

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

KATHARINE SIMONS,  
Petitioner,

v.

JENNY MADKOUR,  
Respondent.

Case No. 20CV12404

**ORDER GRANTING IN PART  
PETITION FOR DIFFERENT  
MEASURE TITLE AND  
EXPLANATORY STATEMENT**

THIS MATTER came before the Court for hearing on May 21, 2020 for decision on Petitioner’s Petition for Different Measure Title and Explanatory Statement (the “Petition”). Petitioner appeared through her attorneys Gregory Chaimov and Evan Christopher. Respondent Multnomah County Attorney Jenny Madkour appeared through her attorney Katherine Thomas. Amici Curiae Sahar Yarhanu Muranovic, Suzanne Cohen, and Will Layng appeared through their attorney Margaret Olney.

For the reasons described below, the Petition is GRANTED IN PART. The Court finds that the ballot title and explanatory statement under review comport with applicable statutory requirements, except for the ballot title question which is insufficient, not concise, and unfair. The Court therefore certifies to the Multnomah County Clerk a revised Ballot Title and Explanatory Statement (attached as Appendix A hereto) which includes a revised ballot title question but is otherwise identical to that previously filed by Respondent.

**PROCEDURAL HISTORY**

Amici Curiae are the chief petitioners of a Multnomah County Measure entitled

“UNIVERSAL PRESCHOOL NOW!” (the “Measure”). Amici filed the Measure with Multnomah County Clerk on February 26, 2020. On March 5, 2020, Respondent filed the ballot title and explanatory statement (the “Ballot Title”) for the Measure with the Multnomah County Clerk.

Petitioner is a Multnomah County elector and is dissatisfied with the filed Ballot Title. Petitioner timely filed her Petition with this Court pursuant to ORS 250.195(1), which requires a petitioner to “stat[e] the reasons the title filed with the court is insufficient, not concise or unfair.” Petitioner complains that the filed ballot title’s caption, question, and summary are insufficient, not concise, and/or unfair in the ways discussed below. Petitioner also complains that the filed explanatory statement required by Multnomah County Code § 5.101(A)(2) fails to meet the statutory requirement that it be “impartial, simple and understandable.”

## **DISCUSSION, ANALYSIS AND CONCLUSIONS**

### **1. Legal Standards for a Local Ballot Title, and for a Challenge Thereto**

ORS 250.035 states that a ballot title for a local measure must contain three separate sections: (1) “A caption of not more than 10 words which reasonably identifies the subject of the measure”; (2) “A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure”; and (3) “A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.” ORS 250.035(1).

ORS 250.195(1) states that upon receipt of a petition from a dissatisfied elector challenging a ballot title, the circuit court “shall review the title and measure to be initiated \* \* \*, hear arguments, if any, and certify to the county clerk a title for the measure which meets the

requirements of ORS 250.035.” The Court has reviewed the Ballot Title and has heard the arguments of all of the parties.

2. Consideration of Petitioner’s Claims That the Ballot Title is Legally Deficient

Petitioner challenges each section of the Ballot Title. The Court has reviewed the Ballot Title and has heard the arguments of all the parties.

**a. The Ballot Title is not rendered insufficient nor unfair – in its entirety or in any specific part – due to its use of the term “Universal Preschool.”**

Petitioner urges that the repeated use of the term “Universal Preschool” and related variants render the Ballot Title insufficient and unfair. Petitioner grounds her argument in two theories: (1) that “Universal Preschool” is an inaccurate description of the one of the effects of the Measure, and (2) “Universal Preschool” is a politically loaded term whose inclusion makes the Measure more electorally appealing.

The Court disagrees with both of Petitioner’s proffered rationales for finding the ballot title insufficient and unfair on the basis of the use of the term “Universal Preschool.” First, “Universal Preschool” appears to be an accurate description of one of the effects of the Measure. If passed, the enacted ordinance would establish a program that offers tuition free preschool to every age-qualified child who lives in the County. While it is true that not every eligible child would enroll in the program, and that not every preschool provider would be included in the program, the effect would be that every age-qualified child would be *offered* tuition free preschool. “Universal Preschool” is therefore an understandable and accurate description of the proposed program.

Second, “Universal Preschool” – in addition to being accurate – does not appear to the Court to be politically loaded. That the contemplated program is designed to be so vast as to cover all age-qualified children in the county might be politically appealing to some voters, and

politically anathema to others. No matter a voter’s view of the policy, “Universal Preschool” accurately and precisely conveys to the voter what is at issue. “Universal Preschool” therefore appears to the Court to be far more informative than politically inflamed. That is, the phrase does not “tend more to promote or defeat passage of the measure than to describe its substance accurately.” *Dirks v. Myers*, 329 Or 608, 616, 993 P2d 808 (2000).

**b. The filed ballot title caption is concise and is fair.**

ORS 250.035(1)(a) requires that the ballot title under review include a “caption of not more than 10 words which reasonably identifies the subject of the measure.”

