

<p>DISTRICT COURT Arapahoe County, State of Colorado 7325 South Potomac Street, Suite 100 Centennial, CO 80112 (303) 645-6600</p>	<p>DATE FILED: August 5, 2023 1:32 PM FILING ID: 6E3DE9EF7513E CASE NUMBER: 2023CV31498</p>
<p>CHARLES RICHARDSON, Plaintiff and Contestor, v. CITY OF AURORA, ELIZABETH HAMILTON, PAUL MITCHELL, AND GARRETT WALLS, Defendants and Contestees.</p>	<p>▲ COURT USE ONLY ▲ Case Number:</p>
<p>Attorneys for Plaintiff/Contestor:</p> <p>Mark G. Grueskin, #14621 Thomas M. Rogers III, #28809 Nathan Bruggemann, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303) 573-1900 Fax: (303) 446-9400 mark@rklawpc.com trey@rklawpc.com nate@rklawpc.com</p>	<p>Div.: Ctrm:</p>
<p align="center">COMPLAINT AND VERIFIED PETITION FOR SUMMARY ADJUDICATION OF A BALLOT TITLE CONTEST PURSUANT TO C.R.S. § 1-11-203.5 AND FOR DECLARATORY JUDGMENT</p>	

Plaintiff/Contestor Charles Richardson (“Contestor”), respectfully submits this complaint and verified petition against the City of Aurora, Colorado (“Aurora”), Elizabeth Hamilton (“Hamilton”), Paul Mitchell (“Mitchell”), and Garrett Walls (“Walls”) (collectively, the “Contestees”), pursuant to C.R.S. § 1-11-203.5, C.R.S. §§ 13-51-101 *et seq.*, and C.R.C.P. 57, and states:

SUMMARY

1) On June 26, 2023, Hamilton, Mitchell, and Walls (collectively, the “Petition Representatives”), proponents of a proposed amendment to the Aurora Charter (the “Proposed Charter Amendment”), submitted signed initiative petitions to the Aurora City Clerk Kadee Rodriguez (the “Clerk”) for her review.

2) On July 25, 2023, the Clerk issued an Initial Determination of Sufficiency through which she provided notice that she had determined proponents collected enough signatures to place the Proposed Charter Amendment on the 2023 Aurora Regular Municipal Election ballot for consideration by voters on November 7, 2023.

3) On August 3, 2023, the Clerk set a ballot title and submission clause for the Proposed Charter Amendment (the “Title and Submission Clause”).

4) The Title and Submission Clause are deficient in that they fail to inform voters of key provisions of the Proposed Charter Amendment.

5) Contestor asks the Court to provide a “corrected ballot title” which it is expressly authorized to do pursuant to C.R.S. § 1-11-203.5(3).

6) The Proposed Charter Amendment contains multiple subjects in violation of the Aurora Charter.

7) Contestor asks the Court for a declaratory judgment that the Proposed Charter Amendment contains multiple subjects in violation of the Aurora Charter.

PARTIES

8) Contestor is a resident and registered elector of Aurora.

9) Aurora is the political subdivision of the State of Colorado in which the contested Proposed Charter Amendment has been proposed to be placed before voters in the November 7, 2023, election.

10) Hamilton, Mitchell, and Walls are the Petition Representatives of the Proposed Charter Amendment. In filings with Aurora related to the Proposed Charter Amendment, they proposit to be registered electors and residents of Aurora.

11) Walls is the named designated representative included in the Statement of Intent, filed with the Aurora City Clerk, which Statement is a required filing in order to begin the charter amendment initiative process pursuant to Aurora City Code, Sec. 54-141(a).

JURISDICTION AND VENUE

12) Aurora is located in Arapahoe County and, therefore, jurisdiction and venue are proper in this Court pursuant to C.R.S. § 1-11-203.5(1), which requires that contests concerning ballot titles of municipal ballot issues be brought in “the district court sitting for the political subdivision within which the contest arises prior to the election.”

