IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

ERIC FRUITS, Petitioner,	)	Case No.: 1207-08606
vs.	)	
CITY COUNCIL OF THE CITY OF PORTLAND, Respondent	)	PETITION FOR BALLOT TITLE REVIEW (ORS 250.296)

NATURE OF CLAIM

1.

This is a petition for review of the Ballot Title prepared by Respondent City Council of the City of Portland (hereinafter "Council") pursuant to Council Resolution No. 36939. This Petition for review is brought pursuant to ORS 250.296, which provides that "Any elector dissatisfied with a ballot title filed with the city elections officer by the city attorney or the city governing body, may petition the circuit court of the judicial district in which the city is located seeking a different title and stating the reasons the title filed with the court is insufficient, not concise or unfair. The petition shall name as respondent the city attorney or city governing body, depending on who prepared the ballot title, and must be filed not later than the seventh business day after the title is filed with the city elections officer. The court shall review the title and measure to be initiated or referred, hear arguments, if any, and certify to the city elections officer a title for the measure which meets the requirements of ORS 250.035."

PARTIES

2.

Petitioner Eric Fruits (hereinafter "Petitioner") is an Oregon elector, registered to vote in Multnomah County and residing within the city limits of Portland at 4318 NE Royal Court. Petitioner is dissatisfied with the proposed Ballot Title and has standing to bring this petition under ORS 250.296.

3.

Respondent City Council of the City of Portland is the legislative body of the City of Portland, a political subdivision of the State of Oregon, located in Multnomah County.

FACTS

4.

On or about June 27, 2012, City Council of the City of Portland approved Resolution No. 36939, (Refer Portland City Code Changes to Title 3 and Title 5 regarding arts education and access to City voters at the November 6, 2012, General Election ballot), which referred a ballot measure to the November 6, 2012, general election and included proposed ballot title language. Resolution No. 36939 along with supporting documents and written testimony is attached as Exhibit 1.

5.

The ballot measure specified by Resolution No. 36939 would impose a tax of $35 on each income-earning resident of the City of Portland, Oregon who is at least eighteen years old and is in a household that is above the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year. Individuals who satisfy all of the conditions are subject to the entire amount of the tax. Individuals who do not satisfy any one of the conditions would not be subject to the tax.

6.

The Financial Impact and Public Involvement Statement for Council Action Items included with Resolution No. 36939 states, "The tax is a flat $35 per income-earning resident."

7.

On or about June 28, 2012, the Portland City Elections Division posted the proposed Ballot Title language within Resolution No. 36939 on the city's website. <http://www.portlandonline.com/auditor/?c=39546&a=402820>

CLAIM FOR RELIEF

(Ballot Title Is Insufficient, Not Concise, and Unfair)

Pursuant to ORS 250.296

8.

Petitioner realleges and incorporates by reference paragraphs 1 through 7, above.

9.

The proposed Ballot Title is insufficient, not concise, and unfair as set out in the following paragraphs.

10.

The proposed Ballot Title Caption and Question misleadingly indicate that the projected tax revenues would "restore" arts and music education to schools within the City of Portland. The word "restore" connotes a sense of completeness or totality. Thus, unless the measure completely or totally replaces funds that were lost or diminished, then the measure cannot be said to "restore" funding. Resolution No. 36939 makes no mention of the amount of lost or diminished funding for arts and music education. Instead, the resolution compares Portland schools with a national average. Thus, Council provides no measure by which one can evaluate whether the taxes raised by the measure would "restore" to some previous level funding for arts and music education. Use of the word "restore" is biased and unfairly gives the impression that the revenues

from the proposed tax will return students to some unknown Golden Age of arts and music education.

11.

The proposed Ballot Title Caption describes the tax as a "limited tax." The term "limited tax" is not commonly understood. Its use, particularly in the Caption, has a significant potential to mislead.

12.

The proposed Ballot Title Caption and Summary describe the tax as "limited." The Measure's tax has no "sunset" clause, thus the Measure is unlimited in duration. To describe the tax as "limited" would give the unfair and false impression that the tax is set to expire at some defined future date. The tax is a specific amount ($35 per resident), thus to describe the amount of tax as "limited" is superfluous.

13.

The proposed Ballot Title Question and Summary is insufficient in its failure to indicate that the tax would be applied retroactively to January 1, 2012. This omission is unfair and provides a misleading impression that tax will not be levied on individuals until after the November 2012 election.

14.

The proposed Ballot Title Question and Summary unfairly and incorrectly identify the tax to be imposed as an income tax. The tax is a flat tax of a specific amount imposed on any individual who four either/or conditions: (1) is a resident of the City of Portland, (2) is 18 years of age or older, (3) earns any amount of income, and (4) in a household that is above the federal poverty guidelines. Individuals who satisfy all of the four conditions are subject to the entire amount of the tax and individuals who do not satisfy any one of the conditions would not be subject to the tax. Thus, on its face, Resolution No. 36939 specifies a poll tax, also known as a head tax. The proposed Ballot Title language describing the tax as an income tax is false, biased, and unfair.

15.

The proposed Ballot Title is insufficient in its failure to indicate that a poll tax or head tax cannot be levied or collected anywhere in the State of Oregon. This omission is unfair and provides a misleading impression that the City of Portland has the authority to levy and collect a poll tax or a head tax.

16.

The proposed Ballot Title question and summary describe the tax as "capped." The tax is of a specific amount ($35 per person), thus to describe the amount of tax as "capped" is superfluous. Use of the word "capped" in conjunction with the word "limited" is redundant. The measure does not provide any prohibition on future increases in the amount of the tax. Use of the words "capped" or "limited" are biased and unfairly give the false impression that the amount of the tax could never be increased. Use of the words "capped" and "limited" with respect to the amount of the tax is biased and unfairly gives the impression that the amount of the tax is small or inconsequential. Furthermore, use of the words "capped" and "limited" gives the false impression that the amount of the tax varies with an individual's income up to a specific upper limit.

17.

The proposed Ballot Title summary indicates that a portion of the revenues would fund "high-quality" arts access. Because the quality of the programs cannot be known until after the programs are in place, the claim that the programs would be "high quality" is speculative, biased, and unfair.

18.

The proposed Ballot Title summary indicates that individuals in households below "federal poverty level" would not be subject to the tax. The United States Department of Health and Human Services advises that the phrase "federal poverty level" is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.

<http://aspe.hhs.gov/poverty/12poverty.shtml/ > "Federal poverty guidelines" is the correct term, the preferred term, and the term that is specified in the proposed measure itself.

REMEDY

19.

For this First Claim for Relief, Petitioner requests that the Court issue a decision finding that the Ballot Title prepared by Respondents fails to comply with the requirements of ORS 250.035 and should be modified as demonstrated in Exhibit 2 or in similar manner to reduce possibility of voter confusion. Petitioner also seeks reimbursement of his costs and disbursements.

SERVICE

20.

Pursuant to ORS 250.296(2), Petitioner certifies that a copy of this Petition for Review was hand delivered to the following on July 9, 2012:

City Council of the City of Portland
1221 SW 4th Avenue
Portland, OR 97204

Portland City Elections Officer
1221 SW 4th Avenue
Portland, OR 97204

Dated on this 9TH day of July, 2012

Eric Fruits
Petitioner, Pro se