APPENDIX

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

No. 100999-2
En Banc

[Filed June 15, 2023]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGUE OF UNITED LATIN AMERICAN CITIZENS,	)
Respondents,	)
v.	)
FRANKLIN COUNTY, a Washington municipal entity, CLINT DIDIER, RODNEY J. MULLEN, LOWELL B. PECK, in their official capacities as members of the Franklin County Board of Commissioners,	)
Defendants,	)
JAMES GIMENEZ,	)
Appellant.	)

YU, J. — This case presents matters of first impression concerning the interpretation and facial validity of the Washington voting rights act of 2018 (WVRA), ch. 29A.92 RCW.[1] As detailed below, the WVRA protects the rights of Washington voters in local elections. In this case, three Latino[2] voters from Franklin County alleged that the county's system for electing its board of commissioners violated the WVRA by "dilut[ing] the votes of Latino/a voters." Clerk's Papers (CP) at 1. The plaintiffs (respondents on appeal) ultimately settled with defendants Franklin County and the Franklin County Board of Commissioners. The defendants are not participants on appeal. We are not asked to review the merits of the plaintiffs' claim or the parties' settlement agreement.

The issues on appeal were raised by James Gimenez, a Franklin County voter who was allowed to intervene by the trial court. Immediately after his motion to intervene was granted, Gimenez moved to dismiss the plaintiffs' claim, arguing that the plaintiffs do not have standing and that the WVRA is facially invalid. The trial court denied Gimenez's motion to dismiss, and he was not an active participant in the case thereafter. After the trial court entered a final

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[1] The legislature amended the WVRA while this appeal was pending, effective January 1, 2024. *See* LAWS OF 2023, ch. 56, § 14. This opinion does not address those amendments.

[2] When referring to the race or ethnicity of specific individuals, this opinion uses the terminology used by that individual. When quoting from another source, this opinion uses the terminology from the source material. Otherwise, this opinion uses gender-neutral terminology.

order approving the parties' settlement, Gimenez appealed directly to this court.

Gimenez's arguments are all based on his view that the WVRA protects some Washington voters but excludes others. The WVRA's protections apply to "a class of voters who are members of a race, color, or language minority group."[3] RCW 29A.92.010(5). Gimenez interprets this language to mean that the WVRA protects only members of "'race minority groups,' 'color minority groups,' or 'language minority group[s].'" Br. of Appellant at 2 (underlining added) (alteration in original). Based on this interpretation, Gimenez argues that the plaintiffs do not have standing because the WVRA does not protect Latinx voters from Franklin County as a matter of law. Gimenez also argues that the WVRA has been repealed by implication and is facially unconstitutional because it requires local governments to implement electoral systems that favor protected voters and disfavor others on the basis of race.

Gimenez's arguments cannot succeed because his reading of the statute is incorrect. The WVRA protects *all* Washington voters from discrimination on the basis of race, color, and language minority group. On its face, the WVRA does not require race-based favoritism in local electoral systems, nor does it trigger strict

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[3] "Language minority group" is a term that is "referenced and defined in the federal voting rights act [of 1965 (FVRA)], 52 U.S.C. 10301 et seq." RCW 29A.92.010(5). The FVRA, in turn, defines "language minority group" as "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." 52 U.S.C. § 10310(c)(3).

scrutiny by granting special privileges, abridging voting rights, or otherwise classifying voters on the basis of race. Therefore, we hold that the plaintiffs have standing and that the WVRA is valid and constitutional on its face.[4] We affirm the trial court, grant the plaintiffs' request for attorney fees and costs on appeal against Gimenez, and remand for a determination of fees and costs incurred at the trial court.

OVERVIEW OF THE WVRA

No Washington appellate court has previously considered the WVRA. To provide context for this case, it is important to begin with an overview of the relevant law and terminology.

A. General provisions

The WVRA recognizes "that electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections." RCW 29A.92.005 (citing WASH. CONST. art. I, § 19, art. VI, § 1; U.S. CONST. amends. XIV, XV). However, prior to the WVRA's enactment, Washington law "often prohibited" local governments from making changes to their electoral systems, even in response to changing demographics. *Id.* The legislature found that "in some cases, this has resulted in an improper dilution of

[4] We decline to reach the plaintiffs' argument that Gimenez failed to comply with RCW 7.24.110 and amici's argument that Gimenez lacks standing to appeal as a matter of right.

voting power," particularly as applied to "minority groups." *Id.*

To protect the rights of Washington voters in local elections, the legislature passed the WVRA in 2018. The WVRA provides that

> no method of electing the governing body of a political subdivision may be imposed or applied in a manner that impairs the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters who are members of a protected class or classes.

RCW 29A.92.020. A "'[p]rotected class' means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal voting rights act [of 1965 (FVRA)], 52 U.S.C. 10301 et seq." RCW 29A.92.010(5). A "'[p]olitical subdivision'" includes "any county, city, town, school district, fire protection district, port district, or public utility district, but does not include the state." RCW 29A.92.010(4). Small cities, towns, and school districts are exempt from most of the WVRA's provisions. RCW 29A.92.700.

Two elements must be shown before a political subdivision may be found in violation of the WVRA:

> (a) Elections in the political subdivision exhibit polarized voting[5]; and
>
> (b) Members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes.

RCW 29A.92.030(1). There are definitions and guidelines for applying these elements in individual cases. *See* RCW 29A.92.010, .030(2)-(6).

B. Types of prohibited voting discrimination

The WVRA expressly protects against two types of voting discrimination: "abridgment" and "dilution." RCW 29A.92.020, .030(1)(b). These terms are not statutorily defined, and their meaning is not necessarily obvious. However, "courts may rely on relevant federal case law for guidance" in interpreting the WVRA. RCW 29A.92.010.

Federal cases use "abridgment" as a relatively general term. Practices that "abridge" the right to vote on the basis of race or color have been expressly prohibited by the Fifteenth Amendment since 1870 and by section 2 of the FVRA (Section 2) since 1965. U.S. CONST. amend. XV, § 1; *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. ___, 141 S. Ct. 2321, 2331, 210 L. Ed.

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[5] As discussed further below, "polarized voting" is "a difference . . . in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." RCW 29A.92.010(3).

2d 753 (2021) (citing 79 Stat. 437). In its current form, Section 2 prohibits electoral systems and practices "which result[ ] in a denial or abridgement" of voting rights based on "race," "color," or membership in a "language minority group." 52 U.S.C. §§ 10301(a), 10303(f)(2).

A Section 2 violation may be found if "the totality of circumstances" show

> that the political processes leading to nomination or election in the [jurisdiction] are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

52 U.S.C. § 10301(b). Thus, "an 'abridgement' of the right to vote" refers to an electoral system or practice that impairs voting rights on the basis of race, color, or language minority group, regardless of whether there was "outright denial of the right" to vote. *Brnovich*, 141 S. Ct. at 2341.

For example, abridgment may be caused "by the requirement of the payment of a poll tax as a precondition to voting" or by "the discriminatory use of literacy tests." 52 U.S.C. § 10306(a); *Oregon v. Mitchell*, 400 U.S. 112, 132, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970) (plurality opinion). For many years, Washington State abridged voting rights by imposing an English-language literacy requirement for voter registration, while at the same time "vesting unlimited discretion in state registration officers" to decide whether to

administer a literacy test before registering any particular individual to vote. 1967 Op. Att'y Gen. No. 21, at 5; *see* LAWS OF 1901, ch. 135, § 4; LAWS OF 1965, ch. 9, § 29.07.070(13).

In contrast to "abridgment," federal courts use "dilution" as a technical term of art. Dilution is a specific type of abridgment, which arises from the "features of legislative districting plans." *Brnovich*, 141 S. Ct. at 2331. In a dilution claim, the plaintiff alleges that their jurisdiction's districting plan "dilute[s] the ability of particular voters to affect the outcome of elections." *Id.* Federal cases recognize two primary forms of vote dilution.

First, vote dilution can be caused by the use of "multimember districts and at-large voting schemes,"[6] as opposed to single-member districts and district-based elections.[7] *Thornburg v. Gingles*, 478 U.S. 30, 47, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986). At-large elections may "'minimize or cancel out the voting strength of racial [minorities]'" because "the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Id.* at 47-48 (alteration in original) (internal quotation marks omitted) (quoting *Burns v. Richardson*, 384 U.S. 73, 88, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966)).

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[6] In an "at-large" election system, "voters of the entire jurisdiction elect the members to the governing body." RCW 29A.92.010(1)(a).

[7] In a "district-based" election system, "the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district." RCW 29A.92.010(2).

Second, vote dilution can occur in district-based elections through "the manipulation of district lines." *Voinovich v. Quilter*, 507 U.S. 146, 153, 113 S. Ct. 1149, 122 L. Ed. 2d 500 (1993). This often involves so-called "'cracking' and 'packing.'" *Gill v. Whitford*, 585 U.S. ___, 138 S. Ct. 1916, 1923, 201 L. Ed. 2d 313 (2018) (quoting record). "Cracking" occurs when a group of voters is split up "'among multiple districts so that they fall short of a majority in each one.'" *Id.* at 1924 (quoting record). "Packing" occurs when a group of voters is concentrated "'in a few districts that they win by overwhelming margins,'" thus preventing the group from electing its preferred candidates in other districts. *Id.* (quoting record).

Both the WVRA and Section 2 of the FVRA prohibit vote dilution. RCW 29A.92.020; *Brnovich*, 141 S. Ct. at 2333. However, there are significant differences between the two, which affect both the range of available remedies and the elements required for a successful claim.

C. The WVRA recognizes a broader range of redressable claims for vote dilution than those recognized by Section 2 of the FVRA

Section 2 recognizes only a few potential remedies for vote dilution. Federal courts "have strongly preferred single-member districts" as the remedy of choice. *Growe v. Emison*, 507 U.S. 25, 40, 113 S. Ct. 1075, 122 L. Ed. 2d 388 (1993). In addition, federal courts may order "the creation of majority-minority[8]

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[8] "In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population," thereby

districts [if] necessary to remedy a violation of federal law." *Quilter*, 507 U.S. at 156. However, Section 2 does not require other remedies, such as so-called "influence districts"[9] or "crossover district[s]."[10] *Bartlett v. Strickland*, 556 U.S. 1, 13, 129 S. Ct. 1231, 173 L. Ed. 2d 173 (2009) (plurality opinion). Instead, courts adjudicating Section 2 claims are generally limited to ordering single-member districts and, in some cases, majority-minority districts.

Due to these limits on available remedies, a plaintiff asserting a Section 2 vote dilution claim

> must prove three threshold conditions: first, "that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single-member district"; second, "that [the minority group] is politically cohesive"; and third, "that the . . . majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."

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creating an opportunity for the minority group to elect its candidate of choice in that district. *Bartlett v. Strickland*, 556 U.S. 1, 13, 129 S. Ct. 1231, 173 L. Ed. 2d 173 (2009) (plurality opinion).

[9] In an "influence district[ ] . . . a minority group can influence the outcome of an election even if its preferred candidate cannot be elected." *Id.*

[10] "[I]n a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Id.*

Emison, 507 U.S. at 40 (some alterations in original) (quoting *Gingles*, 478 U.S. at 50-51). These threshold conditions are generally referred to as the "*Gingles* factors" or "*Gingles* requirements."

As the United States Supreme Court has explained, the *Gingles* factors are necessary in Section 2 vote dilution cases to ensure that the plaintiff has stated a redressable injury. In other words, the *Gingles* factors require the plaintiff to show that their concerns could, at least potentially, be addressed by implementing single-member districts, majority-minority districts, or both:

> The "geographically compact majority" and "minority political cohesion" showings are needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district, [a]nd the "minority political cohesion" and "majority bloc voting" showings are needed to establish that the challenged districting thwarts a distinctive minority vote by submerging it in a larger . . . voting population.

Id. (citing *Gingles*, 478 U.S. at 50 n.17, 51). "[O]nly when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation [of Section 2] has occurred based on the totality of the circumstances." *Strickland*, 556 U.S. at 11-12.

By contrast, the WVRA contemplates a much broader range of available remedies. Similar to Section 2, the WVRA permits courts to order a political subdivision to implement "a district-based election

system" and "to draw or redraw district boundaries." RCW 29A.92.110(1). However, unlike Section 2, courts adjudicating WVRA claims are "not limited to" these examples, and any remedy must be "tailor[ed]" to the political subdivision at issue. RCW 29A.92.110(1)-(2).

For example, in direct contrast to the FVRA, the WVRA explicitly allows for the creation of a crossover or "coalition"[11] district "that provides the protected class the opportunity to join in a coalition of two or more protected classes to elect candidates of their choice if there is demonstrated political cohesion among the protected classes." RCW 29A.92.110(2). Other potential remedies include, but are not necessarily limited to,

- limited voting, where a voter receives fewer votes than there are candidates to elect;
- cumulative voting, where a voter receives as many votes as there are candidates to elect, but may cast multiple votes for a single candidate; and
- single transferrable or ranked choice voting, where a voter ranks candidates in order of preference, and votes are transferred to lower-ranked candidates who are not elected on first-place votes if a majority is not reached.

FINAL B. REP. ON ENGROSSED SUBSTITUTE S.B. 6002, at 2, 65th Leg., Reg. Sess. (Wash. 2018).

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[11] In a coalition district, "two minority groups form a coalition to elect the candidate of the coalition's choice." *Id.*

Thus, on its face, the WVRA permits remedies that Section 2 does not. This does not create a conflict between state and federal law because the states are free to implement remedies that are not *required* pursuant to Section 2, so long as those remedies are not otherwise *prohibited*. *See Strickland*, 556 U.S. at 23 ("Our holding that [Section] 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion."); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 430, 126 S. Ct. 2594, 165 L. Ed. 2d 609 (2006) (*LULAC*) ("To be sure, [Section] 2 does not forbid the creation of a noncompact majority-minority district.").

Because the WVRA contemplates a broader range of remedies than Section 2, a WVRA plaintiff can state a redressable injury under a broader range of circumstances than a Section 2 plaintiff. This is reflected in the elements required to prove a WVRA claim.

Similar to Section 2, the WVRA requires the plaintiff to show that "[e]lections in the political subdivision exhibit polarized voting." RCW 29A.92.030(1)(a). This requirement corresponds to the second and third *Gingles* factors, discussed above: "the minority group must be able to show that it is politically cohesive" and that the "majority [group] votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 51; *see* RCW 29A.92.010(3). The WVRA is also similar to Section 2 in placing the ultimate burden on the plaintiff to prove that "[m]embers of a protected

class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes." RCW 29A.92.030(1)(b); *cf.* 52 U.S.C. § 10301(b).

However, unlike Section 2, the WVRA specifically rejects the first *Gingles* factor as a *threshold* requirement: "The fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this chapter." RCW 29A.92.030(2). *Contra Gingles*, 478 U.S. at 50. Instead, the WVRA provides that geographical compactness "may be a factor in determining a *remedy*." RCW 29A.92.030(2) (emphasis added).

Thus, if the plaintiff in a WVRA case seeks the creation of a so-called "majority-minority" district, they may be required at the remedy stage to show that the minority group is sufficiently geographically compact to constitute a majority in the proposed district—just as a Section 2 plaintiff would need to do at the threshold stage. *Cf. Gingles*, 478 U.S. at 50 & n.17. By contrast, if the plaintiff in a WVRA case seeks only the implementation of a ranked choice voting system for at-large elections, a showing of geographical compactness would be both irrelevant and unnecessary at any stage.

D. Enforcement of the WVRA

The WVRA includes two mechanisms to promote compliance: voluntary changes by political subdivisions and challenges by local voters.

A political subdivision may voluntarily "change its electoral system . . . to remedy a potential violation" of the WVRA. RCW 29A.92.040(1). If the political subdivision wishes to draw or redraw its election districts, then it must comply with specific criteria. RCW 29A.92.050(3). In addition, before implementing any voluntary changes, "the political subdivision must provide public notice" and "hold at least one public hearing." RCW 29A.92.050(1)(a)-(b).

Local voters may also "challenge a political subdivision's electoral system" for alleged WVRA violations. RCW 29A.92.060(1). The voter must "first notify the political subdivision," which must work with the voter "in good faith." *Id.*; RCW 29A.92.070(1). If the political subdivision wishes to implement a remedy at this stage, it must "seek a court order acknowledging that the . . . remedy complies with RCW 29A.92.020 and was prompted by a plausible violation." RCW 29A.92.070(2). There is "a rebuttable presumption that the court will decline to approve the political subdivision's proposed remedy." *Id.*

If a political subdivision receives notice of an alleged WVRA violation but fails to implement a court-approved remedy within a specified time frame, then "any voter who resides in [the] political subdivision . . . may file an action" in superior court. RCW 29A.92.090(1). Such an action is subject to the

WVRA's provisions on venue, time for trial, statute of limitations, and similar issues. *See* RCW 29A.92.090-.100. If the trial court finds that the political subdivision has violated the WVRA, then it "may order appropriate remedies," as discussed above. RCW 29A.92.110(1). Once the political subdivision implements a court-approved remedy, it is largely shielded from WVRA challenges for the next four years. *See* RCW 29A.92.070(3), .080(3), .120(1).

Since the WVRA was enacted in 2018, several political subdivisions have made changes to their electoral systems. However, this will be the first time that any Washington appellate court addresses the WVRA.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises from a voter-initiated challenge to Franklin County's system for electing its three-member board of commissioners. Franklin County is located in southeastern Washington, with its county seat in the city of Pasco. *Find Us*, FRANKLIN COUNTY, https://www.franklincountywa.gov/508/Find-Us (last visited June 5, 2023). About 54 percent of the county's total population is "Hispanic or Latino."[12] *QuickFacts, Franklin County, Washington*, U.S. CENSUS BUREAU,

[12] "The [United States] Office of Management and Budget (OMB) requires federal agencies to use a minimum of two ethnicities in collecting and reporting data: Hispanic or Latino and Not Hispanic or Latino. OMB defines 'Hispanic or Latino' as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race." CP at 558.

https://www.census.gov/quickfacts/franklincountywashington (last visited June 5, 2023). "Latino citizens make up over one third, or 34.4%, of Franklin County's citizen voting age population." CP at 5.

A. The plaintiffs notify Franklin County of an alleged WVRA violation and ultimately file suit

Prior to this case, Franklin County used "a 'hybrid' election system," which combined district-based primaries with at-large general elections:

> [P]otential candidates [ran] in their respective districts and the top two candidates proceed[ed] to the general election. The general election [was] then conducted as an at-large election, in which all voters in the County cast votes to seat a county commissioner in each seat the year that position is up for election.