13) Under Aurora City Code, Sec. 54-1, “[t]he provisions of the Colorado Municipal Election Code of 1965 (C.R.S. § 31-10-101 et seq.) and the Uniform Election Code of 1992 (C.R.S. 1-1-101 et seq.) shall apply to and govern all city elections, unless otherwise provided” by the Aurora City Code. Section 1-11-203.5(1), C.R.S., the statute under which this action is brought is within the Uniform Election Code of 1992. Nothing in the Aurora City Code contradicts or limits the application of C.R.S. § 1-11-203.5(1).

14) In addition to the statutory right of any registered voter to seek District Court review of a ballot title set for an initiative, the Aurora City Code also gives the proponents of an initiative, deemed sufficient by the Clerk, an expedited remedy for addressing a misleading title. Specifically, the Code allows proponents to seek modification of a ballot title if notice of their objections is filed within three (3) days with the City Clerk. The Clerk has authority to revise the title in response to such an objection, after which an appeal may be filed with the District Court. Aurora City Code, Sec. 54-141(d)(2). Plaintiff is not a proponent of the Proposed Charter

Amendment and, therefore, this administrative remedy does not apply to him. Accordingly, he had no administrative remedy to exhaust in order to obtain judicial review of this title.

BOND

15) Contestor will file a cash bond in the amount of \$2,500 with the clerk of the court upon the clerk's acceptance of this complaint and issuance of a case number.

16) The amount of the bond is sufficient.

BACKGROUND ON MEASURE AND BALLOT TITLE

17) The Proposed Charter Amendment is a lengthy and complicated measure. It runs 22 pages and would, inter alia,

- a. reduce the term limit for elected officials from three consecutive four-year terms to two consecutive four-year terms;
- b. change the form of government to a "mayor-council" system from the current "council-manager" system;
- c. remove provisions related to the city manager;
- d. provide the mayor authority to appoint, dismiss, and direct department heads, directors, and executive appointees;
- e. provide the mayor the authority to veto legislation passed by the city council and create a mechanism for the city council to override a mayoral veto;
- f. remove the mayor from the city council;
- g. add an additional at-large member to city council;
- h. transfer the power to appoint members of city advisory boards and commissions from the mayor to the city council;

- i. transfer the power to appoint the city attorney, the presiding municipal court judge, and the municipal court administrator from the city council to the mayor;
- j. increase the mayor's salary;
- k. eliminate the position of mayor pro-tem and create the positions of council president and vice president;
- l. repeal the city council's power to pass an emergency ordinance for the preservation of public property, health, peace and safety;
- m. strip the city council of the power to transfer any unencumbered appropriation balance or portion thereof from one department, office or agency to another;
- n. strip the city council of the power to transfer excess earnings of any municipally-owned utility to the general fund of the city;
- o. strip the city council of the power to establish and fund a contingent fund for the purposes of covering expenditures which could not have been readily foreseen at the time the city budget was approved;
- p. create the office of the mayor and established the powers and duties of the position;
- q. create a procedure for filing a vacancy in the office of the mayor,
- r. create restrictions upon the office of the mayor;
- s. create the position of chief of staff and provide that the chief of staff shall be appointed by the mayor.

18) On August 3, 2023, the Clerk set the following Title and Submission Clause for the Proposed Charter Amendment to place before voters at the November 7, 2023:

Ballot Title:

A citizen-initiated petition to amend the Charter of the city of Aurora to adopt the “mayor-council” form of government, wherein the city manager position is removed and the mayor is the chief executive and administrative officer of the city, while also reducing term limits for elected officials from three (3) consecutive four-year terms to two (2) consecutive four-year terms, and adding one additional at-large member to city council.

Submission Clause:

Shall the charter of the city of Aurora be amended to adopt the “mayor-council” form of government, wherein the city manager position is removed and the mayor is the chief executive and administrative officer of the city, while also reducing term limits for elected officials from three (3) consecutive four-year terms to two (2) consecutive four-year terms, and adding one additional at-large member to city council?

