) (deleting phrase “right-to-work” from ballot title caption as campaign
13 slogan that amounted to argument for measure). Here, the proponents of I-4 have chosen the
14 relatively descriptive and unbiased phrase “sugar-sweetened beverage product” as the operative
15 legal term for their proposed legislation, *see* Exhibit 1 § 4(1), and have given that phrase a
16 specific definition, *see id.* §§ 3(6), (21), (22). There is ample space in the explanatory statement
17 to provide voters with the actual definition of the products they are being asked to tax, rather
18 than a partial list it appears that the proponents included to attempt to engineer a favorable ballot
19 title or explanatory statement.

20 33.

21 Second, the explanatory statement declares that “[r]etail sales of [sugar-sweetened
22 beverage products] to a consumer are not subject to the tax.” *See* Exhibit 2. This statement is
23 both an irrelevant aside and misleading. The explanatory statement informs voters that the tax is
24 collected at the distribution stage, and explicitly defines “distribution.” Having informed voters

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beverages commonly referred to as ‘soda,’ ‘pop,’ ‘cola,’ ‘soft drinks,’ ‘sports drinks,’ ‘energy drinks,’ ‘sweetened
ice teas,’ ‘sweetened coffee drinks,’ or any other common names that are derivations thereof.”)

1 of how the tax *will* be levied, there is no legitimate reason to then state how the tax will *not* be
2 levied. The only reason to do so is to sway voters to vote for the measure by assuring them that
3 they, as consumers, will not pay the tax directly.

4 34.

5 The statement set out in Paragraph 33 is also substantially misleading. In this context,
6 the word “subject” means “likely to be conditioned, affected, or modified in some indicated
7 way[.]” *See Webster’s Third New Int’l Dictionary 2275* (unabridged ed. 1993). *See also*
8 *BLACK’S LAW DICTIONARY 1651* (10th ed. 2014) (defining “subject,” in relevant part, as “having
9 relevance to the current discussion”); *MERRIAM-WEBSTER*, [https://www.merriam-webster.com/
10 dictionary/subject%20to](https://www.merriam-webster.com/dictionary/subject%20to) (last visited Apr. 19, 2017) (defining “subject to” as “affected by or
11 possibly affected by (something)[.]”).⁹ This measure will almost certainly have at least some
12 effect on the retail price of sugar-sweetened beverage products in Multnomah County, even if the
13 tax is not *directly* imposed on consumer purchases. In fact, that is the measure’s self-proclaimed
14 goal, *i.e.*, to drive down consumption of disfavored beverages by raising their price to
15 consumers. *See Exhibit 1* (“[T]he purpose of this ordinance is to diminish the human and
16 economic costs of diseases associated with the consumption of sugary drinks in Multnomah
17 County.”); *id.* § 9(5)(a) (creating new committee to “evaluate and analyze the impact of the tax
18 on beverage prices, consumer purchasing behavior and health outcomes.”). Here, the
19 explanatory statement already makes it clear that this tax is “levied” upon the first non-exempt
20 distribution of sugar-sweetened beverages in the County. *See Exhibit 2*. There is no reason to
21 include a superfluous statement describing what the tax supposedly does *not* do, especially where
22 doing so would mislead voters and lead to voter confusion.

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26 ⁹ Suitably, Merriam-Webster provides the following example for this definition: “Clothing purchases over \$200 are
subject to tax.” *Id.* (emphasis added).

1 35.

2 Third, for similar reasons, the explanatory statement should not state that distribution of
3 sugar-sweetened beverage products “may not be taxed more than once in the chain of
4 commerce.” *See id.* The unnecessarily complex phrase “chain of commerce” is likely to
5 needlessly confuse voters, and inaccurately implies that the tax would have no effect on retail
6 prices. Instead, it would be much clearer to state simply that distributors could not be taxed
7 more than once for the distribution of sugar-sweetened beverage products in the County.

8 36.

9 Fourth, similar to the summary, the explanatory statement omits the phrase “100 percent”
10 before “fruit juice” and “vegetable juice.” *See id.* For the reasons discussed above in Paragraph
11 24, the phrase “100 percent” should be added to the explanatory statement as a modifier to
12 prevent confusion by voters who might otherwise think that something less than 100 percent fruit
13 juice (e.g., Sunny Delight) would be exempt from the tax when it is not.

14 37.

15 Fifth, the proposed explanatory statement fails to adequately explain the administrative
16 cost of collecting the tax and administering the measure. *See id.* In pertinent part, the County’s
17 explanatory statement states:

18 Proceeds from the tax are dedicated to “Children’s Health and
19 Education Fund” for programs primarily serving children in low
20 income communities and communities of color and that increase
21 physical fitness, improve nutrition and dental health, reduce health
22 disparities, and support early childhood education. Limits the
amount spent on administration of the fund and evaluating its
effectiveness to 5% of the Fund.