Id. at 1010. In October 2020, counsel for the plaintiffs[13] sent Franklin County a notice alleging that its electoral system violated the WVRA.

According to the plaintiffs' notice, the county's "at-large general elections for commissioners prevent Latinos from electing a candidate of choice" and "Franklin County has diluted the Latino community's votes by cracking the population into different

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[13] The individual plaintiffs are Gabriel Portugal, Brandon Paul Morales, and Jose Trinidad Corral, "Latino registered voters who reside in Franklin County." *Id.* at 2. League of United Latin American Citizens (LULAC) is also a named plaintiff. *Id.* at 3. None of the parties or amici distinguish between the individual plaintiffs and LULAC.

districts." *Id.* at 116-17. The notice further alleged that "as a result of the County's discriminatory electoral scheme, there are no Latino preferred candidates currently serving on the Franklin County Board of Commissioners, nor has there ever been one elected to serve on the commission." *Id.* at 116.

Franklin County did not take remedial action within the then applicable six-month time frame. *See* RCW 29A.92.080(1). The plaintiffs subsequently filed a WVRA claim in Franklin County Superior Court against Franklin County and each member of the Franklin County Board of Commissioners (Clint Didier, Rodney J. Mullen, and Lowell B. Peck) in their official capacities.

B. James Gimenez intervenes to defend Franklin County's electoral system

The procedural history of this litigation is fairly complicated, but many of the details are irrelevant to our review. To briefly summarize, the plaintiffs moved for partial summary judgment on the issue of whether Franklin County's electoral system violated the WVRA. The defendants conceded the WVRA violation because they could not make a contrary argument "in good faith." CP at 170. The trial court granted partial summary judgment and ordered the parties to "work cooperatively together on the development of the district map." *Id.* at 259. However, this order was vacated shortly after it was entered.

Three days after the trial court granted partial summary judgment, Gimenez moved to intervene to defend Franklin County's existing electoral system,

alleging that the plaintiffs lack standing and that the WVRA is facially unconstitutional. One week later, the Franklin County Board of Commissioners adopted a resolution directing the county prosecutor to "seek reconsideration of the order granting Summary Judgement [sic]." *Id.* at 275. As directed, the prosecutor moved to vacate the summary judgment order, asserting that the "Board of Commissioners never authorized or gave direction in an open public meeting to the Franklin County Prosecutor to stipulate to an order granting summary judgment in favor of the Plaintiffs." *Id.* at 318.

Over the plaintiffs' objections, the trial court granted the defendants' motion to vacate and Gimenez's motion to intervene.

C. The trial court denies Gimenez's motion to dismiss and approves the parties' CR 2A settlement agreement

After his motion to intervene was granted, Gimenez immediately moved for dismissal pursuant to CR 12(c), arguing that the plaintiffs lack standing and that the WVRA is facially invalid. The trial court denied Gimenez's CR 12(c) motion on its merits.

The plaintiffs subsequently filed a second motion for partial summary judgment. As they had done in their first motion, the plaintiffs sought a ruling that Franklin County's electoral system violated the WVRA, leaving only "the question of an appropriate remedial map" for trial. *Id.* at 682. The defendants initially opposed summary judgment, but the parties ultimately entered into a CR 2A settlement agreement, "which

was ratified by Defendant Commissioners in a Franklin County commissioner meeting." *Id.* at 1288.

The settlement agreement allowed Franklin County to use a district map that its board of commissioners had already "approved and adopted" following the 2020 U.S. Census. *Id.* at 1292. However, "[b]eginning with the 2024 election cycle, all future elections for the office of Franklin County Commissioner will be conducted under a single-member district election system for both primary and general elections." *Id.* The plaintiffs also agreed to accept a reduced award of attorney fees and costs from the defendants. Over Gimenez's objection, the trial court approved the parties' CR 2A settlement and dismissed the plaintiffs' claims with prejudice.

Gimenez appealed directly to this court. The plaintiffs opposed Gimenez's arguments on the merits, but they agreed that direct review was appropriate. We retained the case for a decision on the merits and accepted six amici briefs for filing.[14] We have not received any appellate filings from Franklin County or any member of the Franklin County Board of Commissioners.

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[14] An amicus brief supporting Gimenez was filed by the American Civil Rights Project (ACRP). Amici briefs supporting the plaintiffs were filed by (1) the Civil Rights and Justice Clinic at the University of Washington School of Law and the Election Law Clinic at Harvard Law School, (2) OneAmerica and the Campaign Legal Center, (3) the Fred T. Korematsu Center for Law and Equality and the American Civil Liberties Union of Washington, (4) the Brennan Center for Justice, and (5) the State of Washington.

ISSUES

A. Do the plaintiffs have standing to bring a WVRA claim?

B. Did the legislature repeal the WVRA by implication?

C. Does the WVRA facially violate the privileges and immunities clause of article I, section 12 of the Washington Constitution?

D. Does the WVRA facially violate the equal protection clause of the Fourteenth Amendment to the United States Constitution?

E. Should we reach the additional issues raised by plaintiffs and amici?

F. Should we grant the plaintiffs' request for attorney fees and costs?

ANALYSIS

Each of Gimenez's arguments is based on his interpretation of the WVRA's definition of a "protected class." He believes that this definition protects some racial groups, while excluding others. As a result, Gimenez believes that the WVRA requires local governments to implement electoral systems that favor some racial groups, while disfavoring others.

Statutory interpretation is a matter of law, so our review is de novo. *Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 238, 481 P.3d 1060 (2021), *cert. denied*, 142 S. Ct. 1094 (2022). We reject Gimenez's interpretation of the WVRA. The plain

language of the statute and basic principles of statutory interpretation show that the WVRA protects *all* Washington voters from discrimination on the basis of race, color, and language minority group. Therefore, the plaintiffs in this case have standing and the WVRA has not been repealed by implication.

Gimenez's constitutional challenges to the WVRA are also subject to de novo review. *Id.* "We presume statutes are constitutional, and the party challenging constitutionality bears the burden of proving otherwise." *Id.* at 239. Because Gimenez makes facial challenges, his arguments "must be rejected unless there is '*no set of circumstances* in which the statute . . . can constitutionally be applied.'" *Id.* at 240 (quoting *In re Det. of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999)). The WVRA can clearly be applied in a manner that does not violate article I, section 12 because, on its face, the WVRA does not grant any privilege or immunity to any class of citizens.

Finally, contrary to Gimenez's view, his federal equal protection claim does not trigger strict scrutiny because the WVRA, on its face, does not "create racial classifications." *Contra* Br. of Appellant at 17. Strict scrutiny could certainly be triggered in an *as-applied* challenge to "districting maps that sort voters on the basis of race" or to some other "race-based sorting of voters." *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. __, 142 S. Ct. 1245, 1248, 212 L. Ed. 2d 251 (2022) (per curiam). However, on its face, the WVRA requires "equal opportunit[ies]" for voters of all races, colors, and language minority groups, not race-based sorting of voters. RCW 29A.92.020.

Gimenez appears to argue that the WVRA makes "racial classifications" by recognizing the existence of race, color, and language minority groups and prohibiting discrimination on that basis. Br. of Appellant at 17. He also appears to argue that the WVRA *must* favor some racial groups and disfavor others because "[e]lections are quintessentially zero-sum." *Id.* at 53. We cannot agree. If Gimenez's position were correct, then every statute prohibiting racial discrimination or mandating equal voting rights would be subject to facial equal protection challenges triggering strict scrutiny. No authority supports that position. Therefore, we hold that Gimenez's equal protection claim triggers only rational basis review, which the WVRA easily satisfies on its face.

We grant the plaintiffs' request for attorney fees in part. We award fees and costs incurred at trial and on appeal against Gimenez, and we remand to the trial court for a calculation of the fees and costs incurred at the trial court. However, we decline the plaintiffs' request to assess fees against Commissioner Didier.

A. The plaintiffs have standing

According to Gimenez, the WVRA's protections simply do not apply to members of a race, color, or language minority group that comprises a numerical majority of the total population in their local jurisdiction. Slightly over 50 percent of Franklin County's total population is Latinx. Therefore, according to Gimenez, it is impossible for *any* Latinx voter in Franklin County to have standing to bring a WRVA claim, unless they happen to be a member of some other protected class. The trial court rejected

Gimenez's interpretation and ruled that the plaintiffs have standing. We affirm.

1. The plain statutory language and principles of statutory interpretation show that the WVRA's protections apply to all Washington voters

The plain meaning of the WVRA applies to all Washington voters. As discussed above, the WVRA prohibits voting discrimination against "members of a protected class or classes." RCW 29A.92.020. A "protected class" is "a class of voters who are members of a race, color, or language minority group." RCW 29A.92.010(5). Everyone can be a member of a race or races, everyone has a color, and "language minority group" includes ethnic groups that might otherwise be wrongfully excluded—"persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage."[15] 52 U.S.C. § 10310(3)(c). As a

[15] Gimenez and amicus ACRP argue that "Spanish heritage" does not refer to ethnicity but to "those who speak Spanish." Br. of Appellant at 36; *see generally* Br. of ACRP as Amicus Curiae in Supp. of Intervenor Def.-Appellant (Amicus Br. of ACRP). They acknowledge that no case law supports this interpretation. To the contrary, United States Supreme Court precedent has applied the FVRA's protections to Latinx voters. *E.g.*, *LULAC*, 548 U.S. 399 (partial plurality opinion). Nevertheless, Gimenez argues that if "Spanish heritage" refers to ethnicity, then it is "superfluous" because ethnicity is "already captured by the preceding categories" of race and color. Br. of Appellant at 36. However, elsewhere in his briefing, Gimenez questions whether "'Hispanics' are a race," and amicus argues that they are not. Reply Br. of Appellant at 1 n.1; *see also* Amicus Br. of ACRP at 13-14 n.30. Including Latinx ethnicities within "language minority groups," as other courts have consistently done based on the statute's plain language, forecloses the need for such arguments and, therefore, is not superfluous.

result, every Washington voter is a member of at least one protected class, so every Washington voter is protected by the WVRA.

The statute's plain meaning is confirmed by "traditional rules of grammar." *PeaceHealth St. Joseph Med. Ctr. v. Dep't of Revenue*, 196 Wn.2d 1, 8, 468 P.3d 1056 (2020). For instance, "[w]hen evaluating the language of a statute, we apply the last antecedent rule" absent evidence of a contrary legislative intent. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). The last antecedent rule shows that "minority group" modifies only "language," not "race" or "color." *See id.*; RCW 29A.92.010(5). If the legislature had intended otherwise, then the WVRA would refer to "racial" groups, not "race" groups.

Principles of statutory interpretation further confirm that the WVRA "'says what it means and means what it says.'" *City of Seattle v. Long*, 198 Wn.2d 136, 149, 493 P.3d 94 (2021) (quoting *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004)). Statutory language must be interpreted in "the context of the statute, related provisions, and the statutory scheme as a whole." *Id.* at 148. The WVRA recognizes that voters must have an "*equal* opportunity to elect candidates of their choice." RCW 29A.92.020, .030(1)(b) (emphasis added). Equality would not be possible if the WVRA protected the members of some racial groups and excluded others. Moreover, the WVRA does not say that a political subdivision's electoral system may be challenged by "minorities," "minority voters," "minority groups," or anything similar. Instead, the WVRA allows for a challenge by "*any* voter who resides in a political

subdivision where a violation of RCW 29A.92.020 is alleged."[16] RCW 29A.92.090(1) (emphasis added).

In addition, as the trial court correctly ruled, Gimenez's narrow statutory interpretation is inconsistent with the WVRA's remedial purpose. "Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose." *Bennett v. Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990). The stated legislative purpose of the WVRA is to prohibit "electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice." RCW 29A.92.005. It would improperly frustrate this purpose to hold that the WVRA's protections are inapplicable to many Washington voters, as Gimenez claims.

Finally, we consider persuasive authority from California and federal courts. The WVRA's definition of a protected class is identical to the definition of a protected class in California's voting rights act. *Compare* RCW 29A.92.010(5), *with* CAL. ELEC. CODE § 14026(d). In 2006, the California Court of Appeals recognized that this definition "simply gives a cause of action to members of *any* racial or ethnic group that can establish that its members' votes are diluted." *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 666, 51 Cal. Rptr. 3d 821 (2006). The WVRA adopted the same definition 12 years later.

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[16] It is undisputed that the voter bringing the challenge must be a member of the race, color, or language minority group whose rights they seek to vindicate.

If our legislature intended to enact a different definition of a protected class, it had ample time to change the language. Instead, our legislature adopted California's definition verbatim. Absent "contrary legislative intent, when a state statute is 'taken substantially verbatim'" from another jurisdiction, "'it carries the same construction.'" *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 868, 281 P.3d 289 (2012) (internal quotation marks omitted) (quoting *State v. Bobic*, 140 Wn.2d 250, 264, 996 P.2d 610 (2000)). Thus, California's broad interpretation of the definition of a protected class is highly persuasive when interpreting the same language in the WVRA.

In addition, "courts may rely on relevant federal case law for guidance" when interpreting the WVRA. RCW 29A.92.010. As the California Court of Appeals explained, "In a variety of contexts, the [United States] Supreme Court has held that the term 'race' is expansive and covers all ethnic and racial groups." *Sanchez*, 145 Cal. App. 4th at 684. Notably, the Supreme Court has held that the Fifteenth Amendment's prohibition on "deny[ing] or abridg[ing] the right to vote on account of race . . . grants protection to *all* persons, not just members of a particular race." *Rice v. Cayetano*, 528 U.S. 495, 512, 120 S. Ct. 1044, 145 L. Ed. 2d 1007 (2000) (emphasis added).

Like the United States Supreme Court, this court has previously refused to apply narrow definitions when deciding whether a person is protected from discrimination on the basis of "race." *See State v. Zamora*, 199 Wn.2d 698, 704 n.6, 512 P.3d 512 (2022)

(quoting *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 214, 137 S. Ct. 855, 197 L. Ed. 2d 107 (2017)). We decline to change our approach now. Instead, we apply the plain statutory language and hold that the WVRA's protections apply to all Washington voters.

2. We decline Gimenez's invitation to rewrite the statute

Gimenez acknowledges that it is both "plausible" and "grammatically permissible" to interpret the WVRA as protecting all Washington voters. Br. of Appellant at 13-14. Nevertheless, he argues that we must restructure and rewrite the statute as follows:

> "'Protected class' means
>
> (a) a class of voters who are members of a race minority group; or
>
> (b) a class of voters who are members of a color minority group; or
>
> (c) a class of voters who are members of a language minority group, as this class is referenced and defined in the federal voting rights act, 52 U.S.C. 10301 *et seq*."

Id. at 10 (underlining added). "Courts may not 'rewrite unambiguous statutory language under the guise of interpretation.'" *State v. Hawkins*, 200 Wn.2d 477, 492, 519 P.3d 182 (2022) (quoting *Jespersen v. Clark County*, 199 Wn. App. 568, 578, 399 P.3d 1209 (2017)). However, Gimenez argues that this court must judicially rewrite the WVRA. He is incorrect.

First, Gimenez points to the WVRA's statement of legislative findings and intent, which appears to use

"minority groups" as a shorthand for "race, color, or language minority groups." RCW 29A.92.005. However, there is no indication that this was intended to exclude certain racial groups from the WVRA's protections. Indeed, the stand-alone phrase "minority groups" is not defined (or even used) anywhere else in the WVRA.

It would be both absurd and contrary to precedent to hold that the statement of legislative findings negates the plain language of the WVRA's operative provisions. "Declarations of intent are not controlling; instead, they serve 'only as an important guide in determining the intended effect of the operative sections.'" *State v. Reis*, 183 Wn.2d 197, 212, 351 P.3d 127 (2015) (quoting *Kilian v. Atkinson*, 147 Wn.2d 16, 23, 50 P.3d 638 (2002)). The legislature may have found that minority groups would benefit from the WVRA, but that does not mean the legislature intended to exclude everyone else.

Next, Gimenez appears to argue that the WVRA cannot be intended to protect all racial groups because it is "impossible" for a majority group to experience voting discrimination. Br. of Appellant at 26. According to Gimenez, "if the 'protected class' constitutes a majority of the political subdivision . . . it would not lack an equal opportunity to elect candidates of choice due to vote dilution within that subdivision." *Id.* at 25-26 (emphasis omitted).

In this argument, Gimenez appears to assume that the WVRA recognizes only vote *dilution* claims. To the contrary, as discussed above, the WVRA prohibits both "dilution" and "abridgment" of voting rights on the basis of race, color, or language minority group. RCW

29A.92.020. Abridgment of the right to vote can occur regardless of which racial group is in the majority.

For instance, abridgment would likely be found if voting registration officials "administered literacy tests to Mexican-American members of the plaintiffs' class more frequently, more carefully, and more stringently than they have administered them to other persons, including Anglo-Americans whose ability to read and speak English is imperfect or limited." *Mexican-Am. Fed'n-Wash. State v. Naff*, 299 F. Supp. 587, 593 (E.D. Wash. 1969), *judgment vacated sub nom. Jimenez v. Naff*, 400 U.S. 986 (1971); *see also* 1967 Op. Att'y Gen. No. 21. "Indeed, the most egregious examples of Jim Crow era voter suppression—such as poll taxes and literacy tests—were specifically designed to prevent Black majorities from participating in elections." Amicus Br. of State of Wash. at 11-12 (citing Brad Epperly et al., *Rule by Violence, Rule by Law: Lynching, Jim Crow, and the Continuing Evolution of Voter Suppression in the U.S.*, 18 PERSPS. ON POL. 756, 761-64 (2020)).

Moreover, it is entirely possible to dilute the voting power of majority groups through the manipulation of district lines. The United States Supreme Court has already explained how:

> Assume a hypothetical jurisdiction of 1,000 voters divided into 10 districts of 100 each, where members of a minority group make up 40 percent of the voting population and voting is totally polarized along racial lines. With the right geographic dispersion to satisfy the compactness requirement, and with careful

> manipulation of district lines, the minority voters might be placed in control of as many as 7 of the 10 districts.

Johnson v. De Grandy, 512 U.S. 997, 1016, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994). Thus, to the extent that Gimenez believes that the WVRA does not protect majority groups because they do not need the WVRA's protection, he is simply incorrect.