YES _____ NO _____

BACKGROUND ON CLEAR TITLE

19) Section 31-11-111(3), C.R.S., provides that a “ballot title shall correctly and fairly express the true intent and meaning of the measure.”

20) Consistent with state statute, the Aurora City Code requires the Clerk to “designate and fix a ballot title and submission clause which shall fairly and accurately express the intent and meaning of the proposed Charter amendment.” Aurora City Code, Sec. 54-141(d)(1).

21) A ballot title must inform voters of the “central features” of the proposed legal change before them. *In re Petition on School Finance*, 875 P.2d 207, 210 (Colo. 1994).

22) A ballot title’s wording fails to meet the voters’ needs “where such language is misleading, inaccurate, or fails to reflect the central features of the proposed initiative.” *In re Title, Ballot Title & Submission Clause, & Summary for “Petitions”*, 907 P.2d 586, 590 (Colo. 1995).

23) “[T]he clear title requirement seeks to accomplish two overarching goals: prevent voter confusion and ensure that the title adequately expresses the initiative’s intended purpose.”

In re Title, Ballot Title & Submission Clause for 2015-2016 #156, 2016 CO 56, ¶11, 413 P.3d 151, 153.

24) A ballot title must communicate a ballot measure’s key aspects to voters “whether familiar or unfamiliar with the subject matter of a particular proposal” so that, no matter how informed about the law each may be, a voter can “determine intelligently whether to support or oppose such a proposal.” *In re Proposed Initiative Concerning “State Personnel System”*, 691 P.2d 1121, 1123 (Colo. 1984).

25) This standard is not met, and a ballot title is legally inadequate, where “it is so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative.” *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶34, 369 P.3d 565, 570.

26) The Title and Submission Clause are deficient in that they are misleading and fail to inform voters of several central features of the Proposed Charter Amendment, including:

- a. The increase in the mayor’s salary.
- b. The removal of the mayor from the city council. The Title and Submission Clause note that the Proposed Charter Amendment would add an additional at-large member to the city council but fails to note that the mayor would be removed. Without this additional context, the Title and Submission Clause are misleading.
- c. The repeal of the city council’s power to pass an emergency ordinance for the preservation of public property, health, peace, and safety. This power permits the city council to pass an emergency ordinance that becomes effective immediately. Non-emergency ordinances cannot become effective until the time permitted for citizens to exercise their fundamental right of referendum has passed. Thus, the repeal of the council’s power to pass an emergency ordinance would result in a

substantial change to the powers of both citizens and the city council. This shift in powers is a central feature of the measure and must be conveyed to voters in the Title and Submission Clause.

- d. Providing the mayor with veto power over legislation passed by the city council. This provision would result in a substantial transfer of power from the city council to the mayor that is not apparent from the Title and Submission Clause.
- e. Changes in appointing authority. The Proposed Charter Amendment would transfer from the city council to the mayor the power to appoint department heads, directors, executive appointees, the city attorney, the presiding municipal court judge, the municipal court administrator, and (the newly created position of) chief of staff. These changes in appointing authority would constitute a substantial transfer of power from the city council to the mayor and must be included in the Title and Submission Clause.
- f. Elimination of fiscal powers. The Proposed Charter Amendment would strip city council of the power to 1) transfer unencumbered appropriation balances from one department or agency to another, 2) establish and fund a contingent fund for the purpose of covering expenditures which could not have been readily foreseen at the time the city budget was approved, and 3) transfer excess earnings of any municipally owned utility to the general fund of the city. Together, these changes amount to a substantial reduction in the powers of the city council and they should be referenced in the Title and Submission Clause.
- g. The creation of the position of chief of staff. The fact that the Proposed Charter Amendment would create a new, senior official in the Aurora government who would be an additional full-time executive employee on the city payroll and who,

as a non-elected official, would temporarily fill a vacancy in the position of mayor, should be included in the Title and Submission Clause.