23 *Id.* This paragraph implies that, at most, 5% of revenue generated by the tax will be spent
24 on costs unrelated to health and education initiatives for children in low-income
25 communities and communities of color. That is inaccurate and misleading. In reality, the
26 County is allowed to deduct an indeterminate amount from the tax’s revenue in order to

1 pay for the cost of administering and collecting it. *See* Exhibit 1 § 8(1) (“The proceeds
2 from this tax on sugary drinks, *after deducting the reasonable costs of administering and*
3 *collecting the tax*, shall be placed in a special fund[.]”)(emphasis added). After that
4 indeterminate amount has been deducted, the County may deduct *another* 5% of the
5 proceeds to pay for administering the fund. *See id.* § 8(3). Further, stating that the
6 measure would “limit” the amount that can be spent on administration costs is non-
7 neutral language that inappropriately suggests that the measure minimizes administrative
8 overhead. Thus, a more accurate and neutral description would explain that proceeds
9 from the tax would only be deposited in the fund *after* the costs of administering and
10 collecting the tax were deducted.

11 38.

12 Sixth, similar to the summary, the explanatory statement fails to explain that the
13 “Children’s Health and Education Fund” does not currently exist and that it would have
14 to be newly created if the measure were enacted. *See* Exhibit 2. Once again, this
15 deficiency can be easily remedied by inserting the word “new” in front of the phrase
16 “Children’s Health and Education Fund.”

17 39.

18 Based on the above objections, Petitioner respectfully submits that a more accurate and
19 unbiased explanatory statement of 500 words or less would be:

20 *This Measure would create a Multnomah County Ordinance that*
21 *imposes an excise tax of \$0.015 per fluid ounce on Distribution of*
22 *Sugar-sweetened beverage products (SSBP), which include*
23 *nonalcoholic, sugar-sweetened beverages that contain more than 6*
grams of sugar per 8 ounce serving and concentrates (such as a
syrops, powders, or gel mixtures) used to make them.

24 *SSBP does not include Milk, Milk alternatives, 100 percent fruit*
25 *and vegetable juice, infant formula, beverages for Medical Use,*
26 *beverages sweetened with non-caloric Sweeteners such as diet*
drinks or any product designed as a meal supplement or meal

1 replacement that contains proteins, carbohydrates, vitamins and
2 minerals.

3 Distributor is defined as any business entity that distributes SSBP
4 in the County, regardless of where they are purchased, and
5 includes a business entity that transports SSBP purchased outside
6 the County for the purposes of retail sale within the County. The
7 County's jurisdiction over Distributors extends to all persons
8 doing business in Multnomah County as defined in the Multnomah
9 County Business Income Tax Code.

10 Distributors subject to the jurisdiction of the County may not be
11 taxed more than once for the distribution of SSBP.

12 The following are exempt from the tax: Distributors not legally
13 subject to taxation by the laws of the State of Oregon or the United
14 States; distribution to a Retailer of natural or common sweeteners
15 of concentrates for sale or later use by consumers, such as bags of
16 sugar or lemonade powder for sale in a grocery store.

17 Proceeds from the tax, after deducting the reasonable costs of
18 administering and collecting the tax, are dedicated to "Children's
19 Health and Education Fund" for programs primarily serving
20 children in low income communities and communities of color and
21 that increase physical fitness, improve nutrition and dental health,
22 reduce health disparities, and support early childhood education.
23 Up to 5% of the Fund can be spent on administration of the fund
24 and evaluating its effectiveness.

25 The County Auditor is required to conduct a performance audit of
26 the Fund every other year.

The County Tax Administrator is required to collect and receive
the tax. The County may by ordinance, rule or regulation
determine how to administer and collect the tax, including by
contract with a State agency.

The Measure establishes the new Children's Health and
Education Fund Advisory Committee to be comprised of nine
members who are residents of Multnomah County. Committee
members are appointed by the County Chair, and approved by the
Board of County Commissioners. Committee membership criteria
include geographical, economic and racial diversity; and specified
background and expertise. Members may not serve more than two
consecutive three-year terms. The Committee is required to

1 *evaluate the impact of the excise tax on prices, behavior, and*
2 *health outcomes; and to align Fund investments with Community*
3 *Health Improvement Plan and Early Learning Multnomah*
4 *Strategic Plan.*

5 *Ordinance becomes operative January 1, 2018. The tax shall not*
6 *be imposed or collected until July 1, 2018.*

7 **VIII. PRAYER FOR RELIEF**

8 Petitioner respectfully requests this Court examine I-4 and the proposed ballot title and
9 explanatory statement, and grant the following relief:

- 10 A. An Order amending the ballot title and explanatory statement to comply with the
11 ballot title and explanatory statement requirements as set forth above, and
12 certifying such title and explanatory statement to the county clerk; and
13 B. Such other and further relief as this Court deems just and equitable.

