



TO: Joint Committee on Ballot Measure Titles and Explanatory Statements  
FROM: Blair Bobier on behalf of Oregon Ranked Choice Voting Advocates  
RE: Analysis of the draft ballot title for HB 2004  
DATE: January 11, 2024

## SUMMARY:

**The draft ballot title provided by Legislative Counsel would be confusing to voters, does not meet the standards for ballot titles required by Oregon law, and would be vulnerable to a legal challenge.** See below for a list of concerns for the ballot caption, results statements, and summary as written.

## ANALYSIS:

### A. Draft Ballot Title.

While the standard word limits for ballot titles in ORS 250.035(2) do not apply, the ballot title must comply with all other legal requirements.

#### 1. The Caption

The caption must “identify [] the subject matter of the state measure.” ORS 250.035(2). **The caption must “state or describe the proposed measure’s subject matter accurately, and in terms that will not confuse or mislead potential petition signers and voters.”**<sup>1</sup> An initiative’s “subject matter is its actual major effect – or, if there is more than one, all such major effects that can fit within the statutory word limit.”<sup>2</sup>

**HB 2004 has one major effect – to establish ranked voting as the method for selecting nominees and candidates for federal and specified statewide offices.** The measure has a series of additional impacts – discussed below – but none of those rise to the level of a “major effect.”

**LC’s draft caption does not comply with these requirements,** in the following respects:

- **The caption, and all other provisions of the ballot title, are too long.** Although statutory word limits do not apply, this ballot title would be confusing and potentially misleading to voters. It is three times longer than a normal caption, and it contains detail that is more appropriate for the summary. **The caption should be shortened significantly.** Here, where the measure’s major effect can be described within the standard 15-word limit (or very close to it), there is no reason to complicate the caption, which would only lead to a lack of clarity for voters.



- **The caption fails to mention the most significant aspect of the major effect of the measure – how voting for nomination and election to public office would be conducted under HB 2004.** The caption does not describe, in any sense, *what* ranked choice voting is, or *how* it works.
- The LC draft caption reads “Establishes Ranked Choice Method of determining nomination and election to specified offices. Permits specified local governments and local service districts to use RCV to determine election to specified offices.” **The phrase “ranked choice method” is confusing and inaccurate.**
  - **HB 2004 does not use the term “ranked choice method”—and, in fact, it is not used *anywhere* in elections terminology, political science, or academia.** That phrase, along with the acronym “RCV” is wholly uninformative to voters.
  - The caption must focus on the actual effect of the measure – how the nomination and election of candidates for certain offices will be conducted if the measure passes. Meaningless and made-up phrases (ranked choice method) and confusing acronyms (RCV) do nothing to inform voters about what the measure does.
- **The second sentence of the caption addresses a secondary topic not appropriate for the caption and is potentially misleading.**
  - **While HB 2004 does allow local governments to adopt ranked choice voting, that is not a primary effect of the measure.** The most significant effect of the measure is the immediate impact it will have on elections for federal offices and certain statewide offices. The 19-word second sentence contains more information than appropriate for a caption and would be confusing to voters.
  - The second sentence also is potentially misleading. That sentence implies that HB 2004 would provide *all* jurisdictions with *new* authority to adopt ranked voting for local elections; but home rule jurisdictions already can adopt ranked voting and, in fact, a number of them have. **The second sentence, therefore, is an inaccurate and misleading depiction of the current state of the law.**

## 2. The Results Statements

ORS 250.035(2)(b) and (c) require that the ballot title contain “simple and understandable statement[s] . . . that describe the result if the state measure is approved” or “rejected.” The yes statement “should describe the most significant and immediate effects of the ballot initiative for the general public.”<sup>3</sup> The yes statement must “provide the voter with sufficient substantive information to understand the policy choice proposed by the measure’s operative terms.”<sup>4</sup> **A result of yes statement is not statutorily compliant if it is inaccurate, confusing or misleading.** “To substantially comply with [ORS 250.035(2)(b)], an *accurate*



description of the change that will be caused by the measure is key.”<sup>5</sup> The result of no statement “should address the substance of current law *on the subject matter of the proposed measure* and summarize the current law accurately.”<sup>6</sup> The results statements cannot create even an “erroneous inference” of current law or the impact the initiative would have on current law.<sup>7</sup>

The draft **result of yes statement** raises the same concerns as the caption.

