

Hon. L.Candace Hooper
Noted for Hearing: June 4, 2021, at 2:30 p.m.
With Oral Argument Requested

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

EVANGELINA AGUILAR, SUSAN SOTO
PALMER, ROGELIO MONTES, CANDY
GUTIERREZ, and ONEAMERICA, a
Washington nonprofit corporation,

Plaintiffs,

v.

YAKIMA COUNTY, a Washington municipal
entity, LADON LINDE, AMANDA
MCKINNEY, RON ANDERSON, in their
official capacities as members of the Yakima
County Board of Commissioners,

Defendants.

No. No. 20-2-0018019

PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

INTRODUCTION

Yakima County’s method of electing its Board of Commissioners dilutes the political power of its Latino¹ residents in violation of the Washington Voting Rights Act (“WVRA”). The undisputed material facts establish that elections for the Yakima County Board of Commissioners (“BOCC” or “County Board”) exhibit racially polarized voting; Latino voters do not have an equal opportunity to elect the candidates of their choice; and other probative factors hinder their ability to participate in the political process. There is no dispute that Latino-preferred candidates fare worse than white-preferred candidates in County Board elections and that these elections exhibit racially polarized voting. Additionally, there is no dispute that Latino residents

¹ This Motion uses the terms “Latino” and “Hispanic interchangeably to refer to individuals who self-identify as Latino or Hispanic.

1 have suffered from a host of disparities, discrimination, and outright hostility, which continues to
2 hinder their ability to participate equally in the political process. Thus, the County Board has
3 historically been and remains dominated by white voters' preferred candidates and has been
4 insufficiently responsive to issues of particular importance to Latino residents in Yakima
5 County. For these reasons, and as discussed further below, this Court should grant summary
6 judgment in favor of Plaintiffs and against Defendants.

7 STATEMENT OF FACTS

8 I. Parties

9 Plaintiff Evangelina "Bengie" Aguilar is a Latina registered voter who resides in Yakima
10 County. *See* Ex. 1 (Aguilar Decl.) at ¶ 4-5. She served on the Sunnyside City Council from 2001
11 to 2005. *Id.* at ¶ 8. She ran for reelection in 2005 but was not elected. *Id.* In 2018, Plaintiff
12 Aguilar ran for State Senate District 15, which is located entirely in Yakima County, but was not
13 elected. *Id.* at ¶ 16; Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶ 69.

14 Plaintiff Susan Soto Palmer is a Latina registered voter who resides in Yakima County.
15 Ex. 3 (Soto Palmer Decl.) at ¶¶ 4-5. In 2018, Plaintiff Palmer ran to represent District 3 on the
16 County Board but was not elected. *Id.* ¶ 7. In 2016, she ran for State House District 14, which
17 includes a part of Yakima County, but was not elected. *Id.* Ex. 4 (Defs. Supp. Answers to Pls.
18 First RFAs) at ¶ 70.

19 Plaintiff Rogelio Montes is a Latino registered voter who resides in Yakima County. Ex.
20 5 (Montes Decl.) at ¶ 2-4. In 2011, he ran to represent District 2 on the Yakima City Council, but
21 he did not advance to the at-large general election. *Id.* at ¶ 6. In 2018, he initially ran again to
22 represent District 2 but withdrew his candidacy. *Id.*

23 Plaintiff Candy "Dulce" Gutierrez is a Latina registered voter who resides in Yakima
24 County. Ex. 2 (Gutierrez Decl.) at ¶¶ 2-5. In 2015, she was elected to represent District 1 on the
25 Yakima City Council after a federal district court ordered the City of Yakima to discontinue at-
26 large elections. *Id.* at ¶ 8. She served in that position for one term and did not seek reelection. *Id.*

1 Plaintiff OneAmerica is a Washington nonprofit organization whose members include
2 Latino registered voters who reside in Yakima County. Ex. 6 (Stolz Decl.) at ¶ 8-9. Securing fair
3 representation of the Latino community in Yakima County government is directly related to
4 OneAmerica’s mission to advance “fundamental principles of democracy and justice at the local,
5 state, and national levels by building power within immigrant communities in collaboration with
6 key allies.” *Id.* at ¶ 4. OneAmerica works to achieve its mission in part by advocating for voting
7 rights reforms and increasing civic participation and turnout among voters in immigrant and
8 refugee communities, including Latino voters, through voter registration drives and voter
9 education. *Id.* at ¶ 7, 13. Electoral systems that systematically disadvantage the Latino
10 community create a drain on OneAmerica’s organizational resources by requiring dedication of
11 greater time and funds to these civic engagement efforts. *Id.* at ¶ 13. OneAmerica’s voter
12 registration and outreach activities as well as their candidate development efforts require
13 additional funds to be effective when Yakima County’s electoral system unfairly dilutes the
14 Latino vote. *Id.*

15 Defendant Yakima County (the “County”) is a Washington municipal corporation and a
16 political subdivision within the meaning of and subject to the requirements of the WVRA. *See*
17 RCW 29A.92.010. Defendants Anderson, Linde, and McKinney are the current Commissioners
18 of the County Board. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶¶ 26-28. The County
19 Board has the authority to change the County’s electoral system to remedy a violation of the
20 WVRA. The Commissioners are each sued in their official capacity only.

21 **II. Yakima County Demographics**

22 According to the Census Bureau’s most recent American Community Survey Five-Year
23 Estimates (“ACS”), the County has a total population of 249,697. Ex. 4 (Defs. Supp. Answers to
24 Pls. First RFAs) at ¶¶ 39, 41.² ACS estimates that Latinos comprise 49.3 percent of the County

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26 ² ACS statistics are judicially noticeable as they are capable of accurate and ready determination
27 by resort to sources whose accuracy cannot reasonably be questioned. Washington Rules of
Evidence 201(b). And though Defendants made qualified denials to select RFAs related to ACS
data, *see, e.g.*, Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶¶ 41-56, 58-68, 73-79, 84-106,
108-119, they nonetheless admitted for each that “[t]o the extent this request acknowledges that

1 population, whereas non-Hispanic white residents comprise 43.2 percent. *Id.* at ¶¶ 42-43.
2 According to ACS, the County’s citizen voting-age population is 31.4 percent Latino and 60.5
3 percent non-Hispanic white. *Id.* at ¶¶ 53-54. The Latino community is spread throughout Yakima
4 County with heavier concentrations in parts of the City of Yakima and the Lower Yakima
5 Valley. *Id.* at ¶¶ 58-61, 64-67, 149. The County’s Latino community has historically faced racial
6 and ethnic discrimination in Yakima County, *see id.* at ¶ 154, and still experiences both the
7 effects of past discrimination and present-day discrimination. *See infra* Argument Part II.B.3.

8 **III. Yakima County Board of Commissioner Elections**

9 The County Board is the governing body of Yakima County and is composed of three
10 Commissioners, each of whom represent one of three geographic districts. Commissioners must
11 live in the district they represent. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶¶ 24-25.

12 The County uses a district-based top-two primary and an at-large general election system
13 to elect Commissioners. *Id.* at ¶ 30. This means that candidates are first nominated in a non-
14 partisan primary election by voters of their district. *Id.* at ¶ 31. The top two vote-getters in each
15 district then advance to the general election. *Id.* at ¶ 32. In the general election, voters of the
16 *entire* County select the winner to represent each district. *Id.* at ¶ 33. Commissioners are elected
17 to serve staggered four-year terms with County Board elections therefore taking place every two
18 years. *Id.* at ¶ 34. The most recent election for the County Board was held for Districts 1 and 2
19 on November 3, 2020. *Id.* at ¶¶ 35-36. The next election for District 3 will be on November 2,
20 2021, as that seat is presently filled by Commissioner Linde who was appointed in 2020
21 following the death of former Commissioner Norm Childress. *Id.* at ¶¶ 29, 37. In its entire
22 history, Yakima County has elected, at most, one Latino individual to the County Board. *See*
23 *infra*, Argument Part I.B.2.