14 DATED: April 24, 2017

15 **PERKINS COIE LLP**

16 By: 

17 Sarah J. Crooks, OSB No. 971512
18 SCrooks@perkinscoie.com
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23 Attorneys for Petitioner

**Prospective Petition
Local Initiative and Referendum**

APR 03 2017

SEL 370

rev 01/16 ORS 250.045,
250.165, 250.265, 255.135

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information	Type
This filing is an <input checked="" type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment <input checked="" type="checkbox"/> Initiative <input checked="" type="checkbox"/> Referendum	

Jurisdiction	Some Circulators may be Paid
<input checked="" type="checkbox"/> County <input checked="" type="checkbox"/> City <input checked="" type="checkbox"/> District	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Title Subject or name you give your petition.
Multnomah Children's Health & Education Act

Website if applicable

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient Email Chief Petitioners Mail Chief Petitioners

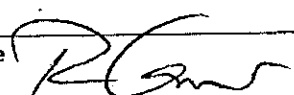
Recipient Information

Name: Terri Steenbergen | Email Address: terriks113@gmail.com

RECEIVED
 17 APR - 3 PM 4:34
 TIM SEITZ
 DIRECTOR OF ELECTIONS

Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name Robert Quintos	Contact Phone 503-329-4536
Residence Address street, city, state, zip 0930 SW Powers Ct. Portland, OR 97219	
Mailing Address if different	Email Address robert.quintos@providence.org
Signature 	Date Signed 04/02/2017

Name	Contact Phone
Residence Address street, city, state, zip	
Mailing Address if different	Email Address
Signature	Date Signed

Name	Contact Phone
Residence Address street, city, state, zip	
Mailing Address if different	Email Address
Signature	Date Signed

MULTNOMAH CHILDREN'S HEALTH AND EDUCATION ACT

The people of Multnomah County, exercising their right to enact laws by citizen initiative, enact the following ordinance to be made part of the Multnomah County Code.

Section 1. Findings

1. Rates of diabetes, heart disease, and tooth decay are high in Multnomah County. Children, low-income communities and communities of color have been disproportionately affected.
2. There is overwhelming evidence of the link between the consumption of sugary drinks and soda and the incidence of diabetes, heart disease, tooth decay and other health problems.
3. In addition to the human cost to those who suffer from these diseases, there is a public health and economic cost to the County associated with these diseases.
4. Early Childhood Education has been found to improve academic achievement, health outcomes and work-related success.

Section 2. Policy and Purpose of Tax

1. Based on the findings set forth above, the purpose of this ordinance is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks in Multnomah County, as well as improve children's health and educational success.
2. Revenues collected through this tax on sugary drinks will be placed in a special fund to be designated as the "Children's Health and Education Fund." The money in this fund will be used to fund programs primarily serving children in low-income communities and communities of color in Multnomah County that improve nutrition and access to healthy foods, increase physical activity and fitness, support early childhood education and early literacy initiatives and improve children's general health and educational achievement. No more than 5% of the funds collected can be spent on expenses associated with administering and evaluating the fund. The fund shall be subject to an audit every other year.
3. This ordinance imposes an excise tax on the privilege of conducting businesses that distribute sugary drinks and products used to make them. It is not a sales tax.
4. Certain drinks containing added sugar are exempted, including infant formula, milk products and natural fruit and vegetable juices.
5. This ordinance creates a "Children's Health and Education Fund Advisory Committee" consisting of experts and community members to: (1) advise the County on the effectiveness of this excise tax in discouraging the distribution and consumption of sugary drinks, and (2) make recommendations regarding the funding of programs designed to improve children's health and education.

Section 3. Definitions

Unless otherwise defined in this section, terms that are defined in Chapter 12 of the Multnomah County Code shall have the meanings provided therein.

1. "Alcoholic beverage" shall have the same meaning as set forth in ORS 471.001.
2. "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as a:
 - a. Oral nutritional therapy for persons who cannot absorb or metabolize caloric or dietary nutrients from usual food or beverages;
 - b. Oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness; or
 - c. Any beverage that meets statutory definition of "medical food" under Orphan Drug Act 21 U.S.C. 360ee(b)(3), as amended."Beverage for Medical Use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.
3. "Bottled Sugar-Sweetened Beverage" means any sugar-sweetened beverage contained in a bottle, can, or any other closed container that is ready for consumption without further processing such as, without limitation, dilution or carbonation.
4. "Business entity" includes, but is not limited to an individual, a natural person, proprietorship, partnership, limited partnership, family limited partnerships, joint venture (including tenants-in-common arrangements), association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business. This definition is intended to track the term "person" as used in Multnomah County Code, Chapter 12.
5. "Caloric sweetener" means a substance or combination of substances suitable for human consumption that adds calories to and is perceived as sweet to humans when consumed, including, but not limited to sucrose, dextrose, fructose, glucose, other mono and disaccharides; corn syrup; and high-fructose corn syrup. "Caloric Sweetener" excludes Non-Caloric Sweeteners.
6. "Concentrate" means a syrup, powder, frozen or gel mixture, or other product containing one or more caloric sweeteners as an ingredient, intended to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the concentrate with one or more other ingredients, including but not limited to water, ice, gases, coffee, tea, fruit juice and vegetable juice.
7. "County" means Multnomah County, Oregon.

