



January 15, 2020

Yakima County Commission
Yakima County Courthouse
128 N. 2nd Street Room 232
Yakima, WA 98901

Re: Violation of the Washington Voting Rights Act of 2018

We are writing on behalf of Evangelina “Bengie” Aguilar, a registered Latina voter residing in Yakima County, Candy “Dulce” Gutierrez, a registered Latina voter residing in Yakima County, Rogelio Montes, a registered Latino voter residing in Yakima County, Susan Soto Palmer, a registered Latina voter residing in Yakima County and OneAmerica, a membership organization with members who are registered Latino voters residing in Yakima County. This letter serves as notice under the Washington Voting Rights Act of 2018 (“WVRA,” “the Act”), Wash. Rev. Code § 29A.92.60, that the current system employed by Yakima County for electing candidates to the Yakima County Commission has the effect of diluting the votes of Latino voters in Yakima County, denying them an equal opportunity to elect candidates of their choice to the Commission in violation of the WVRA and the Washington State Constitution.

The Washington Voting Rights Act

The WVRA was enacted to “promote equal voting opportunity in certain political subdivisions.” Washington Voting Rights Act of 2018, 2018 Wash. Sess. Laws Ch. 113 (codified at Wash. Rev. Code § 29A.92 (2018)). The legislature found 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” established by the Washington State Constitution. Wash. Rev. Code § 29A.92.005. As such, the Act prohibits political subdivisions from maintaining “method[s] of electing the governing body of a political subdivision . . . that impair[] 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 abridgement of the rights of voters who are members of a protected class or classes.” Wash. Rev. Code § 29A.92.020.

A violation of the Act is established when elections in a political subdivision exhibit polarized voting, and the electoral system dilutes the votes of a protected class of voters, such that those voters lack an equal opportunity to elect candidates of their choice. *Id.* § 29A.92.030. Both of these elements are present in Yakima County’s at-large system for electing members to the County Commission. First, voting in Yakima County is racially polarized. *See Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1410 (2014) (“there can be no serious dispute that voting in Yakima is racially polarized.”). Second, Hispanic and Latino voters in Yakima County lack an equal opportunity to elect candidates of their choice because their votes are diluted under Yakima’s at-large general election system for electing candidates to the Yakima County Commission. Thus, the at-large system violates the WVRA.

Yakima County and the WVRA

The population of Yakima County is 49.4% Hispanic or Latino, with a Latino Citizen Voting Age Population (“CVAP”) of 32.5%.¹ The County uses a district-based top two primary system and an at-large general election system for electing candidates to the Yakima County Commission.² This means that candidates for the Yakima County Commission are initially selected based on geographic districts, but voters for the entire county ultimately elect each member of the Commission from among the candidates that advance out of a primary election.

At-large election schemes create a particular risk of diluting minority voting rights. *See Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (“This court has long recognized that multimember districts and at-large voting schemes may operate to minimize or cancel out the voting strength of [minority members of] the voting population.”) (internal quotations omitted). This is because where “minority and majority voters consistently prefer different candidates, the

¹ U.S. Census Bureau, 2017 American Community Survey 1-Year Estimate.

² *See* Yakima County Washington, Board of Yakima County Commissioners, <http://wa-yakimacounty.civicplus.com/766/County-Commissioners-Office> (last visited August 13, 2019) (“The county is divided into 3 districts on the basis of population. At the time of election each commissioner must live in and represent his/her district. The commissioners are partisan and are nominated in a primary election by voters in their particular district. All the voters in the county are given an opportunity in the general election to vote for the commissioner who will ultimately serve the 4-year term.”). *See also*, Wash. Rev. Code § 29A.52.112(2) (mandating that for partisan offices the top two vote-getters in the primary election will advance to the general election).

majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Id.* at 48. The dilutive effect of at-large schemes is enhanced where there is a “requirement that candidates run for specific seats . . . because it prevents a cohesive political group from concentrating on a single candidate.” *Rodgers v. Lodge*, 458 U.S. 613, 627 (1982).

