



# **Pasco City Council Workshop Meeting August 8, 2016**



# **Council Election System**

## **About:**

- **Review/Acknowledge circumstances and facts**
- **Discuss Draft Consent Decree - US District Court of Eastern Washington**
- **First step of a pro-active process to resolution**

## **Not About:**

- **Deciding on a specific election system (September 19)**
- **Specifics of what that resolution might be**



# **Council Election System**

## **Background**





# **Council Election System - Background**

## **Pasco Experience:**

- **Rapid population growth – nearly 400% since 1980**
- **Change in community demographics:**
  - **1980 ~ 20% Latino heritage**
  - **Today - 56% (10x increase)**
- **Expansion of City through annexation:**
  - **1980 - 16 Square miles**
  - **Present - 40 Square miles (2.5x increase)**



## **Council Election System - Background**

### **Impact of growth/demographics on districts:**

- **Rapid growth - frequent changes in district boundaries**
- **Demographic shift - focus on assuring fair/equal opportunity for Latino/a influence on outcomes**



## **Council Election System - Background**

### **Other policy and decision drivers:**

- **Long-standing Council goal of equal and fair elections**
- **Federal Voting Rights Act (VRA)**
- **Washington State Law:**
  - **10% population variance between districts (case law)**
  - **Prohibition on vote by district in general elections**





## **Council Election System - Background**

### **Recent Actions of the City Council:**

- **2014/2015 Redistricting Effort:**
  - **Increased sophistication of analysis**
  - **Use of demographic expert familiar with the federal VRA**
  - **Better tools/info - technology**



## **Council Election System - Background**

### **Recent Actions of the City Council (cont.):**

- **Resolution 3635 – Passed May 2015 declaring intent to move to district-based elections**
- **2015 and 2016 Legislative efforts**
- **Sought State Attorney General (AG) Opinion (via Sen. Roach)**





# **Council Election System - Background**

## **Results:**

- **Legislation did not pass**
- **AG writes opinion:**
  - district-based election allowed if “the city has a strong basis in evidence” to believe Voting Rights Act violation has occurred**
- **Opinion does not address County Auditor’s authority:**
  - “This opinion...does not address the question of whether the county auditor acted within his authority.”**



## **Council Election System - Background**

- **Washington State ACLU formally notifies City in March 2016 - believe current system violates VRA**
- **City and ACLU have been in continuing active negotiations to determine best path forward**
- **Limited federal litigation determined best path in terms of timeliness and potential challenge**



## **Council Election System - Alternatives**

- **Status Quo – do our best and pursue legislation**
- **Utilize AG's opinion – make determinations, adopt election plan, gain approval from other decision-makers, withstand challenges**
- **Limited federal litigation – federal judge can overrule state law**
  - **Consent Decree stipulations**
  - **Analysis on election system plan alternative(s)**
  - **Public input on election system**
  - **Submit to court for judgement**





# **Council Election System – Limited Litigation Alternative**

## **Begins with a Consent Decree:**

- **Summary of Stipulations Draft Decree:**
  - **Federal court has jurisdiction and power to implement a remedy contrary to state law**
  - **Current state law prevents full compliance with Voting Rights Act (VRA)**
  - **Sufficient evidence that a VRA violation has occurred**
  - **A remedy will require implementation of an election system contrary to state law**



## **Council Election System – Next Steps**

### **Summary (continued):**

- **Acknowledges Pasco lacks authority to affirmatively change its election system in a way that remedies the situation**
- **Imposes deadline to meet and confer (9/15/16)**
- **Imposes deadline submit remedial plans to the Court (11/15/16)**



## **Council Election System – Next Steps**

- **August 15 - Consideration and Council action on final draft Consent Decree**
- **September 6 - election system remedies to be discussed at Public Hearing**
- **September 19 - Council consideration of election system remedies**
- **October 3 - Public Hearing on district boundaries**
- **October 17 - Council consideration of district boundaries**





## **Council Election System – Outreach**

- **Website ([www.pasco-wa.gov/councilelections](http://www.pasco-wa.gov/councilelections))**
- **The Pulse newsletter (utility customers & apartment dwellers)**
- **El Pulso (Spanish version) inserted into La Voz Hispanic Newspaper**
- **1/4 page ad in La Voz for September 6 Public Hearing**
- **Spanish radio ads for 9/6 Public Hearing (starting August 23) on La Campesina (96.3FM)**
- **Social Media**
- **Press Releases (English & Spanish)**
- **PSC-TV Community Calendar (Channel 191 on Charter)**

## **AGENDA REPORT**

FOR: City Council August 5, 2016  
TO: Dave Zabell, City Manager Workshop Meeting: 8/8/16  
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:**

Discussion

### **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.



Leland B. Kerr, WSBA No. 6059  
KERR LAW GROUP  
7025 W. Grandridge Blvd., Suite A  
Kennewick, Washington 99336  
Telephone: (509) 735-1542  
Facsimile: (509) 735-0506  
lkerr@kerrlawgroup.net  
Attorneys for Defendants, City of Pasco

Emily Chiang, WSBA No. 50517  
La Rond Baker, WSBA No. 43610  
Breanne Schuster, WSBA No. 49993  
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
Telephone: (206) 624-2184  
Email: echiang@aclu-wa.org, lbaker@aclu-wa.org, bschuster@aclu-wa.org  
Attorneys for Plaintiff, \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

\_\_\_\_\_,  
Plaintiff,

No.