In sum, the WVRA means exactly what it says. All Washington voters are protected from discrimination on the basis of race, color, or language minority group. That includes the plaintiffs. Therefore, the trial court correctly ruled that the plaintiffs have standing to bring their WVRA claim.

B. The WVRA has not been repealed by implication

Next, Gimenez argues that the WVRA gives minority groups the exclusive "right to sue to compel redistricting, and require[s] the county to favor the racial group which sued in drawing new district lines." Br. of Appellant at 17-18. He contends that this irreconcilably conflicts with RCW 29A.76.010(4)(d), which provides that when a county engages in periodic redistricting after a census, "[p]opulation data may not be used for purposes of favoring or disfavoring any racial group or political party." Due to this alleged conflict, Gimenez believes that every time RCW 29A.76.010 was amended, the WVRA was implicitly repealed, at least as applied to counties. He is incorrect. The WVRA neither requires nor allows the kind of race-based favoritism that RCW 29A.76.010(4)(d) prohibits.

First, as discussed above, the WVRA's protections apply to all Washington voters, and all Washington voters have standing to bring a WVRA challenge. The WVRA does not compel race-based favoritism; it explicitly requires "an equal opportunity" in local elections for voters of all races, colors, and language minority groups. RCW 29A.92.020.

Second, contrary to Gimenez's interpretation, a political subdivision cannot be compelled to do *anything* pursuant to the WVRA based on the "single factor" of "racially polarized voting, *i.e.*, the fact that voters of different races tend to vote for different candidates." *Contra* Br. of Appellant at 45. In fact, the plain language of the WVRA provides that a plaintiff must prove *both* that "[e]lections in the political subdivision exhibit polarized voting" *and* that "[m]embers of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes." RCW 29A.92.030(1)(b). Thus, the WVRA does not require local governments to favor "race minority 'haves'" at the expense of "race majority 'have-nots.'" *Contra* Reply Br. of Appellant at 18. The WVRA does not compel local governments to do anything based on *race*. Instead, the WVRA may compel local governments to change their electoral systems to remedy proven *racial discrimination*.

Gimenez appears to believe that actions to remedy proven racial discrimination are indistinguishable from actions based on race alone. He also argues that the WVRA actually "*forbids* consideration of . . . past

discrimination" because the WVRA does not require "[p]roof of intent on the part of the voters or elected officials to discriminate against a protected class." Br. of Appellant at 4 (emphasis added); RCW 29A.92.030(5). We disagree. On its face, the WVRA simply codifies the following, indisputable propositions:

(1) Voters can be "members of a race, color, or language minority group." RCW 29A.92.010(5). Recognizing the existence of race, color, and language minority groups does not, in itself, "create racial classifications." *Contra* Br. of Appellant at 17. *See* U.S. CONST. amend. XV; 52 U.S.C. §§ 10301(a), 10303(f)(2).

(2) "Polarized voting" is possible. RCW 29A.92.010(3). Recognizing the possibility of racially polarized voting is neither novel nor unique to the WVRA. *See generally Gingles*, 478 U.S. 30. Moreover, even where polarized voting is proved to exist, that is not sufficient, by itself, to prove a WVRA violation. RCW 29A.92.030(1).

(3) A combination of polarized voting and "dilution or abridgment" of voting rights can deprive members of a race, color, or language minority group of an "equal opportunity to elect candidates of their choice" in local elections. RCW 29A.92.030(1)(b); *cf.* U.S. CONST. amend. XV; 52 U.S.C. §§ 10301, 10303(f)(2).

(4) Where a class of voters has been deprived of equal electoral opportunities on the basis of race, color, or language minority group, the law can provide a remedy based on "discriminatory effect alone," even in the absence of discriminatory intent. *Gingles*, 478 U.S.

at 35; *see* U.S. CONST. amend. XV, § 2; 52 U.S.C. §§ 10301, 10303(f)(2).

We hold that the WVRA does not irreconcilably conflict with RCW 29A.76.010(4)(d) because on its face, the WVRA requires equality, not race-based favoritism, in electoral systems. Thus, the legislature has not implicitly repealed the WVRA.

C. The WVRA does not facially violate article I, section 12

Next, Gimenez argues that the WVRA violates article I, section 12 on its face because "it grants to a specific identified class the right and privilege to have county commissioner boundaries drawn so that members of that identified class—but not the public at large, or members of other definable classes—can elect a 'candidate of choice.'" Br. of Appellant at 52. As detailed above, Gimenez fundamentally misinterprets what the WVRA says and does. We therefore reject his article I, section 12 argument.

"'For a violation of article I, section 12 to occur, the law . . . must confer a privilege to a class of citizens.'" *Madison v. State*, 161 Wn.2d 85, 95, 163 P.3d 757 (2007) (quoting *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004)). The WVRA does not confer any privilege to any class of citizens. Instead, the WVRA protects the "*equal* opportunity" of voters of *all* races, colors, and language minority groups "to elect candidates of their choice." RCW 29A.92.020, .030(1)(b) (emphasis added). Therefore, all Washington voters have equal rights to challenge their local governments for alleged WVRA

violations. If, in some future case, the WVRA is applied or interpreted in way that grants privileges to some racial groups while excluding others, then the WVRA will be subject to an as-applied challenge. But on its face, the WVRA simply does not implicate article I, section 12.

D. The WVRA does not facially violate the equal protection clause

Finally, Gimenez argues that the WVRA facially violates the equal protection clause of the Fourteenth Amendment because the WVRA cannot survive strict scrutiny. However, as explained above, the WVRA on its face does not classify voters on the basis of race, nor does it deprive anyone of the fundamental right to vote. Instead, the WVRA mandates *equal* voting opportunities for members of every race, color, and language minority group. Therefore, Gimenez's facial equal protection claim triggers rational basis review, not strict scrutiny. *Cf. Madison*, 161 Wn.2d at 103. Rational basis review is satisfied if "there is a rational relationship between" the WVRA "and any legitimate governmental interests." *Id.* at 106.

To the extent that Gimenez's equal protection argument is based on his misinterpretation of the WVRA, we reject it. The WVRA's mandate for equal voting opportunities is clearly rationally related to the State's legitimate interest in protecting Washington voters from discrimination. "[A] law directing state actors to provide equal protection is (to say the least) facially neutral, and cannot violate the Constitution." *Schuette v. Coal. to Def. Affirmative Action*, 572 U.S.

291, 318, 134 S. Ct. 1623, 188 L. Ed. 2d 613 (2014) (Scalia, J., concurring in the judgment).

Gimenez further points out, correctly, that Section 2 of the FVRA has a threshold requirement for vote dilution claims that the WVRA does not have. As discussed above, before a federal court will reach the merits of a Section 2 vote dilution claim, a "group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50. By contrast, the WVRA provides that "[t]he fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this chapter, but may be a factor in determining a remedy." RCW 29A.92.030(2).

Gimenez argues that the WVRA is unconstitutional on its face because "[w]ithout the compactness precondition, the [United States] Supreme Court has made clear, Section 2 could never" satisfy the equal protection clause. Br. of Appellant at 40-41. However, he does not cite a single case—from any court—that actually says what he claims. Instead, Gimenez relies on cases addressing as-applied challenges to specific redistricting plans based on allegations of racial gerrymandering. *See id.* at 37-50.[17] These cases

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[17] Citing *Shaw v. Reno*, 509 U.S. 630, 642-43, 647, 651, 657, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993); *Miller v. Johnson*, 515 U.S. 900, 926-28, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); *Georgia v. Ashcroft*, 539 U.S. 461, 491, 123 S. Ct. 2498, 156 L. Ed. 2d 428 (2003) (Kennedy, J., concurring); *Strickland*, 556 U.S. at 10-13, 15-

consistently hold that *Section 2* requires a threshold showing of compactness in a vote dilution claim. *E.g.*, *Strickland*, 556 U.S. at 10-16, 20-21; *Emison*, 507 U.S. at 40-41. However, Gimenez cites no case holding that the *equal protection clause* imposes the same requirement in every voting discrimination claim.

Without a doubt, the WVRA could be applied in an unconstitutional manner, and it is subject to as-applied challenges. However, Gimenez did not bring an as-applied challenge. He brought a facial challenge. As detailed above, the WVRA, on its face, does not require unconstitutional actions.

Moreover, as amici point out, "entire pages of Gimenez's argument on this point are word-for-word identical" to the briefing from a recent challenge to California's voting rights act. Br. of Law Sch. Clinics Focused on C.R. as Amici Curiae at 14 n.1. *Compare* Br. of Appellant at 37-43, *with* Appellant's Opening Br. at 3-7, 32, *Higginson v. Becerra*, No. 19-55275 (9th Cir. June 17, 2019), *and* Pet. for Writ of Cert. at 4-6, *Higginson v. Becerra*, No. 19-1199 (U.S. Apr. 2, 2020). The Ninth Circuit Court of Appeals rejected the

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16, 20-21; *Shaw v. Hunt*, 517 U.S. 899, 906-08, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996); *Emison*, 507 U.S. at 40-41; *De Grandy*, 512 U.S. at 1016 (majority), 1028-29 (Kennedy, J., concurring in part and concurring in the judgment); *Cooper v. Harris*, 581 U.S. 285, 292, 137 S. Ct. 1455, 197 L. Ed. 2d 837 (2017); *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189-90, 137 S. Ct. 788, 197 L. Ed. 2d 85 (2017); *LULAC*, 548 U.S. at 446 (plurality portion); *Abrams v. Johnson*, 521 U.S. 74, 85-86, 117 S. Ct. 1925, 138 L. Ed. 2d 285 (1997); *United States v. Hays*, 515 U.S. 737, 744-45, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995).

arguments Gimenez makes here and the United States Supreme Court denied certiorari. *Higginson v. Becerra*, 786 F. App'x 705 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 2807 (2020). Gimenez does not explain why we should reach a different conclusion based on the same arguments.

Finally, even under federal law, the threshold compactness requirement applies only in the specific context of a vote *dilution* claim. It does not apply to all voting rights cases. As the United States Supreme Court has explained:

> The reason that a minority group making such a [vote dilution] challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice.

Gingles, 478 U.S. at 50 n.17.

The WVRA protects voters from all forms of abridgment, not just dilution. Gimenez does not explain why a group must demonstrate compactness to prove that their voting rights have been abridged by, for instance, the discriminatory administration of literacy tests. *See Mexican-Am. Fed'n*, 299 F. Supp. 587. Thus, even if the equal protection clause does require a threshold compactness inquiry for a vote dilution claim, that would not make the WVRA facially unconstitutional. At most, the WVRA would be

unconstitutional as applied in the context of vote dilution claims. Gimenez did not bring an as-applied challenge.

Gimenez argues that he cannot be required to prove that the WVRA is unconstitutional in all of its potential applications "because it is impossible to explore and describe every possible circumstance" that might arise. Reply Br. of Appellant at 9. However, that is the standard that applies to a facial constitutional challenge in accordance with this court's controlling precedent. *Woods*, 197 Wn.2d at 240. Gimenez does not show that our precedent is "'incorrect and harmful'" or that its "'legal underpinnings'" have changed. *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016) (quoting *In re Rts. to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970); *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014)).

Therefore, because it is impossible for Gimenez to show that the WVRA is unconstitutional in all of its potential applications, his facial equal protection challenge to the WVRA must be rejected.

E. We decline to reach the additional issues raised by the plaintiffs and amici

As detailed above, each of Gimenez's arguments fails on its merits. We affirm the trial court on that basis alone. We therefore decline to reach the alternative arguments raised by the plaintiffs and

amici concerning RCW 7.24.110 and Gimenez's standing to appeal.[18]

F. We award the plaintiffs' request for attorney fees and costs against Gimenez and remand for a calculation of fees incurred at the trial court

Finally, the plaintiffs request attorney fees and costs based on the WVRA, as well as the statutes and court rules governing frivolous claims. We need not decide whether Gimenez's claims are frivolous. Instead, we award the plaintiffs' request for fees against Gimenez pursuant to the WVRA.

The WVRA allows, but does not require, an award of "reasonable attorneys' fees, all nonattorney fee costs as defined by RCW 4.84.010, and all reasonable expert witness fees" to "the prevailing plaintiff or plaintiffs, other than the state or political subdivision thereof." RCW 29A.92.130(1). Here, the plaintiffs are the

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[18] The plaintiffs and amici argue that Gimenez's constitutional claims should not be considered on their merits because Gimenez did not serve his pleading on the attorney general pursuant to RCW 7.24.110. It is undisputed that Gimenez did not serve the attorney general before filing his CR 12(c) motion for judgment on the pleadings. Yet, arguably, Gimenez did not file any pleading seeking declaratory judgment that would be subject to RCW 7.24.110. Gimenez attached a *proposed* pleading to his motion to intervene, which included counterclaims for declaratory judgment. However, the trial court's order granting the motion to intervene did not address the proposed pleading, and Gimenez did not subsequently file his proposed pleading as a separate document. Instead, he chose to file a CR 12(c) motion for judgment on the *existing* pleadings—the plaintiffs' amended complaint and the defendants' answer. We decline to interpret RCW 7.24.110 as applied to these specific facts.

prevailing parties, they are not the state or a political subdivision, and Gimenez's appeal forced the plaintiffs to spend an entire year litigating this case *after* Franklin County settled their WVRA claim. We therefore exercise our discretion to award the plaintiffs' request for fees and costs attributable to their litigation against Gimenez.[19]

The plaintiffs request their appellate attorney fees, as well as "a fee award at trial" for the "time and expense incurred litigating with Gimenez." Br. of Resp'ts at 52 & n.16. The WVRA's fee provision is explicitly discretionary, providing that "the court *may* allow" fees to a prevailing, nongovernmental plaintiff. RCW 29A.92.130(1) (emphasis added). Thus, we grant both trial and appellate fees, but we remand the calculation of trial court fees to the trial court's discretion.

1. The WVRA's fee provision is constitutional

Gimenez argues that we cannot assess fees against him because "it is unconstitutional to permit a group of lawyers who are funded by another state's government[[20]] to collect fees from an individual Washington Hispanic citizen because of his exercise of his fundamental right to access the state courts and

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[19] The plaintiffs were already awarded fees attributable to their litigation with Franklin County and its board of commissioners in the parties' settlement agreement.

[20] Some, but not all, of the plaintiffs' attorneys are affiliated with the UCLA (University of California, Los Angeles) Voting Rights Project.

petition the government." Reply Br. of Appellant at 26. However, he misrepresents the authorities he cites to support this argument.

Gimenez relies primarily on *Miller v. Bonta*, No. 22cv1446-BEN, 2022 WL 17811114 (S.D. Cal. 2022) (court order). According to Gimenez, *Miller* considered "a California punitive fee-shifting provision such as this one that Plaintiffs seek to exercise" in this case, and "the California attorney general refused to even defend such a statute." Reply Br. of Appellant at 26. In fact, the statute in *Miller* was nothing like the fee provision in the WVRA.

The fee-shifting statute in *Miller* "applie[d] only to cases challenging firearm restrictions." 2022 WL 17811114, at *1. The statute "insulate[d] laws from judicial review by permitting fee awards in favor of the government, tilting the table in the government's favor, and making a plaintiff's attorney jointly and severally liable for fee awards." *Id.* The statute also provided that "[a]s a matter of law, a California plaintiff cannot be a prevailing party." *Id.* The WVRA, by contrast, allows prevailing plaintiffs to recover fees, but only if they are *not* the government. RCW 29A.92.130(1). Moreover, the WVRA does not "tilt the table" in favor of any government entity, and it does not automatically make any party's attorney jointly and severally liable for fees. *Miller* simply does not apply here.

Gimenez also suggests that applying the WVRA's fee provision in this case would violate *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971). *Boddie* struck down "state procedures for the commencement of litigation, including

requirements for payment of court fees and costs for service of process, that restrict[ed the appellants'] access to the courts in their effort to bring an action for divorce." *Id.* at 372. The WVRA's prevailing party fee provision applies at the conclusion of an action, not its commencement. *Boddie* does not apply.

2. We decline to assess fees against Commissioner Didier

Finally, the plaintiffs argue that "Commissioner Didier, who is a named party in the suit in their official capacity, should also be held responsible for any fee award where he was in cahoots with Gimenez's action designed to torpedo the WVRA settlement." Br. of Resp'ts at 54-55. We decline to assess fees against Commissioner Didier.

To be sure, there is significant evidence in the record supporting the plaintiffs' factual allegations. Initially, Commissioner Didier planned to intervene in his personal capacity to challenge the validity of the WVRA. However, after the plaintiffs questioned how a named defendant could also be an intervenor, Gimenez intervened instead. Gimenez has at all times been represented by the same attorney who had originally intended to represent Commissioner Didier in his personal capacity.

Thus, the plaintiffs may be correct that "Commissioner Didier's involvement in Gimenez's intervention was transparent to all those involved in the matter." *Id.* at 55. Indeed, the trial court's order denying Gimenez's CR 12(c) motion begins by stating, "This matter came before the court for hearing on

December 13, 2021 on Intervenor, *Clint Didier's*, Motion for Judgment on the Pleadings." CP at 678 (emphasis added). However, that appears to be a typo, not a finding of fact. The plaintiffs do not cite any trial court findings that Commissioner Didier is the real party behind Gimenez's intervention or appeal.

This court is not a fact-finding court. Moreover, the plaintiffs settled their claims with the defendants, including Commissioner Didier, and Commissioner Didier has not filed anything on appeal. We therefore decline to assess fees against Commissioner Didier based on the plaintiffs' allegations. We express no opinion as to whether Gimenez may have viable claims against Commissioner Didier or anyone else arising from this litigation.

CONCLUSION

All of Gimenez's arguments are based on his interpretation of the WVRA's definition of a protected class. His interpretation is incorrect. We therefore affirm the trial court, award attorney fees and costs to the plaintiffs against Gimenez, and remand for a calculation of fees incurred at the trial court.

/s/ Yu, J.
Yu, J.

WE CONCUR:

/s/ González, C.J.
González, C.J.

/s/ Stephens, J.
Stephens, J.

/s/ Johnson, J.
Johnson, J.

/s/ Gordon McCloud, J.
Gordon McCloud, J.

/s/ Madsen, J.
Madsen, J.

/s/ Montoya-Lewis, J.
Montoya-Lewis, J.

/s/ Owens, J.
Owens, J.

/s/ Judge, J.P.T.
Judge, J.P.T.

