

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BERTHA ARANDA GLATT,

Plaintiff,

v.

CITY OF PASCO, *et al.*,

Defendants.

No. 4:16-CV-05108-LRS

PARTIAL CONSENT DECREE

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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.

FACTUAL STIPULATION – LIABILITY

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

Background

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

1 Francik, Robert Hoffmann, Thomas Larsen, Saul Martinez, Matthew Watkins, and
2 Al Yenney, are current members of the Pasco City Council. The City Council has
3 statutory authority to set voting districts subject to the state law. The City
4 Councilmembers are each sued in their official capacity only.

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

11 3. Five (5) City Councilmembers are currently nominated in a non-
12 partisan, top-two primary in five (5) territorial election districts. For territorial
13 election districts, only a resident of that voting district may be a candidate for, or
14 hold office as, a Councilmember of that district, and only voters of the district may
15 vote at the primary election to nominate candidates for the City Councilmember
16 for that district. Candidates for the two (2) at-large City Council positions are
17 determined at the primary election in a non-partisan, top-two primary by residents
18 of the entire City of Pasco.

22 4. During the general election, voters of the entire City vote to elect a
23 Councilmember for each of the respective territorial election districts, as well as
24 the two at-large Council positions (*i.e.*, all Councilmembers are elected on an at-
25 large basis).

1 5. The City has, within the last legislative session, sought a change to the
2 State law to allow for district-based voting. In the absence of a change in the State
3 law, the City, and in anticipation of the 2015 municipal election cycle, sought to
4 amend Pasco Municipal Code (PMC) 1.10.010 to provide for district-based
5 elections. The City requested that the Franklin County Auditor implement district-
6 based voting. The Auditor responded to Pasco's request in a letter dated April 17,
7 2015, claiming that because implementing a district-based election system would
8 violate Wash. Rev. Code 35A.12.180, the Auditor was unable to conduct an
9 election under Pasco's proposed district-based election system.
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13 6. On May 4, 2015, the Pasco City Council enacted Resolution No. 3635
14 declaring its intent to pursue a district-based election system for City
15 Councilmembers, and further declaring its continuing intent to provide equal
16 voting opportunities for all of its citizens, and to provide equitable and proportional
17 representation.
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20 7. At the behest of the City of Pasco, Washington State Senator Pam
21 Roach submitted a request to the Washington State Attorney General regarding the
22 authority of cities subject to RCW 35A.12.180 (which includes the City of Pasco)
23 to change their own election systems. On January 28, 2016, the Washington State
24 Attorney General rendered an Opinion which noted that:
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26 Thus, RCW 35A.12.180 specifically denies to code cities the authority
27 to restrict voting by ward at the general election. Therefore, a local
28 ordinance that provided for general elections by ward would conflict
with RCW 35A.12.180 and be preempted by state law. (Attorney

1 General Opinion at pg. 5.) In sum, Code cities in Washington that
2 believe they may be in violation of the VRA face difficult decisions
3 and potential legal risk regardless of what course they choose.
(Attorney General Opinion at pg. 10).

4
5 **Violation of Section 2 of the Federal Voting Rights Act**

6 8. This action is for the enforcement of Section 2 of the Federal Voting
7 Rights Act, which provides in part as follows:

8 (a) No voting qualification or prerequisite to voting or standard,
9 practice, or procedure shall be imposed or applied by any State or
10 political subdivision in a manner which results in a denial or
11 abridgement of the right of any citizen of the United States to vote on
12 account of race or color, or in contravention of the guarantees set forth
13 in Section 1973b(f)(2) of this title, as provided in subsection (b) of
this section.

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

26 9. The Federal Voting Rights Act is designed to “help effectuate the
27 Fifteenth Amendment’s guarantee that no citizen’s right to vote shall be denied or
28 abridged . . . on account of race, color, or previous condition of servitude.”

Voinovich v. Quilter, 507 U.S. 146, 152 (1993).

1 10. A violation of the Voting Rights Act occurs when, based upon the
2 totality of the circumstances, the challenged electoral process is “not equally open
3 to participation by members of a [racial minority group] in that its members have
4 less opportunity than other members of the electorate to participate in the political
5 process and to elect representatives of their choice.” 42 U.S.C. § 1973(b).
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8 11. The City of Pasco is an optional municipal code city subject to Wash.
9 Rev. Code 35A.12.180, the pertinent portion of which states as follow:
10

11 Wards shall be redrawn as provided in chapter 29.76 RCW. Wards
12 shall be used as follows: (1) Only a resident of the ward may be a
13 candidate for, or hold office as, a councilmember of the ward; and (2)
14 only voters of the ward may vote at a primary to nominate candidates
15 for a councilmember of the ward. Voters of the entire city may vote at
16 the general election to elect a councilmember of a ward, unless the
17 city had prior to January 1, 1994, limited the voting in the general
18 election for any or all council positions to only voters residing within
19 the ward associated with the council positions. If a city had so limited
20 the voting in the general election to only voters residing within the
21 ward, then the city shall be authorized to continue to do so.

