

AGENDA REPORT

FOR: City Council August 11, 2016
TO: Dave Zabell, City Manager Regular Meeting: 8/15/16
FROM: Stan Strebel, Deputy City Manager
Executive
SUBJECT: Proposed Consent Decree, Federal Voting Rights Act (VRA) Compliance

I. REFERENCE(S):

Proposed Consent Decree - United States District Court Eastern District of Washington
Complaint for Injunctive and Declaratory Relief
Resolution No. 3635

II. ACTION REQUESTED OF COUNCIL / STAFF RECOMMENDATIONS:

MOTION: I move to authorize the City Attorney to jointly file, with the ACLU, in the case of Bertha Aranda Glatt v City of Pasco, the proposed Consent Decree in substantially the form presented.

III. FISCAL IMPACT:

IV. HISTORY AND FACTS BRIEF:

As the result of rapid population growth and changes in community demographics, the City has expended significant effort recently in working to assure that all Pasco residents are fairly represented on the City Council. In the recent past the City Council has identified that its current election system, which provides that Council district seats are voted by district in the primary election but on a city-wide basis in the general election, could be diluting the Latino/a vote. State law however mandates that City Council district seats be voted on a city-wide basis in the general election. As the City is not authorized to adopt an election system inconsistent with state law, the City Council has not been able to change its election system to allow district-based voting in the general election.

It has recently been alleged by the American Civil Liberties Union (ACLU) that the impact of Latino voters is diluted by the at-large aspect of the City's current election system and, thus, adversely impacts the election of Latino-favored candidates to the City Council. The ACLU's claim, as outlined in the attached complaint recently filed in Federal District court, is that the City is in violation of the Federal Voting Rights

Act.

Aside from efforts within the confinements created by state law, the City Council has initiated multiple efforts in an attempt to change state law to allow for greater impact of the Latino/a vote. In May 2015, the City Council enacted Resolution No. 3635, attached, declaring its intent to pursue a change in state law to allow district based-voting, declaring its continuing intent to provide equal voting opportunities for all of its citizens, and to provide equitable and proportional representation. The City followed up its resolution by vigorously advocating to the state legislature for a change in state law that would allow for district based voting for City Council districts in the general election. While some traction was gained, the legislature has yet to amend state law.

In a separate effort, the City sought an opinion from the Washington State Attorney General (AG) on the matter, which the AG rendered on January 28, 2016. While helpful, as written the AG's opinion references threshold determinations and requires coordination with, and approval from, other agencies that add considerable time and potential for disagreement in resolving this matter of great import to the community in a timely manner. It has been Council's direction that the matter of district-based voting be brought to them for consideration and resolution far enough in advance of the next Council election cycle so as to be beneficial to the community.

City officials and representatives of the American Civil Liberties Union have been in discussions since early 2016 in an effort to map a way forward. With the adjournment of the legislature signaling the loss of a legislative solution this year, and the possibility that utilization of the AG's opinion may result in a protracted and unpredictable process leaving the City at risk of costly litigation, those discussions have necessarily focused on litigation in federal court as a vehicle to address concerns over the City's election system. In a situation such as this, where state law is precluding the City from taking action to meet the requirements of a federal law, the judgment of a federal judge can overrule the state law. A court, however, cannot enter a judgment unless it has jurisdiction over the matter, which is initiated by a legal proceeding, which in turn requires the filing of a complaint which has now occurred.

The proposed draft consent decree is a means by which the City and ACLU propose to ask the United States District Court Eastern District of Washington assume jurisdiction in this matter and ultimately "Determine and impose the appropriate election system remedy."

V. DISCUSSION:

The City and ACLU have jointly crafted the above referenced proposed consent decree. Council discussion and approval of the document is requested before it is submitted to the Court.

This item was discussed at the August 8 Workshop meeting. Staff recommends

approval of the attached resolution.

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18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF WASHINGTON

20 Bertha Aranda Glatt,
21 Plaintiff,

No. 4:16-CV-05108-LRS

22 v.

23 CITY OF PASCO, MATT WATKINS,
24 in his official capacity as Mayor of
25 Pasco, and REBECCA FRANCIK, BOB
26 HOFFMANN, TOM LARSEN, SAUL
27 MARTINEZ, and AL YENNEY, in their
28 official capacity as members of the Pasco
City Council,

CONSENT DECREE

Defendants.