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27 the quoted figure is an estimate . . . the estimate is accurately stated.” There is no disagreement
among the parties that the ACS data contains reliable estimates, *see id.* at ¶ 40, and Defendants
do not dispute that the figures are accurately stated.

1 **IV. Procedural History**

2 On January 15, 2020, Plaintiffs gave notice to Defendants that Yakima County’s at-large
3 system for electing members of the County Board violates the WVRA. Ex. 7 (Notice Letter);
4 RCW 29A.92.060. Plaintiffs further gave notice that they intended to challenge the County’s at-
5 large electoral system unless the County adopted the appropriate remedy. *Id.* During the six-
6 month notice period prior to filing suit, Plaintiffs attempted to work with the County in good
7 faith to remedy the WVRA violation, including by providing Defendants with the data and
8 analyses relied on in their notice letter. Ex. 8 (Pre-Suit Letters). Despite informing Plaintiffs that
9 they intended “to work collaboratively” with Plaintiffs and other Yakima residents, Ex. 8 (Pre-
10 Suit Letters) at 1, Defendants did not make any effort to engage with Plaintiffs during the notice
11 period. Ex. 12 (Baker Dep.) at 46:3-11; Ex. 13 (Anderson Dep.) at 90:10-18. They did not offer
12 to meet with Plaintiffs or direct any County staff to meet with Plaintiffs, Ex. 12 at 46:17-22, nor
13 did they discuss the notice letter in public meetings. Ex. 12 at 58:5-7. At no point did Defendants
14 respond substantively to Plaintiffs’ claim that the at-large system for electing members of the
15 County Commission violates the WVRA. Instead, Defendants’ sole response was to contest what
16 relief was available to Plaintiffs under the WVRA, and to admonish Plaintiffs for seeking to
17 protect their rights. Ex. 8 (Pre-Suit Letters) at 2,11, 22.

18 On July 13, 2020, after the six-month notice period elapsed without Defendants making
19 any attempt at remedying the violation alleged in Plaintiffs’ notice letter, Plaintiffs filed suit in
20 this court. Compl., Docket 1.

21 **LEGAL STANDARDS**

22 **I. Summary Judgment**

23 Summary judgment shall be granted if “there is no genuine issue as to any material fact
24 and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). “The court
25 should grant the motion only if, from all the evidence, reasonable persons could reach but one
26 conclusion.” *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 630-31, 71 P.3d
27 644 (2003).

1 **II. Washington Voting Rights Act**

2 The WVRA was enacted to “promote equal voting opportunity in certain political
3 subdivisions.” Laws of 2018, ch. 113 (codified at RCW 29A.92). The legislature found that
4 “electoral systems that deny race, color, or language minority groups an equal opportunity to
5 elect candidates of their choice are inconsistent” with the guarantees of the Washington State
6 Constitution and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. RCW
7 29A.92.005. The WVRA therefore bars certain political subdivisions, including counties, from
8 maintaining any electoral system “that impairs the ability of members of a protected class . . . to
9 have an equal opportunity to elect candidates of their choice as a result of the dilution or
10 abridgment of the rights” of such voters. RCW 29A.92.020, 010(4). It is uncontested that Latinos
11 are a protected class under the WVRA. *See* RCW 29A.92.010(5); Ex. 4 (Defs. Supp. Answers to
12 Pls. First RFAs) at ¶ 22.

13 The WVRA sets forth a streamlined test to determine whether electoral systems deny
14 minority voters an opportunity to elect candidates of their choice, a determination which is
15 intended to be specifically tailored to local conditions. RCW 29A.92.030(2); *see also Thornburg*
16 *v. Gingles*, 478 U.S. 30, 78-80 (1986). A violation of the WVRA is established if two elements
17 are met: “(a) Elections in the political subdivision exhibit polarized voting; and (b) Members of a
18 protected class . . . do not have an equal opportunity to elect candidates of their choice as a result
19 of the dilution or abridgement of [their rights].” RCW 29A.92.030(1). “[C]ourts may rely on
20 relevant federal case law for guidance” in applying the Act’s terms. RCW 29A.92.010.

21 **ARGUMENT**

22 Plaintiffs’ undisputed evidence establishes both elements of a WVRA claim: (a) elections
23 in Yakima County exhibit racial polarization, and (b) the electoral system used to elect the
24 County Board dilutes Latino voting power such that Latinos are denied equal opportunity to elect
25 candidates of their choice. As such, Plaintiffs are entitled to summary judgment.

1 **I. Elections in Yakima County Exhibit Racial Polarization.**

2 To establish a violation of the WVRA, Plaintiffs must demonstrate that elections in
3 Yakima County exhibit polarized voting. RCW 29A.92.030(1)(a). Polarized voting means
4 “voting in which there is a difference, as defined in case law regarding enforcement of the
5 federal voting rights act, 52 U.S.C. Section 10301 *et seq.*, in the choice of candidates or other
6 electoral choices that are preferred by voters in a protected class, . . . and electoral choices that
7 are preferred by voters in the rest of the electorate.” RCW 29A.92.010(3). Under the federal
8 Voting Rights Act (“VRA”), racial polarization in voting is legally actionable when members of
9 the protected class vote cohesively for the same candidates or electoral outcomes, and the
10 majority bloc routinely votes against the preferred candidate of the protected class. *See, e.g.*,
11 *Gingles*, 478 U.S. at 56.

12 **A. Courts Routinely Use Quantitative Estimates To Find Racially Polarized**
13 **Voting.**

14 Because elections in the United States are conducted via secret ballot, it is impossible to
15 analyze voting patterns based on actual individual voting behavior Ex. 11. (Grumbach Rebuttal)
16 at 2; Ex. 10 (Lewis Rep.) at 10. As such, courts evaluating the existence of racially polarized
17 voting under the federal VRA routinely rely on quantitative estimates of aggregate voting
18 behavior to determine whether the electoral choices of the protected class differ from those of the
19 rest of the electorate. *See United States v. City of Euclid*, 580 F. Supp. 2d 584, 596 (N.D. Ohio,
20 2008) (“In assessing whether racial bloc voting exists in a designated political subdivision, courts
21 often begin with a statistical analysis of voting behavior.”) (citing *Campos v. City of Baytown*,
22 840 F.3d 1240, 1244 (5th Cir. 1988); *Monroe v. City of Woodville, Miss.*, 897 F.2d 763, 764 (5th
23 Cir. 1990); *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 995 (D.S.D. 2004), *aff’d*, 461 F.3d
24 1011 (8th Cir. 2006)); *see also, e.g., Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385,
25 454, 273 Cal. Rptr. 437 (2020) (relying on quantitative analyses of aggregate voting behavior in
26 finding racially polarized voting under the California Voting Rights Act).

