

# Agenda Summary Report (ASR)

## Franklin County Board of Commissioners

<b>DATE SUBMITTED:</b> 10-20-2021	<b>PREPARED BY:</b> Jennifer Johnson
<b>Meeting Date Requested:</b> 10/26/21	<b>PRESENTED BY:</b> Shawn Sant
<b>ITEM:</b> (Select One) <input checked="" type="checkbox"/> Consent Agenda <span style="float: right;">Brought Before the Board Time needed</span>	
<b>SUBJECT / ISSUE:</b> Joint Defense/Common Interest/Confidentiality Agreement	
<b>FISCAL IMPACT:</b> \$0 to sign this document, but there will be expenses to defend the lawsuit, however, by sharing counsel, the expenses will be less than if we had our own.	
<b>BACKGROUND:</b> Franklin County and Matt Beaton were sued by Washington Election Integrity Coalition United, along with other counties around the state and specifically other counties involved with the Risk Pool. The Risk Pool, along with the civil attorneys for the Risk Pool Counties, have determined that it is in the best interest of the counties to mount a joint defense and share attorney costs. The Joint Defense/Common Interest/Confidentiality Agreement protects the interests of all defendant parties.	
<b>RECOMMENDATION:</b> Approve the Resolution/ Joint Defense/Common Interest/Confidentiality Agreement	
<b>COORDINATION:</b> Shawn Sant Risk Pool	
<b>ATTACHMENTS:</b> (Documents you are submitting to the Board)\  ASR, Resolution, and Joint Defense/Common Interest/Confidentiality Agreement	
<b>HANDLING / ROUTING:</b> (Once document is fully executed it will be imported into Document Manager. Please list <u>name(s)</u> of parties that will need a pdf)  Prosecuting Attorney's Office	

*I certify the above information is accurate and complete.*

 Jennifer Johnson, Chief Civil DPA

**FRANKLIN COUNTY RESOLUTION \_\_\_\_\_**

**BEFORE THE BOARD OF COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

***APPROVING The Joint Defense/Common Interest/Confidentiality Agreement for  
WEICU v. Franklin County and Matt Beaton lawsuit***

**WHEREAS**, a lawsuit had been filed against Franklin County and Matt Beaton by the Washington Election Integrity Coalition United; and

**WHEREAS**, at this time an almost identical lawsuit has been filed against numerous other counties in Washington, including Whatcom and Thurston Counties; and

**WHEREAS**, Whatcom, Thurston, and Franklin Counties are members of the Washington Counties Risk Pool; and

**WHEREAS**, the Washington Counties Risk Pool has agreed to partially cover the litigation against member counties; and

**WHEREAS**, the member counties have decided it is in their best interest to share legal counsel; and

**WHEREAS**, the member counties share legal interests that are common and mutual in connection with the Litigation that have been and will be best served by sharing information and cooperating for the sake of efficiency in joint efforts in furtherance of their common legal interests, including working with experts and the Parties' Joint Defense Counsel to investigate and respond to the Litigation and sharing certain documents, communications and information relating to the Litigation.; and

**WHEREAS**, the waiver of attorney-client privilege or work product would affect all other member counties; and

**WHEREAS**, the Board of Franklin County Commissioners constitutes the legislative authority for Franklin County and desires to enter into this agreement as being in the best interest of Franklin County;

**NOW, THEREFORE, BE IT RESOLVED** the Franklin County Board of Commissioners hereby approves the Joint Defense/Common Interest/Confidentiality Agreement for WEICU v. Franklin County and Matt Beaton lawsuit.

**APPROVED** this 26th day of October 2021.

**BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Member

Attest:

\_\_\_\_\_  
Clerk of the Board

## **JOINT DEFENSE/COMMON INTEREST/CONFIDENTIALITY AGREEMENT**

### **1. PARTIES**

1.1 The Parties to this Joint Defense and Common Interest Agreement (“Agreement”) are Whatcom County, Thurston County, and Franklin County (“the Counties”), by and through their respective Prosecuting Attorneys, County Commissioners, or County Executives.

