

Exhibit 4

Declaration of John A. Safarli in Support of City's Motion for Entry of Proposed
Remedial Plan and Final Injunction

Glatt v. City of Pasco, et al.

No. 4:16-CV-05108-LRS



CITY MANAGER (509) 545-3404 / Fax (509) 545-3403

P.O. Box 293, (525 North 3rd Avenue) Pasco, Washington 99301 / www.pasco-wa.gov

April 10, 2015

Matt Beaton
Franklin County Auditor
1016 North 4th Avenue
Pasco WA 99301

RE: City of Pasco Redistricting - 2015 Elections

Dear Mr. Beaton:

As you are aware, the City of Pasco has recently gone through the process of re-drawing its voting districts with the specific goal to provide proportional as well as equal representation in City elections.

With the exceptional assistance of your office, the City Council has adopted an Ordinance that achieves that goal in providing candidates for City Council through the primary elections.

As we previously discussed, however, the at-large general election voting procedure presently provided in PMC 1.10.070 may result in neutralizing these efforts for proportionate and equitable voting, as well as exposing the City to liability under Section 2 of the Federal Voting Rights Act. The experience of the City of Yakima in *Montes vs. Yakima*, vividly illustrates this concern.

The City Council is about to consider an Ordinance amending PMC 1.10.070 to provide district-based elections for the five council districts.

In our earlier discussions, and as reflected by Diana Killian's e-mail of March 20, 2015, you have concerns regarding conducting of district-based election as proposed in this Ordinance.

I earnestly seek your reconsideration and agreement to conduct district-based elections in 2015 if the City Council adopts the proposed Ordinance. It is the City's position that strict application of RCW 35A.12.180, when applied to a population base such as the City of Pasco, has a high probability of diluting and marginalizing the voting rights of minority groups in violation of the Federal Voting Rights Act. Under the Federal supremacy clause, to the extent the State statute conflicts with the Federal statute, the State law must yield.

Matt Beaton, Auditor
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I have been authorized to share with you the memorandum prepared by the Pasco City Attorney addressing this specific conflict between RCW 35A.12.180 and 42 U.S.C. § 1943. A copy of both the proposed ordinance and the memorandum are enclosed.

The best and closest resource is the recent ruling in the *Montes vs. Yakima* case pending in the Eastern District of Washington, United States District Court. That case is heavily cited in the enclosed Memorandum. To assist, a copy of the Final Injunction and Remedial Districting Plan entered in that case is, likewise, enclosed for your consideration.


The City Council is obviously very reluctant to proceed with the adoption of this Ordinance if you will not conduct district-based elections for the City in 2015. As pointed out by Diana in her e-mail, we have very little time to resolve this since filing will begin in mid May. We, therefore, respectfully request your earliest consideration and response.

We would invite you to share this letter and the enclosed materials with the Prosecuting Attorney or other legal counsel to assist you in your reconsideration. Likewise, if we can provide any additional assistance or authorities, please let me know.

Your attention and consideration in this matter is greatly appreciated.

Sincerely,



 Dave Zabell
City Manager

DZ/tlz
cc: City Council
enclosures



FRANKLIN COUNTY AUDITOR

Matt Beaton, Auditor

4/17/2015

Dave Zabell
City Manager
525 North 3rd Avenue
Pasco, WA 99301

RE: Response to City of Pasco Redistricting – 2015 Elections

Dear Mr. Zabell:

I am in receipt of the letter and enclosures you sent April 10, 2015 regarding the voting procedures that the City of Pasco is considering.

Thank you for acknowledging the "exceptional" service that the Franklin County Elections Department strives to deliver to all of its Districts. In pursuit of that goal of exceptional service we try to collaborate as much as practicable. I want to clarify that the Franklin County Auditor's Office when conducting elections is functioning in an administrative role and as such is bound by adherence to the law.

Your letter discusses Stan Strebel's informal discussions with Diana Killian as well as an email dated March 20, 2015. It infers that based on discussions with Diana that we may have some latitude on which laws we choose to follow when conducting elections. You go so far as to say that you, "earnestly seek my reconsideration and agreement to conduct district-based elections in 2015."

The Franklin County Auditor's position was correctly stated in the March 18, 2015 email from Stan Strebel to Diana where he correctly summarized our conversation. Stan stated: "Dave Zabell recently had a conversation with Matt Beaton, in which Matt evidently stated that the County would not conduct City elections which are contrary to the state law in the district-only voting aspect." The Oath of Office I took for Franklin County Auditor reads, "I do solemnly swear(or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Washington, and that I will faithfully and impartially perform and discharge the duties of the office of Auditor."

I include the Oath because I want you to know that I cannot, and will not, "reconsider" or "agree" to conduct an election that is contrary to Washington State Law. I appreciate the legal opinion of your City Attorney and your willingness to share it, but I will not act on it.

RE: Response to City of Pasco Redistricting – 2015 Elections (Continued)

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The Auditor's function as Ex-Officio Supervisor of Elections for Franklin County is administrative; we do not have an opinion or "official" position on hypothetical, proposed or other changes that Districts are considering. We are eager to provide our input and experience but always tell the District to rely on their own legal council to determine their options under the law. Any process changes submitted to Franklin County by Districts that are subject to legal interpretation are referred to the County Prosecuting Attorney for legal review.