1 Ecological regression (“ER”) and ecological inference (“EI”) are quantitative
2 methodologies that analyze precinct-level election results and infer aggregate voting behavior by
3 members of distinct racial or ethnic groups based on precinct-level voter demographics. Ex. 11
4 (Grumbach Rebuttal) at 2. Courts analyzing claims under the federal VRA have routinely
5 accepted ecological regression and ecological inference as reliable quantitative methods for
6 analyzing the existence of racially polarized voting. *See, e.g., Luna v. County of Kern*, 291 F.
7 Supp. 3d 1088, 1124 (E.D. Cal. 2018) (citing *Patino v. City of Pasadena*, 230 F. Supp. 3d 667,
8 691 (S.D. Tex. 2017)); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014);
9 *Cisneros v. Pasadena Indep. Sch. Dist.*, No. 4:12-cv-2579, 2014 WL 1668500 (S.D. Tex. Apr.
10 25, 2014); *Rodriguez v. Harris County, Tex.*, 964 F. Supp. 2d 686 (S.D. Tex. 2013); *Benavidez v.*
11 *City of Irving, Tex.*, 638 F. Supp. 2d 709, 723 (N.D. Tex. 2009); *Teague v. Attala County, Miss.*,
12 92 F.3d 283, 291-92 (5th Cir. 1996).

13 **B. The Quantitative Evidence Overwhelmingly Supports a Finding that**
14 **Elections in Yakima County Exhibit Racially Polarized Voting.**

15 **1. The Quantitative Evidence Overwhelmingly Supports a Finding that**
16 **Latino and White Voters Prefer Different Electoral Outcomes.**

17 It is undisputed that the ecological inference estimates produced by both Plaintiffs’ expert
18 Dr. Jacob M. Grumbach, and Defendants’ expert Dr. Jeffery Lewis, show that Latino voters
19 prefer different electoral outcomes than white voters in County elections. Further, in the County
20 Board contests analyzed by the parties’ experts, the Latino candidate of choice was routinely
21 defeated by the white candidate of choice. As such, the quantitative evidence overwhelmingly
22 supports a finding that elections in the County exhibit racially polarized voting.

23 To determine whether County elections exhibit polarization in voting preferences
24 between Latino and white voters, Plaintiffs’ expert Dr. Grumbach analyzed eleven County
25 elections featuring Latino or Latino-surnamed candidates between 2012 and 2018 using the EI
26 methodology. Ex. 9 (Grumbach Report) at 5. He relied on precinct-level election results
27 produced by the Washington Secretary of State’s office and precinct-level demographic data

1 reported in the Census Bureau’s ACS survey. *Id.* at 3. EI is routinely used by social scientists to
2 analyze racially polarized voting. Ex. 11 (Grumbach Rebuttal) at 4; *see also, supra* Part. I.A.

3 The estimates produced by Dr. Grumbach’s analyses showed that, on average, Latino
4 candidates received 66.1 percent of the Latino vote but only 21.5 percent of the white vote. Ex. 9
5 (Grumbach Report) at 5. Dr. Grumbach concluded that the 45.5-point gap in support for the
6 Latino candidate between white and Latino voters was statistically significant and that County
7 elections exhibited racially polarized voting. *Id.* at 5-6. Dr. Grumbach also utilized EI to analyze
8 the 2016 Presidential election, concluding that the election was “extremely racially polarized,”
9 with estimated white support for candidate Donald Trump at 70.0 percent, but estimated Latino
10 support at only 16.1 percent. *Id.* at 6. He then performed a robustness check on his EI analyses
11 by analyzing the same twelve elections using the ER methodology. *Id.* at 6. The results of his ER
12 analyses show that “there is a strong, positive relationship between a precinct’s Hispanic
13 population and the precinct’s share of votes for the Hispanic candidate,” providing increased
14 confidence that Latino and white voters prefer different electoral outcomes. *Id.* at 7.
15 Furthermore, Dr. Grumbach used multilevel regression with poststratification to analyze public
16 opinion in Yakima County and found that there are “meaningful differences in political
17 attitudes” between white and Latino residents of Yakima County. *Id.* at 7-8.³

18 Finally, in his rebuttal report, Dr. Grumbach conducted a meta-analysis of elections
19 identified by Dr. Lewis, which confirmed his conclusion that elections in Yakima County exhibit
20 racially polarized voting. Ex. 11 (Grumbach Rebuttal) at 4. The majority of the elections
21 analyzed by Dr. Lewis were conducted in smaller jurisdictions within Yakima County, and at
22 first glance his EI estimates appear to show little evidence of racially polarized voting. *Id.* at 3.
23 As Dr. Grumbach noted and Dr. Lewis conceded, however, analyses of smaller elections, like the
24 ones relied on by Dr. Lewis, suffer from “extreme uncertainty” as compared to larger elections
25 like the ones initially relied on by Dr. Grumbach. *Id.*; *see also* Ex. 14 (Lewis Dep.) at 147:3-8

26 ³ Dr. Grumbach’s finding that public opinion in Yakima County is racially polarized is
27 undisputed. Dr. Lewis did not offer any opinion in his report to rebut Dr. Grumbach’s analysis of
public opinion in Yakima County.

1 (“[A]ll else equal . . . if you had more precincts you would have less uncertainty as reported by
2 these methods.”). This is because the EI methodology “lack[s] the statistical power to ‘detect’
3 relationships between variables such as voter race/ethnicity and votes for a particular candidate,”
4 in smaller elections and thus is likely to produce “false negative[s].” Ex. 11 (Grumbach Rebuttal)
5 at 3.⁴ Dr. Grumbach’s meta-analysis corrected for this problem by aggregating the data from
6 each of the elections selected by Dr. Lewis. *Id.* at 3-4. This meta-analysis confirmed that Dr.
7 Lewis’s selection of elections also plainly exhibit racially polarized voting. *Id.* at 4.

8 Notably, Dr. Lewis omitted from his rebuttal report analysis of some of the most
9 probative elections for determining whether racially polarized voting exists in Yakima County,
10 including several large, County-wide elections featuring Latino candidates that suggest that
11 voting in Yakima County is racially polarized. *Id.*; *see also* Ex. 14 (Lewis Dep.) at 131:20-
12 132:10, 132:25-133:12. After reviewing Dr. Grumbach’s rebuttal report, which highlighted this
13 omission, Dr. Lewis concluded that his reliance on the Census Bureau’s Decennial Census
14 Surnames File⁵ to determine candidates’ ethnicity resulted in the omission of several races that
15 otherwise provided information about the existence of racially polarized voting in Yakima
16 County. *See* Ex. 14 (Lewis Dep.) at 119:15-17 (“I went back and I just thought like well, okay,
17 maybe I shouldn't have, you know, relied entirely upon this list.”). As such, Dr. Lewis took it
18 upon himself to analyze six additional Yakima County elections involving Latino-surnamed
19 candidates. *See* Ex. 15 (Lewis Extra Analysis); Ex. 14 (Lewis Dep.) at 65:15-25 (testifying that
20 he conducted the additional analysis “because I was curious . . . whether, you know, somehow I

21
22 ⁴ Importantly, the uncertainty that arises from analyzing smaller elections arises within the
23 analysis itself—the numbers are simply too small to produce reliable statistical estimates. *See*
24 Ex. 11 (Grumbach Rebuttal) at 3-4; Ex. 14 (Lewis Dep.) at 147:3-8. This type of uncertainty is
25 distinct from the uncertainty that forms the basis of Dr. Lewis’s critique, *see infra* Part I.C,
26 which is that the methodologies courts have relied upon for decades are insufficient to provide
27 reliable estimates of racially polarized voting regardless of the sample size.

⁵ The Decennial Census Surnames File “is a data release based on names recorded in the
decennial census. The product contains rank and frequency data on surnames reported 100 or
more times in the decennial census, along with Hispanic origin and race category percentages.”
United States Census Bureau, *Decennial Census Surnames File*,
<https://www.census.gov/data/developers/data-sets/surnames.html>.