22 12. Due to voting trends, the result of the statutorily mandated at-large
23 election has been non-Latino dominance in electing City Council members.
24 Pasco’s large Latino population is sufficiently numerous and compact to form a
25 majority in at least one single-member district, is political cohesive, and the non-
26 Latino majority votes sufficiently as a block to defeat a Latino preferred candidate.
27 *See Thornburg v. Gingles*, 478 U.S. 30 (1986).
28

13 13. As this court held in *Montes v. Yakima*, “state law must sometimes
14 yield to afford an effective remedy under the Voting Rights Act. The Supremacy
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1 Clause requires that state law be abrogated where doing so is necessary to remedy
2 a violation of the Voting Rights Act.” *Montes v. Yakima*, No. 12-CV-3108-TOR,
3 Final Injunction and Remedial Districting Plan, ECF No. 143 (Feb. 17, 2015)
4 (citing *Arizona v. Inter Tribal Council of Ariz. Inc.*, 133 S. Ct. 2247, 2256 (2013)).
5 “Federal legislation so far as it extends and conflicts with the regulations of the
6 State, necessarily supersedes them.” *Ex Parte Siebold*, 100 U.S. 371, 384 (1879).
7 Thus, “[i]n remedial situations under Section 2 where state laws are necessarily
8 abrogated, the Supremacy Clause appropriately works to suspend those laws
9 because they are an unavoidable obstacle to the vindication of the federal right.”
10 *Large v. Fremont Cnty.*, 670 F.3d 1133, 1145 (10th Cir. 2012).
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13 14. As such, a number of federal courts have invalidated at-large election
14 systems and approved or given full deference to remedial plans that include single-
15 member districts, even when the adoption of such a plan conflicted with state law.
16 See, e.g., *United States vs. City of Euclid*, 580 F. Supp. 2d 584 (E.D. Ohio 2008);
17 *Tallahassee Branch of NAACP v. Leon County*, 827 F.2d 1436, 1437 (11th Cir.
18 1987), cert. denied, 488 U.S. 960; *United States v. Osceola County*, 474 F. Supp.
19 2d 1254 (M.D. Fla 2006). Similarly here, this Court is specifically authorized to
20 order an election system that conflicts with state law in order to fully remedy the
21 City’s Voting Rights Act violation.
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24 15. Since the implementation of Pasco’s current election system in 1978,
25 the population of the City of Pasco has grown dramatically. During that period,
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1 there has been a substantial increase in the number of Latino residents. Today,
2 Latino residents are estimated to be approximately half of the City's population.
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4 The Latino population in the City of Pasco is sufficiently numerous and
5 geographically compact to constitute a majority of the citizen voting age
6 population in at least one election district.
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8 16. Latinos in the City of Pasco are a politically unified group that votes
9 cohesively as a bloc. In contests between Latino and non-Latino candidates for the
10 City Council, statistical analyses show that Latino voters consistently vote for
11 Latino candidates.
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13 17. The majority of voters in Pasco are white and have historically
14 engaged in bloc voting favoring non-Latino candidates.
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16 18. There is a pattern of racially polarized voting in the City of Pasco City
17 Council elections. The voting patterns and the presently mandated at-large general
18 election of all City Council candidates make it very difficult for the Latino
19 community to elect candidates of their choice. Although other minority candidates
20 have been elected to the City Council, as a result of racially-polarized bloc voting,
21 no Latino candidate has ever won an opposed election to the Pasco City Council.
22
23 The first Latina to serve on the City Council was Luisa Torres. She was appointed
24 to the Council in 1989. Luisa ran for election in 1989 but was defeated by a non-
25 Latino candidate. The only other Latino to serve on the City Council was also first
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1 appointed to the City Council, Saul Martinez. He subsequently ran unopposed,
2 which enabled him to retain his seat.

3
4 19. In 2015, six Latinos ran for two positions on City Council. Despite
5 strong support of Latino voters, the two Latinas who survived the primary election
6 were both defeated in the November 2015 general election.