8. "Tax administrator" means the Chief Financial Officer of the County or designees.
9. "Consumer" means a natural person who purchases a sugar-sweetened beverage product in the County for a purpose other than resale or use in the ordinary course of business.
10. "Distribution" or "distribute" means supply to a retailer, acquisition by a retailer, delivery to a retailer, or transport into the County by a retailer for purpose of holding out for retail sale within the County any sugar-sweetened beverage product. Distribution or Distribute shall not mean the retail sale to a consumer.
11. "Distributor" means any business entity that distributes sugar-sweetened beverage products in the County, whether or not that entity also sells sugar-sweetened beverage products to consumers. A business entity that transports sugar-sweetened beverage products purchased outside the County for the purposes of retail sale within the County shall be deemed a distributor.
12. "Early childhood education" means programs primarily serving children from birth to age five that are designed to prepare children to be successful in school.
13. "Early literacy initiatives" mean programs providing at-risk children and their families with the access, support, resources and instruction they need to establish a strong foundation of literacy. Programs may target students in pre-kindergarten through grade five, and may be conducted before, during or after school, or during the summer.
14. "Milk" means natural liquid milk, natural milk concentrate (whether or not reconstituted) or dehydrated natural milk (whether or not reconstituted), regardless of animal source or butterfat content, and shall include any beverage in which natural milk is the primary ingredient, i.e., the ingredient listed first in the product ingredient list.
15. "Milk alternatives" include but are not limited to non-dairy creamers or beverages marketed as alternatives to milk but primarily consisting of plant-based ingredients (such as but not limited to soy, coconut, rice or almond milk products), regardless of sugar content (i.e., any beverage in which water and grains, nuts, legumes, or seeds constitute the first two ingredients in the product ingredient list).
16. "Natural or Common Sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.
17. "Powder" means any solid mixture, containing one or more Caloric Sweetener(s) as an ingredient, which is intended to be used in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Powder with any one or more other ingredients.

18. "Retail sale" means sale to a consumer for use or consumption, and not for resale.
19. "Retailer" means any business entity that sells or otherwise dispenses a sugar-sweetened beverage product to a consumer.
20. "Sale" means the transfer of title or possession for valuable consideration regardless of the manner by which the transfer is completed.
21. "Sugar-sweetened beverage" means any nonalcoholic beverage intended for human consumption that has one or more added caloric sweeteners and contains more than six (6) grams of sugar per eight (8) ounce serving, using FDA labeling guidelines.
- a. "Sugar-sweetened beverage" includes, but is not limited to, all added caloric drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," "sweetened coffee drinks," or any other common names that are derivations thereof.
- b. "Sugar-sweetened beverage" shall not include any of the following:
- (1) Milk;
 - (2) Milk alternatives;
 - (3) Any beverage sweetened solely with non-caloric sweeteners, commonly referred to as "diet" drinks;
 - (4) Any beverage that contains only 100 percent natural fruit juice, natural vegetable juice, or combined natural fruit juice and natural vegetable juice, including natural fruit or vegetable juices diluted with water or carbonated water, so long as there is no other added caloric sweetener;
 - (5) Any product commonly known as "infant formula" or "baby formula," or any product whose purpose is infant rehydration;
 - (6) Any Beverage for Medical Use;
 - (7) Any product designed as supplemental, meal replacement or sole-source nutrition that includes proteins, carbohydrates and multiple vitamins and minerals; or
 - (8) Sweetened medication such as cough syrup, liquid pain relievers, fever reducers, and similar products.
22. "Sugar-sweetened beverage product" means a bottled sugar-sweetened beverage or a concentrate for the preparation of a sugar-sweetened beverage.
23. "Sugary drink" means "sugar-sweetened beverage product."
24. "Syrup" means any liquid or frozen mixture containing one or more caloric sweeteners as an ingredient intended to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the syrup with one or more other ingredients.

25. "Low-income" means those living in a household with income less than 185% of the federal poverty level.