1 3. Five (5) City Councilmembers are currently nominated in a non-
2 partisan, top-two primary in five (5) territorial election districts. For territorial
3 election districts, only a resident of that voting district may be a candidate for, or
4 hold office as, a Councilmember of that district, and only voters of the district may
5 vote at the primary election to nominate candidates for the City Councilmember
6 for that district. Candidates for the two (2) at-large City Council positions are
7 determined at the primary election in a non-partisan, top-two primary by residents
8 of the entire City of Pasco.
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12 4. During the general election, voters of the entire City vote to elect a
13 Councilmember for each of the respective territorial election districts, as well as
14 the two at-large Council positions (i.e., all Councilmembers are elected on an at-
15 large basis).
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17 5. The City has, within the last legislative session, sought a change to the
18 State law to allow for district-based voting. In the absence of a change in the State
19 law, the City, and in anticipation of the 2015 municipal election cycle, sought to
20 amend Pasco Municipal Code (PMC) 1.10.010 to provide for district-based
21 elections. The City requested that the Franklin County Auditor implement district-
22 based voting. The Auditor responded to Pasco's request in a letter dated April 17,
23 2015, claiming that because implementing a district-based election system would
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1 violate RCW 35A.12.180, the Auditor was unable to conduct an election under
2 Pasco's proposed district-based election system.

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4 6. On May 4, 2015, the Pasco City Council enacted Resolution No. 3635
5 declaring its intent to pursue a district-based election system for City
6 Councilmembers, and further declaring its continuing intent to provide equal
7 voting opportunities for all of its citizens, and to provide equitable and proportional
8 representation.

9
10 7. On the behest of the City of Pasco, Washington State Senator Pam
11 Roach submitted a request to the Washington State Attorney General regarding the
12 authority of cities subject to RCW 35A.12.180 (which includes the City of Pasco)
13 to change their own election systems. On January 28, 2016, the Washington State
14 Attorney General rendered an Opinion which noted that:

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17 **“Thus, RCW 35A.12.180 specifically denies to code cities the authority**
18 **to restrict voting by ward at the general election. Therefore, a local**
19 **ordinance that provided for general elections by ward would conflict**
20 **with RCW 35A.12.180 and be preempted by state law.” (Attorney**
21 **General Opinion at pg. 5.) “In sum, Code cities in Washington that**
22 **believe they may be in violation of the VRA face difficult decisions and**
potential legal risk regardless of what course they choose.” (Attorney
General Opinion at pg. 10).

23 **Violation of Section 2 of the Federal Voting Rights Act**

24 8. This action is for the enforcement of Section 2 of the Federal Voting
25 Rights Act, which provides in part as follows:
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2 "(a) No voting qualification or prerequisite to voting or standard,
3 practice, or procedure shall be imposed or applied by any State or
4 political subdivision in a manner which results in a denial or
5 abridgement of the right of any citizen of the United States to vote on
6 account of race or color, or in contravention of the guarantees set forth
7 in Section 1973b(f)(2) of this title, as provided in subsection (b) of
8 this section.

9 (b) A violation of subsection (a) of this section is established if,
10 based on the totality of circumstances, it is shown that the political
11 processes leading to nomination or election in the State or political
12 subdivision are not equally open to participation by members of a
13 class of citizens protected by subsection (a) of this section in that its
14 members have less opportunity than other members of the electorate
15 to participate in the political process and to elect representatives of
16 their choice. The extent to which members of a protected class have
17 been elected to office in the State or political subdivision is one
18 circumstance which may be considered: Provided, That nothing in
19 this section establishes a right to have members of a protected class
20 elected in numbers equal to their proportion in the population."

21 The Federal Voting Rights Act is designed to "help effectuate the Fifteenth
22 Amendment's guarantee that no citizen's right shall 'be denied or abridged . . . on
23 account of race, color, or previous condition of servitude." (*Voinovich vs. Quilter*,
24 507 U.S. 146, 152 (1993)).