### **2. LAWSUIT**

2.1 The Counties, along with their respective Officers and employees, (collectively as “Defendants”), have been named as Defendants in *Washington Election Integrity Coalition United v. Bradrick.*, Case No. 21-2-00943-37; *Washington Election Integrity Coalition United v. Hall.*, Case No. 21-2-01641-34; and *Washington Election Integrity Coalition United v. Beaton.*, Case No. 21-2-50572-11 (“the Litigation”).

2.2 Plaintiff Washington Election Integrity Coalition United filed individual complaints against the Counties, along with other counties in the State, alleging that the Defendants unlawfully used uncertified voting systems and engaged in other voter fraud in violation of state law and the United States and Washington constitutions.

### **3. JOINT DEFENSE AND COMMON INTEREST**

3.1 The Parties share legal interests that are common and mutual in connection with the Litigation that have been and will be best served by sharing information and cooperating for the sake of efficiency in joint efforts in furtherance of their common legal interests, including working with experts and the Parties' Joint Defense Counsel to investigate and respond to the Litigation and sharing certain documents, communications and information relating to the Litigation.

3.2 Parties and their Joint Defense Counsel have been acting pursuant to those common interests in evaluation, defense and furtherance of the Litigation.

3.3 The Parties have interests that are common, mutual, and non-adverse in connection with Litigation, and their mutual interests will be served by continuing to share certain information.

3.4 The Parties have jointly retained Counsel to provide legal advice and counsel concerning issues of law with respect to the Parties' evaluation, defense and furtherance of the Litigation and such advice and counsel is, and is intended to remain, confidential and protected by the attorney-client privilege, and the Parties expect their Joint Defense Counsel to generate confidential and privileged work-product to assist them in providing advice and counsel to their clients.

3.5 The Parties' evaluation, defense and furtherance of the Litigation involve common questions of law and fact, and the Parties have common legal interests as to the issues currently presented or which may be presented.

3.6 The Parties also desire to cooperate among themselves in the evaluation, defense and furtherance of the Litigation in furtherance of their common legal interests,

3.7 The Parties and Joint Defense Counsel intend for any such cooperation, including communications made by Counsel, as well as the sharing of privileged and protected information by Counsel, to be kept in confidence to the extent permitted by law.

#### **4. CONFIDENTIALITY**

4.1 All documents, communications and information, including factual material, legal research, mental impressions, memoranda, and other information and oral communications relating to the Litigation including, but not limited to, information, communications and documents directly derived from such shared materials, in connection with the evaluation, defense

or furtherance of the Litigation, which work product, including attorney or client work product, are within the common interest privilege, or within the joint defense privilege, or are otherwise subject to any other privilege or protection from disclosure, is “Joint Defense Information” under this Agreement.

4.2 Unless expressly stated in writing to the contrary, Joint Defense Information disclosed by any one or more of the Parties to any other Parties and/or their Counsel is to be protected from disclosure to non-Parties by the attorney-client privilege, the work product doctrine, and any other applicable privilege or protection.

4.3 The Parties agree that all Joint Defense Information shared between the Parties and their Counsel pursuant to this agreement shall be protected pursuant to the joint defense doctrine recognized in such cases as *State v. Emmanuel*, 42 Wn.2d 799, 259 P.2d 845 (1953); *Sanders v. State*, 169 Wn.2d 827, 240 P.3d 120 (2010); *U.S. v. McPartlin*, 595 F.2d 1321, 1336, 4 Fed. R. Evid. Serv. 416 (7th Cir. 1979); *Hunydee v. U.S.*, 355 F.2d 183, 66-1 U.S. Tax Cas. (CCH) P 9137, 17 A.F.T.R.2d 262 (9th Cir. 1965); *Continental Oil Co. v. U.S.*, 330 F.2d 347 (9th Cir. 1964) and their progeny, and the Parties and their Counsel do not intend to waive any work-product protection, attorney-client privilege, or any other privilege or protection applicable to Joint Defense Information by sharing it with any other Counsel or Parties, and the receiving Party agrees that such information will remain Joint Defense Information.