Section 4. Excise Tax on Distribution of Sugary Drinks Imposed

1. The County hereby imposes an excise tax of one and a half cent (\$0.015) per fluid ounce on the privilege of distributing sugar-sweetened beverage products in Multnomah County.
2. The County's jurisdiction over distributors doing business in Multnomah County shall extend to all persons doing business in the county, as defined in Chapter 12 of the Multnomah County Code, subject to the exemptions set forth in that Chapter 12, §12.400.
3. For the purposes of this Chapter, the volume, in ounces, of a sugar-sweetened beverage product shall be calculated as follows:
 - a. For a bottled sugar-sweetened beverage, the volume, in fluid ounces, of sugar-sweetened beverages distributed to any business in the County.
 - b. For concentrates, the largest volume, in fluid ounces, of sugar-sweetened beverages that would typically be produced by the amount of concentrate, based on the manufacturer's instructions or, if the distributor uses the concentrate to produce a sugar-sweetened beverage, the volume produced by the regular practice of the distributor as reasonably determined by the Tax Administrator. For added caloric sweeteners that may be used to flavor coffee, milk and other drinks, the tax shall be calculated assuming the concentrate is combined with carbonated water to make a soda drink (e.g. "Italian sodas") as reasonably determined by the Tax Administrator.
4. The tax shall be paid upon the first non-exempt distribution of a sugar-sweetened beverage product in the County. To the extent that there is a chain of distribution within Multnomah County involving more than one distributor, the tax shall be levied on the first distributor subject to the jurisdiction of the County. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent distributions and by subsequent distributors, provided that the distribution of sugar-sweetened beverage products may not be taxed more than once in the chain of commerce.

Section 5. Exemptions

The tax imposed by this Chapter shall not apply:

1. To any distributor that is not subject to taxation by the County under the laws of the United States or the State of Oregon;
2. To any distribution of natural or common sweeteners or concentrates to a retailer intended for sale for later use by consumers (e.g. bags of sugar or lemonade powder for sale in a grocery store).

Section 6. Duties, Responsibilities and Authority of the Tax Administrator

1. It shall be the duty of the Tax Administrator or his or her designee to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.
2. The Board of County Commissioners and the Tax Administrator may prescribe, adopt, and enforce ordinances, rules and regulations relating to the administration and enforcement of this excise tax on the distribution of sugary drinks. Such rules and regulations may include, but are not limited to, the following:
 - a. The determination of whether and how a distributor must register with the County;
 - b. Reporting requirements for distributors and retailers;
 - c. The schedule for payment of the tax;
 - d. The process for determining deficiencies and refunds;
 - e. Enforcement procedures, including provisions authorizing the imposition of penalties and other sanctions for noncompliance; and
 - f. The procedures for challenging a determination relating to the amount of taxes owed.
3. Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the County, it may be refunded to the payer.
4. The Tax Administrator shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

Section 7. Collection

1. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the County. Any distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the County for the recovery of such amount.
2. The Multnomah County Board of Commissioners may, but is not required to, contract with other public agencies, including the Oregon Department of Revenue (as authorized by ORS 306.620) or the Oregon Liquor Control Commission, to administer and collect the taxes owed under this Chapter. If the County Commissioners exercise this option, the duties and responsibilities of the Tax Administrator shall be given, as appropriate, to the contracted public agency, which may delegate such duties and responsibilities as necessary and as authorized by law.

Section 8. The Children's Health and Education Fund

1. The proceeds from this tax on sugary drinks, after deducting the reasonable costs of administering and collecting the tax, shall be placed in a special fund to be designated as the "Children's Health and Education Fund."

2. Money in the Children's Health and Education Fund shall be dedicated to the funding of initiatives primarily serving children in low-income families and communities of color in Multnomah County that:
 - a. Expand access to early childhood education and early literacy initiatives;
 - b. Increase physical activity and physical fitness of children;
 - c. Improve the nutrition of children;
 - d. Improve the dental health of children; and
 - e. Reduce health disparities of children.
3. No more than 5% of the fund may be spent on expenses associated with administering the fund and evaluating its effectiveness. One half of the remaining funds shall be used to support early childhood education and early literacy initiatives. The other half shall be used to support children's health initiatives, as described in subsection 2 of this section.
4. The fund shall be subject to a performance audit every other year.
5. The fund shall provide fair and equitable distribution of benefits among its intended beneficiaries.

Section 9. The Children's Health and Education Fund Advisory Committee

1. There shall be established the Children's Health and Education Fund Advisory Committee ("Committee") to: (1) advise the County on the effectiveness of this sugary drink tax in reducing the consumption of sugar-sweetened beverages, and (2) make recommendations regarding the funding of programs designed to improve children's health and education in Multnomah County.
2. The Committee shall be made up of nine members who are residents of Multnomah County. Members shall be appointed by the Chair and approved by the Board of County Commissioners.
3. The Board shall appoint members of the Committee based on the following background and expertise. Members may fit more than one criteria:
 - a. The Committee shall represent the diversity of Multnomah County's low-income children and families. At least one member shall be from each County District, and two members shall be residents living east of SE 82nd Avenue.
 - b. At least two members shall be involved in, or have significant knowledge of the Multnomah County Community Health Improvement Plan.
 - c. At least two members shall have expertise in initiatives to improve children's health, one of which shall have expertise in nutrition.
 - d. At least two members shall have expertise in initiatives to improve early childhood education or early literacy.
 - e. At least two members shall be parents.
 - f. At least two members shall have experience in a program that primarily serves low-income families and people of color. At least one of these members shall experience in addressing poverty.