25 A violation of the Federal Voting Rights Act occurs, when based upon the
26 totality of the circumstances, the challenged electoral process is "not equally open
27 to participation by members of a 'racial minority group' and that its members have
28 less opportunity than other members of the electorate to participate in the political
process and to elect representatives of their choice."

1 The City of Pasco is an optional municipal code city subject to RCW
2 35A.12.180, the pertinent portion of which reads as follow:
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4 "Wards shall be redrawn as provided in chapter 29.70 RCW (now
5 29A.76 RCW). Wards shall be used as follows: (1) Only a resident
6 of the ward may be a candidate for, or hold office as, a
7 councilmember of the ward; and (2) only voters of the ward may vote
8 at a primary to nominate candidates for a councilmember of the ward.
9 Voters of the entire city may vote at the general election to elect a
10 councilmember of a ward, unless the city had prior to January 1, 1994,
11 limited the voting in the general election for any or all council
12 positions to only voters residing within the ward associated with the
13 council positions. If a city had so limited the voting in the general
14 election to only voters residing within the ward, then the city shall be
15 authorized to continue to do so."

16 Due to voting trends, the result of the statutorily mandated at-large election
17 is non-Hispanic dominance in electing City Council members. Pasco's large
18 Latino population is sufficiently numerous and compact to form a majority in at
19 least one single-member district; is political cohesive; and the non-Latino majority
20 votes sufficiently as a block to defeat a Hispanic preferred candidate. (*Thornburg*
21 *vs. Gingles*, 478 U.S. 30 (1986)).

22 As this court held in *Montes v. Yakima*, "state law must sometimes
23 yield to afford an effective remedy under the Voting Rights Act. The
24 Supremacy Clause requires that state law be abrogated where doing so is
25 necessary to remedy a violation of the Voting Rights Act. *See Arizona vs.*
26 *Inter Tribal Council of Ariz. Inc.*, 133 S.Ct. 2247, 2256 (2013))." *Montes v.*
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1 *Yakima*, No. 12-CV-3108-TOR, Final Injunction and Remedial Districting
2 Plan (2015). “Federal legislation so far as it extends and conflicts with the
3 regulations of the State, necessarily supersedes them.” *Ex parte Siebold*, 100
4 U.S. 371, 384 (1879)). Thus, “[i]n remedial situations under Section 2 where
5 state laws are necessarily abrogated, the Supremacy Clause appropriately
6 works to suspend those laws because they are an unavoidable obstacle to the
7 vindication of the federal right.” *Large v. Fremont Cnty., Wyo.*, 670 F.3d
8 1133, 1145 (10th Cir. 2012).

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13 As such, a number of state courts have invalidated at-large election
14 systems and approved or given full deference to single-member district
15 remedial plans, even when the adoption of such a plan conflicted with state
16 law. *See e.g. United States vs. City of Euclid*, 580 F. Supp. 2d 584 (E.D.
17 Ohio 2008); *Tallahassee Branch of NAACP v. Leon County*, 827 F.2d 1436,
18 1437 (11th Cir. 1987); cert. denied, 488 U.S. 960; *United States v. Osceola*
19 *County*, 474 F. Supp. 2d 1254 (M.D. Fla 2006). Similarly here, the Federal
20 Court is specifically authorized to order an election system that conflicts with
21 state law in order to fully remedy the City’s Voting Rights Act violation.
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26 Indeed, the Eastern District of Washington affirmatively held in *Montes*
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3 "Defendants are correct that state law must sometimes yield to afford
4 an effective remedy under the Voting Rights Act. The Supremacy
5 Clause requires that state law be abrogated where doing so is
6 necessary to remedy a violation of the Voting Rights Act. (*Arizona*
7 *vs. Inter Tribal Council of Ariz. Inc.*, 133 S.Ct. 2247, 2256 (2013).
8 Federal legislation so far as it extends and conflicts with the
9 regulations of the State, necessarily supersedes them. In remedial
10 situations under Section 2 where state laws are necessarily abrogated,
11 the Supremacy Clause appropriately works to suspend those laws
12 because they are an unavoidable obstacle to the vindication of the
13 federal right."