BACKGROUND ON SINGLE SUBJECT VIOLATION

27) Under Aurora City Code, Sec. 54-141(d)(1), “[a]ny Charter amendment initiative petition shall be in the form of an ordinance.”

28) Indeed, the Proposed Charter Amendment is titled “ORDINANCE” and its text begins “FOR AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF AURORA...PROPOSED AMENDEMENTS TO...THE CITY CHARTER...”

29) Under the Aurora Charter, Sec. 5-1, “all ordinances...shall be confined to one subject” except in certain cases not applicable here. Accordingly, the ordinance that refers the Proposed Charter Amendment may address only one subject.

30) The proposed ordinance referring the Proposed Charter Amendment violates this requirement because it contains multiple subjects.

31) To determine that a measure has only a single subject, the Court must find that an initiative’s topics have a “necessary or proper” connection to the general single subject of the measure, rather than being “disconnected or incongruous” with that subject. *In re Breene*, 14 Colo. 401, 404, 24 P. 3, 3 (1890) (prohibiting the joining in a single act of “disconnected or incongruous matters”) and *In re Interrogatories Propounded by Gov. Roy Romer on House Bill No. 1353*, 728 P.2d 371, 372-73 (Colo. 1987) (prohibiting the joining in a single act “subjects having no necessary or proper connection . . .” and noting that “[t]he requirement that a bill be limited to a single subject serves the beneficent purpose of making each legislative proposal depend upon its own merits for passage.”).

32) The Proposed Charter Amendment’s primary subject appears to be to change Aurora’s form of government. However, the measure contains unrelated additional subjects, including:

- a. reducing the term limits for elected officials from three consecutive four-year terms to two four-year consecutive terms;
- b. increasing the mayor’s salary;
- c. repealing the city council’s power to pass an emergency ordinance for the preservation of public property, health, peace, and safety;
- d. aside from merely transferring the powers of the city manager position to the mayor, taking substantial powers away from the city council or transferring the city council’s powers to the mayor; and
- e. stripping the city council of certain fiscal powers.

33) None of these provisions are “necessarily and properly” connected to changing Aurora’s form of government. Instead, they are disconnected from and incongruous with the measure’s primary purpose.

FIRST CLAIM FOR RELIEF
(Correction of a deficient ballot title and submission clause under C.R.S. § 1-11-203.5)

34) The above paragraphs are incorporated by reference in their entirety.

35) Under C.R.S. § 1-11-203.5(3), if the Court finds that the form or content of the ballot title does not conform to the requirements of law, it shall set the text of a corrected title.

36) The ballot title fails to conform to the requirements of law in that it is misleading and does not inform voters of central features of the measure, including:

- a. The increase in the mayor’s salary.
- b. The removal of the mayor from the city council.

- c. The repeal of the city council’s power to pass an emergency ordinance for the preservation of public property, health, peace, and safety.
- d. Providing the mayor with veto power over legislation passed by the city council.
- e. Transfers of appointing power from city council to the mayor.
- f. Elimination of certain of the city council’s fiscal powers.
- g. The creation of the position of chief of staff and the position’s role in temporarily filling a mayoral vacancy.

37) The Court should correct these deficiencies by setting the following as the corrected title and submission clause:

Ballot Title:

A citizen-initiated petition to amend the Charter of the city of Aurora to expand the powers and authority of the mayor, wherein the city manager position is eliminated and the mayor is made the chief executive and administrative officer of the city; the mayor’s pay is increased from \$80,000 to \$92,000 per year; the city council will no longer be empowered to pass emergency ordinances for the preservation of public property, health, peace, and safety; the mayor is given the power to veto legislation passed by city council, and the city council is given the power to override the mayor’s veto; the mayor will take the power currently given to the city council to appoint department heads, directors, the city attorney, the presiding municipal court judge, the municipal court administrator and other positions; remove from the powers of the city council the ability to make transfers of unencumbered funds from one department to another and to establish contingency funds to provide resources for unforeseen situations; the position of chief of staff, to be appointed by the mayor, is created; designating the chief of staff to temporarily fill the position of mayor when the position becomes vacant; reducing term limits for elected officials from three (3) consecutive four-year terms to two (2) consecutive four-year terms; and removing the mayor from city council and adding one additional at-large member to city council.