- g. One member shall be appointed by the Multnomah County Public Health Advisory Board.
- 4. Members shall serve three-year terms. The County Chair shall have discretion to stagger terms of appointment as necessary to ensure rotating terms and continuity. No member may serve more than two consecutive three-year terms.
- 5. The Committee shall:
 - a. Evaluate and analyze the impact of the tax on beverage prices, consumer purchasing behavior and health outcomes.
 - b. Align the Children's Health and Education Fund investments with the Multnomah County Community Health Improvement Plan and the Early Learning Multnomah strategic plan.
 - c. Make funding recommendations to the Board of County Commissioners, consistent with the priorities required by this ordinance and the Committee's strategic plan, based on a transparent grant application and review process when funds are distributed to community organizations. The committee shall request community input before making funding recommendations.
 - d. Monitor performance of programs receiving funds from the Children's Health and Education Fund. This includes: (1) identifying key data and outcome goals; (2) ensuring the funded programs are reaching children in low-income communities and communities of color; and (3) evaluating and ensuring accountability and effectiveness of funded programs.

Section 10. Performance Audit

The Multnomah County Auditor shall conduct a performance audit every other year. The results of the audit shall be made publicly available on the Multnomah County website as well as any website for the Children's Health and Education Fund.

Section 11. Operative Date

This ordinance shall become operative on January 1, 2018, except the County will not impose or collect the tax until July 1, 2018.

Section 12. Severability

If any part, section or provision of this ordinance, or tax imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.

Ballot Title

RECEIVED
17 APR 13 AM 11:13
TIM SCOTT
DIRECTOR OF ELECTIONS

CAPTION

Taxes distribution of sugar sweetened beverages, funds children's health, education.

QUESTION

Should County impose \$.0015/ ounce excise tax on distribution of sugar sweetened beverage products, revenues used for children's health, education?

SUMMARY

Enacts County Ordinance imposing an excise tax of one and a half cent (\$.0015) per fluid ounce on businesses that distribute in Multnomah County Sugar-sweetened beverage products (SSBP), and SSBP concentrates . Distribution is defined as supply, delivery to, or acquisition by retailer, or transport into County by retailer for retail sale. Excludes retail sales to consumers; applies only to first non-exempt Distribution within County. Defines SSBP as nonalcoholic beverages containing added caloric sweeteners and more than 6 grams sugar per 8 ounce serving. Exempts milk, milk alternatives, natural fruit / vegetable juices, "diet" drinks, products intended as supplemental meals or meal replacements, medications. County Tax Administrator to collect, enforce, and administer tax. Revenues dedicated to " Children's Health and Education Fund" used to fund programs primarily serving children in low income communities and communities of color that promote physical fitness, health, nutrition, early childhood education initiatives.- Creates Children's Health Fund Advisory Committee to advise Board of County Commissioners on effectiveness of tax on consumption of SSBP's and make recommendations on use of funds.

EXPLANATORY STATEMENT

This Measure would create a Multnomah County Ordinance that imposes an excise tax of \$.0015 per fluid ounce on Distribution of Sugar sweetened beverage products (SSBP), which include but are not limited to beverages commonly referred to as soda, pop, cola, soft drinks, sports drinks, energy drinks, sweetened iced teas or sweetened coffee drinks.

Retail sales of SSBP to a consumer are not subject to the tax.

SSBP does not include Milk, Milk alternatives, fruit juice, vegetable juice, infant formula, beverages for Medical Use, beverages sweetened with non-caloric sweeteners such as diet drinks or any product designed as a meal supplement or meal replacement that contains proteins, carbohydrates, vitamins and minerals.

Distributor is defined as any business entity that distributes SSBP products in the County regardless of where they are purchased, and includes a business entity that transports SSBP purchased outside the County for the purposes of retail sale within the County. The County's jurisdiction over Distributors extends to all persons doing business in Multnomah County as defined in the Multnomah County Business Income Tax Code.

The tax is levied upon the first non-exempt distribution of SSBP. Distribution of SSBP may not be taxed more than once in the chain of commerce of Distributors subject to the jurisdiction of the County.

The following are exempt from the tax: Distributors not legally subject to taxation by the laws of the State of Oregon or the United States; distribution to a Retailer of natural or common sweeteners or concentrates for sale or later use by consumers, such as bags of sugar or lemonade powder for sale in a grocery store.