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

No. 1 0 0 9 9 9 -2

[Filed October 6, 2023]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGE OF UNITED LATIN AMERICAN CITIZENS,	)
Respondents,	)
v.	)
FRANKLIN COUNTY, a Washington municipal entity; CLINT DIDIER, RODNEY J. MULLNE, LOWELL B. PECK, in their official capacities as members of the Franklin County Board of Commissioners,	)
Defendants,	)
JAMES GIMENEZ,	)
Appellant.	)

RULING SETTING AWARD FOR
ATTORNEY FEES AND EXPENSES

This court issued an opinion on June 15, 2023, in favor of respondents Gabriel Portugal, Brandon Paul Morales, Jose Trinidad Corral, and League of United Latin American Citizens, affirming the trial court's decision denying James Giminez's motion to dismiss respondents' claim under the Washington Voting Rights Act of 2018, ch. 29A.92 RCW. The court granted respondents' request for attorney fees and costs on appeal against Gimenez, and additionally granted trial court fees, but it remanded for a determination of fees and costs incurred at the trial court. This ruling determines the amount of attorney fees and costs to be awarded for respondents' work in this court.

In calculating reasonable attorney fees, this court employs the "lodestar" method. The court accordingly determines the attorney fees to be awarded by multiplying the respective reasonable hourly rates by the number of hours reasonably expended by counsel for the prevailing party. *Bowers v. Transamerica Title Ins., Co.*, 100 Wn.2d 581, 593-94, 675 P.2d 193 (1983). The party requesting attorney fees must provide basic documentation of the work performed sufficient to inform the court of the number of hours worked, the type of work, and the category of the attorneys or other professionals who performed the work. *Id.* at 597. The determination as to what are reasonable hours for which counsel may fairly be compensated requires the court to exclude wasted or duplicative hours. *Mahler v. Szucs*, 135 Wn.2d 398, 433-34, 957 P.2d 632 (1998), *implied overruling recognized on other grounds by*

SentinelC3, Inc. v. Hunt, 181 Wn.2d 127, 331 P.3d 40 (2014). The evaluative process requires at least a passing knowledge of what has been considered a reasonable expenditure of efforts and reasonable hourly rates in prior similar litigation.

In their appeal, respondents were represented by the UCLA Voting Rights Project, the Morfin Law Firm, and Talmadge Fitzpatrick. In total, respondents seek an award of $118,394.34 in fees for 262.51 hours of legal services rendered, consisting of the sum of the fees and expenses requested by the UCLA Voting Rights Project ($91,119.44), the Morfin Law Firm ($13,424.40), and Talmadge Fitzpatrick ($13,850.50).

The UCLA Voting Rights Project, whose attorneys on this case were admitted pro hac vice, states that it has exercised billing judgment by not seeking compensation for administrative tasks, numerous case strategy and litigation meetings, as well as other duplicative work. The Voting Rights Project further reports that its fees were calculated using the USAO Attorney's Fees Matrix, available at https://www.justice.gov/file/1461316/download. That fee matrix was created by the Civil Division of the United States Attorney's Office for the District of Columbia to evaluate requests for attorney fees in civil cases in District of Columbia courts, and the matrix is intended for use in cases in which a fee shifting statute permits the prevailing party to recover reasonable attorney fees.

On June 26, 2023, Chad Dunn from the UCLA Voting Rights Project filed a declaration detailing requested attorney fees. Dunn is the Clinical and

Voting Rights Lecturer at the University of California, Los Angeles School of Law, the Legal Director of the UCLA Voting Rights Project, and a partner at the law firm Brazil & Dunn. Dunn requests an hourly rate of $621 for 51.08 hours, totaling $31,720.68, for work performed from June 2022 to June 2023. Dunn was first licensed to practice law in Texas in 2002, and since then has been licensed in the District of Columbia, Florida, and North Carolina. Dunn states that they have handled hundreds of litigation matters under federal and state law, and that they have appeared as pro hac vice counsel in four other cases in addition to this one in Washington. Dunn also details their experience with civil and voting rights law. Dunn states they devoted a total of 64.38 hours to this matter but eliminated administrative, unnecessary, or duplicative work from their total hour request here.

Bernadette Reyes, also with the UCLA Voting Rights Project, filed a declaration detailing requested attorney fees. Reyes is an attorney licensed to practice law in California and is employed by the UCLA Voting Rights Project as Voting Rights Counsel. Reyes requests an hourly rate of $452 for 70.33 hours, totaling $31,789.16, for work performed from June 2022 to June 2023. Reyes was admitted to practice law in 2014 and has practiced litigation for almost seven years. Reyes states that they have litigated hundreds of cases as court appointed dependency counsel in addition to handling several appellate matters in the California Court of Appeals. Reyes states they are currently handling redistricting cases in various states related to voting rights issues.

Sonni Waknin, also with the UCLA Voting Rights Project, filed a declaration detailing requested attorney fees. Waknin is an attorney licensed to practice law in California since 2021, having graduated from law school in 2020, and is currently employed by the UCLA Voting Rights Project as Program Manager and Voting Rights Counsel. Waknin requests an hourly rate of $353 for 67.20 hours, totaling $23,721.60, for work performed from June 2022 to June 2023. Waknin states they currently serve as counsel in multiple voting rights related cases, including two federal cases in this state.

The UCLA Voting Rights Project additionally seeks an award of $3,880.00 for 21.6 hours of work performed by law clerks at an hourly rate of $180. The total amount of $3,880.00 is in line with the project's requested total of $91,119.44. But in the body of Waknin's declaration, they state that the law clerk's devoted 33.66 hours to the matter on appeal, and that based on the USAO fee schedule, the reasonably attorney fees for their work is $6,058.80. This is the only discrepancy between the amounts listed in the summary table provided by Waknin in their declaration and the summary provided in the body of the declaration.

Edwardo Morfin, also counsel for respondents, submitted a declaration in support of requested attorney fees. Morfin is licensed to practice law in Washington and is employed at Morfin Law Firm, PLLC. Morfin requests an hourly rate of $452 for 29.7 hours, totaling $13,424.40 for work performed from June 2022 to May 2023. Morfin was admitted to

the Washington bar in October 2014 and their office is in Kennewick. Morfin based their hourly rate on the USAO's Attorney's Fees Matrix. Morfin states that they did not claim the entirety of the time spent on this appeal, with many cocounsel zoom meetings, teleconferences, and other administrative tasks being excluded from the total.

Phillip A. Talmadge has also filed a declaration in support of their request for attorney fees. Talmadge has been licensed to practice law in Washington since 1976 and is admitted to the bar of the federal courts. Talmadge served as a senator on the Judiciary Committee for 14 years; served as a Washington State Supreme Court Justice for six years, authoring the opinion in *Mahler v. Szucs*, 135 Wn.2d 398, which addresses attorney fees in civil cases; and principally works in the appellate field and has significant experience practicing appellate law, which includes published work on attorney fees in Washington. Talmadge requests an hourly rate of $500 for 27.7 hours of work, for a total of $13,850.50, for work performed from June 2022 to February 2023.

Giminez has not filed an objection to Talmadge's declaration.[1] But Giminez objects to both the hourly

[1] Talmadge withdrew from the case while the appeal was pending but filed a lien in this court for $13,850.50 for their work on the appeal. Because Talmadge withdrew before the case was final, they did not receive notice that the decision was final and did not receive notice about the deadlines for filing a request for attorney fees. Accordingly, this court notified Talmadge about the pending attorney fee determination and provided them the opportunity to file a declaration supporting their request for fees. Giminez was

rates requested by each of the other attorneys as well as the hours billed for their services. Giminez contends that the hours billed are an extraordinary excess of the norms of actual time investment by Washington lawyers in Washington cases before this court. They argue that the respondents' requests exceed what this and other courts award in contested cases by many multiples and urges this court to either deny the request or drastically reduce it. In support, Giminez has submitted a declaration from former Washington Supreme Court Justice Richard Sanders, who emphasizes their 54-plus years of practice, the number of appellate cases they have handled, and the number of cases they have sat on as a justice and the number of opinions they have authored. Giminez contends that Sanders's experience allows them to command one of the highest hourly rates in Washington for appellate advocacy, noting that they bill clients $395 an hour, and states that Washington courts have even reduced this hourly rate in awarding fees.

As a second example, Giminez refers to attorney Jackson Maynard as widely recognized and one of the most experienced Washington state practitioners in the field of challenges to state laws and state administrative actions. They note that Maynard has 21 years of relevant legal experience and charges $325/hour. Giminez argues that the rates charged to and paid by the actual clients of Sanders and Maynard reflect the actual, reasonable rates which clients in this state are willing to pay lawyers. Thus, Giminez

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provided a 10-day opportunity to object to Talmadge's request, but did not file any objection.

contends that respondents' claimed hourly rates are demonstrably unreasonable.

Giminez similarly argues that the claimed hours for work are wildly excessive. They assert that because no client agreed to pay respondents' counsel, they faced no market-based financial constraint on the number of hours they tallied against this matter, and that as a result, the hours claimed are vastly in excess of what clients actually pay for in cases which are significantly more complex. They note that plaintiffs' counsel insisted that resolving this case was a simple matter of applying long-settled law to a straightforward statute, which this court accomplished in just 28 days from argument to a published decision. Giminez asserts that in vastly more complex cases, this court and the appellate courts have awarded a mere fraction of the fee sought here.

I am not persuaded that Sanders and Maynard represent the absolute cap for an award of appellate attorney fees in Washington. I find Talmadge's declaration persuasive, given their experience and familiarity with attorney fees issues in Washington specifically as well as their citation to authority and the explanation provided in their declaration. And in light of Talmadge's experience, I find $500 to be reasonable, but I also find it to be an appropriate cap for the hourly rate in this case. This is consistent with other hourly rates awarded in Washington for appellate work. Based on other attorney fee awards approved by this court, the rates listed in the USAO Attorney's Fees Matrix appear high for Washington attorney rates. Giminez did not object to Talmadge's

declaration, although I do note that a capped rate of $500 is on the high end of hourly rates previously awarded by this court.

For these reasons, the rates requested by attorneys Dunn, Reyes, Waknin, and Morfin are proportionally reduced to reflect a high end rate of $500 per hour. As for Dunn, given their knowledge and expertise in voting rights law and experience litigating in this area of law, as well as their position as the director of the UCLA Voting Rights Project and other legal experience, I find a rate of $470 per hour to be reasonable and proportional to the capped rate of $500. I also accordingly reduce the rates of Reyes, Waknin, and Morfin, such that I find a rate of $344 for Reyes, $268 for Waknin, and $344 for Morfin to be reasonable based on their knowledge and experience.[2] These rates are on the higher end of rates historically awarded by this court, but I find them reasonable in light of the nature of the case and the work completed.

I am persuaded by Giminez's argument that the hours expended by the attorneys on the appeal exceed what is reasonable when compared to the work of attorneys subject to market forces. For that reason, I have stricken hours expended on administrative tasks and I have reduced the total number of hours spent on research and drafting the briefing filed in this case. Specifically, Waknin requests a total of 24 hours and

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[2] Using the scale provided by the USAO matrix for attorney fee awards and setting a cap of $500 for fees (meaning replacing the highest rate in the table, $665, with $500), each attorney's requested rate has been proportionally reduced accordingly.

18 minutes for work completed on the Answer to the Statement of Grounds for Direct Review. But the parties were in agreement in asking this court to grant direct review, and the answer totaled just 15 pages, including the signature page. Thus, I am reducing the total number of hours billed for this task by 10 hours. I am additionally striking three hours and 52 minutes of work from Waknin's timesheet for administrative tasks, tasks related to becoming familiar with the Washington appellate system, and meetings or discussions with potential amicus parties. Some of the administrative tasks billed for involved matters that would have taken experienced Washington appellate attorneys less time, and presumably Waknin could have consulted with Talmadge or Morfin on these tasks. I am also striking eight hours and 23 minutes from Waknin's timesheet for work on the opening brief, which appears duplicative of the same type of work Reyes lists in their timesheet for the same dates. I find this to be reasonable given that Reyes bills at a higher rate than Waknin. In sum, I am allowing an award of 44.95 hours for Waknin's work in this case.

In their declaration, Reyes bills 26 hours and 17 minutes for "Research and Draft of Opening Brief" and then additionally bills 25 hours and 58 minutes for "Drafting and editing Opening Brief" for a total of 52 hours and 16 minutes. While the brief was over 55 pages and thorough, I find the total number of hours billed for work done on the opening brief to be excessive and accordingly reduce the total number of allowable hours to 35. I am also striking one hour and 30 minutes of work billed by Reyes for work done on the Answer to the Statement of Additional Grounds as duplicative of

work done by Waknin, and I additionally strike two hours and 50 minutes from Reyes's timesheet for administrative work. In sum, I am awarding Reyes 48.84 hours for work performed in this case.

Dunn billed a total of 25 hours and 50 minutes for time spent preparing for oral argument, including two moot court sessions, in addition to billing for five hours and 47 minutes spent preparing for and attending oral argument. While preparation for oral argument is essential, and moot court sessions are helpful in that preparation, I find the additional 25 hours and 50 minutes to be excessive, and I am reducing that total to 15 hours. I am also striking six hours and 26 minutes from Dunn's timesheet for administrative work and review of the record that occurred after their final review and editing of the opening brief, allowing for a total award of 33.82 hours to Dunn for work performed in this appeal.

I am also striking 5.1 hours of administrative work from Morfin's timesheet, allowing for a total award of 24.6 hours for his work done in this appeal. I find all of these hour reductions to be reasonable in light of the higher than average hourly rates awarded above.

I am additionally striking the $3,888 request for attorney fees for work performed by law clerks, as respondents provide no persuasive argument or authority for awarding fees for this work. Nor do they provide any information about the experience or work of the law clerks to justify a rate of $180 per hour. Further, 14.66 hours spent researching elements of the constitutional challenge on the Washington Voting Rights Act, as well as seven hours spent proofreading

and cite checking opening briefs appears excessive and duplicative based on the number of hours billed by the other attorneys for research and editing. I also find that striking of the fee request for the law clerks to be fair in light of the fact that I have awarded hourly rates that are higher than the average usually awarded by this court.

In sum, the total fee awarded to Respondents is $67,055.86 for 175.91 hours of work performed, broken down as follows:

Attorney	Hours Allowed	Hourly Rate	Total Fees
Phillip A. Talmadge	27.7	$500	$13,850.50
Chad Dunn	33.82	$470	$15,895.40
Bernadette Reyes	48.84	$344	$16,800.96
Sonni Waknin	44.95	$268	$12,046.60
Edwardo Morfin	24.6	$344	$8,462.40
		Total Award	$67,055.86

/s/
DEPUTY COMMISSIONER

October 6, 2023

APPENDIX C

THE SUPREME COURT OF WASHINGTON

Supreme Court No. 100999-2

Franklin County Superior Court No. 21-2-50210-11

[Filed July 7, 2023]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGUE OF UNITED LATIN AMERICAN CITIZENS,	)
Respondents,	)
v.	)
FRANKLIN COUNTY, a Washington municipal entity, CLINT DIDIER, RODNEY J. MULLEN, LOWELL B. PECK, in their official capacities as members of the Franklin County Board of Commissioners,	)
Defendants,	)
JAMES GIMENEZ,	)
Appellant.	)

MANDATE

COURT ACTION REQUIRED

THE STATE OF WASHINGTON TO:

The Superior Court of the State of Washington in and for Franklin County

The opinion of the Supreme Court of the State of Washington was filed on June 15, 2023, and became the decision terminating review of this Court in the above entitled case on July 5, 2023. This case is mandated to the superior court from which the appellate review was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.6(c), costs or fees will be awarded in a supplemental judgment at such time as any Deputy Clerk's Ruling on Attorney Fees is final.

[SEAL] IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Olympia, Washington, on July 7, 2023.

/s/ Sarah R. Pendleton
SARAH R. PENDLETON
Deputy Clerk of the Supreme Court
State of Washington

cc: Presiding Judge, Franklin County Superior Court
Clerk, Franklin County Superior Court
Joel Bernard Ard
Edwardo Morfin

Sonni Waknin
Bernadette Samson Reyes
Chad W. Dunn
Francis Stanley Floyd
Amber L. Pearce
Amanda Dawn Daylong
Reporter of Decisions

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR FRANKLIN COUNTY

No. 21-2-50210-11

[Filed May 9, 2022]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGUE OF UNITED LATIN AMERICAN CITIZENS.	)
Plaintiffs,	)
v.	)
FRANKLIN COUNTY, a Washington municipal entity, CLINT DIDIER, RODNEY J. MULLEN, LOWELL B. PECK, in their official capacities as members of the Franklin County Board of Commissioners,	)
Defendants.	)

JOINT ORDER APPROVING SETTLEMENT
AND ORDER OF DISMISSAL

Having considered the parties' CR2A agreement, the Court's previous orders, and the file in this case, the Court enters the following findings and ORDER approving the settlement and its terms.

FINDINGS

1. Plaintiffs Gabriel Portugal, Brandon Paul Morales, Jose Trinidad Corral, and League of United American Citizens ("Plaintiffs") filed suit against Defendants Franklin County, and Clint Didier, Rodney J. Mullen, Lowell B. Peck, as individuals acting in their official capacities as members of the Franklin County Board of Directors (collectively, "County" or "Defendants") alleging violations of the Washington Voting Rights Act, Chapter RCW 29A.92 ("Lawsuit").

2. The Parties have entered into a binding agreement to resolve all of Plaintiffs' claims against the County arising from the Lawsuit, and to forever settle, resolve, and compromise, any and all claims, demand, damages, actions, causes of action or suits of any kind or nature whatsoever as enumerated under Chapter 29A.92 RCW, relating to Plaintiffs' claims and allegations in the Lawsuit;

3. Plaintiffs assert that they incurred approximately $1,420,000 in attorneys' fees and costs in this litigation.

4. The terms of the agreed settlement are attached as **Exhibit A**, and fully incorporated into the Court's findings and order as follows:

a. Beginning with the 2024 election cycle, all future elections for the office of Franklin County Commissioner shall be conducted under a single-member district election system for both primary and general elections.

b. For the 2022 general election for County Commissioner for District 3 (incumbent Clint Didier), the general election shall proceed as an at-large election, and the member elected to the seat for District 3 in 2022 shall serve a four-year term.

c. For the 2026 general election for County Commissioner for District 3, the seat will be elected for the first time as a single-member district.

d. The first general election for single-member district elections for County Commissioner shall occur on November 5, 2024, for Districts 1 (incumbent Lowell B. Peck) and District 2 (incumbent Rodney J. Mullen).

e. The members elected to seats for Districts 1 and 2 shall be elected to serve four-year terms.

f. The districting map for single-member district elections shall be Option 2, as approved and adopted by the Board of Commissioners on December 28, 2021.

g. Plaintiffs agreed to reduce their attorney's fees and costs from $1,420,000 to $375,000. The County shall pay the foregoing amount in three annual installments of $125,000 beginning

August 1, 2022, and ending August 1, 2024. No interest shall be accrued. The Parties have agreed that payments shall be made under the following schedule:

i. One Hundred Twenty-Five Thousand Dollars and no cents ($125,000) on or before August 1, 2022;

ii. One Hundred Twenty-Five Thousand Dollars and no cents ($125,000) on or before August 1, 2023;

iii. One Hundred Twenty-Five Thousand Dollars and no cents ($125,000) on or before August 1, 2024.

h. The Court finds that the foregoing terms of settlement and resolution reached between the parties is reasonable.