1 had accidentally omitted any” elections).⁶ Unsurprisingly, and as Dr. Lewis acknowledged, his
2 supplemental EI analyses of larger County-wide elections, including the 2018 Legislative
3 District 15 Senate race featuring Plaintiff Bengie Aguilar, produced estimates that suggest voting
4 in Yakima County is racially polarized. *See* Ex. 14 (Lewis Dep.) at 197:8-198:1 (testifying
5 regarding the 2018 race: “It may be entirely indicative of that . . . but yeah, I think it’s suggestive
6 of that for sure.”).

7 It is therefore undisputed that the EI estimates produced by both experts for probative
8 elections featuring Latino or Latino-surnamed candidates support a finding that voting in Yakima
9 County is racially polarized.

10 **2. The Quantitative Evidence Overwhelmingly Supports a Finding that**
11 **White Voters in Yakima County Vote Sufficiently as a Bloc to Defeat**
Latino Voter’s Preferred Candidate

12 Because the white majority in Yakima County “votes sufficiently as a bloc to enable it –
13 in the absence of special circumstances – to defeat the minority’s preferred candidate,” *Gingles*,
14 478 U.S. at 51, the at-large system to elect County Commissioners denies Latino voters in
15 Yakima County “an equal opportunity to elect candidates of their choice.” RCW
16 29A.92.030(1)(b).

17 In every one of the County Board elections analyzed by the parties’ experts, the Latino
18 preferred candidate was defeated by white bloc voting. *See* Table 1.

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22 ⁶ Dr. Lewis also omitted from his analyses two probative, County-wide races in which Plaintiff
23 Susan Soto Palmer was a candidate. Ex. 9 (Grumbach Report) at 3; Ex. 15 (Lewis Extra
24 Analysis) Dr. Lewis testified that he excluded these races because although Soto is a Latino
25 surname, Palmer is not a Latino surname. *See* Ex. 14 (Lewis Dep.) 210:24-211:6. In light of this
26 omission, Defendants have attempted to dispute that Plaintiff Soto Palmer is Latina, on the
27 grounds that her second surname is Palmer. Ex. 4 (Def’s. Supp. Answers to Pls. First RFAs) at ¶
9. This is not a genuine dispute. Plaintiff Soto Palmer is Latina. Ex. 3 (Soto Palmer Decl.) ¶ 2-3.
Notably, Dr. Lewis admitted that Dr. Grumbach’s EI analyses of both races featuring Plaintiff
Soto Palmer produced estimates showing that it is more likely than not that voting in those
elections was racially polarized. Ex. 14 (Lewis Dep.) 200:9-201:2 (“I would agree that under the
assumptions of the model, the estimates suggest that [white and Latino voters preferred different
candidates], yes.”).

Table 1: Summary of Probative Elections Featuring Latino Candidates that Undisputedly Show Racially Polarized Voting⁷

Year	Election	Latino Candidate of Choice	White Candidate of Choice	Winning Candidate	EI Results
<i>Endogenous At-Large Board of County Board Races⁸</i>					
2018	BOCC District 3	Susan Soto Palmer	Norm Childress	Norm Childress	Ex. 11 (Grumbach Rebuttal) at 6.
2016	BOCC District 2	Debra Manjarrez	Ron Anderson	Ron Anderson	Ex. 10 (Lewis Rep.) at 71.
2008	BOCC District 2	Jesse Farias	Kevin Bouchey	Kevin Bouchey	Ex. 10 (Lewis Rep.) at 52
<i>Exogenous County-Wide Races</i>					
2018	Leg. District 15 Senator	Bengie Aguilar	Jim Honeyford	Jim Honeyford	Ex. 15 (Lewis Extra Analysis) at 5.
2016	Leg. District 14 Representative	Susan Soto Palmer	Norm Johnson	Norm Johnson	Ex. 11 (Grumbach Rebuttal) at 6.
2014	Leg. District 15 Senator	Gabriel Munoz	Jim Honeyford	Jim Honeyford	Ex. 15 (Lewis Extra Analysis) at 6.
2014	Leg. District 15 Representative	Teodora Martinez-Chavez	David V. Taylor	David V. Taylor	Ex. 11 (Grumbach Rebuttal) at 6.
2012	Leg. District 15 Representative	Pablo Gonzalez	David V. Taylor	David V. Taylor	Ex. (Grumbach Rebuttal) at 6.
2012	State Supreme Court Primary	Steve Gonzalez	Bruce O. Danielson	Bruce O. Danielson	Ex. (Grumbach Rebuttal) at 6.

Plaintiffs’ quantitative evidence of RPV is strengthened by the fact that only one Latino candidate, Jesse Palacios, has *ever* been elected to the County Board.⁹ *See infra* Part II.A. It is

⁷ For races analyzed by both Dr. Grumbach and Dr. Lewis, this table relies on Dr. Lewis’s analysis. Otherwise, the table relies on Dr. Grumbach’s analysis. Election results are drawn from official Yakima County Election Results, available at <https://www.yakimaCounty.us/206/Election-results-1974---current>. These results are judicially noticeable. ER 201. “Winning Candidate” refers to which candidate won in Yakima County.

⁸ Endogenous elections involve the particular office at issue, whereas exogenous elections involve other offices voted on by residents in the relevant jurisdiction. *See Sanchez v. State of Colo.*, 97 F.3d 1303, 1324-25 (10th Cir. 1996).

⁹ At the request of Defendants’ counsel, Dr. Lewis appears to have attempted to include an analysis of the 2002 County Commissioner District 3 race featuring Mr. Palacios in his report. *See* Ex. 10 (Lewis Rep.) at 52; Ex. 14 (Lewis Dep.) at 58:11-58:20. Instead, however, Dr. Lewis included his analysis of the 2008 County Commissioner District 2 race twice. Ex. 10 (Lewis Rep.) at 52. (displaying identical tables showing support for candidates Jesse Farias and Kevin Bouchey under the ‘County Commissioner, 3rd District (2002)’ heading and the ‘County Commissioner 2rd [sic] District’ (2008) heading.

1 clear that the white majority in Yakima County usually—if not always—defeats Latino preferred
2 candidates in County Board elections, and thus that Latino voters in Yakima County are “denied
3 an equal opportunity to elect candidates of their choice.” RCW 29A.92.030(1)(b).

4
5 **C. Defendants Do Not Contest That Elections in Yakima County Exhibit
6 Racially Polarized Voting.**

7 Defendants offer no evidence to dispute that voting in Yakima County elections is
8 racially polarized. Dr. Lewis expressly declined to opine as to the existence of racially polarized
9 voting in Yakima County. Ex. 14 (Lewis Dep.) at 73:17-22, 91:25-92:12, 97:21-98:3, 98:4-16,
10 189:21-24, 203:14-23. Dr. Lewis did not contest the results of Dr. Grumbach’s analysis. *See id.*
11 at 189:12-20 (testifying that he does not dispute that Dr. Grumbach correctly applied the
12 ecological regression and ecological inference methodologies in his report); *see also id.* 193:5-
13 194:10. Further, Dr. Lewis admitted that estimates derived from his own ER and EI analyses of
14 Yakima County elections show that Latino and white voters in the County prefer different
15 electoral outcomes. *See, e.g.,* Ex. 10 (Lewis Rep.) at 47 (acknowledging that his own ER and EI
16 models estimate that Latino voters preferred losing candidate Manjarrez while white voters
17 preferred winning candidate Anderson in the 2016 County Commissioner District 2 election); *see*
18 *also* Table 1; Ex. 14 (Lewis Dep.) at 165:2-166:18, 172:19-24, 178:15-179:1, 183:5-185:14,
19 200:9-17, 200:18-201:2, 214:22-216:19, 218:19-219:14, 180:12-24, 197:8-198:1, 198:2-20,
20 200:1-8, 216:24-218:15 (admitting that the EI analyses of the elections contained in Table 1
21 suggest that voting in Yakima County is racially polarized).