4.4 Joint Defense Information will be held in strict confidence by Counsel and the Parties. Each Party will take appropriate measures to maintain the confidentiality of all such information and it will not be shared with or disseminated to anyone other than the following in connection with the Litigation or if necessary for the conduct of a Party’s business or otherwise required by law or contract: (a) the Parties, including their officers and employees necessary to

this Litigation; (b) representatives, experts, and consultants hired by the Parties for purposes of the defense; or (c) independent consultants and experts retained by a Party or Counsel and working on the Litigation. Joint Defense Information that has been disclosed to other Parties to this Agreement will not be used for any purpose adverse to the interest of any Party, unless such information is otherwise no longer privileged information. Joint Defense Information may be marked as “Joint Defense Information” or “Confidential Pursuant to Joint Defense Agreement” or “Confidential Pursuant to Common Interest Agreement” or with some similar designation, but the failure to so mark such materials will not in any way waive any applicable privilege or protection.

4.5 The Parties agree that, to the extent they have exchanged, disclosed, or communicated to one another Joint Defense Information prior to the date of this Agreement, whether pursuant to their oral common interest agreement in the Actions or otherwise, such communications and sharing of Joint Defense Information are subject to this Agreement.

4.6 If any person or entity seeks Joint Defense Information from any Party through discovery, subpoena, or any other legal process or proceeding, including public records requests, whether before or after this Agreement is terminated, that Party will promptly notify in writing the other Parties to this Agreement.

4.7 Any inadvertent or purposeful disclosure of Joint Defense Information by any party does not waive any privilege or protection held by any other Party. No Party has the unilateral right to waive any privilege or protection in which any other Party has an interest, either before or after termination of this Agreement.

4.8 This Agreement does not restrict the right of any Party to use documents received in the normal and ordinary course of business, through discovery in the Litigation, or through another public means for any business purpose, whether or not they are deemed to be Joint Defense

Information. Joint Defense Information prepared by any expert or consultant is permitted to be used by any Party subject to the confidentiality provisions of this Agreement.

## 5. OTHER PROVISIONS

5.1 **Settlement Arrangement; Notice.** Any Party that enters into a settlement arrangement with, or agrees to cooperate with or assist in any way with, any defendant in the Actions, or another defendant against which the Parties are asserting substantially similar claims, shall notify the other Party immediately and withdraw from and terminate its participation in this Agreement immediately, in accordance with the procedure set forth in Section 4.2 below.

5.2 **Right to Withdraw.** Each Party to this Agreement has the right to withdraw from participation at any time upon 30 days' prior written notice to the other Party. Withdrawal from participation under this Agreement shall not operate as a waiver or authorize violation of this Agreement. A withdrawing Party remains bound to maintain the confidentiality of information received under this Agreement.

5.3 **Termination.** This Agreement may be terminated only by written agreement of all Parties other than Parties that have withdrawn pursuant to Section 5.2, except that this Agreement shall be automatically terminated by the satisfaction, extinguishment, or final resolution of all known and potential claims and causes of action involving the Parties arising out of the Actions or any other actions alleging substantially similar claims involving the Parties.

5.4 **Use of Agreement.** The existence of this Agreement or the fact of the joint defense of the claims asserted by any Defendant in the Litigation shall not be used offensively or defensively in any litigation involving any issue relating to or deriving from the Parties' claims or defenses (*e.g.*, indemnity, contribution, or related issues), other than a claim for enforcement of this Agreement. The mere existence of this Agreement shall not be used by any Party as a basis of

any claim that any counsel for one or more of the Parties is disqualified from representing any person or entity in other and different litigation. The Parties further agree that neither the fact of their joint defense efforts nor this Agreement shall be admissible in any litigation which involves an issue relating to the claims asserted by the plaintiffs in the Litigation or any other actions alleging substantially similar claims against or involving the Parties.