Yakima County’s at-large system for electing candidates to the County Commission demonstrates precisely these effects. The system dilutes the votes of Latino voters, and denies them an equal opportunity to elect candidates of their choice, because the majority white population is regularly able to defeat minority-preferred candidates. As a result, Latino candidates of choice have rarely been elected to political office in the County. Only one Latino candidate has ever been elected to the County Commission,³ and Hispanic and Latino candidates in other county races have also struggled. Prior to 2015, only one Latina had been elected to the state legislature.⁴ Sonia Rodriguez was appointed to the Yakima City Council in 2008, but lost to a white candidate in the 2009 election. *Id.* Similarly, Graciela Villanueva was appointed to the Yakima School Board in 2011, but lost her 2013 race even though her opponent had dropped out.⁵ Although three Latina candidates were elected to the Yakima City Council in 2015, those wins came after the city lost a voting rights lawsuit and replaced its at-large voting system with a district-based system.⁶ *See Montes*, 40 F. Supp. 3d 1377. The fact that no Hispanic or Latino candidate of choice was able to win election to the City Council until the system changed provides strong evidence of the dilutive effect of at-large election systems on Hispanic and Latino voters in Yakima County.

Several of the other factors that may establish a violation of the WVRA are present in Yakima County. In addition to the use of devices, practices, or procedures that enhance the dilutive effects of at-large elections, factors such as a history of discrimination, the denial of access to processes for determining which candidates receive support, the effects of past discrimination against members of the protected class, and the use of racial appeals in political campaigns are all probative in determining whether an electoral system violates the Act. Wash. Rev. Code § 29A.92.030(6).

³ George Cheung, EJ Juárez and Kristina Logsdon, SYSTEMS CHANGE IN THE YAKIMA VALLEY, NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY, <https://www.ncrp.org/publication/responsive-philanthropy-winter-2015-16/systems-change-in-the-yakima-valley> (last visited November 26, 2018).

⁴ Cheung, Juarez, and Logsdon, *supra* n. 3

⁵ Misty Shock Rule, *From UW to Yakima, Dulce Gutierrez has been guided by love for her community*, University of Washington, <https://www.washington.edu/storycentral/story/from-uw-to-yakima-dulce-gutierrez-has-been-guided-by-love-for-her-community/> (last visited November 26, 2018).

⁶ Cheung, Juarez, and Logsdon, *supra* n. 3.

Latino voters in Yakima County endure the widespread effects of past and present discrimination, in such areas as employment, health care, and education, which impact their ability to engage in the local political process. Census statistics reveal a number of discrepancies between the Latino and white communities in Yakima County. Latino residents in Yakima are nearly forty-four percent less likely to have a high school diploma than white Yakima residents.⁷ Likewise, only five percent of Latino students in Yakima County go on to obtain a bachelor's degree or higher, compared to twenty-three percent of white students.⁸ More than a quarter of the Latino population of Yakima lives below the poverty line, as compared to only seventeen percent of the white population in the County.⁹ In Yakima City, the largest city in the County, “[fifty seven percent] of Latino adults do not have health insurance, in comparison to only [eighteen percent] of their white counterparts,” and “the rate of home ownership among Latinos is less than half than that among their white counterparts.”¹⁰

Furthermore, there is evidence that, at least until the adoption of a consent decree in 2004, Yakima County was in violation of Section 203 of the federal Voting Rights Act, which mandates that election materials and assistance be provided in minority languages. Denial of access to information about elections to a minority language group, in addition to being discriminatory in and of itself, constitutes an electoral practice likely to enhance the dilutive effects of at-large elections.

Finally, there is a significant history of “contentious and combative” ethnic and racial relations between the white and Latino communities in the Yakima Valley, including in Yakima City.¹¹ And racial tensions between the white and Latino communities in the Yakima Valley persist through the present day.¹² As one media outlet observed, “cultural conflicts” in Yakima are “apparent in public, where Latinos and non-Latinos largely gather at different parks and

⁷ U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate, Yakima County, Washington, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF> (last visited July 14, 2019).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Montes*, 40 F. Supp. at 1413.

¹¹ See Louis Ricardo Fraga, *Ethnicity and Race in Yakima, WA*, Expert Report Submitted on Behalf of Plaintiffs in *Montes v. City of Yakima* No. 12-cv-3108 (E.D. Wash) at 7-11, (February 22, 2013).

¹² See *id.* (citing public commentary in the Yakima Herald-Republic throughout 2010-2011 demonstrating that “racial tensions between Whites and Hispanics persist in the Yakima Valley”).

many businesses, and on the Internet, where forums and comment boards for local audiences can often be loaded with xenophobic vitriol.”¹³

Potential Remedies

However, Yakima County may take proactive steps to remedy this violation of the WVRA. The legislature recently recognized that existing state laws could prevent political subdivisions with dilutive systems from acting on their own to remedy this constitutional harm. *Id.* As such, the legislature passed the WVRA to “modify existing laws” such that local governments could act “voluntarily . . . in collaboration with affected community members” to adopt alternate electoral systems, and ensure that members of minority groups have an equal opportunity to elect candidates of their choice. *Id.*

Under the Act, a political subdivision is authorized to “change its electoral system,” but is not required to adopt a particular remedy. *Id.* § 28A.92.040. Pursuant to Wash. Rev. Code § 29A.92.060(2), our clients identify the following remedies for vote dilution in Yakima County.