ORDER

NOW THEREFORE, having reviewed the Parties' executed CR 2A and found that the terms of settlement and resolution are reasonable, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Franklin County shall conduct all future elections for County Commissioner as single-member district elections beginning with the 2024 election cycle.

2. The first single-member district general election for County Commissioner shall occur on November 5, 2024, for the seats up for election.

3. The members elected to the seats in Districts 1 and 2 in the 2024 election shall serve four-year terms and run for re-election in 2028.

4. The general election for County Commissioner in 2022 shall proceed under the current system and shall proceed as an at-large election for County Commissioner for District 3.

5. The member elected to the District 3 commissioner seat in 2022 shall serve a four-year term and shall run for re-election in 2026.

6. The Court approves "Option 2" as the district map for Franklin County to be used as the electoral map beginning in 2022.

7. The County shall remit payment to Plaintiffs as set forth in Exhibit A and under the following payment schedule:

i. One Hundred Twenty-Five Thousand Dollars and no cents ($125,000) on or before August 1, 2022;

ii. One Hundred Twenty-Five Thousand Dollars and no cents ($125,000) on or before August 1, 2023;

iii. One Hundred Twenty-Five Thousand Dollars and no cents ($125,000) on or before August 1, 2024.

8. The County shall make the foregoing payments into the Court register, or as otherwise agreed in writing by the parties.

9. The Court shall retain jurisdiction over any disputes arising from the settlement agreement or the terms of this order.

10. Plaintiffs' claims against Defendants are hereby DISMISSED with prejudice.

DONE IN OPEN COURT this 9th day of May, 2022.

/s/ Alexander C. Ekstrom
Superior Court Judge

Presented By:

MORFIN LAW FIRM, PLLC
/s/ Edwardo Morfin
Edwardo Morfin, WSBA No. 47831
Attorney for Plaintiffs Gabriel Portugal, Brandon Paul Morales, Jose Trinidad Corral, and League of United American Citizens

FLOYD, PFLUEGER, & RINGER, P.S.
/s/ Francis S. Floyd
Francis S. Floyd, WSBA No. 10642
Amanda D. Daylong, WSBA No. 48013
Attorneys for Defendants Franklin County, and Clint Didier, Rodney J. Mullen, Lowell B. Peck, as individuals acting in their official capacities as members of the Franklin County Board of Directors

FRANKLIN COUNTY PROSECUTOR
/s/ Shawn Sant
Shawn Sant, WSBA No.
Franklin County Prosecutor

Approved as to Form and Notice of Presentation Waived:
ARD LAW GROUP, PLLC

_____
Joel B. Ard, WSBA No.
Attorney for Intervenor James Giminez/Gimenez

APPENDIX E

**IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN**

NO. 21-2-50210-11

[Filed January 3, 2022]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGUE OF UNITED LATIN AMERICAN CITIZENS,	)
Plaintiffs,	)
v.	)
FRANKLIN COUNTY, a Washington Municipal Entity, and CLINT DIDIER, RODNEY J. MULLIN, and LOWELL J. PECK, in their official capacities as Members of the FRANKLIN COUNTY BOARD OF COMMISSIONERS,	)
Defendants.	)

ORDER DENYING MOTION
FOR JUDGMENT ON THE PLEADINGS

This matter came before the court for hearing on December 13, 2021 on Intervenor, Clint Didier's, Motion for Judgment on the Pleadings. At the time of the hearing, the court granted One America's unopposed Motion to File Amicus Brief. After considering the motion, Plaintiffs' Response, Intervenor's Reply, the amicus brief filed by One America and the arguments of counsel, the court finds that Intervenor's Motion for Judgment on the Pleadings should be denied.

Intervenor first asks the court to take judicial notice of the fact that Latino residents make up a majority rather than a minority of residents in Franklin County and, for that reason, the court should find that the plaintiffs in this case lack standing to bring this action. However, this court finds that the Intervenor's reading of the Washington Voting Rights Act, which is clearly a remedial statute, limiting consideration to the specific county in question, is too narrow. The Washington Voting Rights Act (WVRA) specifically states that "protected class" means a class of voters who are members of a race, color or language minority group, as defined by the federal voting rights act. Therefore, the court finds that standing to proceed is not limited to those who are a minority within the specific county in question. Further, counsel for the Plaintiffs has also pointed out that Latinos actually make up a minority of the eligible voters in Franklin County. Counsel for Intervenor did not contest this assertion. Since the WVRA specifically refers to

"voters" who are members of a race, color or language minority, these Plaintiffs have standing as members of a protected class under the statute even accepting Intervenor's narrow reading of its provisions.

This court also finds that the WVRA does not violate the Equal Protection Clause of the United States Constitution. First, the WVRA is not itself a district plan and no specific district boundaries have been adopted. Therefore, the issue of unconstitutional racial gerrymandering is, at best, premature.

The Intervenor has made a facial challenge to the constitutionality of the WVRA. Such challenges are disfavored and in order to prevail, Intervenor must establish that no set of circumstances exists where the statute would be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987). See also *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). After reviewing the pleadings in this matter, this court finds that the Intervenor has failed to establish that there are no set of circumstances where the WVRA would be valid.

Intervenor relies in large part on the assertion that the WVRA lacks the requirement of what has been termed "compactness" and therefore violates the Equal Protection provisions of the United States Constitution. Intervenor relies in large part on the U.S. Supreme Court case of *Thornburg v. Gingles*, 478 U.S. 30 (1986) as support for this position. However, a careful reading of the *Gingles* case indicates that the compactness requirement that the record was referring to had to do with compliance with the section 2 of the Federal Voting Rights Act rather than being any type of

constitutional requirement. Consequently, the court finds no authority for the assertion that the legislature's decision not to include a compactness requirement in the WVRA renders it violative of the Equal Protection Clause of the federal Constitution.

Finally, this court finds that the WVRA does not violate the Privileges and Immunities clause of the Washington State Constitution. The WVRA is essentially identical to the California Voting Rights Act that was reviewed by the Ninth Circuit Federal Court of Appeal and found to be constitutional in *Higgins v. Becerra*, 786 Fed. Appx. 705 (9th Cir. 2019). As pointed out, states have wide authority to adopt measures designed "to eliminate racial disparities through race-neutral means." *Id.* at 707. Consistent with the Ninth Circuit, this court finds that the WVRA, while race conscious, does not discriminate based on race. The court further finds that the WVRA represents a closely tailored, race-neutral means to accomplish its legitimate goals as a remedial statute and, therefore passes the rational basis review standard applicable in this case.

Based on the foregoing analysis, the court finds that the Intervenor's Motion for Judgment on the Pleadings should be denied.

So Ordered, this 3rd Day of January 2022

/s/ Cameron Mitchell
Judge Cameron Mitchell

APPENDIX F

Statutory Provisions

52 U.S.C.A. § 10301
Formerly cited as 42 USCA § 1973

§ 10301. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

Effective: September 1, 2014
Currentness

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office

in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

West's RCWA 29A.92.005

29A.92.005. Findings--Intent

Effective: July 28, 2019
Currentness

The legislature finds that electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided by Article I, section 19 and Article VI, section 1 of the Washington state Constitution as well as protections found in the Fourteenth and Fifteenth amendments to the United States Constitution. The well-established principle of "one person, one vote" and the prohibition on vote dilution have been consistently upheld in federal and state courts for more than fifty years.

The legislature also finds that local government subdivisions are often prohibited from addressing these challenges because of Washington laws that narrowly prescribe the methods by which they may elect members of their legislative bodies. The legislature finds that in some cases, this has resulted in an improper dilution of voting power for these minority groups. The legislature intends to modify existing prohibitions in state laws so that these jurisdictions

may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.

The legislature intends for this chapter to be consistent with federal protections that may provide a similar remedy for minority groups. Remedies shall also be available where the drawing of crossover and coalition districts is able to address both vote dilution and racial polarization.

The legislature also intends for this chapter to be consistent with legal precedent from *Mt. Spokane Skiing Corp. v. Spokane Co.* (86 Wn. App. 165, 1997) that found that noncharter counties need not adhere to a single uniform county system of government, but that each county have the same "authority available" in order to be deemed uniform.

West's RCWA 29A.92.010

29A.92.010. Definitions
(Effective until January 1, 2024)

Effective: June 7, 2018 to December 31, 2023
Currentness

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. In applying these definitions and other terms in this chapter, courts may rely on relevant federal case law for guidance.

(1) "At large election" means any of the following methods of electing members of the governing body of a political subdivision:

(a) One in which the voters of the entire jurisdiction elect the members to the governing body;

(b) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or

(c) One that combines the criteria in (a) and (b) of this subsection or one that combines at large with district-based elections.

(2) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(3) "Polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal voting rights act, 52 U.S.C. 10301 et seq., in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(4) "Political subdivision" means any county, city, town, school district, fire protection district, port district, or public utility district, but does not include the state.

(5) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal voting rights act, 52 U.S.C. 10301 et seq.

West's RCWA 29A.92.020

29A.92.020. Method of election--Equal opportunity for protected class

Effective: June 7, 2018
Currentness

As provided in RCW 29A.92.030, no method of electing the governing body of a political subdivision may be imposed or applied in a manner that impairs the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters who are members of a protected class or classes.

West's RCWA 29A.92.030

29A.92.030. Violations--Factors
(Effective until January 1, 2024)

Effective: July 28, 2019 to December 31, 2023
Currentness

(1) A political subdivision is in violation of this chapter when it is shown that:

(a) Elections in the political subdivision exhibit polarized voting; and

(b) Members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes.

(2) The fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this chapter, but may be a factor in determining a remedy. The equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts.

(3) In determining whether there is polarized voting under this chapter, the court shall analyze elections of the governing body of the political subdivision, ballot measure elections, elections in which at least one candidate is a member of a protected class, and other electoral choices that affect the rights and privileges of members of a protected class. Elections conducted prior to the filing of an action pursuant to this chapter are more probative to establish the existence of racially polarized voting than elections conducted after the filing of an action.

(4) The election of candidates who are members of a protected class and who were elected prior to the filing of an action pursuant to this chapter shall not preclude a finding of polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice.

(5) Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained.

(6) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors, to establish a violation of this chapter.

West's RCWA 29A.92.040

29A.92.040. Voluntary change to electoral system--Authorized

(Effective until January 1, 2024)

Effective: June 7, 2018 to December 31, 2023
Currentness

(1) A political subdivision that conducts an election pursuant to state, county, or local law, is authorized to change its electoral system, including, but not limited to, implementing a district-based election system, to remedy a potential violation of RCW 29A.92.020.

(2) If a political subdivision invokes its authority under this section to implement a district-based election

system, the districts shall be drawn in a manner consistent with RCW 29A.92.050.

West's RCWA 29A.92.050

29A.92.050. Voluntary change to electoral system--Notice--New elections--Districting

Effective: January 1, 2023
Currentness

(1)(a) Prior to the adoption of its proposed plan, the political subdivision must provide public notice to residents of the subdivision about the proposed remedy to a potential violation of RCW 29A.92.020. If a significant segment of the residents of the subdivision have limited English proficiency and speaks a language other than English, the political subdivision must:

(i) Provide accurate written and verbal notice of the proposed remedy in languages that diverse residents of the political subdivision can understand, as indicated by demographic data; and

(ii) Air radio or television public service announcements describing the proposed remedy broadcast in the languages that diverse residents of the political subdivision can understand, as indicated by demographic data.

(b) The political subdivision shall hold at least one public hearing on the proposed plan at least one week before adoption.

(c) For purposes of this section, "significant segment of the community" means five percent or more of

residents, or five hundred or more residents, whichever is fewer, residing in the political subdivision.

(2)(a) If the political subdivision invokes its authority under RCW 29A.92.040 and the plan is adopted during the period of time between the first Tuesday after the first Monday of November and on or before January 15th of the following year, the political subdivision shall order new elections to occur at the next succeeding general election.

(b) If the political subdivision invokes its authority under RCW 29A.92.040 and the plan is adopted during the period of time between January 16th and on or before the first Monday of November, the next election will occur as scheduled and organized under the current electoral system, but the political subdivision shall order new elections to occur pursuant to the remedy at the general election the following calendar year.

(3) If a political subdivision implements a district-based election system under RCW 29A.92.040(2), the plan shall be consistent with the following criteria:

(a) Each district shall be as reasonably equal in population as possible to each and every other such district comprising the political subdivision.

(b) Each district shall be reasonably compact.

(c) Each district shall consist of geographically contiguous area.

(d) To the extent feasible, the district boundaries shall coincide with existing recognized natural boundaries

and shall, to the extent possible, preserve existing communities of related and mutual interest.

(e) District boundaries may not be drawn or maintained in a manner that creates or perpetuates the dilution of the votes of the members of a protected class or classes.

(f) All positions on the governing body must stand for election at the next election for the governing body, scheduled pursuant to subsection (2) of this section. The governing body may subsequently choose to stagger the terms of its positions.

(4) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each political subdivision.

(5) No later than November 15th of each year ending in one, the governing body of the political subdivision that had previously invoked its authority under RCW 29A.92.040 to implement a district-based election system, or that was previously charged with redistricting under RCW 29A.92.110, shall prepare a plan for redistricting its districts, pursuant to RCW 29A.76.010, and in a manner consistent with this chapter.

West's RCWA 29A.92.060

29A.92.060. Voter challenge of electoral system--Notice

(Effective until January 1, 2024)

Effective: July 28, 2019 to December 31, 2023
Currentness

(1) A voter who resides in the political subdivision who intends to challenge a political subdivision's electoral system under this chapter shall first notify the political subdivision. The political subdivision shall promptly make such notice public.

(2) The notice provided shall identify and provide contact information for the person or persons who intend to file an action, and shall identify the protected class or classes whose members do not have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election because of alleged vote dilution and polarized voting. The notice shall also include a type of remedy the person believes may address the alleged violation of RCW 29A.92.030.

West's RCWA 29A.92.070

29A.92.070. Voter challenge of electoral system--Good faith effort to remedy--Court approval--Safe harbor

(Effective until January 1, 2024)

Effective: July 28, 2019 to December 31, 2023
Currentness

(1) The political subdivision shall work in good faith with the person providing the notice to implement a remedy that provides the protected class or classes identified in the notice an equal opportunity to elect candidates of their choice. Such work in good faith to implement a remedy may include, but is not limited to consideration of: (a) Relevant electoral data; (b) relevant demographic data, including the most recent census data available; and (c) any other information that would be relevant to implementing a remedy.

(2) If the political subdivision adopts a remedy that takes the notice into account, or adopts the notice's proposed remedy, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy complies with RCW 29A.92.020 and was prompted by a plausible violation. The person who submitted the notice may support or oppose such an order, and may obtain public records to do so. The political subdivision must provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filings seeking the court order and with any documents made public. All facts and reasonable inferences shall be viewed in the

light most favorable to those opposing the political subdivision's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the political subdivision's proposed remedy at this stage.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

(4) In agreeing to adopt the person's proposed remedy, the political subdivision may do so by stipulation, which shall become a public document.

West's RCWA 29A.92.080

29A.92.080. Voter challenge of electoral system--Filing of action--Multiple challenges
(Effective until January 1, 2024)

Effective: July 28, 2019 to December 31, 2023
Currentness

(1) Any voter who resides in the political subdivision may file an action under this chapter if, one hundred eighty days after a political subdivision receives notice of a challenge to its electoral system under RCW 29A.92.060, the political subdivision has not obtained a court order stating that it has adopted a remedy in compliance with RCW 29A.92.020. However,

if notice is received after July 1, 2021, then the political subdivision shall have ninety days to obtain a court order before an action may be filed.

(2) If a political subdivision has received two or more notices containing materially different proposed remedies, the political subdivision shall work in good faith with the persons to implement a remedy that provides the protected class or classes identified in the notices an equal opportunity to elect candidates of their choice. If the political subdivision adopts one of the remedies offered, or a different remedy that takes multiple notices into account, the political subdivision shall seek a court order acknowledging that the political subdivision's remedy is reasonably necessary to avoid a violation of RCW 29A.92.020. The persons who submitted the notice may support or oppose such an order, and may obtain public records to do so. The political subdivision must provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filings seeking the court order and with any documents made public. All facts and reasonable inferences shall be viewed in the light most favorable to those opposing the political subdivision's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the political subdivision's proposed remedy at this stage.

(3) If the court concludes that the political subdivision's remedy complies with RCW 29A.92.020, an action under this chapter may not be brought against that political subdivision for four years by any party so long as the political subdivision does not enact a change to

or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

West's RCWA 29A.92.090

29A.92.090. Action in superior court--Venue--Joint action
(Effective until January 1, 2024)

Effective: July 28, 2019 to December 31, 2023
Currentness

(1) After exhaustion of the time period in RCW 29A.92.080, any voter who resides in a political subdivision where a violation of RCW 29A.92.020 is alleged may file an action in the superior court of the county in which the political subdivision is located. If the action is against a county, the action may be filed in the superior court of such county, or in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050(2). An action filed pursuant to this chapter does not need to be filed as a class action.

(2) Members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.

West's RCWA 29A.92.100

29A.92.100. Trial schedule--Statute of limitations--Secrecy of vote--Plaintiff bond

Effective: July 28, 2019
Currentness

(1) In an action filed pursuant to this chapter, the trial court shall set a trial to be held no later than one year after the filing of a complaint, and shall set a discovery and motions calendar accordingly.