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.

**CONSENT DECREE**

A Complaint has been filed by the above Plaintiff alleging that the current at-large method of electing members of the Pasco City Council violates Section 2 of the Federal Voting Right Act by diluting the electoral power of Pasco's Latino voters and thereby depriving Latinos of an opportunity to fully participate in the political process and to elect candidates of their choice to the Pasco City Council.

The above-named Plaintiff and Defendants stipulate and agree as follows:

1. Defendant City of Pasco, Washington, is a municipal corporation organized under the laws of the State of Washington as an optional-code city subject to Chapter 35A of the Revised Code of Washington. Defendants Rebecca Francik, Robert Hoffmann, Thomas Larsen, Saul Martinez, Matthew Watkins, and Albert Yenney, are current members of the Pasco City Council. The City Council has statutory authority to set voting districts subject to the State law. The City Councilmembers are each sued in their official capacity only.

2. The Pasco City Council consists of seven (7) City Councilmembers serving staggered four-year terms. The next municipal election will be in November 2017, at which time four (4) seats on the Pasco City Council will be up for election.

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.  
9  
10

11  
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).  
16

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.

3  
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:  
15

16  
17 "Thus, RCW 35A.12.180 specifically denies to code cities the  
18 authority to restrict voting by ward at the general election. Therefore,  
19 a local ordinance that provided for general elections by ward would  
20 conflict with RCW 35A.12.180 and be preempted by state law." (Attorney General Opinion at pg. 5.) "In sum, Code cities in  
21 Washington that believe they may be in violation of the VRA face  
22 difficult decisions and potential legal risk regardless of what course  
23 they choose." (Attorney General Opinion at pg. 10).

### 24 **Violation of Section 2 of the Federal Voting Rights Act**

25 8. This action is for the enforcement of Section 2 of the Federal Voting  
26 Rights Act, which provides in part as follows:  
27  
28

1  
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 its members have less  
28       opportunity than other members of the electorate to participate in the political  
29       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:  
3

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

22 In such a case, the State statute must "give way" to remedy a violation of  
23 Section 2 of the Federal Voting Rights Act. In *United States vs. City of Euclid*,  
24 580 F.Supp.2d 584 (2008), the Court invalidated the at-large election system,  
25 likewise, based upon the State statute and incorporated by City ordinance. In  
26  
27  
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1 *United States vs. OSCEOLA County* (2005) an at-large election system was, as  
2 provided in statute, invalidated.  
3

4 *Montes vs. City of Yakima*, 40 F.Supp. 1377 (2014) states:

5 "Defendants are correct that state law must sometimes yield to afford  
6 an effective remedy under the Voting Rights Act. The Supremacy  
7 Clause requires that state law be abrogated where doing so is  
8 necessary to remedy a violation of the Voting Rights Act. (*Arizona*  
9 *vs. Inter Tribal Council of Ariz. Inc.*, 133 S.Ct. 2247, 2256 (2013).  
10 Federal legislation so far as it extends and conflicts with the  
11 regulations of the State, necessarily supersedes them. In remedial  
12 situations under Section 2 where state laws are necessarily abrogated,  
the Supremacy Clause appropriately works to suspend those laws  
because they are an unavoidable obstacle to the vindication of the  
federal right."

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

16 9. Since the implementation of the current election system in 1971, the  
17 population of the City of Pasco has grown dramatically. During that period, there  
18 has been a substantial increase in the number of Latino residents. Today, Latino  
19 residents are estimated to be approximately half of the City's population. The  
20 Latino population in the City of Pasco is sufficiently numerous and geographically  
21 compact to constitute a majority of the voting age population in at least one  
22 election district. *Id.* ¶ 42.  
23

24  
25 10. Latinos in the City of Pasco are a politically unified group that votes  
26 cohesively as a bloc. In contests between Latino and non-Latino candidates for the  
27  
28



1 City Council, statistical analysis show that Latino voters consistently vote for  
2 Latino candidates. *Id.* ¶ 21.

3  
4 11. The majority of voters in Pasco are white and have historically  
5 engaged in bloc voting favoring non-Hispanic candidates.