14 *Montes*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014)

15 The Federal Court is specifically authorized to act in just such a
16 circumstance to resolve such a conflict.

17 9. Since the implementation of district voting in 1971, the population of
18 the City of Pasco has grown dramatically. During that period, there has been a
19 substantial increase in the number of Latino residents. Today, Latino residents are
20 estimated to be approximately half of the City's population. The Latino population
21 in the City of Pasco is sufficiently numerous and geographically compact to
22 constitute a majority of the voting age population in at least one election district.

23 *Id.* ¶ 42.

24 10. Latinos in the City of Pasco are a politically unified group that votes
25 cohesively as a bloc. In contests between Latino and non-Latino candidates for the
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1 City Council, statistical analysis show that Latino voters consistently vote for
2 Latino candidates. *Id.* ¶ 21.

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4 11. The majority of voters in Pasco are white and and have historically
5 engaged in bloc voting favoring non-Hispanic candidates.

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7 12. There is a pattern of racially polarized voting in the City of Pasco City
8 Council elections. The voting patterns and the presently mandated at-large general
9 election of all City Council candidates make it impossible for the Latino
10 community to elect candidates of their choice. *Id.* ¶¶ 10, 22. Although other
11 minority candidates have been elected to the City Council, as a result of racially-
12 polarized bloc voting, no Latino candidate has ever won an opposed election to the
13 Pasco City Council. The first Latina to serve on the City Council was Luisa
14 Torres. She was appointed to the Council in 1989. Luisa subsequently ran for
15 election in 1989 but was defeated by a non-Latino candidate. The only other
16 Latino to serve on the City Council was also first appointed to the City Council,
17 Saul Martinez. He subsequently ran unopposed, which enabled him to retain his
18 seat. *Id.* ¶ 23.

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23 13. In 2015, six Latinos ran for two positions on City Council. Despite
24 strong support of Latino voters, the two Latinas who survived the primary election
25 were both defeated in the November 2015 general election. *Id.* ¶ 24.

1 While there is no evidence of any discriminatory motive or intent by the
2 non-Latino population in exercising their own rights to vote, such intent is
3 not relevant to a violation of Section 2 of the Voting Rights Act.
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5 14. There is no evidence that non-Latinos are deliberately conspiring to
6 outvote Latinos.
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8 15. The Latino population in the City of Pasco is sufficiently numerous
9 and geographically compact to constitute a majority of the voting age population in
10 at least one election district. *Id.* ¶ 42.
11

12 16. Under the Senate Factors or “the totality of the circumstances”
13 analysis, there is sufficient evidence of disparities to show inequality in
14 opportunities between the white and Latino populations and that the existing at-
15 large election system for the Pasco City Council has excluded Latinos from
16 meaningfully participating in the political process and diluted their vote such that
17 Latinos are unable to elect candidates of their choice to the City Council. Thus,
18 the election system by which Pasco elects its City Councilmembers, which is
19 mandated by State statute, and voting trends in Pasco results in a violation Section
20 2 of the Voting Rights Act.
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24 17. It is in the best interest of the residents of the City of Pasco to enter
25 into this Consent Decree, thus avoiding protracted, costly, and potentially divisive
26 litigation. Defendants have the authority to settle litigation in good faith for further
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1 expenditure of public funds and defense thereof is not likely to be in the interest of
2 the public.

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4 NOW, THEREFORE, based upon the stipulated evidence presented in this
5 case and as memorialized above, IT IS HEREBY, ORDERED, ADJUDGED AND
6 DECREED that:

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8 1. This Court has jurisdiction over these actions pursuant to 42 U.S.C.
9 1973 and 28 U.S.C. 1345.

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11 2. Under the Supremacy Clause of Article VI of the Constitution of the
12 United States this Court has the power to impose a remedy otherwise contrary to
13 applicable State statutes. This Court also has the authority to approve a settlement
14 or issue a consent decree that abrogates or modifies state law if doing so necessary
15 to remedy a violation of Section 2 of the Voting Rights Act. *Perkins v. Chicago*
16 *Heights*, 47 F.3d 212, 216 (7th Cir. 1995).