(2) For purposes of any applicable statute of limitations, a cause of action under this chapter arises every time there is an election for any members of the governing body of the political subdivision.

(3) The plaintiff's constitutional right to the secrecy of the plaintiff's vote is preserved and is not waived by the filing of an action pursuant to this chapter, and the filing is not subject to discovery or disclosure.

(4) In seeking a temporary restraining order or a preliminary injunction, a plaintiff shall not be required to post a bond or any other security in order to secure such equitable relief.

(5) No notice may be submitted to any political subdivision pursuant to this chapter before July 19, 2018.

West's RCWA 29A.92.110

29A.92.110. Court-ordered remedies--District-based remedies--New elections
(Effective until January 1, 2024)

Effective: May 21, 2019 to December 31, 2023
Currentness

(1) The court may order appropriate remedies including, but not limited to, the imposition of a district-based election system. The court may order the affected jurisdiction to draw or redraw district boundaries or appoint an individual or panel to draw or redraw district lines. The proposed districts must be approved by the court prior to their implementation.

(2) Implementation of a district-based remedy is not precluded by the fact that members of a protected class do not constitute a numerical majority within a proposed district-based election district. If, in tailoring a remedy, the court orders the implementation of a district-based election district where the members of the protected class are not a numerical majority, the court shall do so in a manner that provides the protected class an equal opportunity to elect candidates of their choice. The court may also approve a district-based election system that provides the protected class the opportunity to join in a coalition of two or more protected classes to elect candidates of their choice if there is demonstrated political cohesion among the protected classes.

(3) In tailoring a remedy after a finding of a violation of RCW 29A.92.020:

(a) If the court's order providing a remedy or approving proposed districts, whichever is later, is issued during the period of time between the first Tuesday after the first Monday of November and on or before January 15th of the following year, the court shall order new elections, conducted pursuant to the remedy, to occur at the next succeeding general election. If a special filing period is required, filings for that office shall be reopened for a period of three business days, such three-day period to be fixed by the filing officer.

(b) If the court's order providing a remedy or approving proposed districts, whichever is later, is issued during the period of time between January 16th and on or before the first Monday of November, the next election will occur as scheduled and organized under the current electoral system, but the court shall order new elections to occur pursuant to the remedy at the general election the following calendar year.

(c) The remedy may provide for the political subdivision to hold elections for the members of its governing body at the same time as regularly scheduled elections for statewide or federal offices. All positions on the governing body must stand for election at the next election for the governing body, scheduled pursuant to this subsection (3). The governing body may subsequently choose to stagger the terms of its positions.

(4) Within thirty days of the conclusion of any action filed under RCW 29A.92.100, the political subdivision must publish on the subdivision's website, the outcome and summary of the action, as well as the legal costs incurred by the subdivision. If the political subdivision

does not have its own website, then it may publish on the county website.

West's RCWA 29A.92.120

29A.92.120. Safe harbor--Limitation of actions

Effective: July 28, 2019
Currentness

(1) No action under this chapter may be brought by any person against a political subdivision that has adopted a remedy to its electoral system after an action is filed that is approved by a court pursuant to RCW 29A.92.070 or implemented a court-ordered remedy pursuant to RCW 29A.92.110 for four years after adoption of the remedy if the political subdivision does not enact a change to or deviation from the remedy during this four-year period that would otherwise give rise to an action under this chapter.

(2) No action under this chapter may be brought by any person against a political subdivision that has adopted a remedy to its electoral system in the previous decade before June 7, 2018, as a result of a claim under the federal voting rights act until after the political subdivision completes redistricting pursuant to RCW 29A.76.010 for the 2020 decennial census.

West's RCWA 29A.92.130

29A.92.130. Award of fees
(Effective until January 1, 2024)

Effective: June 7, 2018 to December 31, 2023
Currentness

(1) In any action to enforce this chapter, the court may allow the prevailing plaintiff or plaintiffs, other than the state or political subdivision thereof, reasonable attorneys' fees, all nonattorney fee costs as defined by RCW 4.84.010, and all reasonable expert witness fees. No fees or costs may be awarded if no action is filed.

(2) Prevailing defendants may recover an award of fees or costs pursuant to RCW 4.84.185.

West's RCWA 29A.92.700

29A.92.700. Not applicable to certain political subdivisions

Effective: June 7, 2018
Currentness

The provisions of RCW 29A.92.005 through 29A.92.030, 29A.92.060 through 29A.92.130, and 29A.92.900 are not applicable to cities and towns with populations under one thousand or to school districts with K-12 full-time equivalent enrollments of less than two hundred fifty.

West's RCWA 29A.92.710

29A.92.710. Other laws superseded

Effective: July 28, 2019
Currentness

This chapter supersedes other state laws and local ordinances to the extent that those state laws or ordinances would otherwise restrict a jurisdiction's ability to comply with this chapter.

West's RCWA 29A.92.900

29A.92.900. Short title

Effective: July 28, 2019
Currentness

This chapter may be known and cited as the Washington voting rights act of 2018.

APPENDIX G

**IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN**

NO. 21-2-50210-11

[Filed September 7, 2021]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGUE OF UNITED LATIN AMERICAN CITIZENS,	)
Plaintiffs,	)
v.	)
FRANKLIN COUNTY, a Washington municipal entity, CLINT DIDIER, RODNEY J. MULLEN, LOWELL B. PECK, in their official capacities as members of the Franklin County Board of Commissioners,	)
Defendants.	)

DEFENDANTS' MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION & SUMMARY OF POSITION

The act of changing Franklin County's election system for its county commissioners is not a decision to be taken lightly or done without serious consideration as to the facts, data, and policy considerations. Under the current system, the primary election for county commissioners uses district-based voting and the general election uses county-wide, at-large voting. This system is rooted in legitimate and judicially recognized policy considerations and has served the citizens of Franklin County for decades. *See Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS, at 30-31 (E.D. Wash. 2016) (Suko, J.) (recognizing the policy benefits of at-large districts); *City of Tucson v. State*, 229 Ariz. 172, 174 (2012) (Arizona Supreme Court recognizing that "although at-large members are responsible to electors in the entire city, this may diminish attention to the interests of particular neighborhoods or groups; district-based elections, in contrast, assure representation from different geographic areas but may elevate particular interests over citywide ones."); *Vecinos DeBarrio Uno et al., v. City of Holyoke et al*, 960 F. Supp. 515 (D. Mass. 1997) (recognizing favorable policy underlying at-large component insuring representation.).

However, no matter how legitimate or well-intentioned an election system is, it is insufficient unless serves *all* of its citizens—equally. Under

Washington's landmark Voting Rights Act of 2018 ("WVRA"):

> The legislature finds that electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided by Article I, section 19 and Article VI, section 1 of the Washington state Constitution as well as protections found in the Fourteenth and Fifteenth amendments to the United States Constitution. The well-established principle of "one person, one vote" and the prohibition on vote dilution have been consistently upheld in federal and state courts for more than fifty years.

RCW 29A.92.005.

When Plaintiffs asserted that the method and system used to elect Franklin County's commissioners violated the WVRA, Franklin County did not take those claims lightly. Franklin County began a long, deliberate investigation into the truth of those allegations. This analysis culminated with analysis of the recently released demographic data from the 2020 U.S. Census. When the 2020 demographic data was compared to the 2020 elections data for the Franklin County commissioners' races, state supreme court races, congressional races, and state executive races, the County could draw only one conclusion: the citizens of Franklin County exhibit polarized voting. Additionally, the Citizen Voting Age Population of

Latino citizens in Franklin County is between 35% and 50%.

As a result, Franklin County cannot in good faith oppose Plaintiffs' current Motion for Summary Judgment.[1] The size of the Latino Population in Franklin County and the existence of polarized voting among its citizens is factually supported. To argue otherwise, Franklin County would have had to cherry-pick small, outlier precincts that stand contrary to the overall trends of the 105 precincts, which follow a consistent polarization trend. Such arguments would serve only to increase needlessly the cost of litigation and deny factual reality—neither of which serve the best interests of the citizens of Franklin County.

To be clear, under the WVRA, "[p]roof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained." RCW 29A.92.030. Franklin County and its elected official assert that the current election system was not imposed to discriminate against any protected class. The system has been used by Franklin County for decades to ensure that candidates represent each individual area within the County (district based primary election) but that the elected officials are responsive to the citizens from all

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[1] Plaintiffs' present motion is titled Motion for Summary Judgment but it is clear from the contents of the motion and communications with Plaintiffs' counsel that the motion is intended to be a Motion for Partial Summary Judgment and seeks only to resolve the question whether polarized voting exists such that Franklin County must adopt single member district based voting under the WVRA. *See Declaration of Casey Bruner*, Ex. F.

areas of the County (at-large general election). However, shifting demographics over the past decades, the substantial growth in the Hispanic/Latino population in Franklin County and central Washington generally, and the patterns of polarized voting as recently as the 2020 general election make it clear that the current system of electing county commissioners stands contrary to the requirements of the WVRA.

Therefore, Franklin County does not oppose Plaintiffs' Motion for Summary Judgment and agrees that a new system must be implemented for electing Franklin County's commissioners. Franklin County asks that the Court enter partial summary requiring the election of Franklin County commissioners through single-member-district based elections. What Franklin County asks, though, is sufficient time to hear from its citizens on *how* those districts should be drawn to best serve the citizens of Franklin County. Under the WVRA, as long as a court approved plan is entered prior to January 15, 2022, new elections are required to be held in November 2022. Franklin County asks the Court to set a hearing on a proposed remedial plan on or after November 15, 2021, so that it can have full opportunity to hear from its citizens and prepare a single member district plan that would best serve its citizens.

II. PROCEDURAL HISTORY

1. On October 12, 2020, Plaintiffs provided statutory notice to Franklin County asserting that the County was in violation of the WVRA. Specifically, Plaintiffs alleged that the system for electing county commissioners diluted the Latino vote by utilizing an

at-large general election system and that the citizens of Franklin County demonstrated polarized voting.

2. On April 22, 2021, Plaintiffs filed their Complaint in this case.

3. On May 5, 2021, Plaintiffs filed their Amended Complaint in this case.

4. On July 21, 2021, Plaintiffs moved for partial summary judgment on the issue of whether Franklin County's current system for electing its county commissioners constituted a violation of Washington's Voting Rights Act Plaintiffs' motion does not seek to impose a specific plan as a remedy.

5. On August 9, 2021, Defendants moved to continue Plaintiffs' summary judgment hearing to allow for the receipt, synthesis, and analysis, of the 2020 Census data.

6. Pursuant to an agreement of the parties, Plaintiffs agreed to reset their summary judgment hearing to the September 13, 2021. The parties further agreed that Defendants would have until September 6, 2021, to provide their response. This agreement reflected Defendants' desire to obtain, process, and analyze the most recent U.S. Census data and Plaintiffs' desire to have this issue resolved in a timely fashion. Declaration of Casey Bruner in Support of Defendants' Memorandum in Response to Plaintiffs' Motion for Summary Judgment (hereinafter *Bruner Decl.*), Ex. F.

III. ANALYSIS OF LAW & FACTS

1. Overview of Washington Voting Rights Act

The WVRA represents a legislative response to restrictions that have historically resulted in the under-representation of certain communities. Prior to the Legislature passing the WVRA, political subdivisions, such as counties, were "often prohibited from [changing their electoral systems] because of Washington laws that narrowly prescribe the methods by which they may elect members of their legislative bodies." RCW 29A.92.005. These laws "resulted in an improper dilution of voting power for . . . minority groups." *Id.* Through the adoption of the WVRA, the Legislature sought "to modify existing prohibitions in state laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election." *Id.*

Under the WVRA, "no method of electing the governing body of a political subdivision may be imposed or applied in a manner that impairs the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters who are members of a protected class or classes." RCW 29A.92.020.

A violation of the WVRA occurs when:

(a) Elections in the political subdivision exhibit polarized voting; and

> (b) Members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes.

RCW 29A.92.030(1).

Critically, the WVRA is more restrictive against governmental entities, and more favorable to plaintiffs, than its federal counterpart: Section 2 of the Voting Rights Act of 1965. Under the WVRA, "[t]he fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this chapter." RCW 29A.92.030(2); *c.f. Thornburg v. Gingles*, 478 U.S. 30, 50, 106 S. Ct. 2752, 2766, 92 L. Ed. 2d 25 (1986) ("[T]he minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.").

Further, "[p]roof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained." RCW 29A.92.030. Importantly, intent does not matter. The creation and ongoing use of an election system may violate the WVRA even if it was enacted with good intention.

Therefore, under the WVRA, if Franklin County exhibits polarized voting and the election system operates in a manner that denies a protected class of citizens from electing a candidate of their choice, a

violation of the WVRA has occurred. In that case, Franklin County must enact single member district voting. The analysis then turns to the population and demographic data of Franklin County and the voting patterns of its citizens.

2. Preamble on The Usage of Terms

Plaintiffs have identified themselves as "Latino" citizens and voters. Defendants aim to respect their use of that term and identity. Throughout this brief, Defendants will refer to the protected class of persons subject to this lawsuit as "Latino" in deference to Plaintiffs' chosen term. The 2020 Census, and other census surveys, collect data as "Hispanic or Latino," combining the two terms in a single data point. The surveys then inquire into whether the person is "Mexican," "Puerto Rican," "Cuban," or "Other Hispanic or Latino." *See 2019 ACS Demographic and Housing Estimates* https://data.census.gov/cedsci/table?tid=ACSDP5Y2019.DP05&g=0400000US53_0500000US53021. As such, the underlying data may be referred to or identified as "HISP" or "Hispanic" in charts and source documents. These references should be interpreted as referring to the U.S. Census data point of "Hispanic or Latino." Under the 2019 ACS Demographic and Housing Estimates, 53.1% of Franklin County's population identified as "Hispanic or Latino." *Id.* 49.8% further identified as "Mexican." *Id.* .2% further identified as Puerto Rican. *Id.* 3% further identified as "Other Hispanic or Latino." *Id.* Given this data, nearly all of Franklin County's "Hispanic or Latino" population, as described by the census, identifies as "Latino," and this briefing will refer to

"Latinos." When referring to the U.S. Census data points, however, the term "Latino" as used herein should be read to reference the data point "Hispanic or Latino."

3. Franklin County's overall population and demographics.

Under the WVRA, the data used for the purpose of analyzing violations and remedies may include, but is not limited to, consideration of: (a) Relevant electoral data; (b) relevant demographic data, including the most recent census data available; and (c) any other information that would be relevant to implementing a remedy. RCW 29A.92.070.

According to the 2020 United States Census, Franklin County's population is 96,749. Declaration of Peter Morrison in Support of Defendants' Response to Plaintiffs' Motion for Summary Judgment (hereinafter *Morrison Decl.*) ¶ 28. According to the 2020 Washington State Office of Financial Management data, Franklin County's Population is 96,760. Office of Financial Mgmt., *Small Area Estimates Program,* OFM.wa.gov, https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/small-area-estimates-program (last visited Sept. 6, 2021). According to the 2020 United States Census, Franklin County's Latino population is 52,445. Morrison Decl., Ex. A (combined total of "PL_Total_HISP"). According to the 2020 Census, Franklin County's Voting Age Population is 66,302. *Id.* According to the 2020 Census, Franklin County's Latino Voting Age Population 32,496. *Id.* According to the 2017 United State Census America Community

Survey (ACS) data, the Citizen Voting Age Population (CVAP) is 47,815. According to the 2017 United States Census ACS data, the Latino Citizen Voting Age Population is 15,849.

To summarize this data:

- Based on the 2020 Census data, Franklin County is 54% Latino. This data includes persons who are not yet of voting age and persons who are not citizens.
- Based on the 2020 Census data, Franklin County's Voting Age Population is 49% Latino.[2]
- According to the 2017 ACS data, Franklin County's Citizen Voting Age Population is 33% Latino.

These numbers are sufficient under the WVRA for the purposes of determining whether a violation exists under RCW 29A.92.030. Under the statute, for a violation to exist, it must be shown that "[m]embers of a protected class or classes do not have an equal opportunity to elect candidates of their choice *as a result of* the dilution or abridgment of the rights of members of that protected class or classes." RCW 29A.92.030(1)(b) (emphasis added).

---

[2] This number includes non-citizen Latino residents living in Franklin County. Therefore, utilizing the 2017 five-year survey, which includes the Citizen Voting Age Population numbers, we are able to extrapolate that the current Latino Citizen Voting Age Population (LCVAP) is between 33% and 49%, sufficient for the analytical purposes for the second prong of RCW 29A.92.030(1)(b).

The operation of the WVRA's causal "as a result of" language can be illustrated by comparing two hypothetical scenarios. Assume a hypothetical county of 100,000 voters with three equally sized districts of approximately 33,000 voters each. Within this county is a "protected class" that votes in perfect unison and with perfect polarity but is only 1,000 persons large. In that scenario, that protected class could not, acting alone, secure the candidate of their choice. However, this outcome would not be *as a result of* voter dilution, it would merely be the result of the fact the group does not comprise enough voters. If, however, that same protected class comprised 30,000 voters, it would be possible for that group to secure the candidate of their choice through polarized voting. But if the election system split the members of the class between districts such that voters within that group could not secure their chosen candidate, this would violate the WVRA.

Here, the demographic data in Franklin County more closely resembles the second scenario. The population of Franklin County is 54% Hispanic and comprises between 33% and 49% of the Citizen Voting Age Population. Assuming the *smallest* population of 33% of the Citizen Voting Age Population, this is still 1/3 of all eligible voters. Franklin County's Board of County Commissioners is comprised of three seats. Dividing the County into three equally populated districts would result in three districts of approximately 32,250 persons. Based on districts of this size, it is clear that the Hispanic Voting Age Population between 33% and 49% of the entire County could make up the majority of voters in a 1 /3 district. However, when that population then voles in an at-

large general election, their votes would become the minority—less than 50% of the total population.