6  
7 12. As such, there is a pattern of racially polarized voting in the City of  
8 Pasco City Council elections. The voting patterns and the presently mandated at-  
9 large general election of all City Council candidates make it difficult 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. Ms. Torres 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.

19  
20  
21  
22 13. In 2015, six Latinos ran for two positions on City Council. Despite  
23 strong support of Latino voters, the two Latinas who survived the primary election  
24 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 not  
3 relevant to a violation of Section 2 of the Voting Rights Act.  
4

5 14. There is no evidence that non-Latinos are deliberately conspiring to  
6 outvote Latinos.  
7

8 15. Under the Senate Factors or “the totality of the circumstances”  
9 analysis, there is sufficient evidence of disparities to show inequality in  
10 opportunities between the white and Latino populations and that the existing at-  
11 large election system for the Pasco City Council has excluded Latinos from  
12 meaningfully participating in the political process and diluted their vote such that  
13 Latinos are unable to elect candidates of their choice to the City Council. Thus,  
14 the election system by which Pasco elects its City Councilmembers violates Section  
15 2 of the Voting Rights Act. State law, however, prevents Pasco from adopting an  
16 adequate remedy to this Section 2 violation.  
17  
18  
19

20 16. It is in the best interest of the residents of the City of Pasco to enter  
21 into this Consent Decree, thus avoiding protracted, costly, and potentially divisive  
22 litigation. Defendants have the authority to settle litigation in good faith for further  
23 expenditure of public funds and defense thereof is not likely to be in the interest of  
24 the public.  
25  
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28

1 NOW, THEREFORE, based upon the stipulated evidence presented in this  
2 case and as memorialized above, IT IS HEREBY, ORDERED, ADJUDGED AND  
3 DECREEED that:  
4

5 1. This Court has jurisdiction over these actions pursuant to 52 U.S.C.  
6 10308 and 28 U.S.C. 1345.  
7

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

16 3. Wash. Rev. Code 35A.12.180 prevents Pasco from utilizing district  
17 based elections mandates that Pasco elect its City Councilmembers in at-large  
18 elections. Due to voting trends in Pasco the use of an at-large election system  
19 dilutes the Latino population's voting power in violation of Section 2 of the Voting  
20 Rights Act.  
21

22 4. In order to remedy the City of Pasco's Section 2 violation, the City  
23 must adopt a new election system. Implementation of the new election system will  
24 necessarily abrogate Washington State law, but must do so only as much as  
25 necessary to remedy the Section 2 violation. *Large vs. Fremont County*, 670 F.3d  
26  
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1 1133, 1145 (10th Cir. 2012) (“[I]n remedial situations under Section 2 where State  
2 laws are necessarily abrogated, the supremacy clause appropriately works to  
3 suspend those laws because they are an *unavoidable obstacle* to the vindication of  
4 the Federal right.”) (emphasis in original).

5  
6 5. Defendants admit that due to voting trends Pasco’s election system  
7 results in unlawful dilution of the Latino population’s vote in violation of Section 2  
8 of the Voting Rights Act; a new election system must be imposed; Pasco does not  
9 have the authority to affirmatively change its election system because Wash. Rev.  
10 Code 35A.12.180 bars such alterations; and this Court has the authority to impose  
11 an election system that remedies that violation.

12  
13 6. The Court reviewed the Parties’ stipulation of facts as reflected in this  
14 Consent Decree, and finds that the stipulations are sufficient to support finding that  
15 the current Pasco’s City Council election system unlawfully dilutes the Latino  
16 population’s vote in violation of Section 2 of the Federal Voting Rights Act, 52  
17 U.S.C. § 10308.

18  
19 7. Except as inconsistent with or specifically altered by the terms of this  
20 Consent Decree, all State laws shall continue to govern elections for the City  
21 Council of the City of Pasco.

22  
23 8. Defendants, and their officers, agents, and successors in office, and all  
24 persons acting in concert with them, are enjoined from administering,



1 implementing, or conducting future elections for the Pasco City Council under the  
2 current at-large election method or any other election method that violates Section  
3  
4 2 of the Voting Rights Act.

5 9. The Court reserves jurisdiction of this matter to determine and impose  
6 the appropriate election system to remedy the current violation of Section 2 of the  
7  
8 Voting Rights Act.