Submission Clause:

Shall the charter of the city of Aurora be amended to adopt the “mayor-council” form of government, wherein the city manager position is eliminated and the mayor is made the chief executive and administrative officer of the city; the mayor’s pay is increased from \$80,000 to \$92,000 per year; the city council will no longer be empowered to pass emergency ordinances for the preservation of public property, health, peace, and safety; the mayor is given the power to veto legislation passed by city council, and the city council is given the power to override the mayor’s veto; the mayor will take the power

currently given to the city council to appoint department heads, directors, the city attorney, the presiding municipal court judge, the municipal court administrator and other positions; remove from the powers of the city council the ability to make transfers of unencumbered funds from one department to another and to establish contingency funds to provide resources for unforeseen situations; the position of chief of staff, to be appointed by the mayor, is created; designating the chief of staff to temporarily fill the position of mayor when the position becomes vacant; reducing term limits for elected officials from three (3) consecutive four-year terms to two (2) consecutive four-year terms; and removing the mayor from city council and adding one additional at-large member to city council.

YES _____ NO _____

SECOND CLAIM FOR RELIEF

(Declaratory Judgment under C.R.S. §§ 13-51-101 *et seq.* and C.R.C.P. 57 that the Proposed Charter Amendment Contains Multiple Subjects in violation of Aurora Charter)

38) The above paragraphs are incorporated by reference in their entirety.

39) As set forth above, under the Aurora Charter, Sec. 5-1, every ordinance in the City, including the ordinance referring the Proposed Charter Amendment to voters, is limited to a single subject.

40) The ordinance referring the Proposed Charter Amendment to voters violates this provision of the Aurora Charter because it contains multiple subjects. In addition to what appears to be its primary purpose, changing Aurora's form of government, the Proposed Charter Amendment would also:

- a. reduce the term limit for city council members from three consecutive four-year terms to two consecutive four-year terms;
- b. increase the mayor's salary;
- c. repeal the city council's power to pass an emergency ordinance for the preservation of public property, health, peace, and safety;
- d. take substantial powers away from the city council or transfer certain powers to the mayor; and

e. strip the city council of certain fiscal powers.

41) These subjects are not necessarily and properly related to the primary subject of the measure but are instead disconnected or incongruous.

42) Under C.R.S. §§ 13-51-101 *et seq.* and Colorado Rule of Civil Procedure 57, Contestor, as a registered elector and resident of Aurora, is entitled to a determination of a question of the construction of the single subject provision of Aurora Charter, Sec. 5-1, as it applies to the Proposed Charter Amendment and a declaration that it contains multiple subjects in violation thereof.

PRAYER FOR RELIEF

Contestor requests the following relief:

- 1) An order finding the Bond filed with the clerk of the court sufficient;
- 2) A scheduling order setting this matter for hearing on the merits within ten days after Contestees file their response to this complaint and verified petition, pursuant to C.R.S. § 1-11-203.5(2);
- 3) An order finding the Title and Submission Clause do not conform to the requirements of state law and will be misleading or confusing to voters, and specifying the text of the corrected ballot title as set forth in this Complaint, pursuant to C.R.S. § 1-11-203.5(3);
- 4) An award of Contestor's costs and reasonable attorneys' fees as required by C.R.S. § 1-11-203.5(3);
- 5) A declaratory judgment that the ordinance referring the Proposed Charter Amendment to voters contains more than one subject; and
- 6) Such other and further relief the Court determines is just and proper.