17
18 3. RCW 35A.12.180 mandates that Pasco elect its City Councilmembers
19 in at-large elections. Due to voting trends in Pasco the use of an at-large election
20 system *dilutes* the Latino population's voting power in violation of Section 2 of the
21 Voting Rights Act.
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24 4. In order to remedy the City of Pasco's Section 2 violation, the City
25 must adopt a new election system. Implementation of the new election system will
26 necessarily abrogate Washington State law, but must do so only as much as
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1 necessary to remedy the Section 2 violation. *Largey*, 670 F.3d at 1145 (“[I]n
2 remedial situations under Section 2 where State laws are necessarily abrogated, the
3 supremacy clause appropriately works to suspend those laws because they are an
4 *unavoidable obstacle* to the vindication of the Federal right.”) (emphasis in
5 original).
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8 5. Defendants admit that due to voting trends Pasco’s election system
9 results in unlawful dilution of the Latino population’s vote in violation of Section 2
10 of the Voting Rights Act; a new election system must be imposed; Pasco does not
11 have the authority to affirmatively change its election system because Wash. Rev.
12 Code 35A.12.180 bars such alterations; and this Court has the authority to impose
13 an election system that remedies that violation.
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16 6. The Court reviewed the Parties’ stipulation of facts as reflected in this
17 Consent Decree, and finds that the stipulations are sufficient to support finding that
18 the current Pasco’s City Council election system unlawfully dilutes the Latino
19 population’s vote in violation of Section 2 of the Federal Voting Rights Act, 42
20 U.S.C. § 1973.
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22 7. Except as inconsistent with or specifically altered by the terms of this
23 Consent Decree, all State laws shall continue to govern elections for the City
24 Council of the City of Pasco.
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1 8. Defendants, and their officers, agents, and successors in office, and all
2 persons acting in concert with them, are enjoined from administering,
3 implementing, or conducting future elections for the Pasco City Council under the
4 current at-large election method or any other election method that violates Section
5 2 of the Voting Rights Act.
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8 9. The Court reserves jurisdiction of this matter to determine and impose
9 the appropriate election system to remedy the current violation of Section 2 of the
10 Voting Rights Act.
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12 10. It is further ordered, to provide for effective opportunities for full
13 participation in the 2017 municipal election cycle, that the Parties shall, in good
14 faith efforts, meet and confer no later than September 15, 2016 to determine
15 whether the Parties can agree upon a remedial option for compliance with Section
16 2 of the Voting Rights Act. If the Parties cannot reach agreement, the Parties shall
17 each submit their proposed remedial districting plans to the Court on or before
18 October 15, 2016. The Parties shall respond to the proposed remedial plans on or
19 before November 15, 2016. The Parties shall present a reply regarding the
20 proposed remedial plans by November 15, 2016. A hearing before this Court on
21 the proposed remedial redistricting plans shall be set by the Court.
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25 11. No attorney fees or costs are awarded for this liability phase of the
26 case or work performed by Plaintiffs prior to the filing of the Complaint; however,
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1 the Court reserves the award of reasonable attorney fees and costs for the remedial
2 phase of this case.

3
4 ENTERED THIS _____ day of _____, 2016.

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7 _____
8 United States District Judge

9 Presented by:

10 */s/Leland B. Kerr*

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Bertha Aranda Glatt,
Plaintiff,

v.

CITY OF PASCO, MATT
WATKINS, in his official capacity as
Mayor of Pasco, and REBECCA
FRANCIK, BOB HOFFMANN,
TOM LARSEN, SAUL MARTINEZ,
and AL YENNEY, in their official
capacity as members of the Pasco
City Council,

Defendants.

No.

COMPLAINT

I. INTRODUCTION

1. This Complaint is a challenge to the at-large election system utilized by the City of Pasco, Washington to elect members of its City Council. The

1 current at-large scheme impermissibly denies Latino/a voters an equal
2 opportunity to participate in the political process and elect representatives
3 of their choice, in violation of Section 2 of the Voting Rights Act, 42
4 U.S.C. § 1973.

5 **II. JURISDICTION**

6 2. This is an action for injunctive and declaratory relief under Section 2 of
7 the Voting Rights Act, 42 U.S.C. § 1973.

8 3. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4),
9 and 1367. Plaintiff's action for declaratory and injunctive relief is
10 authorized by 28 U.S.C. §§ 2201 and 2202. Venue is proper under 28
11 U.S.C. § 1391.