The filed ballot title caption reads: “Establishes publicly funded “Universal Preschool Program,” income tax above thresholds.”

Petitioner argues that the ballot title caption is not concise and is unfair because of the placement of the comma suggests falsely that the “Universal Preschool” program would be accessible only to those who qualified “above thresholds.” The Court respectfully disagrees that the ballot title caption as presented is reasonably susceptible to such a reading. The ballot title caption is both concise and fair.

**c. The ballot title question is insufficient, not concise, and unfair.**

ORS 250.035(1)(b) requires that a ballot title include a “question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure.”

The filed ballot title question reads: “Should County establish publicly funded, tuition-free “Universal Preschool Program,” funded by tax on County residents’ income above certain thresholds?”

Petitioner urges that the ballot title question is insufficient, not concise, and unfair.

Petitioner argues that the question includes “unnecessary and redundant language,” and that a “substantially more informative question” might be drafted if such language was removed. In particular, Particular suggests that more information regarding the size and scope of the Measure’s proposed tax could be included. Petitioner puts forward a question that she believes is sufficient, concise, and fair.<sup>1</sup>

Respondent takes issue with Petitioner’s proposed alternative question, arguing that it is overlong and misleading. Respondent unsurprisingly also maintains that the filed question is sufficient, concise, and fair. Amici Curiae support these arguments, with slightly different emphases but to largely the same effect.

The Court agrees with Petitioner’s criticism of the filed question. The question employs redundant language and phrases. For example, it describes the “Universal Preschool Program” as “publicly funded,” and also as “funded by tax”; the latter plainly includes the former. The question also includes language that does little to actually inform an interested voter. For example, it describes those whose income is potentially subject to the proposed tax as “County residents,” when of course it is obvious that a County may only tax its own residents. Removing the redundant and non-informative language in the question creates an opportunity to include language that provides additional, important information to voters. Such information includes details such as the fact that is proposed is a new tax (rather than an earmark from an already in-force tax), and the amount of that tax.<sup>2</sup> Because the question excludes such information in favor

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<sup>1</sup> Petitioner’s preferred question would read: “Should Multnomah county fund two-year, tuition-free preschool through 3.9% tax on resident incomes over \$165,000 (single), \$190,000 (joint)?”

<sup>2</sup> The Court agrees with the position taken by Respondent and Amici at hearing, that inclusion of the particular income thresholds at which the proposed tax would take effect is likely to be more confusing and/or misleading to voters than otherwise. What qualifies as “income” under the Measure is technical and cannot be included in the 20-word question. Without that contextual information, a question that included the specific thresholds would present only the illusion of

of text that is redundant and/or non-informative, the question is not sufficient, is not concise, and is unfair.

The Court also agrees with many of the critiques Respondent and Amici Curiae direct toward Petitioner’s proffered version of the question. The Court finds that this version of the question is also not sufficient, is not concise, and is unfair.

The Court finds that the following version of the question provides needed information to voters, and is otherwise sufficient, concise, and fair:

Should County establish tuition-free “Universal Preschool Program” funded by new 3.9 percent tax on residents’ income above certain thresholds?

The above version will be included in the revised ballot title and explanatory statement certified by this Order.

**d. The ballot title summary is sufficient, is concise, and is fair.**

ORS 250.035(1) requires that the ballot title include a “A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.”

Petitioner suggests that this ballot title’s summary is insufficient, not concise, and unfair, for several reasons: (1) it includes “needless surplusage”; (2) it is disorganized in such a way that “minor, technical” features of the Measure are described at the expense of the Measure’s “central mechanics”; and (3) the summary does not helpfully present voters with the kind of information that they would actually find useful. Petitioner submits a version of a ballot title summary that she believes is sufficient, concise, and fair.

The Court does not agree with Petitioner’s assertions regarding the ballot title summary under review. Reasonable minds may differ about the proper ordering of information in the

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factual information to voters.

summary, and about how many words should be dedicated to a particular subject. The ballot title summary may not be letter-perfect, but the Court finds that it is sufficient, concise, and fair, and therefore meets the required statutory standard.

**e. The explanatory statement is impartial, simple, and understandable.**

Multnomah County Code § 5.101(A)(1) requires that in addition to drafting a ballot title that conforms with the requirements of state law, the Multnomah County attorney must also prepare an explanatory statement for a filed measure. That statement “must consist of an impartial, simple and understandable statement explaining the measure and its effect.” MCC 5.101(A)(2).

Petitioner posits that filed explanatory statement is not impartial, simple, nor understandable. Petitioner reasons that the explanatory statement: (1) mischaracterizes the way in which the Measure will operate; (2) prioritizes trivial and technical provisions over parts of the measure that will be of greater significance to voters; and (3) fails to describe how the Measure will turn tax revenues into a functioning preschool program. Petitioner submits a version of the explanatory statement that she believes is impartial, simple, and understandable.