22 Instead, Defendants merely contend that, as a general matter, the quantitative methods
23 used by Plaintiffs’ expert cannot provide *certainty* that voting in Yakima County is racially
24 polarized. *See* Ex. 10 (Lewis Rep.) at 47. This claim cannot be taken seriously. As outlined
25 above, courts routinely rely on the quantitative methodologies used by Plaintiffs’ expert in this
26 case to establish racially polarized voting. *See* Part I.A. Further, a “court need not insist on
27 mathematical exactitude in assessing racial polarization.” *Luna*, 291 F. Supp. 3d at 1125
(rejecting defendants’ assertion that lack of certainty in quantitative methodologies precluded a

1 finding that voting was racially polarized and crediting plaintiffs’ expert’s analyses of racial
2 polarization using ecological regression and ecological inference).¹⁰ Indeed, “[u]ncertainty is
3 inherent to any inferential statistical analysis. But the presence of uncertainty does not mean we
4 cannot draw conclusions from statistical results.” Ex. 11 (Grumbach Rebuttal) at 2. Defendants’
5 expert’s disagreement with the accepted method employed by courts does not constitute a
6 *genuine* dispute of any material fact.

7 In addition, Defendants’ own expert agrees that the estimates Plaintiffs’ expert produced
8 using the standard methodologies of EI and ER are probative for measuring racially polarized
9 voting.¹¹ *See, e.g.*, Ex. 14 (Lewis Dep.) 163:3-9 (testifying that the informational value of EI and
10 ER for measuring racially polarized voting should not be disregarded as they “provide . . .
11 estimates of the degree of difference in the voting for different candidates by members of
12 different ethnic groups”). Dr. Lewis also admitted that ecological inference is commonly used
13 and relied on in voting rights litigation. Ex. 14 (Lewis Dep.) at 152:12-17, 158:4-16. Further, *Dr.*
14 *Lewis himself* has used ER and EI in his past work as an expert to draw conclusions as to
15 whether racially polarized voting exists. *Id.* at 154:14-25, 156:9-14; *see also id.* at 162:3-163:9
16 (acknowledging the utility of EI methods in analyzing whether racially polarized voting exists).

17 In sum, there is no dispute that the established quantitative methods used by Plaintiffs’
18 expert show that voting in Yakima County is racially polarized. Plaintiffs are therefore entitled to
19 summary judgment.

21 ¹⁰ Notably, in at least two cases in which Dr. Lewis has testified, courts have expressly rejected
22 his assertion that ecological inference is too unreliable to support a finding of racially polarized
23 voting. *See Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385, 454, Cal. Rptr. 3d 437
(2020); *Pico Neighborhood Ass’n v. City of Santa Monica*, 2019 WL 10854474 at *10 (Cal. Sup.
24 Ct. Sept. 13, 2019) *reversed on other grounds*, 51 Cal. App. 5th 1002, 265 Cal. Rptr. 3d 530
(2020) *review granted*, 474 P.3d 635 (Cal. 2020).

25 ¹¹ Dr. Lewis does not propose that these analyses provide an alternative methodology for
26 analyzing the existence of racially polarized voting. *Cf. Luna*, 291 F. Supp. 3d at 1125 (rejecting
27 expert testimony regarding the uncertainty of EI and ER in part because expert did not provide
alternative means of analyzing RPV). Instead, he merely contends that these analyses illustrate
the uncertainty underlying the standard methodologies utilized by experts and courts in analyzing
the existence of racially polarized voting. Ex. 10 (Lewis Rep.) at 47; Ex. 14 (Lewis Dep.) at
155:9-19.

1 **D. The Undisputed Qualitative Evidence Demonstrates that Elections In**
2 **Yakima County Exhibit Racially Polarized Voting.**

3 In addition to quantitative evidence, courts analyzing racially polarized voting under the
4 federal VRA often “look to [non-statistical] evidence . . . since ‘[t]he experiences and
5 observations of individuals involved in the political process are clearly relevant to the question of
6 whether the minority group is politically cohesive.’” *Luna*, 291 F. Supp. 3d at 1126 (quoting
7 *Sanchez v. Bond*, 875 F.2d 1488, 1494 (10th Cir. 1989)); *Sanchez v. State of Colo.*, 97 F.3d 1303,
8 1321 (10th Cir. 1996); *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.*, 4 F.3d 1103, 1126,
9 1128 (3d Cir. 1993) (permitting plaintiffs to rely on lay testimony to demonstrate that particular
10 minority candidates were the minority-preferred candidates for analysis of racial polarization);
11 *Bone Shirt*, 336 F. Supp. 2d at 1035-36 (relying on lay testimony from community leaders,
12 elected and local officials, and candidates to demonstrate racial polarization); *Uno v. City of*
13 *Holyoke*, 72 F.3d 973, 989 (1st Cir. 1995) (“a court has a duty to ponder all available evidence
14 concerning racially polarized voting that promises to cast light on the factors at work in a
15 particular electoral scheme”). Plaintiffs’ undisputed non-statistical evidence confirms that
16 Yakima County elections exhibit racially polarized voting.

17 **1. Latino Candidates Face Hostility from White Residents in Yakima County.**

18 Racial polarization can be inferred from a majority group’s hostile response to candidates
19 belonging to the minority group. *See Bone Shirt*, 336 F. Supp. 2d at 1035-36 (finding as evidence
20 of racial polarization the fact that “[t]he reception [a Native American candidate] received
21 depended on her location” where “[t]he white response to her candidacy in towns bordering
22 reservations . . . was more hostile”). One way such hostility manifests is through minority
23 candidates’ decisions to de-emphasize their minority status when campaigning. *See, e.g., U.S. v.*
24 *Alamosa County, Colo.*, 306 F. Supp.2d 1016, 1025 n.28 (D. Colorado 2004) (finding relevant
25 that candidate “chose to ‘de-Latinize’ his campaign in order to appeal to the largest group of
26 voters” and another “recognized that it would be ‘political suicide’ to emphasize ethnicity”).
27

1 Plaintiffs' experience campaigning in Yakima County provides substantial evidence that
2 white voters respond to Latino candidates with hostility. Plaintiff Gutierrez often experienced a
3 hostile reception when campaigning in predominantly white neighborhoods of the City of
4 Yakima. Ex. 2 (Gutierrez Decl.) at ¶ 10. Likewise, Plaintiff Soto Palmer experienced hostility in
5 predominantly white towns during her campaign for the County Board. Ex. 3 (Soto Palmer
6 Decl.) at ¶ 12. That reception was severe enough that white volunteers for Plaintiff Soto Palmer's
7 campaign took over doorbelling in those neighborhoods out of concern for her personal safety.
8 *Id.* In other words, Ms. Gutierrez and Ms. Soto Palmer were forced to not just to de-emphasize
9 their ethnicity while campaigning, *cf. Alamosa County*, 306 F. Supp. 2d at 1025 n.28, but Ms.
10 Soto Palmer had to actually replace herself with white campaign surrogates for fear of her safety.

11 Former Commissioner Jesse Palacios, the only Latino ever elected to the County Board,
12 also de-emphasized his ethnicity while campaigning. Mr. Palacios testified that he refrained from
13 campaigning in Spanish because he thought it would have negatively affected his campaign. Ex.
14 16 (Palacios Dep.) at 42:7-19. Nonetheless, Mr. Palacios's candidacy was still met with hostility
15 by white voters. Mr. Palacios testified that one of his volunteers relayed a message from a
16 constituent that he would not vote for Palacios because he was a "[expletive] Mexican." Ex. 16
17 (Palacios Dep.) at 51:12-52:25.

