

**Testimony before the House Rules Committee  
Hearing scheduled for 1 pm, Mon., June 24, 2019**

**James B. De Young, Mayor of Damascus**

Mr. Holvey, Chair of the House Committee on Rules, and other members of the Committee. Thank you for this opportunity to testify in opposition to SB 226-a. Following our City Charter, I'm the duly and legally appointed Mayor of Damascus as of May 16, 2019. I'm also the plaintiff for whom the Appellate Court decided on May 1, 2019, in *De Young v. Brown*. The defendants in this case are the State, Governor Brown, and Clackamas County. Originally, at the Circuit Court level, the defendants also included my own city, the City of Damascus, which we named for its failure to protect our City charter. I was serving my fourth year on the City Council in 2016 when the vote was made on Measure 93 which the State legislature demanded as a result of HB 3085 and HB 3086 which passed this House and became law in 2015.

While there are many other matters I could bring before this committee regarding why you should vote **no** on SB 226, I wish to restrict my remarks to several key statements in the Appellate Court decision that bear directly on the new legislation being weighed in SB 226-a.

I wish to address the following matters dealing with the surrender of the City charter.

First, in a letter to this Committee and to the Senate Rules Committee, Clackamas County has maintained that it is "not possible" to return to the condition of the City in 2016. I have maintained that while it is difficult it is not impossible, and the Appellate Court in its decision, *De Young v. Brown*, agrees with me. The Court stated that it was "skeptical" that a city that had no "facilities, personnel, and resources" could "resume functioning as a municipality." The Court also noted other decisions about "land use, law enforcement, and numerous other types of decisions made by Clackamas County since 2016 that would be called into question" (the Court citing here the defendants' wording; p 363). "Nonetheless"—this is the Court's word-- the Court did not think on this basis that the case should be declared moot (p 363). Implicitly the Court thus acknowledged that the City could be revived.

Second, it has often been asserted that Damascus "surrendered its charter" in 2016 as a result of the simple majority of people voting for Measure 93 as HB 3085 demanded. Somewhat as consequences of this "surrender" there are assertions in the media that the Mayor and City Council are phonies or (by the latest claim) are impersonating officers of the city that the DA of Clackamas Co should investigate as criminal matters.

But these very matters are discussed in the Appellate Court ruling. I quote here the words of the ruling that occur in their discussion as to whether the case is moot, where the defendants' claim "that there is no practical means for the city to resume operations." Here is an extended quote of what the Court said (p 362):

Plaintiff responds that his appeal is "neither factually nor legally moot." Contending that the act of "surrendering" a charter is, essentially, a "legal fiction," plaintiff argues that we could reverse that act "by the stroke of this court's pen." That is, if we were to invalidate

the results of the special election, Damascus and its residents would be restored to the status quo ante: The city would reacquire its corporate existence (and related obligations to its tax payers), plaintiff would regain his position as a city councilor, and the residents of Damascus “could resume their home rule constitutional right to self-governance.” Plaintiff further contends that he “and any of the other city councilors could meet and resume the operations of the city.”

And this is exactly what the Appellate Court did. On three occasions in its decision the Court said that the “plaintiff is entitled to prevail as a matter of law” (pp 364, 370, 371). Thus all the elements in the quoted paragraph above have occurred by the decision of the Appellate Court in *De Young v. Brown*: the Charter was not surrendered; the City reacquired its corporate existence; the councilors can function again; and, most importantly, the residents of the city have resumed their “home rule constitutional right to self-governance.”

This last right is all important. Since the early 1900’s individual cities have sovereign rights to govern themselves apart from outside influence—including interference coming from the executive branch (the Governor) or from the legislative branch (the Oregon Senate or House).

This right has been the basis of the previous attempts to disincorporate Damascus in 2013-14, to interfere in the City by HB 4029 in 2013, and by again a vote to disincorporate in 2016. On all three occasions the Courts have defeated all such attempts on the basis of the Oregon Constitution or statutory law based on the Constitution.

The previous Mayor of Damascus has claimed that she is the real Mayor if the Court’s words reinstating Damascus as a City are true. But the problem is that not everything could be restored as it was in 2016. For example, some people have died, land use and annexations into Happy Valley have taken place (and statutory law prevents these from being reversed after one year). The former mayor annexed into Happy Valley two years ago so she is not in Damascus. She is disqualified from the office by the City Charter standards for residency.

And note that the Court did not say that all the details had to be restored. It uses broad terms such as “the people” and “the city” and “other councilors.” The only specific person referred to is myself.

So what does all this mean for this House hearing today on SB 226-a? It means a great deal. Should it pass the bill, this legislature is again about to violate home rule “constitutional self-governance.” When will such vain attempts end? Every city in Oregon ought to be deeply disturbed over the repeated attempts to destroy a sovereign city by the State Legislature.

Note that the provisions of SB 226-a at the very beginning violate the State Constitution on home rule or statutory standards. These ask the Secretary of State to ratify the election on disincorporation in 2016, that the vote was carried by simple majority, that the City charter was surrendered to the County, and that the city boundaries were eliminated.

In light of the Appellate Court decision that the City has been restored, all of these features have no basis in reality, especially the surrender of the City charter. Only a city council can amend or end its charter, and no such action ever occurred in 2016 or since.

So where do we go from here? While the City of Damascus has an obvious basis for demanding restitution from Clackamas County (for the loss of \$8.1 million) and from Happy Valley (for the loss of about 1400 A. which have annexed from Damascus into HV without a legal basis), we desire reconciliation. Reconciliation is the basis of my 10-point plan: five points to reconcile with the County and five points to reconcile with Happy Valley. But Reconciliation assumes that both parties desire it and will compromise to secure it.

I call on our civic partners to come to the table and begin talking. I also invite the proponents of disincorporation to come to the table also. In the past three years much of the demands of disincorporation have been realized. Why continue this negative attempt to destroy the City? You will find a new Council with a desire to move forward and forget the past. We embrace A. Lincoln's words on the occasion of his second inaugural address (April 10, 1864): "With malice toward none, and charity toward all, let us do the right as God gives us the sight to see the right. That right makes might."

James B. De Young  
Mayor, City of Damascus  
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