12 **III. PARTIES**

13 4. Plaintiff Bertha Aranda Glatt is a Latina, registered voter, and resident of
14 the City of Pasco.

15 5. Plaintiff desires to participate in the electoral and political processes of
16 the City of Pasco on an equal basis with all other residents, and to ensure
17 that all Latino/a voters can also do so.

18 6. Defendant City of Pasco is a governmental entity that maintains an
19 electoral system comprised of seven positions—five residency district
positions and two at-large positions—for the Pasco City Council (the

1 “City Council”). In the general election, all seven City Council seats are
2 elected at-large.

3 7. Defendants Matt Watkins, the Mayor of the City of Pasco, Rebecca
4 Francik, Bob Hoffmann, Tom Larsen, Saul Martinez, and Al Yenney are
5 the current elected members of the City Council. The City Council has
6 authority to set voting districts. The City Council members are each sued
7 in their official capacity only.

8 IV. FACTS

9 A. The City of Pasco

10 8. Pasco is a non-charter code city. Under Wash. Rev. Code 35A.12.180,
11 non-charter code cities may divide their city into wards but may not limit
12 voting in general elections to voters residing in wards unless the system
13 was set up prior to 1994. Pasco did not set up a districted voting system
14 for primary elections prior to 1994.

15 9. According to data provided by the United States Census Bureau, the City
16 of Pasco has a total population of 62,295 and a voting-age population of
17 40,451.

18 10. Latino/as comprise approximately 32% of the City of Pasco’s voting-age
19 population, and comprising approximately 54.13% of the city’s
population.

1 **B. The Pasco City Council**

2 11. The City Council is comprised of seven (7) non-partisan seats.

3 12. City Council positions 1, 2, 3, 4, and 5 are residency districts. Positions 6
4 and 7 are at-large seats.

5 13. In the primary, only those who live in a residency district associated with
6 positions 1-5 vote to determine who will proceed from the primary to the
7 general election. In the primary, positions 6 and 7 are elected at-large.

8 14. In the general election all City Council positions are elected at-large.

9 15. City Councilmembers serve staggered, four-year terms such that either
10 three or four of the seven seats are up for election biannually. The last
11 general election for positions 1, 5, and 6 was held on November 3, 2015.
12 The last general election for positions 2, 3, 4 and 7 was held on November
13 5, 2013.

14 16. Despite the fact that there is a substantial Latino/a population, no Latino/a
15 has won a contested election.

16 **C. Pasco's Latino/a Community**

17 17. Latino/as in Pasco have expressed clear political preferences that are
18 distinct from those of the majority of non-Latino/a voters. In elections
19 where Latino/a candidates have run, a statistically significant percentage
of Latino/a voters in Pasco vote for the same candidates.

1 18. As a result of racially polarized bloc voting, no Latino/a candidate has
2 ever won a contested election for a seat on the City Council.

3 19. These patterns have continued through the most recent elections in the
4 Pasco City Council. In 2015, six Latinos ran for two positions on City
5 Council. Despite vigorous efforts and strong support in the Latino/a
6 community, the two Latinas who survived the primary election were both
7 defeated in the general November 2015 election.

8 20. Latino/as in the City of Pasco are physically and geographically compact
9 enough to compose the majority of at-least one single-member district,
10 and it is possible to draw a single-member district plan for the Pasco City
11 Council that contains three districts with Latino/a citizen voting-age
12 population majorities.

13 21. The totality of the circumstances demonstrate that Latino/a voters in the
14 City of Pasco have less opportunities than white members of the
15 electorate to participate in the political process and elect representatives of
16 their choice.

17 22. There has been discrimination against Latino/as in their efforts to
18 participate equally with other residents in the political process.

19 23. There is significant evidence of racially polarized voting in Pasco City
Council elections. Bloc voting patterns in the City have consistently

1 prevented Latino/a voters from electing their preferred candidates. This
2 racially polarized voting results in the limited representation and
3 indifference to the Latino/a community's interests on the City Council.

4 24. The City of Pasco has used voting practices or procedures that enhance
5 the opportunity for discrimination against Latino/a voters.