- **The yes statement is much too long and would be confusing to voters.** Whereas a normal yes statement is 25 words, the draft result of yes statement is 114 words – over four times longer than what voters are accustomed to. Even where statutory word limits have been suspended, voters rarely have been faced with a “yes” statement of this length. A statement that more closely adheres to the statutory word limits would be more accessible to voters.
- As with the caption, **the draft result of yes statement does not describe a key aspect of HB 2004 – how ranked choice voting would be conducted in Oregon if the measure passes.**
- The draft yes statement includes details more appropriate for the summary, such as the individual offices impacted, and the local government option.
- As with the caption, the draft yes statement conveys that under current law, local jurisdictions cannot adopt ranked voting. That is inaccurate, because Oregon home rule jurisdictions can, and already have adopted and used ranked voting for local elections.
- **The second sentence is inaccurate, because HB 2004 does not provide for ranked voting for “the nomination . . . of Vice President of the United States.”**

**The results statements do not adequately contrast current law with an important impact of HB 2004.** Under existing law, a candidate prevails if the candidate receives a plurality of votes; for elections conducted under ranked voting pursuant to HB 2004, the candidate with a majority of votes, not just the most votes on a single tally, wins. This **change from plurality wins to majority wins is an important aspect of the measure that should be conveyed in results statements** (and all other sections of the ballot title).

### 3. The Summary

The summary should be a “concise and impartial statement . . . summarizing the state measure and its major effect.” ORS 250.035(2)(d). The summary should address “additional important consequences or details that the result statement does not convey” and “helpful information about the impact of the proposed measure on existing law.”<sup>8</sup> **The draft summary is flawed, for a series of reasons.**



- **The summary does not contain a description of current law.** It is standard practice for a summary first to describe the law that will be impacted and then clarify how the measure would change current law. The summary is missing this key aspect.
- As with the caption and result of yes statement, **the summary does not describe how ranked choice voting actually would be conducted** or work under HB 2004.
- **The third sentence addresses an issue that is tertiary, at best.** While section 4(3) does provide that the Secretary of State will establish a methodology for determining the victors for ranked voting elections where “more than one person is elected to a single office,” the actual impact of this provision is minimal to non-existent. Local elections where more than one person is elected to a single office are rare; and local elections where more than one person is elected by ranked voting are even rarer. The one most recent example adopted – the election for councilors to the Portland City Council – will not be impacted by HB 2004, because the measure allows home rule jurisdictions (such as Portland) that already have adopted ranked choice voting to maintain their current processes. HB 2004, § 3(4)(b). **This topic need not be mentioned in the summary at all and is more appropriate for the explanatory statement; its inclusion in the summary will only confuse voters.**
- The summary is confusing for the additional reason that the discussion of statewide offices impacted is disjointed. The discussion of the election of the Commissioner of the Bureau of Labor and Industries should follow the discussion of other statewide offices. Moreover, the phrase “election of a candidate to the office of the Commissioner of the Bureau of Labor and Industries” is unnecessarily obtuse. The phrase could more easily and clearly read “election to the office of the Commissioner of the Bureau of Labor and Industries.”
- **As with the other sections of the ballot title, the summary does not draw the important distinction that under current law, the candidate with the most votes wins, even if the candidate does not receive a majority of votes, but under HB 2004, a candidate must receive a majority to win.**

The summary would be an appropriate place to discuss much of the information improperly and unnecessarily contained in the draft caption and result of yes statement. This includes the federal and state offices to which ranked voting would apply under the initiative, the local government option, and greater detail about how ranked choice voting would be conducted under the measure.



Thank you for the opportunity to provide testimony and for your consideration of the above concerns.

Sincerely,  
Blair Bobier, J.D.  
Co-Founder, Oregon Ranked Choice Voting Advocates

#### References

1. *Lavey v. Kroger*, 350 Or 559, 563 (citations omitted; internal quotation marks omitted, emphasis added).
2. *Fletchall v. Rosenblum*, 365 Or 98, 103 (2019) (internal quotation marks omitted; citation omitted).
3. *McCann v. Rosenblum*, 354 Or 701, 707 (2014) (internal quotation marks omitted; citation omitted).
4. *Rasmussen v. Rosenblum*, 354 Or 344, 348 (2013).
5. *Lavey*, 350 Or at 564 (emphasis in original).
6. *McCann*, 354 Or at 707 (2014) (citation omitted; internal quotation marks omitted; emphasis in original).
7. *McCormick v. Kroger*, 347 Or 293, 300 (2009).
8. *Novick v. Myers*, 337 Or 568, 574 (2004).

*Blair Bobier is a Board member and co-founder of Oregon Ranked Choice Voting Advocates. Mr. Bobier was the author and co-sponsor of the successful ballot initiative that created ranked choice voting elections in Benton County—the first county in Oregon to adopt and use ranked choice voting.*