18 **2. The Latino Community Is Cohesive and Has Different Political Preferences**
19 **Than the White Majority Voting Population.**

20 Plaintiffs' undisputed testimony demonstrates that the Latino community is cohesive and
21 has different political preferences than the white majority. Ex. 1 (Aguilar Decl.) at ¶ 17 ("Based
22 on my three runs for office and volunteering on other political campaigns, I believe that Latino
23 and white voters in Yakima County generally prefer different candidates."); Ex. 3 (Soto Palmer
24 Decl.) at ¶ 16 ("Based on my experience running for office twice and volunteering on other
25 political campaigns, I believe that Latino and white voters generally prefer different candidates.
26 Indeed, I personally know people who decide not to vote for candidates for the Yakima County
27 Board of Commissioners because they felt that no one represented them on the ballot. People

1 simply throw away their ballots because they have no expectations that a candidate will represent
2 them, since no one who identifies as Latino has been elected in so many years.”). Latino
3 residents in Yakima also have a demonstrated history of organizing and advocating around their
4 common interest and shared political preferences. *See infra* Part II.B.5.c.

5 Further, testimony from members of and candidates for the County Board confirms that
6 many Latino residents in Yakima County enjoy a common bond and background, and as such are
7 more likely to prefer candidates who are Latino. *See, e.g.*, Ex. 12 (Baker Dep.) at 248:2-9
8 (testifying to statement by the late Commissioner Norm Childress that “Latinos may want to
9 have a Latino represent them”); Ex. 17 (Manjarrez Dep.) at 144:11-145:23 (testifying that based
10 on her business experience working with Latino clients, she believes that Latino voters likely
11 feel more comfortable with a Latino candidate who shares the same culture and thought
12 processes); *id.* at 146:15-147:2 (testifying that likewise a white voter may prefer a white
13 candidate because that candidate is more likely to “represent their values, [the] same kind of
14 values”); Ex. 13 (Anderson Dep.) at 141:7-17 (describing the background shared by Latino
15 farmworkers in Yakima County, including “their lifestyle, their heritage, their culture . . . their
16 mindsets and their attitudes, where they came from, the history”). Indeed, Commissioner Linde
17 testified that the divide between Latino and white residents in Yakima County has led to a
18 mutual suspicion between the groups. Ex. 18 (Linde Dep.) at 171:20-172:8 (“some white people
19 may be, you know, suspicious of Latinos, and I’ve seen it in reverse where the Latinos are
20 suspicious of white people.”). Such mutual suspicion is likely to make it difficult for white-
21 preferred candidates to effectively represent the Latino community.

22 In addition, testimony from Commissioners about their experiences running for the
23 County Board demonstrates that the at-large system enables a white majority concentrated in one
24 district to overwhelm the preferences of Latino voters in other districts. Former Commissioner
25 Leita testified that “District 1 has historically had stronger voter turnout and can therefore
26 influence or even overrule the voters of the district that the candidates come from.” Ex. 19 (Leita
27 Dep.) 45:17-20. Specifically, he attributed Commissioner Anderson’s 2016 win over Debra

1 Manjarrez to his strength in District 1 rather than his strength as a candidate. *Id.* at 143:2-25.
2 According to recent County registration data, only 14 percent of registered voters in District 1
3 are Latino, compared to 33 percent in District 2 and 43 percent in District 3. Ex. 20 (Yakima
4 County Voter Stats); *see also* Ex. 49 (Harless Decl.). Mr. Leita’s testimony strongly suggests that
5 the white majority District 1 votes sufficiently as a bloc to overwhelm the choice of voters in
6 other districts. At the very least, it suggests that Commissioners and candidates believe this to be
7 the case and may therefore be incentivized to campaign more heavily in white majority parts of
8 Yakima County.

9 * * *

10 The undisputed quantitative and qualitative evidence demonstrates that elections in
11 Yakima County are racially polarized. As such, Plaintiffs are entitled to summary judgment on
12 the first element of their claim under the WVRA.

13
14 **II. Latino Residents Do Not Have an Equal Opportunity to Elect Candidates of Choice
as a Result of Vote Dilution.**

15 The second element Plaintiffs must prove is that the County’s at-large system for electing
16 County Commissioners dilutes the voting rights of Latinos and thus deprives them of the equal
17 opportunity to elect candidates of their choice. *See* RCW 29A.92.020. Proof of discriminatory
18 intent is not required. RCW 29A.92.030(5). Nor does the WVRA demand an exhaustive “totality
19 of the circumstances” review.¹² Instead, the WVRA simply instructs that vote dilution “be
20 assessed pragmatically, based on local conditions.” RCW 29A.92.030(2).

21
22 ¹² Indeed, the Washington Senate and House both rejected floor amendments to the WVRA that
23 would have required courts to engage in a version of the totality-of-circumstances inquiry
24 articulated under the federal VRA in *Gingles* and to consider “at a minimum” a version of each
25 of the Senate Factors, the specific factors named by the Senate Committee on the Judiciary for
26 courts to consider when doing a totality-of-circumstances analysis. *See* S. Amendment No. 334
27 of Sen. Fortunado (Jan. 17, 2018) (rejected by the Senate), <http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Amendments/Senate/6002-S%20AMS%20BAUM%20S3979.1.pdf>; H.R. Amendment No. 1104 of Rep. Irwin (Feb. 27, 2018) (rejected by House of Representatives), <http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Amendments/House/6002-S.E%20AMH%20IRWI%20H4176.2.pdf>; *see also Gingles*, 478 U.S. at 36.

1 **A. Yakima County’s At-Large Election System Dilutes the Votes of Latino**
2 **Residents Depriving Them Equal Opportunity to Elect Candidates of Their**
3 **Choice.**

4 The U.S. Supreme Court has long recognized that at-large election systems create a grave
5 risk of diluting minority voting rights and are almost certain to do so in jurisdictions with racially
6 polarized electorates. *See Gingles*, 478 U.S. at 48.¹³ The Yakima County Board uses a top-two
7 primary and an at-large election system to elect members of the County Board. *See* Ex. 4 (Defs.
8 Supp. Answers to Pls. First RFAs) at ¶ 30; RCW 29A.92.010 (defining at-large elections to
9 include a system of electing members of governing body in which voters of the entire
10 jurisdiction elect candidates to the body). Thus, because voting in Yakima County is racially
11 polarized, *see supra* Part I, the County Board’s at-large system is almost certain to dilute Latino
12 voting power.

13 Indeed, the white majority in Yakima County, “by virtue of its numerical superiority,
14 regularly defeat[s] the choices” of Latino voters. *Gingles*, 478 U.S. at 48. The white electorate’s
15 “numerical superiority” in Yakima County is a function of the undisputed demographics of the
16 County: Latino voters are 31.4 percent of the County’s citizen voting-age population whereas
17 white voters are 60.5 percent, according to the latest ACS estimates. Ex. 4 (Defs. Supp. Answers
18 to Pls. First RFAs) at ¶¶ 53-54.¹⁴ Thus, under Yakima County’s at-large system, no candidate
19 favored by Latino voters can win a seat on the County Board unless that candidate also receives
20 sufficient support from white voters. As proven exhaustively above, this rarely, if ever, occurs in
21 Yakima County. As such, local conditions in Yakima County virtually guarantee defeat of Latino
22 candidates of choice, absent extraordinary circumstances. *See, e.g.*, Ex. 21 (Elliott Dep.) at
23 118:9-14.

24
25

¹³ Part II.B.2, *infra*, further describes additional dilutive aspects of Yakima County’s election
26 system.