5.5 **Opportunity to Consult with an Attorney.** Each Party has had the opportunity to consult with its attorney, understands the terms of this Agreement and agrees to abide by them, and each Party has authorized its attorney of record to execute this Agreement on its behalf.

5.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. Any controversy, dispute, or claim arising out of or relating to the obligations under this Agreement shall be resolved by confidential mediation.

5.7 **Other Privileges and Protections.** This Agreement is made without prejudice to the right of any Party to contend that privileges or other protections greater or other than those specified in this Agreement exist with respect to any communication or document concerning or involved in the Actions. Nothing in this Agreement shall abridge the rights of any Party.

5.8 **Integration.** This Agreement is fully integrated and constitutes the complete and final agreement among the Parties with respect to the subject matter herein. Any amendments to or modifications of this Agreement must be in writing and signed by all of the Parties. Any addition of new parties shall be accomplished by written amendment to this Agreement.

5.9 **Exclusive Benefit.** This Agreement is for the exclusive benefit of the Parties and their successors in interest, and shall not be deemed to give any legal or equitable right, remedy, or claim to any other entity or person, or to constitute an admission of liability for any purpose.



5.10 **Survival of Certain Provisions.** The following Sections shall survive termination of this Agreement and/or a Party's withdrawal from this Agreement: 3 (Applicability of Joint Defense Doctrine and Privilege), 4 (Confidentiality), 5.4 (Use of Agreement), 5.6 (Governing Law), 5.9 (Exclusive Benefit), 5.10 (Survival of Certain Provisions), and 5.11 (Work Product).

5.11 **Counterparts.** This Agreement may be executed in counterparts with like effect as though original signatures all appear on the same document.

The Parties through their authorized representatives have executed this Agreement pursuant to their respective signatures on Exhibit A.

**SIGNATURE PAGES TO FOLLOW**

EXHIBIT A

I acknowledge I have read the Joint Defense and Common Interest Agreement (“Agreement”), including all exhibits. The following agrees to be a participant in and be bound by the Agreement:

FRANKLIN COUNTY

By:  \_\_\_\_\_ Date: 10/20/2021  
SHAWN SANT, FRANKLIN  
COUNTY PROSECUTING  
ATTORNEY

FRANKLIN COUNTY, WASHINGTON

\_\_\_\_\_  
BRAD PECK, Member.

\_\_\_\_\_  
ROCKY MULLEN, Member.

\_\_\_\_\_  
CLINT DIDIER, Member.

Constituting the Board of County Commissioners of Franklin County, Washington.

DATED: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk of the Board

**EXHIBIT A**

I acknowledge I have read the Joint Defense and Common Interest Agreement (“Agreement”), including all exhibits. The following agrees to be a participant in and be bound by the Agreement:

**THURSTON COUNTY**

By: \_\_\_\_\_  
JON TUNHEIM, THURSTON COUNTY PROSECUTING ATTORNEY  
Date: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

BOARD OF THURSTON COUNTY COMMISSIONERS

\_\_\_\_\_  
CAROLINA MEJIA, COMMISSIONER

\_\_\_\_\_  
GARY EDWARDS, COMMISSIONER

\_\_\_\_\_  
TYE MENSER, COMMISSIONER

ATTEST:

\_\_\_\_\_  
CLERK  
Dated: \_\_\_\_\_

**EXHIBIT A**

I acknowledge I have read the Joint Defense and Common Interest Agreement (“Agreement”), including all exhibits. The following agrees to be a participant in and be bound by the Agreement:

**WHATCOM COUNTY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
ERIC RICHEY, WHATCOM COUNTY  
PROSECUTING ATTORNEY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
SATPAL SINGH SIDHU, WHATCOM  
COUNTY EXECUTIVE