Proceeds from the tax are dedicated to "Children's Health and Education Fund" for programs primarily serving children in low income communities and communities of color and that increase physical fitness, improve nutrition and dental health, reduce health disparities, and support early childhood education. Limits the amount spent on administration of the fund and evaluating its effectiveness to 5% of the Fund.

The County Auditor is required to conduct a performance audit of the Fund every other year.

The County Tax Administrator is required to collect and receive the tax. The County may by ordinance, rule or regulation determine how to administer and collect the tax, including by contract with a State agency.

The Measure establishes the Children's Health and Education Fund Advisory Committee to be comprised of nine members who are residents of Multnomah County. Committee members are appointed by the County Chair, and approved by the Board of County Commissioners. Committee membership criteria include geographical, economic and racial diversity; and specified background and expertise. Members may not serve more than two consecutive three-year terms. The Committee is required to evaluate the impact of the excise tax on prices, behavior, and health outcomes; and to align Fund investments with Community Health Improvement Plan and Early Learning Multnomah Strategic Plan.

Ordinance becomes operative January 1, 2018. The tax shall not be imposed or collected until July 1, 2018.

CAPTION

Taxes ~~distribution of sugar-sweetened beverages~~ and concentrates, funds specified children's health, education initiatives.

QUESTION

Should County impose \$0.015/ ounce excise tax on distributing ~~distribution of sugar-sweetened beverages~~ and concentrates products, revenue used for to fund specified children's health, education initiatives?

SUMMARY

Enacts County Ordinance imposing an excise tax of one and a half cent (\$0.015) per fluid ounce on businesses that distribute in Multnomah County Sugar-sweetened beverages products (SSBP), and SSBP concentrates used to make them. Defines ~~Distribution is defined as supply, delivery to, or acquisition by retailer, or transport into County by retailer for retail sale. Excludes retail sales to consumers;~~ Applies only to first non-exempt Distribution within County. Defines SSBP sugar-sweetened beverages as nonalcoholic beverages containing added caloric sweeteners and more than 6 grams sugar per 8 ounce serving. Exempts milk, milk alternatives, 100 percent natural fruit / vegetable juices, "diet" drinks, products intended as supplemental meals or meal replacements, medications. County Tax Administrator to collect, enforce, and administer tax. After paying administrative costs, remaining Revenues dedicated to new "Children's Health and Education Fund" used ~~to funding~~ programs primarily serving children in low-income communities and communities of color that promote physical fitness, health, nutrition, and early childhood education initiatives. Creates Children's Health Fund Advisory Committee to advise Board of County Commissioners on effectiveness of tax on consumption of SSBP's sugar-sweetened beverages and make recommendations on use of funds.

EXPLANATORY STATEMENT

This Measure would create a Multnomah County Ordinance that imposes an excise tax of \$0.015 per fluid ounce on Distribution of Sugar-sweetened beverage products (SSBP), which include ~~but are not limited to beverages commonly referred to as soda, pop, cola, soft drinks, sports drinks, energy drinks, sweetened iced teas or sweetened coffee drinks.~~ nonalcoholic, sugar-sweetened beverages that contain more than 6 grams of sugar per 8 ounce serving and concentrates (such as a syrups, powders, or gel mixtures) used to make them.

~~Retail sales of SSBP to a consumer are not subject to the tax.~~

SSBP does not include Milk, Milk alternatives, 100 percent fruit juice, and vegetable juice, infant formula, beverages for Medical Use, beverages sweetened with non-caloric Sweeteners such as diet drinks or any product designed as a meal supplement or meal replacement that contains proteins, carbohydrates, vitamins and minerals.

Distributor is defined as any business entity that distributes SSBP products in the County, regardless of where they are purchased, and includes a business entity that transports SSBP purchased outside the County for the purposes of retail sale within the County. The County's jurisdiction over Distributors extends to all persons doing business in Multnomah County as defined in the Multnomah County Business Income Tax Code.

~~Distributors subject to the jurisdiction of the County may not be taxed more than once for the distribution of SSBP. The tax is levied upon the first non-exempt distribution of SSBP. Distribution of SSBP may not be taxed more than once in the chain of commerce of Distributors subject to the jurisdiction of the County.~~

The following are exempt from the tax: Distributors not legally subject to taxation by the laws of the State of Oregon or the United States; distribution to a Retailer of natural or common sweeteners or concentrates for sale or later use by consumers, such as bags of sugar or lemonade powder for sale in a grocery store.

Proceeds from the tax, after deducting the reasonable costs of administering and collecting the tax, are dedicated to "Children's Health and Education Fund" for programs primarily serving children in low income communities and communities of color and that increase physical fitness, improve nutrition and dental health, reduce health disparities, and support early childhood education. ~~Limits~~ Up to 5% of the fund can be ~~the amount spent on administration of the fund and evaluating its effectiveness to 5% of the Fund.~~

The County Auditor is required to conduct a performance audit of the Fund every other year.