27 ¹⁴ In their supplemental RFA responses, Defendants stated that “to the extent this request
acknowledges that the quoted figure is an estimate, Defendants admit that the estimate is
accurately stated.” *Id.* at ¶¶ 53-54; *see supra* note 2. Since all ACS data are estimates, this is an
admitted and undisputed fact.

1 Only one Latino candidate, Jesse Palacios, has ever been elected to the County Board.
2 Ex. 16 (Palacios Dep.) at 8:4-13, 58:17-19; Ex. 13 (Anderson Dep.) at 68:3-7; Ex. 19 (Leita
3 Dep.) at 111:3-7, 111:17-19; Ex. 17 (Manjarrez Dep.) at 53:23-54:1; Ex. 22 (Bouche Dep.) at
4 83:15-21; Ex. 21 (Elliott Dep.) at 105:12-19. And Mr. Palacios was last elected almost 20 years
5 ago—meaning there has not been any Latino commissioner on the County Board for almost 16
6 years. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶ 139.

7 Mr. Palacios also testified that his election was unique in a number of ways. For instance,
8 Mr. Palacios said he was endorsed by a group of local mayors when he ran for the County Board,
9 but he “ha[s] not seen that again . . . That was kind of like a once—one and only.” Ex. 16
10 (Palacios Dep.) at 80:3-81:7. He was also endorsed by a group of police chiefs, which “ha[s]
11 never seen the police chiefs do . . . again” for a County commissioner. *Id.* at 81:7-15. He also
12 testified that he won his election after boosting his name recognition in the County by *subduing a*
13 *wild black bear* during the middle of a community celebration in Sunnyside. *Id.* at 35:10-37:20.
14 Given these facts, it is reasonable to conclude that there were special circumstances surrounding
15 Mr. Palacios’s election to the County Board. *See, e.g., Gingles*, 478 U.S. at 57 (noting that “the
16 success of a minority candidate in a particular election does not necessarily prove that the
17 [jurisdiction] did not experience polarized voting” particularly when “special circumstances . . .
18 may explain minority success in a polarized contest”).

19 Moreover, Defendants claim it is possible that no Latino candidate has ever been elected
20 to the County Board. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶ 140. It is unclear how
21 that position helps their case, but it also does not create a material dispute. Whether the number
22 of Latino candidates elected to the County Board is zero or one, the law clearly favors a finding
23 of vote dilution. *See, e.g., RCW 29A.92.030(4); Montes*, 40 F. Supp. 3d at 1414; *Large v.*
24 *Fremont Cty., Wyo.*, 709 F. Supp. 2d 1176, 1221 (D. Wyo. 2010) (“The Court finds it significant
25 that only one Indian [candidate] . . . has ever been elected to the County Commission”);
26 *Benavidez*, 638 F. Supp. 2d at 727-728 (finding this factor weighed in Plaintiffs’ favor where
27 only one Latino candidate had ever been elected, and no current members were Latino).

1 The lack of successful Latino candidates is not because no such candidates run for
2 election to the County Board. It is undisputed that in the last five years alone, at least three
3 Latino candidates have run for positions on the County Board, but none were elected. Ex. 4
4 (Defs. Supp. Answers to Pls. First RFAs) at ¶ 138. Further, several lay witnesses testified that the
5 Latino population deserves representation on the County Board. *See, e.g.*, Ex. 12 (Baker Dep.) at
6 161:2-3; Ex. 17 (Manjarrez Dep.) at 87:14-25 (“I think it’s important that we get to a point that
7 there’s a Hispanic on the County commission”). Commissioner Anderson acknowledged that
8 Latino candidates have not been elected in proportion to their share of the population. Ex. 13
9 (Anderson Dep.) at 68:12-15; *see also* Ex. 22 (Bouche Dep.) at 85:19-22 (agreeing that Latino
10 residents have been less represented on the County Board than white residents); Ex. 21 (Elliott
11 Dep.) at 105:23-106:5 (agreeing Latinos have not won seats to the County Board proportional to
12 their share of the population). In addition, former Commissioner Leita agreed that the County’s
13 election system should be changed to a single-member district system instead of at-large. Ex. 19
14 (Leita Dep.) at 44:6-45:20 (stating that current “District 1 has historically had a stronger voter
15 turnout and can therefore influence or even overrule the voters of the district that the candidates
16 come from” in the general election); 131:19-132:19; 115:8-11 (noting that it “would be wrong”
17 to have an election system with the clear effect of excluding minority representation).

18 Finally, in addition to the lack of Latino candidates elected to the County Board, no
19 Latino candidates have ever been appointed to it either. Ex. 17 (Manjarrez Dep.) at 54:10-13.
20 Commissioner Anderson conceded that none of the finalists in consideration for the two most
21 recent County Board appointments were Latino. Ex. 13 (Anderson Dep.) at 233:5-7; 233:24-
22 234:4. The County Board has also appointed an abysmally low number of Latinos to various
23 boards within the County. For example, no person of color has ever been appointed to the
24 County Board of Equalization, Ex. 23 (Board Appointments) at *YC1408*, which hears appeals to
25 property tax assessments, and makes important decisions on behalf of the community. Ex. 12
26 (Baker Dep.) at 201:20-22. Similarly, from 1996 to at least 2018 (the most recent data provided
27

1 by the Defendants), the Planning Commission had zero Latino members. Ex. 23 (Board
2 Appointments) at YC1457.

3 In sum, under these undisputed local election conditions, Yakima County's at-large
4 election system clearly dilutes the votes of its Latino residents and thereby deprives them of
5 equal opportunity to elect candidates of their choice.

6 **B. Latino Residents of Yakima County Do Not Have an Equal Opportunity to**
7 **Participate in the Political Process or Elect Candidates of Their Choice.**

8 The WVRA sets out a list of factors that are probative, "but *not necessary*," to prove a
9 violation of the statute. RCW 29A.92.030(6) (emphasis added). These factors are similar to the
10 "totality of the circumstances" analysis required under Section 2 of the federal Voting Rights Act
11 ("VRA"), where the focus is on "the impact of the contested structure or practice on minority
12 electoral opportunities . . ." *See, e.g. Gingles*, 478 U.S. at 36-37, 44.¹⁵ The probative factors
13 expressly identified by the WVRA include:

14 [1] the history of discrimination, [2] the use of electoral devices or other voting
15 practices or procedures that may enhance the dilutive effects of at large elections,
16 [3] denial of access to those processes determining which groups of candidates will
17 receive financial or other support in a given election, [4] the extent to which
18 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 [5] the use of overt or subtle racial appeals
in political campaigns.

19 RCW 29A.92.030(6). Because the probative factors are not necessary to prove a violation of the
20 WVRA, "there is no requirement that any particular number of factors be proved, or that a
21 majority of them point one way or the other." *Gingles*, 478 U.S. at 45 (internal quotation marks
22 omitted); RCW 29A.92.030(6).

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24
25 ¹⁵ The WVRA explicitly mentions that "[t]he legislature intends for this chapter to be consistent
26 with federal protections that may provide a similar remedy for minority groups." RCW
27 29A.92.005. Thus, Plaintiffs refer to federal case law on the "totality of the circumstances"
analysis under Section 2 of the Voting Rights Act as relevant and persuasive authority in their
discussion of the probative factors under the WVRA.

1 In this case, there is no genuine dispute that Plaintiffs can easily establish factors 1, 2, 4,
2 and 5.¹⁶ In fact, at the March 15, 2021 hearing held before this Court, counsel for Defendants
3 agreed that much of the evidence relevant to the probative factors is not disputed. Mr. Safarli
4 stated:

5 It's a record that I don't think is going to be largely in dispute when it comes to the
6 subject matter of these depositions . . . I don't—I don't really have a problem with
7 stipulating to the other factual parts of the record, which is sometimes referred to
8 in the federal case law as the Senate Factors. And it's adopted in the Washington
9 Voting Rights Act as well. I think the testimony that has been given over the past
10 two months is by and large stipulated . . . when it comes to this fact witness
11 testimony, we could stipulate to that.