The City should do what is in their best interest and legal under the law as judged by your legal counsel. We will continue to help administratively and respond to official changes when you make them.



Matt Beaton
Franklin County Auditor

cc: JB, DK, SS



FRANKLIN COUNTY AUDITOR

Matt Beaton, Auditor

4/28/2015

Everyone,

There is a misperception on the role of the Franklin County Auditor when conducting the City's elections. I am writing to clarify it.

Our Mission is: To facilitate honest, transparent and accurate elections.

To protect the public's faith in elections integrity it is important that we maintain our independence. We work with special purpose districts to achieve their elections objectives constrained only by my oath of office to follow the law.

As I stated on the second page of my letter dated 4/17/2015:

"The Auditor's function as Ex-Officio Supervisor of Elections for Franklin County is administrative; we do not have an opinion or "official" position on hypothetical, proposed or other changes that Districts are considering. We are eager to provide our input and experience but always tell the District to rely on their own legal council to determine their options under the law. Any process changes submitted to Franklin County by Districts that are subject to legal interpretation are referred to the County Prosecuting Attorney to review whether said changes are compliant with the law.

The City should do what is in their best interest and legal under the law as judged by your legal counsel. We will continue to help administratively and respond to official changes when you make them."

The role of the Auditor is to administer elections. That is it. With that in mind, we do not give legal advice or block policy decisions made by the Districts in Franklin County.

If the Pasco City Council makes a policy decision to elect its council members in the General Election by district then, upon receipt of that decision, I will seek a legal opinion from the County Prosecutor and/or the State Attorney General to assure that I can legally conduct the election.

Sincerely,

A handwritten signature in blue ink that reads "Matt Beaton".

Matt Beaton

Franklin County Auditor



CITY MANAGER (509) 545-3404 / Fax (509) 545-3403

P.O. Box 293, (525 North 3rd Avenue) Pasco, Washington 99301 / www.pasco-wa.gov

April 30, 2015

Matt Beaton, Auditor
Franklin County
1016 N. 4th Avenue
Pasco, WA 99301

RE: City of Pasco – District-Based Election

Dear Mr. Beaton:

Thank you for your letters of April 17 and 28, 2015. As you are aware, you indicated in the April 17 letter your inability to conduct an election which is “contrary to Washington State law.” As you point out in your April 28 letter addressed to “everybody,” in which you make the assumption the City misinterpreted your prior letter, you did previously advise the City to “do what is in their best interest as judged by” our legal counsel. So you are assured, the City had read and understood your April 17 letter in its entirety upon receipt. Given the complexity of this matter, there appears to have been some understandable confusion on the part of the media, which would be logically compounded by people reading or viewing media reports, but as we discussed, what the media prints or reports is not something in our control.

Based on your most recent letter and comments to the media, I believe you may have misperceived the intent of the City’s April 10 letter, which was simply to pose the question; if the City were to pass an ordinance allowing for district-based general elections, would or could the Auditor’s office accommodate such an election? Your April 17 response letter was clear; however, your April 28 letter alludes to a request by the City for “legal advice” from the Auditor’s office, which is confusing as there was no such request or expectation of your office. Likewise, the City did not view the clear declarations in your April 17 letter as an effort on the part of your office to “block policy decisions” of the City Council, as was also included in your April 28 letter. Admittedly, as you saw play out independently in an e-mail to you from Mayor Pro-Tem Francik, I think it is accurate to say that there was an assumption by City officials, myself included, which perhaps led to some confusion on our part, that given the nature of our question and the certainty of statements in your April 17 letter, it was assumed you had consulted with legal counsel on the question in advance of transmitting your April 17 letter. You did clarify in your April 28 letter that you had not sought legal advice in your prior response. In any event, we understand your desire to provide a prompt reply and appreciate your timely and concise response.

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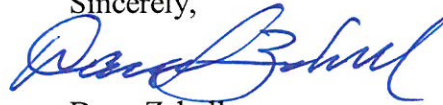
At this date, given the proximity of the election filing deadline, election timelines and the time it would take for you to now obtain legal opinions from the State Attorney General's office and the County Prosecutor, I am advising the City Council that it would likely serve to confuse the public and potential candidates for office were the City Council to pass an ordinance providing for district-based elections, particularly given the potential of such an ordinance to be potentially rendered moot by an opinion or position by those in authority, thus preventing such elections from occurring in 2015.

Rather than placing your office in a position of attempting to communicate the City's case to your legal advisors, or to have to make the call on an ordinance providing for district-based elections which appear to not be provided for in State law, the City will likely take its request for a legal opinion directly to the State Attorney General. We would be pleased to work jointly with your office on this effort. To keep you apprised of the City's efforts in this regard, enclosed is a draft Resolution which the City Council will be considering at their May 4 regular meeting.

Pending the outcome of the City Council's direction Monday evening, we will be moving forward quickly on this matter.

Again, thank you for your responsiveness and assistance.

Sincerely,



Dave Zabell
City Manager

DZ/tlz
attachment

RESOLUTION NO. _____

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. Request for Opinion. The City Council of the City of Pasco will request an Opinion of the State Attorney General regarding whether RCW 35A.12.180 prohibits the City from having a district-based election system.

Section 3. 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 4. 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 4th day of May, 2015.

Matt Watkins Mayor

ATTEST:

Debra Clark, City Clerk

APPROVED AS TO FORM:

Leland B. Kerr, City Attorney