6 25. Latino/as in the City of Pasco have been subjected to and continue to bear
7 the effects of official and private discrimination on the basis of race and
8 ethnicity in employment, education, health services, and housing. As a
9 result of historical discrimination against Latino/as in employment,
10 education, health services, and housing, many Latino/as in the City of
11 Pasco have a lower socioeconomic status.

12 26. According to the 2011-2013 American Community Survey ("ACS") 3-
13 Year Estimates, Latino/as in Pasco are less likely to own homes than
14 white residents. Estimates indicate that 77.7% of white residents owned
15 the home they occupied while only 51.8% of Latino/a residents did.

16 27. According to the 2011-2013 ACS 3-Year Estimates, while 14.2% of the
17 City of Pasco's non-Hispanic white residents aged 18 to 64 lack health
18 insurance, 43.8% of Latino/as aged 18 to 64 lack the same.

19 28. According to the 2011-2013 ACS 3-Year Estimates, the poverty rate for
Latino/a residents of the City of Pasco is more than six times higher than

1 the rate for non-Hispanic white residents (32.9% to 5.1% respectively).

2 Relatedly, the median household income for Latino/a residents in the city
3 is approximately half that of non-Latino/a white residents. The median
4 household income for Latino/a residents is \$33,645, while the median
5 income for non-Hispanic whites is \$66,222.

6 29. While a Latino/a has run for a City Council position nearly every election
7 cycle since 1990, not one Latino/a candidate has won a contested City
8 Council election. The sole Latino elected to the City Council, Saul
9 Martinez, was first appointed to the Council, and subsequently ran
10 unopposed. The only other Latino/a that has sat on the City Council, Luisa
11 Torres, was appointed in 1989 but lost subsequent bids for City Council.

12 30. These factors have allowed elected officials to remain unresponsive to the
13 needs of the Latino/a community in Pasco.

14 31. The City's at-large election system, racially polarized voting, and
15 historical and ongoing discrimination have hindered Latino/as' ability to
16 participate effectively in the political process and have diluted Latino/as'
17 ability to elect representatives of their choice.

COUNT ONE
VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT OF 1965

1
2 32. The allegations contained in Paragraphs 1 through 31 are hereby
3 incorporated in Count One of the Complaint as if set forth herein.

4 33. The Latino/a community in the City of Pasco is sufficiently numerous and
5 geographically compact such that one or more properly apportioned
6 single-member electoral districts can be drawn in which Latino/as would
7 constitute an effective majority of eligible voters.

8 34. Latino/as in the City of Pasco constitute a politically unified group that
9 votes cohesively as a bloc.

10 35. Racially polarized voting persists in Pasco City Council elections. White
11 voters consistently vote as a bloc to elect candidates favored by the white
12 community and defeat the Latino/a community's candidates of choice.

13 36. Under the totality of the circumstances, the at-large method of electing
14 members of the Pasco City Council denies Latino/a citizens an
15 opportunity to participate in the political process and elect representatives
16 of their choice equal to that afforded other members of the electorate,
17 thereby diluting Latino/a voting strength.

18 37. This vote dilution violates Section 2 of the Voting Rights Act, 42 U.S.C. §
19 1973.

1 38. Unless enjoined by order of this Court, the City of Pasco will continue to
2 violate Section 2 by conducting elections for the Pasco City Council
3 pursuant to the current at-large method in staggered elections.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays that the Court enter an order:

- 6 1. Declaring that the at-large method of electing Pasco City Council
7 members violates Section 2 of the Voting Rights Act of 1965;
- 8 2. Enjoining Defendants, their agents and successors in office, and all
9 persons acting in concert with any of these individuals from
10 administering, implementing, or conducting any future elections for the
11 City of Pasco under the current method of electing City Council members;
- 12 3. Ordering the implementation of an election system for the Pasco City
13 Council that complies with Section 2 of the Voting Rights Act of 1965;
- 14 4. Retaining jurisdiction of this action and granting Plaintiff any further
15 relief which may in the discretion of this Court be necessary and proper to
16 ensure that timely and lawful procedures are used in elections for the
17 Pasco City Council;
- 18 5. Granting Plaintiff the attorneys' fees and costs they incur, pursuant to 42
19 USC § 1973l(e) and 42 U.S.C. § 1988; and

1 6. Granting any other relief that the Court may determine to be just and
2 equitable.