4. Analysis of 2020 elections and racial demographics

Since the Latino population is sufficiently large to satisfy the second prong of RCW 29A.92.030(1), the only remaining inquiry is to determine whether "polarized" voting exists. Under the WVRA:

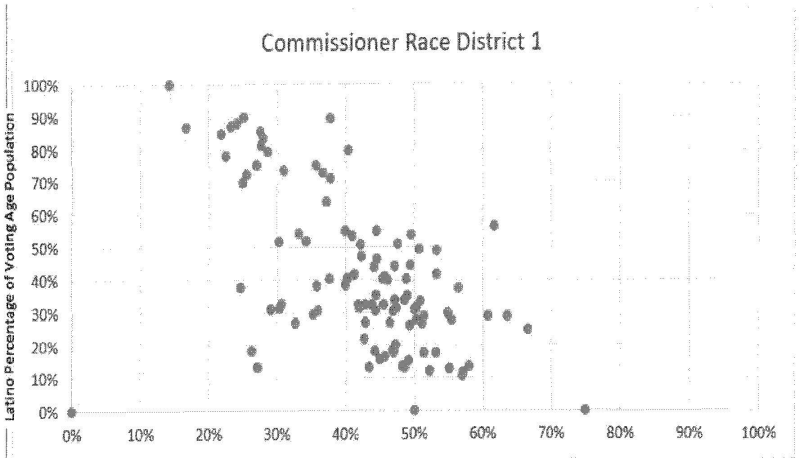
> In determining whether there is polarized voting under this chapter, the court shall analyze elections of the governing body of the political subdivision, ballot measure elections, elections in which at least one candidate is a member of a protected class, and other electoral choices that afford the rights and privileges of members of a protected class. Elections conducted prior to the filing of an action pursuant to this chapter are more probative to establish the existence of racially polarized voting than elections conducted after the filing of an action.

29A.92.030(3).

After receiving the 2020 demographic census data, Franklin County compared that data with the 2020 elections results, which are publicly available through the Franklin County Auditor's Office. *See Bruner Decl.*, Exs. A – E. Each of these tables show the precinct by precinct voting results between the candidates. For each race analyzed, a new column was added to calculate only the percent of votes that Candidate A received as part of the total amount of votes cast. Each race is analyzed below:

A. Commissioner District 1 – 11/03/20

In 2020, Franklin County elected two county commissioners. In the first race, the election results are outlined in Exhibit A. This data was compared to the demographic precinct data from the 2020 Census. *Morrison Decl., Ex. A.* When the data is charted is looks as follows:



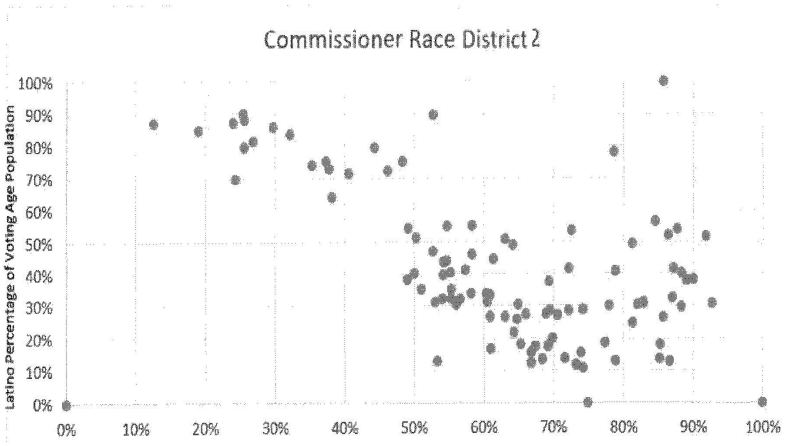
Percentage of Votes for Candidate A

The vertical axis is the percentage of the voting age population that is Latino for that precinct. The horizontal axis is the percentage of the votes in that precinct for "Candidate A." As indicated by this charting, it is apparent that as the percentage of Latino voters in a precinct increases, the percentage of votes for Candidate A decreases. This indicates polarized voting. Obviously, no group of sufficient size will demonstrate perfect polarity. However, in this election, generally speaking, the Latino population had a

general preference for Candidate B and the non-Latino population had a general preference for Candidate A.

B. Commissioner District 2 – 11/03/20

In the second County Commissioner's race, the election results are outlined in Exhibit B. This data was also compared to the demographic precinct data from the 2020 Census. This data is even more probative under the WVRA because "one candidate [was] a member of a protected class." RCW 29A.92.030(3). When the data is charted is looks as follows:



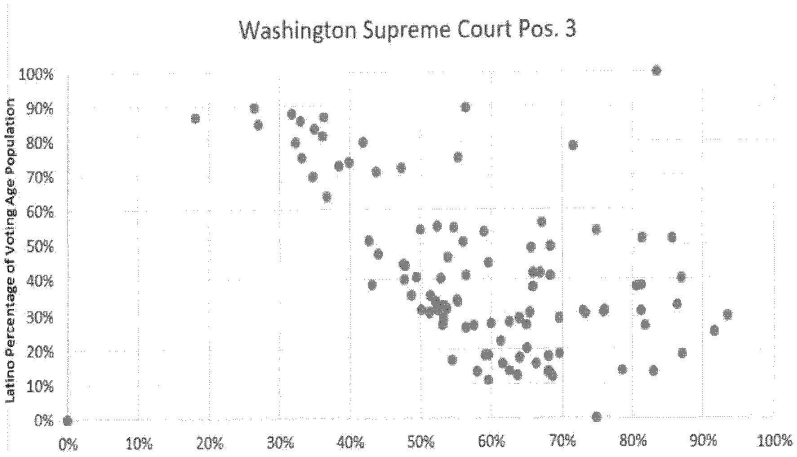
Percentage of Votes for Candidate A

In this race, the polarized voting is even more clear. As the percent of persons who are Latino increases in a given precinct, the number of voters for Candidate A decreases. Correspondingly, as the percent of voters who are non-Latino increases in a precinct, the percent of votes increases for Candidate A. Generally speaking,

the Latino population had a general preference for Candidate B over Candidate A and the non-Latino population had a general preference for Candidate A over Candidate B.

C. Washington Supreme Court Position #3

The same analysis was conducted with the Washington State Supreme Court Position #3 elections. The data is as follows:

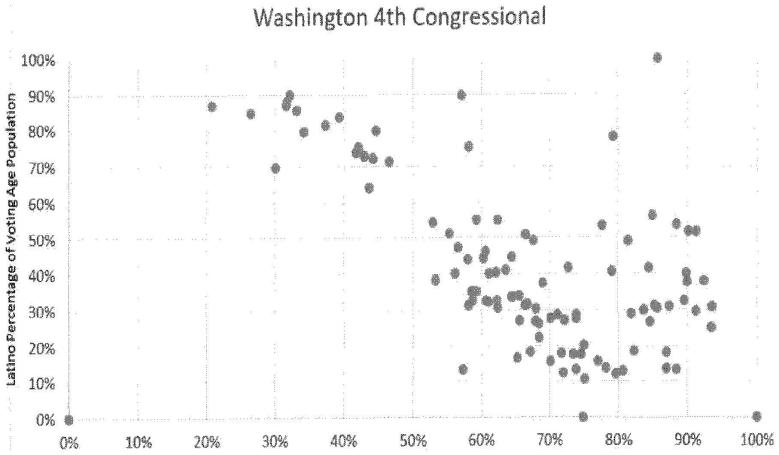


Percentage of Votes for Candidate A

Again, the same trend appears in this election. As the percent of the voting age population becomes more Latino, the preference for Candidate A decreases and the preference for Candidate B increases. Generally speaking, the Latino population had a general preference for Candidate B over Candidate A and the non-Latino population had a general preference for Candidate A over Candidate B.

D. Washington 4th Congressional Race

The same analysis was completed for the Washington 4th Congressional race. The data is as follows:

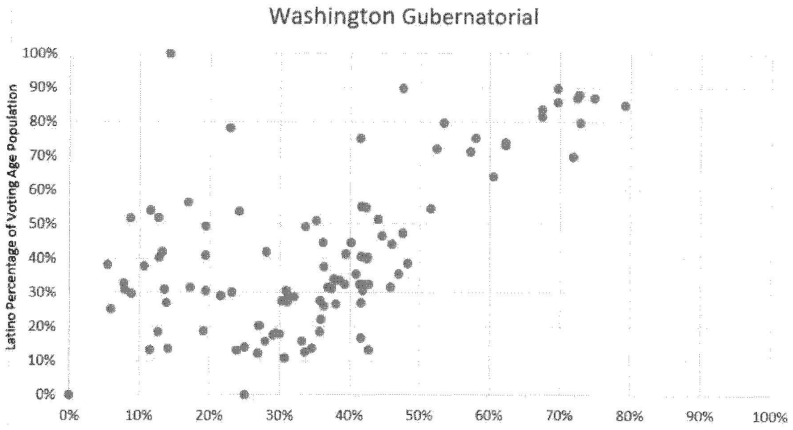


Percentage of Votes for Candidate A

Again, the same trend appears in this election. As the percent of the voting age population becomes more Latino, the preference for Candidate A decreases and the preference for Candidate B increases. Generally speaking, the Hispanic population showed a general preference for Candidate B over Candidate A and the non-Hispanic population showed a general preference for Candidate A over Candidate B.

E. Washington's Gubernatorial Election

The same analysis was completed for the Washington's gubernatorial race. The data is as follows:



Percentage of Votes for Candidate A

Again, the same trend appears in this election, however, this time in the inverse. As the percent of the voting age population becomes more Latino, the preference for Candidate A increases and the preference for Candidate B decreases. Generally speaking, the Latino population had a general preference for Candidate A over Candidate B.

F. Consistent Trends

Many races were analyzed by Franklin County in this fashion and the trends were consistent. Of course, it is possible that the difference in preferences between candidates is not racially based but is instead attributable to other factors, such as political party preference. Even if this were true, however, it would not preclude a finding of violation under the WVRA. This is because "[p]roof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained." RCW 29A.92.030. As explained by the

U.S. Supreme Court in its analysis the federal counterpart to the WVRA:

> The first reason we reject appellants' argument that racially polarized voting refers to voting patterns that are in some way caused by race, rather than to voting patterns that are merely correlated with the race of the voter, is that the reasons black and white voters vote differently have no relevance to the central inquiry . . .
>
> It is the difference between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, we conclude that under the "results test" of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.

Thornburg, 478 U.S. at 63. In other words, it does not matter *why* polarized voting exists, only *whether* it exists. Regardless of the reason, the analysis of elections held in 2020 in Franklin County shows that polarized voting exists among the protected class.

This acknowledgment, along with the substantial size of the Latino population in Franklin County leads the County to acknowledge that the current system of electing its county commissioners constitutes a violation of RCW 29A.92.030.

5. Franklin County's concession of a violation of the WVRA is subject to an anticipated validity / constitutionality challenge.

Franklin County's analysis and acknowledgment that the current system for electing Franklin County commissioners constitutes a violation of the WVRA is premised on the assumption that the WVRA is valid and constitutional. Franklin County does not challenge the validity or constitutionality of the WVRA. However, it is the County's understanding that Mr. Clint Didier, who is currently a party to this lawsuit in his official capacity only, will be moving to intervene in this matter in his individual capacity as a citizen and candidate for office. The County further understands that Mr. Didier intends to challenge the validity and / or constitutionality of the WVRA. The County does not know what Mr. Didier's arguments will be or the basis of his legal position. However, Franklin County's agreement that the current system violates the WVRA and that single member district elections are required is based on the County's assumption that the WVRA is valid. If Mr. Didier's individual challenge is successful and the WVRA is invalidated, the County's position would be mooted and the legal challenge dismissed. Unless and until that happens, Franklin County's position remains as previously asserted: the current system for electing Franklin County commissioners constitutes a violation of the WVRA.

6. Plan Moving Forward

Moving forward, Franklin County requests the time necessary to listen to its citizens and to work with its elected officials, counsel, and experts, to provide the

Court with a remedial plan that it believes would serve all of the citizens of Franklin County. This may take time, but no prejudice would result to the Plaintiffs or any prospective candidates or voters. Under the WVRA, as long as a court-approved plan is entered prior to January 15, 2022, new elections must be held in November 2022. RCW 29A.92.110. Franklin County asks the Court to set a hearing on a proposed remedial plan on or after November 15, 2021, so that it can have full opportunity to hear from its citizens and prepare a single member district plan that would best serve its citizens. This would also have the added benefit of providing adequate time for any facial challenges to the law that may come.

IV. CONCLUSION

When this lawsuit was filed, Franklin County recognized the seriousness of the allegations and what it would mean if they were verified. With the substantial amount of data available to it from the 2020 general elections and the anticipated 2020 decennial census demographic data, the County was able to perform a thorough, detailed analysis to determine whether it was following the law, facts, data, and policy in good faith. After that data was received and promptly reviewed, it became clear that racially polarized voting exists and that the Latino Citizen Voting Age Population in Franklin County would be sufficient to form a majority in a single-member district but not so large as to constitute an at-large majority. Therefore, Franklin County acknowledges that the current election system for its county commissioners constitutes a violation of the WVRA and asks the Court

to set a hearing on November 15, 2021, or later to allow Franklin County to seek input from its citizens, including the Plaintiffs, in development of a plan that will best serve all of its citizens.

Dated this 6th day of September, 2021.

WITHERSPOON · KELLEY

By:/s/ Casey M. Bruner
CASEY M. BRUNER, WSBA # 50168
ASTI M. GALLINA, WSBA # 53361
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 6th day of September, 2021 the foregoing was delivered to the following persons in the manner indicated:

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Casey M. Bruner

APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR FRANKLIN COUNTY

No. 21-250210-11

[Filed May 5, 2021]

GABRIEL PORTUGAL, BRANDON PAUL MORALES, JOSE TRINIDAD CORRAL, and LEAGUE OF UNITED LATIN AMERICAN CITIZENS.	)
Plaintiffs,	)
v.	)
FRANKLIN COUNTY, a Washington municipal entity, CLINT DIDIER, RODNEY J. MULLEN, LOWELL B. PECK, in their official capacities as members of the Franklin County Board of Commissioners,	)
Defendants.	)

AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF UNDER THE
WASHINGTON VOTING RIGHTS ACT

I. INTRODUCTION

1.1 This action challenges the at-large electoral system used by Franklin County (The County) in general elections and the districting scheme used in primary elections. The current election scheme dilutes the votes of Latino/a voters in Franklin County, denying them the equal opportunity to elect candidates of their choice in general elections in violation of the Washington Voting Rights Act ("WVRA" or "the Act"), RCW 29A.92.060.

1.2 The Latino community has been growing, now accounting for about one third of the citizen voting age population (CVAP) in Franklin County.

1.3 Latino voters in the County have been unable to elect candidates of their choice for decades, despite voting cohesively.

1.4 This is because the hybrid district-based and at-large election model both cracks and dilutes the minority group's voting power. The district-based primary elections break up the cohesive and compact Latino community by splitting voters across three districts.

1.5 The Latino community is large enough and sufficiently geographically compact to comprise a majority-minority district, but instead, voters are separated to dilute the votes cast by Latino citizens.

1.6 Then, the at-large general election further dilutes Latino voting power, because there is racially polarized voting during county elections which operates to block Latino voters from electing candidates of their choice.

1.7 Combined, this leaves Latino voters in Franklin unable to effectively participate in the political process.

1.8 The electoral scheme in Franklin county deprives Latino voters of their equal right to elect candidates of their choice as guaranteed by the WVRA.

II. PARTIES

2.1 Plaintiffs GABRIEL PORTUGAL, BRANDON PAUL MORALES, and JOSE TRINIDAD CORRAL ("Individual Plaintiffs") are Latino registered voters who reside in Franklin County.

2.2 Plaintiff GABRIEL PORTUGAL is an American citizen, over the age of 18, is eligible to vote, and is a registered voter in Franklin County, Washington.

2.3 Plaintiff BRANDON PAUL MORALES is an American citizen, over the age of 18, is eligible to vote, and is a registered voter in Franklin County, Washington.

2.4 Plaintiff JOSE TRINIDAD CORRAL is an American citizen, over the age of 18, is eligible to vote, and is a registered voter in Franklin County, Washington.

2.5 Plaintiffs LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is the oldest and largest national Latino civil rights organization in the United States.

2.6 LULAC is a non-profit membership organization with a presence in the State of Washington, with three membership chapters within the state and one in Franklin County.

2.7 LULAC participates in civic engagement activities, such as voter registration, voter education, and voter turnout efforts throughout Washington. LULAC's mission is to educate voters, including expending resources to ensure that LULAC membership and Latinos are able to have equitable access to the franchise.

2.8 Defendant FRANKLIN COUNTY ("the County") is a Washington municipal corporation and a political subdivision within the meaning of and subject to the requirements of the WVRA. *See* RCW 29A.92.010. The County maintains a system in which candidates for Commissioner are first voted on through a district-based primary and then elected through a County-wide at-large election.

2.9 Defendants CLINT DIDIER, RODNEY J. MULLEN (aka "ROCKY MULLEN") and LOWELL B. PECK (aka "BRAD PECK") (collectively "the Commissioners") are current members of the Commission. The Commission has the authority to change the County's electoral system to remedy a violation of the WVRA. The Commissioners are each sued in their official capacity only.

III. JURISIDCTION AND VENUE

3.1 This court has subject matter jurisdiction over this Complaint because Washington state courts have jurisdiction over claims brought under the WVRA. RCW 29A.92.

3.2 Venue is proper in Franklin County pursuant to RCW 29A.92.090 and RCW 36.01.05(2).

IV. FACTS

A. The Franklin County Commission

4.1 The Commission is the governing body of Franklin County and is composed of three commissioners. Each commissioner represents one of three geographic districts.

4.2 Franklin County currently uses a hybrid voting system; the County uses a district-based model for primary elections and an at-large system for general elections.

4.3 This means that candidates are first nominated in a primary election by voters of the district in which they reside.

4.4 Then, voters from all districts in the County vote for and elect the commissioners during the general election.

4.5 County commissioners are elected to serve 4-year staggered terms, and elections are held every two years.

4.6 Districts 1 and 2 vote on commissioners during presidential elections, and District 3 votes on

commissioners during midterm elections. The most recent election for a Commission seat was held on November 3, 2020 for Districts 1 and 2.

4.7 As the County's legislative authority, the Commission is responsible for the overall administration of County government, including adoption of annual budgets, enactment of ordinances, and appointments to advisory boards and commissions.

4.8 The Commission is also tasked with adopting the district maps for Franklin County elections.

4.9 The Commission is responsible for redistricting the county.

4.10 The Commission oversees programs and services related to public health, environmental protection, housing, public works, and other matters that affect the interests and well-being of Latino residents.

B. Franklin County Demographics

4.11 According to the 2019 American Community Survey (ACS) 1-Year Estimates, Franklin County has a total population of 95,222 and a Latino population of 51,001.