The Court does not share Petitioner’s views regarding the explanatory statement. While there may be multiple ways to explain how the Measure will operate and how it would affect residents, the Court finds that the explanatory statement under review is impartial, simple, and understandable and that it therefore meets the required statutory standard.

**CONCLUSION**

For the reasons stated above, the Petition is GRANTED IN PART. Pursuant to ORS 255.155(1), the Court has revised the Ballot Title to bring it into compliance with applicable law,

and hereby certifies to the county clerk the revised Ballot Title and Explanatory Statement, attached as Appendix A to this Opinion and Order.

Petitioner will submit an appropriate form of judgment consistent with this Opinion and Order.

**IT IS SO ORDERED.**

DATED: June 1, 2020.

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Benjamin Souede  
Circuit Court Judge

## **MultCoInit-08 Ballot Title and Explanatory Statement**

**Caption:** Establishes publicly funded “Universal Preschool Program,” income tax above thresholds.

**Question:** Should County establish tuition-free “Universal Preschool Program,” funded by new 3.9 percent tax on residents’ income above certain thresholds?

**Summary:** Enacts Multnomah County ordinance establishing “Universal Preschool Program” providing two years of publicly funded, tuition-free, year-round preschool for age-eligible children in Multnomah County; eligibility not income based. First 12 to 18 months for planning, targeted implementation by 2022-2023 school year; countywide implementation by 2027-2028 school year. County may create administrative body or contract to administer program. Establishes requirements for providers to receive funding, including licensure, certification; programming options; mixed delivery model; staffing; wages (at least 145% of Portland minimum wage), benefits, professional development; union organizing code of conduct. Providers may charge for extended hours (in excess of six).

Program funded by new tax on Multnomah County residents: 3.9% tax on taxable income under Oregon law (gross income minus deductions, other adjustments) over \$165,000 (individuals) and \$190,000 (joint filers). Requires dedicated fund for tax net revenue, including operations; reserve; planning, capital investment; and professional development subaccounts.

Creates advisory committee of residents to make funding, other recommendations, evaluate effectiveness. County Auditor conducts annual financial audit, biennial performance audit. Other provisions.

**Explanatory Statement:** The measure would enact a Multnomah County ordinance establishing a “Universal Preschool Program” providing culturally inclusive or culturally specific year-round, publicly funded preschool for children in Multnomah County. Age-eligible children could attend two years of preschool tuition free. Eligibility not based on income. Providers may charge for extended hours (in excess of six).

Program would be funded by a new tax on County residents (taxpayers domiciled in Multnomah County for any portion of the taxable year) starting in the January 2021 tax year. The tax would be on 3.9% of income taxable under Oregon law over \$165,000 a year (individual filer) and \$190,000 a year (joint filers). For example, if taxable income is \$200,000, income subject to tax is \$35,000 (individual) / \$10,000 (joint), with tax of \$1,365 (individual) / \$390 (joint). Income taxable under Oregon law is gross income minus deductions, with other adjustments.

Program will establish a staffing and curriculum framework reflecting early education best practices, emphasizing child led, trauma informed, physically active, and developmentally appropriate experiences, deemphasizing testing. Preschool may be provided in different settings, such as schools, community centers, multigenerational classrooms, licensed family childcare programs, and cooperative settings, and may provide parents with options (such as location, hours and days of operation, vacation and summer break schedules, size, language, and parental

involvement). Providers will minimize expulsions. Providers must be approved to operate as childcare facilities, providers, or schools under certain state standards; temporary exceptions allowed. Program will establish provider compensation scheme for contracted slots.

The first 12 to 18 months of the program will involve planning and implementation in areas serving low-income communities and communities of color in the 2022-2023 school year. Implementation will be in phases, with countywide implementation by the 2027-2028 school year. Department of County Human Services will initially oversee the program; the County may create a new administrative agency or contract with others to administer the program.

Providers must ensure adequate staffing, generally one adult for eight children. Program employees compensated under matrix requiring wage of at least 145% of Portland's minimum wage, with other adjustments. Providers will provide onsite coaching and mentoring, professional development, and pathway to licensure. Program employers must adhere to union organizing code of conduct.

Measure creates advisory committee of up to 12 County residents to provide funding and other recommendations and evaluate effectiveness. County Chair will appoint members, including early education educators or administrators, those representing early education employees, advocates on behalf of houseless, foster, and immigrant families, and those representing the community at large. County auditor will conduct annual financial audit and biennial performance audit.

Measure requires dedicated fund for tax revenue, less costs of collection and enforcement ("net tax revenue"). County Chief Financial Officer will collect and enforce tax; Board of County Commissioners will distribute proceeds in consultation with the advisory committee. Net tax revenue dedicated to the program, including operations and administrative expenses; planning; capital expenditures; professional development and training; and a 12-month reserve.