9 10. It is further ordered, to provide for effective opportunities for full  
10 participation in the 2017 municipal election cycle, that the Parties shall, in good  
11 faith efforts, meet and confer no later than September 15, 2016 to determine  
12 whether the Parties can agree upon a remedial option for compliance with Section  
13 2 of the Voting Rights Act. If the Parties cannot reach agreement, the Parties shall  
14 each submit their proposed remedial districting plans to the Court on or before  
15 October 15, 2016. The Parties shall respond to the proposed remedial plans on or  
16 before November 15, 2016. The Parties shall present a reply regarding the  
17 proposed remedial plans by November 15, 2016. A hearing before this Court on  
18 the proposed remedial redistricting plans shall be set by the Court.  
19  
20  
21

22 11. No attorney fees or costs are awarded for this liability phase of the  
23 case or work performed by Plaintiffs prior to the filing of the Complaint; however,  
24 the Court reserves the award of reasonable attorney fees and costs for the remedial  
25 phase of this case.  
26  
27  
28

1 ENTERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
2  
3

4 \_\_\_\_\_  
5 United States District Judge  
6

7 Presented by:

8 /s/Leland B. Kerr

9 Leland B. Kerr, WSBA No. 6059

10 KERR LAW GROUP

11 7025 W. Grandridge Blvd., Suite A

12 Kennewick, Washington 99336

13 Telephone: (509) 735-1542

14 Facsimile: (509) 735-0506

15 lkerr@kerrlawgroup.net

16 *Attorneys for Defendants*

17 /s/Emily Chiang

18 Emily Chiang, WSBA No. 50517

19 La Rond Baker, WSBA No. 43610

20 Breanne Schuster, WSBA No. 49993

21 ACLU of Washington Foundation

22 901 Fifth Avenue, Suite 630

23 Seattle, Washington 98164

24 Telephone: (206) 624-2184

25 echiang@aclu-wa.org

26 lbaker@aclu-wa.org

27 bschuster@aclu-wa.org

28 *Attorneys for Plaintiff*

Emily Chiang, WSBA No. 50517  
 La Rond Baker, WSBA No. 43610  
 Breanne Schuster, WSBA No. 49993 (*E.D. Wash. Admission Pending*)  
 AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION  
 901 Fifth Avenue, Suite 630  
 Seattle, Washington 98164  
 Telephone: (206) 624-2184  
 Email: echiang@aclu-wa.org, lbaker@aclu-wa.org, bschuster@aclu-wa.org  
 Brendan V. Monahan, WSBA No. 22315  
 STOKES LAWRENCE VELIKANJE MOORE & SHORE  
 120 N. Naches Ave.  
 Yakima, Washington 98901  
 Telephone: (509) 853-3000  
 Email: bvm@stokeslaw.com  
*Attorneys for Plaintiff Bertha Aranda Glatt*

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON

Bertha Aranda Glatt,  
 Plaintiff,

No.

v.

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

**COMPLAINT**

Defendants.

**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.

**B. The Pasco City Council**

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

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

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

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

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

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

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

17. Latino/as in Pasco have expressed clear political preferences that are distinct from those of the majority of non-Latino/a voters. In elections 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**

32. The allegations contained in Paragraphs 1 through 31 are hereby incorporated in Count One of the Complaint as if set forth herein.
33. The Latino/a community in the City of Pasco is sufficiently numerous and geographically compact such that one or more properly apportioned single-member electoral districts can be drawn in which Latino/as would constitute an effective majority of eligible voters.
34. Latino/as in the City of Pasco constitute a politically unified group that votes cohesively as a bloc.
35. Racially polarized voting persists in Pasco City Council elections. White voters consistently vote as a bloc to elect candidates favored by the white community and defeat the Latino/a community's candidates of choice.
36. Under the totality of the circumstances, the at-large method of electing members of the Pasco City Council denies Latino/a citizens an opportunity to participate in the political process and elect representatives of their choice equal to that afforded other members of the electorate, thereby diluting Latino/a voting strength.
37. This vote dilution violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter an order:

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

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

DATED this 4th day of August, 2016.

Respectfully submitted,

By:

/s/Emily Chiang

Emily Chiang, WSBA No. 50517  
echiang@aclu-wa.org

/s/La Rond Baker

La Rond Baker, WSBA No. 43610  
lbaker@aclu-wa.org

/s/Breanne Schuster

Breanne Schuster, WSBA No. 49993\*  
bschuster@aclu-wa.org

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION

901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
Telephone: (206) 624-2184

/s/Brendan V. Monahan

Brendan V. Monahan, WSBA No. 22315

bvm@stokeslaw.com

STOKES LAWRENCE VELIKANJE MOORE & SHORE

120 N. Naches Ave.  
Yakima, Washington 98901  
Telephone: (509) 853-3000

*Attorneys for Plaintiff Bertha Aranda Glatt*

\* 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:**

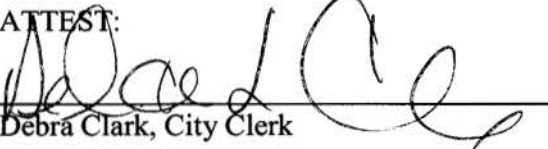
**Section 1.** Declaration of Intent. The City Council of the City of Pasco, Washington, declares its intent to pursue a district-based election system for City Councilmembers when such authority may be available at law.


**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