Single Member Districts with Ranked Choice Voting

Ranked choice voting involves a single round of vote-casting, and multiple rounds of vote counting. Voters rank candidates in order of preference when marking their ballots, and only candidates who reach a certain threshold of votes are elected.¹⁴ If a candidate reaches the vote threshold in the first round of vote-counting, that candidate is elected, and any excess votes over the threshold are counted for the voters’ next-ranked candidates.

After the initial tally, if no candidate has reached the vote threshold, or if fewer candidates have reached the threshold than there are seats, the candidate with the fewest first-choice votes is eliminated, and the ballots of voters who selected that candidate as their first choice are redistributed to their second-choice candidates. This process repeats until all the seats are filled.

¹³ Mike Faulk, *Yakima’s Cultural Divide*, YAKIMA HERALD (Oct. 16, 2015), http://www.yakimaherald.com/news/elections/yakima_city_council/yakima-s-cultural-divide/article_590c92b47416-11e5-949e-dbf62c94960.html.

¹⁴ The vote threshold is the number of votes needed to ensure victory. Once a candidate reaches the vote threshold, it becomes mathematically impossible for another candidate to receive more votes. The vote threshold is calculated as $1/(N+1)+1$ where N equals the number of seats up for election. For example, if five candidates will be elected, the threshold is approximately 14% because if one candidate obtains more than 14% of the vote, it is mathematically impossible for five different candidates to achieve a higher vote total.

Ranked choice voting is used in many cities across the country, as well as by military and overseas voters in five states.¹⁵ In addition, the state of Maine has adopted ranked choice voting for general elections for Congress.¹⁶ Ranked-choice voting provides for more choices for all voters in the community, not just one subset or group. For example, it accounts for the intensity and cohesion of all voting blocs, including those that are racially polarized and those that form among other communities of interest. In addition, research has shown that voters and candidates in localities with RCV generally embrace it “as a means of reducing divisive politics and fostering more positive, inclusive, and informative campaigns.”¹⁷

Under a single-member district system using ranked choice voting, Yakima would create three districts, consistent with the criteria laid out in Wash. Rev. Code § 29A.92.050. There would be no primary election, and all candidates for a district seat would run in a single general election for that seat, and would be elected by the voters in that district. Voters in each district would have the opportunity to rank each candidate running in their district. The first candidate to surpass the 50% plus one vote threshold would be elected to the seat for that district.

County-Wide Elections with Multi-Winner Ranked Choice Voting

Alternatively, Yakima County could retain a system where candidates are elected county-wide, by eliminating the primary and adopting a multi-winner ranked choice voting system for the general election. Under this system, the vote threshold would be 25% plus one for each seat. Every voter would have the opportunity to express a preference as to every candidate running for Commissioner, and the first three candidates to surpass the vote threshold would be elected to the Commission. This system would allow Yakima to continue its county-wide election system, while allowing the entire community to more effectively participate in elections. In addition, the County would save significant costs under this system, because it would not need to redistrict every ten years after the decennial U.S. census.

Our clients believe that using ranked choice voting in either a three-single member district scenario or a county-wide multi-winner scenario would ensure

¹⁵ See, e.g., *Ranked Choice Voting in U.S. Elections*,

¹⁶ Scott Thistle, *Bill seeks to expand Maine’s ranked-choice voting to presidential elections*, Portland Press Herald, Mar. 20, 2019, <https://www.pressherald.com/2019/03/20/bill-seeks-to-expand-maines-ranked-choice-voting-system/>.

¹⁷ See Andrew Douglas, *Ranked Choice Voting and Civility: New Evidence from American Cities* 1 (Apr. 2014), <https://fairvote.app.box.com/v/rcv-civility-study-april-2014>.

the Latino community an opportunity to elect candidates of their choice to the Yakima County Commission.

Conclusion

We look forward to working with the County in good faith to implement a remedy to the aforementioned violations of the WVRA. *See* Wash. Rev. Code § 29A.92.070(1). Pursuant to Wash. Rev. Code § 29A.92.080, however, our clients reserve the right to take legal action against the County if it has not adopted a remedy and obtained a court-order approving that the adopted remedy complies with the WVRA within one hundred and eighty days of receipt of this letter. Please contact us at your earliest convenience to discuss how to the County would like to proceed.

Respectfully submitted,



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