The County Tax Administrator is required to collect and receive the tax. The County may by ordinance, rule or regulation determine how to administer and collect the tax, including by contract with a State agency.

The Measure establishes the new Children's Health and Education Fund Advisory Committee to be comprised of nine members who are residents of Multnomah County. Committee members are appointed by the County Chair, and approved by the Board of County Commissioners. Committee membership criteria include geographical, economic and racial diversity; and specified background and expertise. Members may not serve more than two consecutive three-year terms. The Committee is required to evaluate the impact of the excise tax on prices, behavior, and health outcomes; and to align Fund investments with Community Health Improvement Plan and Early Learning Multnomah Strategic Plan.

Ordinance becomes operative January 1, 2018. The tax shall not be imposed or collected until July 1, 2018.

CAPTION

Taxes sugar-sweetened beverages and concentrates, funds specified children's initiatives

QUESTION

Should County impose \$0.015/ ounce tax on distributing sugar-sweetened beverages and concentrates to fund specified children's health, education initiatives?

SUMMARY

Enacts County Ordinance imposing an excise tax of one and a half cent (\$0.015) per fluid ounce on businesses that distribute in Multnomah County Sugar-sweetened beverages and concentrates used to make them. Defines distribution as supply, delivery to, or acquisition by retailer, or transport into County by retailer for retail sale. Applies only to first non-exempt Distribution within County. Defines sugar-sweetened beverages as nonalcoholic beverages containing added caloric sweeteners and more than 6 grams sugar per 8 ounce serving. Exempts milk, milk alternatives, 100 percent natural fruit / vegetable juices, "diet" drinks, products intended as supplemental meals or meal replacements, medications. County Tax Administrator to collect, enforce, and administer tax. After paying administrative costs, remaining revenues dedicated to new "Children's Health and Education Fund" funding programs primarily serving children in low-income communities and communities of color that promote health and early childhood education initiatives. Creates Children's Health Fund Advisory Committee to advise Board of County Commissioners on effectiveness of tax on consumption of sugar-sweetened beverages and make recommendations on use of funds.

EXPLANATORY STATEMENT

This Measure would create a Multnomah County Ordinance that imposes an excise tax of \$0.015 per fluid ounce on Distribution of Sugar-sweetened beverage products (SSBP), which include nonalcoholic, sugar-sweetened beverages that contain more than 6 grams of sugar per 8 ounce serving and concentrates (such as syrups, powders, or gel mixtures) used to make them.

SSBP does not include Milk, Milk alternatives, 100 percent fruit and vegetable juice, infant formula, beverages for Medical Use, beverages sweetened with non-caloric Sweeteners such as diet drinks or any product designed as a meal supplement or meal replacement that contains proteins, carbohydrates, vitamins and minerals.

Distributor is defined as any business entity that distributes SSBP in the County, regardless of where they are purchased, and includes a business entity that transports SSBP purchased outside the County for the purposes of retail sale within the County. The County's jurisdiction over Distributors extends to all persons doing business in Multnomah County as defined in the Multnomah County Business Income Tax Code.

Distributors subject to the jurisdiction of the County may not be taxed more than once for the distribution of SSBP.

The following are exempt from the tax: Distributors not legally subject to taxation by the laws of the State of Oregon or the United States; distribution to a Retailer of natural or common sweeteners of concentrates for sale or later use by consumers, such as bags of sugar or lemonade powder for sale in a grocery store.

Proceeds from the tax, after deducting the reasonable costs of administering and collecting the tax, are dedicated to "Children's Health and Education Fund" for programs primarily serving children in low income communities and communities of color and that increase physical fitness, improve nutrition and dental health, reduce health disparities, and support early childhood education. Up to 5% of the Fund can be spent on administration of the fund and evaluating its effectiveness.

The County Auditor is required to conduct a performance audit of the Fund every other year.

The County Tax Administrator is required to collect and receive the tax. The County may by ordinance, rule or regulation determine how to administer and collect the tax, including by contract with a State agency.

The Measure establishes the new Children's Health and Education Fund Advisory Committee to be comprised of nine members who are residents of Multnomah County. Committee members are appointed by the County Chair, and approved by the Board of County Commissioners. Committee membership criteria include geographical, economic and racial diversity; and specified background and expertise. Members may not serve more than two consecutive three-year terms. The Committee is required to evaluate the impact of the excise tax on prices, behavior, and health outcomes; and to align Fund investments with Community Health Improvement Plan and Early Learning Multnomah Strategic Plan.

Ordinance becomes operative January 1, 2018. The tax shall not be imposed or collected until July 1, 2018.