4.12 According to the 2018 ACS 5-Year Estimates, Latino citizens make up over one third, or 34.4%, of Franklin County's citizen voting age population (CVAP).

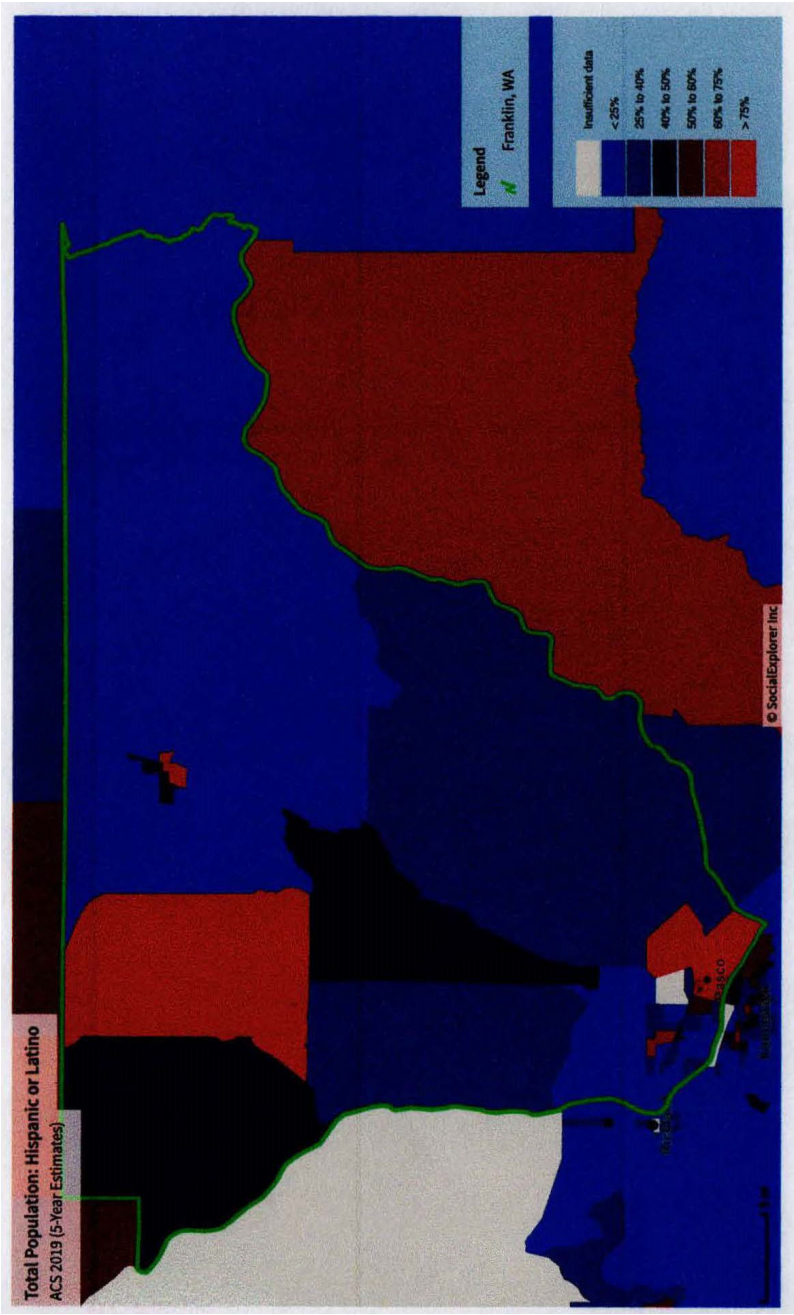
4.13 Over the past twenty years, Franklin County has grown rapidly, and the demographics have shifted.

4.14 Latino population has grown, fueling the expansion of the County's CVAP.

4.15 Latino residents of Franklin County are largely geographically concentrated in the Cities of Pasco, Mesa, and Connell.

4.16 The Latino CVAP for these cities is 35.59%, 32.09%, and 22.32%, respectively, according to the 2018 ACS 5-Year Estimates.

4.17 **The following map** shows the geographic distribution of the Latino community in Franklin County, where areas that are purple or red are more Latino and areas that are blue have a lower Latino population.


Total Population: Hispanic or Latino
ACS 2019 (5-Year Estimates)
Legend
Franklin, WA
Insufficient data
< 25%
25% to 40%
40% to 50%
50% to 60%
60% to 75%
> 75%
© SocialExplorer Inc
Pasco

C. The Washington Voting Rights Act

4.18 The Washington Voting Rights Act was enacted in 2018 by the state legislature in order to ensure that, "minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election." RCW. 29A.92.005.

4.19 Any electoral system that denies such groups to elect candidates of their choice is, "inconsistent with the right to free and equal elections" guaranteed by the Washington State Constitution. RCW 29A.92.005.

4.20 The Washington Voting Rights Act gives local governments the opportunity to remedy discrimination in election schemes and is designed to, "promote equal voting opportunity in certain political subdivisions." 2018 Wash. Sess. Law Ch. 112 (codified at RCW 29A.92).

4.21 The WVRA requires that district maps afford minority voters an equal opportunity to elect candidates of their choice. RCW 29A.92.020.

4.22 Political subdivisions are prohibited from maintaining election schemes that dilute or abridge this electoral opportunity. RCW 29A.92.020.

4.23 The WVRA prohibits diluting the voting power or influence of protected classes through at-large elections. RCW 29A.92.030.

4.24 At-large elections dilute the voting power of minorities because, "where minority and majority voters consistently prefer different candidates, the

majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Thornburg v. Gingles*, 478 U.S. 30, 48 (1986).

4.25 Combined with racially polarized voting, where the minority population votes for different candidates than the majority population, the at-large scheme works to dilute the voting power of minority populations.

4.26 Where there is racially polarized voting in a political subdivision and the votes of a racial minority are diluted, that subdivision is in violation of the WVRA. RCW 29A.92.020.

D. Elections in Franklin County Exhibit Polarized Voting

4.27 Elections in Franklin County exhibit polarized voting along racial lines.

4.28 Polarized voting occurs when members of different racial or ethnic groups prefer different candidates than other racial or ethnic groups.

4.29 White, non-Hispanic voters and Latino voters demonstrate consistent patterns of voting for different candidates.

4.30 Candidates who win a majority of the vote in high-density Latino voting precincts receive very low support in high-density white precincts.

4.31 This split, in which candidates who win a majority of the vote in high-density Latino voting precincts but receive low or very low support in high-

density white precincts is emblematic of racially polarized voting.

4.32 This pattern is consistent across different elections in Franklin County.

4.33 This pattern is consistent across the county in different elections.

4.34 This pattern is consistent across different election years in Franklin County.

4.35 Latino voters in Franklin County are politically cohesive and consistently vote as a bloc for common candidates of choice.

4.36 Latino voters' candidates of choice are rarely elected, and Latino voters have bee unable to elect a candidate of their choice under the county's at-large election scheme.

4.37 Because Latino voters do not constitute a majority, White voters frequently vote as a bloc for other non-Latino preferred candidates, and there are not enough crossover White votes to account for the different voting preferences between the Latino and White populations.

4.38 Franklin County Commission elections from 2008 to 2020 all exhibit racially polarized voting.

4.39 Since 2008, no Latino preferred candidate has been elected to the County Commission, even though Latino preferred candidates have run.

4.40 In 2020, Ana Ruiz Peralta ran in District 2 during the primary, won, and advanced to the general election.

4.41 Within District 2, Peralta was the preferred candidate in high-density Latino precincts.

4.42 In Pct 004, Peralta won 75% of the vote.

4.43 She also won a majority of the vote share in the high-density Latino precincts, Pct 006 (68% won), Pct 009 (67%), Pct 002 (65%), and Pct 005 (64%).

4.44 Peralta lost the vote in majority-white voting precincts, such as Pct 100, where only 8% voted for Peralta, Pct 101 (9% voted for Peralta), Pct 096 (10%), Pct 095 (13%), and Pct 092 (17%).

4.45 The difference in candidate preference between Latino and white voting precincts is quite large and is statistically significant.

4.46 Racially polarized voting was also observed in the 2018 County Commission election between Clint Didier and Zahra Roach.

4.47 Roach, the candidate of choice in majority-Latino voting precincts, won 82% in Pct 004, 77% in Pct 006 and Pct 012.

4.48 Roach also received majority support in nearly every high-density Latino precinct.

4.49 Didier, by contrast, won countywide, receiving the most support from majority-white precincts.

4.50 Didier won over 90% of the vote in multiple majority-white voting precincts.

4.51 Examining the 2018 general election through a larger, county-wide perspective demonstrates extremely strong evidence of racially polarized voting.

4.52 Similar patterns have likewise emerged over time, as high-density Latino precincts have reported vote results that are the polar opposite of high-density white precincts.

4.53 In 2012, Al Yenney lost countywide in the November general election, won a majority of the vote in Latino precincts, but lost badly in precincts with substantial non-Latino populations.

4.54 In 2008, Neva Corkrum, the Latino preferred candidate, lost the countywide election in November but won a clear majority of the vote in high-density Latino voting precincts.

4.55 Corkrum won as much as 74% of the vote in majority-Latino precincts, but still lost badly, garnering less than 20% of the vote in majority-white precincts.

4.56 The same patterns of racially polarized voting have emerged across elections in Franklin County for other local, legislative, and statewide offices.

4.57 There is no doubt that a clear and consistent pattern of racially polarized voting exists in Franklin County.

4.58 The Latino population in Franklin County is geographically large.

4.59 The Latino population in Franklin County is sufficiently compact.

4.60 The Latino population in Franklin County are politically cohesive.

4.61 The white population is cohesive in voting and acts to block Latino voters from being able to elect Latino preferred candidates due to the at-large election scheme.

4.62 This precinct analysis of voter trends reveals that Latino-preferred candidates are losing county elections because the at-large election system dilutes the minority vote.

4.63 While minority-preferred candidates receive the most votes in high percentage Latino precincts, they are obstructed from winning the general election because of the increased participation of majority-white precincts that vote differently.

4.64 In addition to the evidence presented above, the pattern persists on a local level. The Latino population of Pasco alone, the largest concentration of Latino voters in the county, shows political cohesion.

4.65 The City of Pasco even conceded this fact in its consent decree to resolve *Glatt v. City of Pasco.*

4.66 The city conceded that three *Gingles* factors were met: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the majority group votes sufficiently as a bloc to enable it, in the absence of

special circumstances, "usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

4.67 Further evidence shows that Latino voters in Franklin County do vote as a bloc, coalescing around candidates of their choice.

4.68 Following the City of Pasco's 2017 change to a hybrid district-based system, Latinos now occupy three out of seven city council seats, including two out of the three Latino majority-minority districts. Two of these council members have also taken on the role of Pasco's mayor and mayor pro tem.

4.69 The fact that no Latino candidate of choice was able to win a contested Pasco city council election prior to the change from at-large to district-based elections shows the significant power the at-large system had to dilute the vote of Latino citizens in Franklin County.

4.70 Latino voters are able to show that there is racially polarized voting occurring during Franklin County Commissioner elections.

4.71 Because there is racially polarized voting, under the WVRA, there is evidence sufficient to show that Latino voters are suffering from vote dilution.

4.72 Latino voters across Franklin County suffer from vote dilution in violation of the WVRA due to the County's at-large election system.

E. Franklin County's At-Large Electoral System Dilutes the Voting Rights of Latinos and Denies Latinos an Equal Opportunity to Elect Candidates of their Choice

4.73 Franklin County's hybrid district and at-large election model dilutes the voting power of the Latino community and denies Latino voters the equal opportunity to elect candidates of their choice.

4.74 The County's district plan cracks the Latino voting population between the three districts.

4.75 While much of the Latino population is centered in and around the City of Pasco, residents here are divided across Franklin County's three districts. District 1 is centered within the City of Pasco, but districts 2 and 3 also include areas within the City of Pasco.

4.76 Franklin County Commissioner Brad Peck noted in a February 4, 2020 commission meeting that, "homogenous" East Pasco, "the predominantly Latino east Pasco," has historically been, "carved up into pieces to make the other districts balanced."

4.77 Cracking the East Pasco Latino community such that the cohesive community is split into different districts impedes the ability of voters to rally behind a candidate of choice in primary elections.

4.78 If the current district system were used as the map for single-member district based elections, such cracking would still prevent Latino voters from electing candidates of their choice.

4.79 The County's election scheme dilutes the Latino vote such that Latino voters are unable to elect candidates of their choice, despite representing a sizeable portion of Franklin County's CVAP.

4.80 Latino voters in Franklin County have not been able to elect a candidate of their choice to the County Commission in the past 20 years.

4.81 There are no Latino preferred candidates currently serving on the Franklin County Board of Commissioners.

4.82 There has never been a Latino elected to serve on the Franklin County Board of Commissioners.

4.83 There are other factors that indicate the dilutive and discriminatory effects of Franklin County's electoral system.

4.84 The existence of historic and present racial discrimination in the jurisdiction adds an additional layer in understanding how the challenged voting systems or methods are discriminatory.

4.85 In determining whether there is a history or pattern of present discrimination, courts consider a variety of factors, including: the history of discrimination; the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at large elections; the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; and the use of overt or subtle racial appeals in political campaigns.

4.86 Franklin County has a history of ethnic and racial tension between the county's white and Latino communities.

4.87 According to historians, East Pasco was once the only part of the city open to minorities.

4.88 In the past there were efforts by white residents to target and remove non-Whites from the City of Pasco entirely.

4.89 This historic discrimination has had long lasting effects on Latinos and other minorities in Franklin County.

4.90 The factors of race and poverty combined to create patterns of discrimination that have endured in Pasco for generations.

4.91 Racial tensions between white and Latino communities in the County persist today.

4.92 On February 10, 2015, local Pasco police, itself not racially reflective of the community, shot seventeen times and killed Antonio Zambrano-Montes after he was allegedly throwing rocks at cars.

4.93 Weeks of demonstrations calling for justice and more scrutiny over Pasco's policing of the Latino community followed.

4.94 Even county officials have publicly declared racially insensitive viewpoints. In 2016, a Franklin County official shared an image of a white farmer with the caption, "When is white history month?" and on the corner of the image, there was a white raised fist used

by white supremacists with the words "100% White, 100% Proud."

4.95 Franklin County officials have expressed anti-immigrant sentiment against the county's immigrant population—an overwhelming majority of which is Latino.

4.96 When current county commissioner, Clint Didier, was asked about immigration while running for his seat, he stated he wanted to secure borders and that until then, "[w]e work with ICE."

4.97 Law enforcement officials within the County have also sought ways to collaborate with immigration enforcement officials, including receiving Spanish language training from U.S. Border Patrol agents, which has undermined trust between them and the overwhelming Latino immigrant community.

4.98 In addition to the above, Latino voters in Franklin County endure the widespread effects of past and present discrimination in areas such as education, employment, and health.

4.99 This discrimination impacts their ability to engage in the local political process.

4.100 U.S. Census statistics reveal a number of discrepancies between the white and Latino communities in the county.

4.101 Latino residents in Franklin are much less likely to have a high school diploma than white Franklin residents. Only 7.1% of Latinos in Franklin have a bachelor's degree or higher, compared to 29.9%

of whites. 7.5% of Franklin's white population lives below the poverty line, but more than one out of five Latinos in the County live below the poverty line.

4.102 The disparities between the white population and the Latino community in Franklin County are also pervasive with respect to job earnings and access to health care.

4.103 White Franklin County residents also earn substantially more at their jobs on average than do Latino residents.

4.104 These statistics, taken together with anecdotal information regarding discrimination faced by the Latino community, exemplifies how the Latino community experiences racial discrimination and the effects of having a lack of representation in county government.

V. CAUSE OF ACTION: WASHINGTON VOTING RIGHTS ACT

5.1 Plaintiffs repeat, replead, and incorporate by reference, as though fully set for the in this paragraph, all the allegations of this Complaint.

5.2 A violation of the WVRA is established when elections in a political subdivision exhibit polarized voting and members of a protected class do not have equal opportunity to elect candidates of their choice as a result of vote dilution or abridgement.

5.3 Elections in Franklin County exhibit polarized voting along racial lines.

5.4 Latino voters in Franklin County do not have equal opportunity to elect candidates of their choice because the County's hybrid district-based and at-large electoral system illegally dilutes Latino votes.

5.5 On October 12, 2020, Plaintiffs properly notified Franklin County by letter that the County was in violation of the WVRA and that Plaintiffs intended to challenge the County's electoral system unless the County adopted an appropriate remedy. RCW 29A.92.060. *See* Attached Exhibit A.

5.6 Franklin County officials declined to work in good faith with Plaintiffs, discussing redistricting in County Commission meetings without sending notice to or seeking input from Plaintiffs.

5.7 After receipt of Plaintiff's letter, Franklin County Commissioners predominantly discussed redistricting in closed, executive sessions.

5.8 Despite the Commissioners' initial response to the notice letter, in which Commissioners stated they would respond to Plaintiffs, the next follow-up communication was only received 149 days or four months and 26 days later.

5.9 Commissioners did not work with Plaintiffs to implement a remedy pursuant to RCW 29A.92.070.

5.10 180 days have elapsed since Plaintiffs notified the County of its WVRA violation.

5.11 Within the 180 days and since, the County has not obtained a court order stating that it has adopted a remedy that complies with RCW 29A.92.020.

5.12 As registered voters who reside in Franklin County and an organization with members who are registered voters who reside in Franklin County, Plaintiffs have a right to file this suit and the suit is timely.

5.13 Plaintiffs are entitled to the remedies available under the WVRA.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the court:

1. Declare that Franklin County's hybrid district-based and at-large electoral system for electing members to the County Commission violates the WVRA, RCW 29A.92.020;

2. Enjoin Defendants, their agents and successors in office, and all persons acting in concert with, or as an agent of, any Defendants in this action from administering, implementing, or conducting any future elections in Franklin County under the current hybrid district-based and at-large electoral system;

3. Order the implementation of an electoral system for the County Commission that complies with RCW 29A.92.020 and other provisions of the WVRA;

4. Redraw the County district map in a manner that does not dilute the vote of Latino citizens;

5. Order that all future elections in Franklin County comply with the WVRA;

6. Grant Plaintiffs' attorneys' fees, costs, and litigation expenses pursuant to 29A.92.130; and

7. Grant any other relief that the Court may deem just and equitable.

DATED this 5th day of May, 2021.

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*Motions for admission *pro hac vice* forthcoming