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8 20. While there is no evidence of any discriminatory motive or intent by
9 the non-Latino population in exercising their own rights to vote, such intent is not
10 necessary to a violation of Section 2 of the Voting Rights Act. There is no
11 evidence that non-Latinos are deliberately conspiring to outvote Latinos.

12
13 21. The Latino population in the City of Pasco is sufficiently numerous
14 and geographically compact to constitute a majority of the citizen voting age
15 population in at least one election district.

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17 22. Under the Senate Factors or “the totality of the circumstances”
18 analysis, there is sufficient evidence of disparities to show inequality in
19 opportunities between the white and Latino populations and that the existing at-
20 large election system for the Pasco City Council has excluded Latinos from
21 meaningfully participating in the political process and diluted their vote such that
22 Latinos are unable to elect candidates of their choice to the City Council. Thus, the
23 election system by which Pasco elects its City Councilmembers, which is
24 mandated by state statute, and voting trends in Pasco results in a violation Section
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28 2 of the Voting Rights Act.

1 23. It is in the best interest of the residents of the City of Pasco to enter
2 into this Partial Consent Decree, thus avoiding protracted, costly, and potentially
3 divisive litigation. Defendants have the authority to settle litigation in good faith
4 for further expenditure of public funds and defense thereof is not likely to be in the
5 interest of the public.
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8 NOW, THEREFORE, based upon the stipulated evidence presented in this
9 case and as memorialized above, IT IS HEREBY, ORDERED, ADJUDGED,
10 AND DECREED that:
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12 1. This Court has jurisdiction over these actions pursuant to 42 U.S.C.
13 1973 and 28 U.S.C. 1345.
14

15 2. Under the Supremacy Clause of Article VI of the Constitution of the
16 United States this Court has the power to impose a remedy otherwise contrary to
17 applicable state statutes. This Court also has the authority to approve a settlement
18 or issue a consent decree that abrogates or modifies state law if doing so is
19 necessary to remedy a violation of Section 2 of the Voting Rights Act. *Perkins v.*
20 *City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995).
21

22 3. Wash. Rev. Code 35A.12.180 mandates that Pasco elect its City
23 Councilmembers in at-large elections. Due to voting trends in Pasco, the City's
24 current election system dilutes the Latino population's voting power in violation of
25 Section 2 of the Voting Rights Act.
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1 4. In order to remedy the City of Pasco's Section 2 violation, the City
2 must adopt a new election system. Implementation of the new election system will
3 necessarily abrogate Washington State law, but must do so only as much as
4 necessary to remedy the Section 2 violation. *Large*, 670 F.3d at 1145 (“[I]n
5 remedial situations under Section 2 where State laws are necessarily abrogated, the
6 supremacy clause appropriately works to suspend those laws because they are an
7 *unavoidable obstacle* to the vindication of the Federal right.”).

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10 5. Defendants admit that, due to voting trends, Pasco's current election
11 system results in unlawful dilution of the Latino population's vote in violation of
12 Section 2 of the Voting Rights Act. As such, a new election system must be
13 imposed. Pasco does not have the authority to affirmatively change its election
14 system because Wash. Rev. Code 35A.12.180 bars such alterations. However, this
15 Court has the authority to impose an election system that remedies that violation.

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18 6. The Court reviewed the Parties' stipulation of facts as reflected in this
19 Partial Consent Decree, and finds that the stipulations are sufficient to support
20 finding that Pasco's current City Council election system unlawfully dilutes the
21 Latino population's vote in violation of Section 2 of the Voting Rights Act, 42
22 U.S.C. § 1973.

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25 7. Except as inconsistent with or specifically altered by the terms of this
26 Partial Consent Decree or any subsequent orders from this Court, all state laws
27 shall continue to govern elections for the City 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, that to provide for effective opportunities for full
13 participation in the 2017 municipal election cycle, the Parties shall, in good faith
14 efforts, meet and confer no later than September 15, 2016 to determine whether the
15 Parties can agree upon a remedial option for compliance with Section 2 of the
16 Voting Rights Act. If the Parties cannot reach agreement, the Parties shall each
17 submit their proposed remedial districting plans to the Court on or before October
18 15, 2016. The Parties shall respond to the proposed remedial plans on or before
19 November 1, 2016. The Parties shall present a reply regarding the proposed
20 remedial plans by November 15, 2016. A hearing before this Court on the
21 proposed remedial redistricting plans may 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 Plaintiff 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.

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4 ENTERED THIS 2nd day of September, 2016.

5
6 ***Lonny R. Suko***

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LONNY R. SUKO
9 SENIOR U.S. DISTRICT COURT JUDGE

10 Presented by:

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