3 DATED this 4th day of August, 2016.

4 Respectfully submitted,

5 By:

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7 /s/La Rond Baker
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17 *Attorneys for Plaintiff Bertha Aranda Glatt*

18 * Application for admission to the Eastern District of Washington pending.

RESOLUTION NO. 3635

A RESOLUTION of the City of Pasco, Washington, Declaring an Intent to Adopt District-Based General Elections.

WHEREAS, the City of Pasco has long pursued a policy to provide equal voting opportunity among its citizens, having adopted PMC 1.10.010 to provide districts that are nearly equal in population and configured as not to favor or disfavor any racial group or political party, and by PMC 1.10.090, to provide for the re-establishment of district boundaries to maintain this equality, preventing a difference in population that exceeds 10%; and

WHEREAS, rapid population growth within of the City of Pasco and redistribution of population have necessitated frequent redistricting efforts on the part of the City; and

WHEREAS, with this increased growth, the City's minority populations have likewise increased, particularly its Hispanic citizens; and

WHEREAS, during the 2014/2015 redistricting cycle, the City conducted extensive research and investigation, with the assistance of demographic expertise to pursue and achieve not only equitable representation, but proportional representation within its five voting districts; and

WHEREAS, the City Council has achieved that balance with the adoption of Ordinance No. 4209 which provides for equal and proportionate representation through the primary election of City Council candidates; and

WHEREAS, the City Council's final step for achieving both equal and proportional representation was the amendment of PMC 1.10.070 to provide for district-based general elections for City Council candidates; and

WHEREAS, the City has, during the 2015 legislative session, supported the Washington Voting Rights Bill (Senate Bill 5668) which, by its terms, would authorize the City to change its electoral system by implementing a district-based election system to achieve proportional representation; and

WHEREAS, that legislation failed to secure approval by the 2015 legislature; and

WHEREAS, the City has sought assurances from the Franklin County Auditor that if the City adopted a district-based election system without passage of the Washington Voting Rights Bill, it would be able to adopt a district-based election system for the 2015 municipal election; and

WHEREAS, the Franklin County Auditor has determined that such action would be in violation of RCW 35A.12.180 and, therefore, would not be able to accommodate district-based voting; and

WHEREAS, the City Council believes that the provisions of RCW 35A.12.180 as applied to the circumstances of the City of Pasco results in potential vote dilution for some of its citizens. **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO RESOLVE AS FOLLOWS:

Section 1. Declaration of Intent. The City Council of the City of Pasco, Washington, declares its intent to pursue a district-based election system for City Councilmembers when such authority may be available at law.

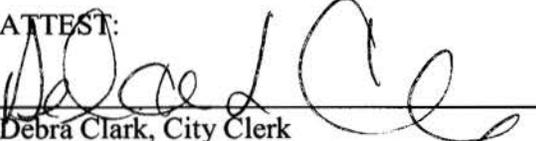
Section 2. Requested Legislation. The City Council of the City of Pasco, Washington, requests consideration by the Washington State legislature for amendment of RCW 35A.12.180 to provide cities the authority, and option, to adopt district-based election systems for the election of City Councilmembers at general municipal elections, or to consider and adopt a comprehensive voting rights bill that would permit local political subdivisions to change their electoral systems, including implementation of district-based election systems, during the 2016 legislative session.

Section 3. Continuing Efforts. The City Council of the City of Pasco, Washington, declares its continuing intent to provide equal voting opportunities for all of its citizens and to provide equitable and proportionate representation of all of its citizens by the Pasco City Council.

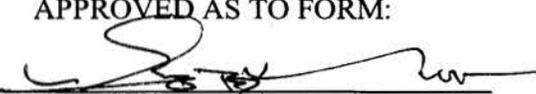
PASSED by the City Council of the City of Pasco, Washington, as its regular meeting dated this 4 day of May, 2015.



Matt Watkins Mayor

ATTEST:


Debra Clark, City Clerk

APPROVED AS TO FORM:


Leland B. Kerr, City Attorney