12 Ex. 24 (March 15, 2021 Hearing Trans.) at 10:25-12:12.

13 The undisputed probative factors strongly support a finding that the County's election
14 system denies Latino voters an equal opportunity to participate in violation of the WVRA.

15 **1. Yakima County Has a History of Discrimination Against Latino
16 Residents (Probative Factor 1).**

17 Under the federal VRA, an analysis of the history of discrimination requires an
18 examination of “the extent of any history of official discrimination in the state or political
19 subdivision that touched the right of the members of the minority group . . . to participate in the
20 democratic process.” *Gingles*, 487 U.S. 36-37 (quoting S. Rep. No. 97-417, at 28). The analysis
21 is meant to consider “not only [] present discrimination, but [] the vestiges of discrimination
22 which may interact with present political structures to perpetuate a historical lack of access to the
23 political system.” *Luna* 291 F. Supp. 3d at 1136 (internal quotation marks and citations omitted).
24 The text of the equivalent probative factor under the WVRA is broader, simply requiring
25 consideration of “the history of discrimination.” RCW 29A.92.030(6). Here, there is ample and
26 undisputed evidence that Latino residents in Yakima County have faced discrimination and a
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¹⁶ Probative Factor 3 is not applicable in this case, because Yakima County does not appear to have slating or other processes to determine which groups of candidates will receive financial or other support in a given election. *See, e.g., Luna*, 291 F. Supp. 3d at 1136 (finding that Senate Factor 4 under the federal VRA favored neither party where no evidence of a candidate slating system was presented).

1 lack of access to the political system, including voting-related discrimination, on a number of
2 occasions.

3 First, it is undisputed that in 2004, Yakima County entered into a consent decree with the
4 United States Department of Justice after being sued for failing to provide Spanish-language
5 voting materials and voter assistance as required by Section 203 of the federal VRA.¹⁷ Ex. 4
6 (Def. Supp. Answers to Pls. First RFAs) at ¶ 161; Ex. 25 (Fisher Dep.) at 39:13-16; *U.S. v.*
7 *Yakima County*, 04-cv-3072, ECF No. 1 (E.D. Wash. 2004). Kathy Fisher, Elections Manager for
8 Yakima County, admitted that prior to the filing of the lawsuit, Yakima County failed to provide
9 complete and accurate Spanish translations of all election materials provided to the public, did
10 not adequately provide bilingual services at the Elections Office or at polling places, did not
11 translate and provide Spanish-language election materials at the same time as English
12 documents, and did not provide adequate materials related to voter registration and voting in
13 Spanish. Ex. 25 (Fisher Dep.) at 40:3-7; 48:4-9; 44:1-4; 48:14-50:17.¹⁸ Ms. Fisher also agreed
14 that the County’s failure to provide these materials and assistance harmed voters with limited
15 English proficiency. *Id.* at 43:13-22; 44:5-13; *see also* Ex. 16 (Palacios Dep.) at 58:2-16. Yakima
16 County is still covered by Section 203 of the VRA today, and “still operate[s] as if [it is] covered
17 by a Consent Decree.” Ex. 25 (Fisher Dep.) at 52:9-11; 76:5-12.

18 Second, “the Yakima County Auditor persisted in administering literacy tests to Latino
19 voters for several years after the passage of the Voting Rights Act of 1965, despite having been
20 directed by the Washington Attorney General to discontinue the practice.” *See Montes*, 40 F.

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24 ¹⁷ Yakima County is covered under Section 203 of the Voting Rights Act because the U.S.
25 Census determined that more than five percent of the citizens of voting age in the County are
26 Spanish speakers who do not speak or understand English well and that have an illiteracy rate
27 higher than the national illiteracy rate. Ex. 25 (Fisher Dep.) at 38:5-17; *see Covered*
Jurisdictions, U.S. Dept. of Justice, <https://www.justice.gov/crt/file/927231/download>.

¹⁸ Ms. Fisher worked in the County’s Elections Office at the time the 2004 lawsuit was filed. Ex.
25 (Fisher Dep.) at 39:17-40:2.

1 Supp. 3d at 1409; *Oregon v. Mitchell*, 400 U.S. 112 (1970).¹⁹ This practice is clear evidence of
2 discrimination by Yakima County against Latino voters.

3 In *Montes*, a federal court held that the at-large election system used by the City of
4 Yakima violated Section 2 of the federal VRA because it diluted the votes of Latino residents in
5 Yakima City. *Montes*, 40 F. Supp. 3d. The court found these two examples relevant to
6 establishing a history of discrimination under the federal VRA. *Id.* at 1409-10. In particular, the
7 court found that the consent decree directly impacted the ability of a large number of Latino
8 voters to participate in the political process. *Id.*²⁰ As the court stated:

9 As recently as ten years ago, Yakima County was sued by the federal government
10 for failing to provide Spanish-language voting materials and voter assistance to
11 Spanish-speaking voters. These proceedings terminated in the entry of a consent
12 decree. Although Yakima County did not admit liability, it did agree to take several
13 steps to ensure its future compliance with Section 203, including the
14 implementation of a “Bilingual Election Program” managed by a full-time
15 “Program Coordinator.”

16 *Id.*

17 In addition to the evidence relied on by the *Montes* court, there are a number of other
18 sources confirming a history of discrimination in Yakima County. The Yakima County Board of
19 Commissioners itself has acknowledged the County’s history of discrimination in a series of
20 annual proclamations from 2014 to 2019 titled “Yakima County STAND AGAINST RACISM
21 PROCLAMATION.” *See, e.g.*, Ex. 26 (2019 Racism Proclamation). As an example, the 2019
22 proclamation states that “our shared goal is to advocate for increased awareness of the lasting
23 and negative effects of racism in our communities, institutions[,] and personal relationships” and
24 “the persistence and pervasiveness of racism divides our community and keeps individuals from
25 achieving success in education, economics, employment, and quality of life . . . in recognition of

26 ¹⁹ The Court can also take judicial notice of this fact pursuant to Wash. Rule ER 201, as it is
27 generally known within the territorial jurisdiction of this Court and capable of accurate and ready
determination by resort to accurate sources, including a federal court decision. *See, e.g., Montes*,
40 F. Supp. 3d 1377.

²⁰ In fact, the *Montes* court found that the history of discrimination factor weighed “slightly” in
Plaintiffs’ favor based solely on the two examples provided above about the administration of
literacy tests and the 2004 Section 203 VRA lawsuit against Yakima County. *Montes*, 40 F.
Supp. 3d at 1410. Plaintiffs present additional evidence here.

1 the impact that racism has on the health and well-being of our community, we, the Yakima
2 County Commissioners, do hereby proclaim the 25-28th day of April 2019 as YWCA Yakima
3 STAND AGAINST RACISM DAY.” *Id.* The proclamation was placed on the agenda for the
4 April 23, 2019 County Board meeting, and signed by then-commissioners Mike Leita, Norm
5 Childress, and Ron Anderson. *Id.*; Ex. 27 (Apr. 23, 2019 Agenda) at YC016846. Notably, there
6 is no evidence that the County Board took any concrete or substantive steps to implement the
7 promises of this proclamation.

8 Numerous witnesses have testified to the history of discrimination against Latinos in
9 Yakima County. For example, former Commissioner Rand Elliott stated that there has been
10 discrimination in the County “[p]robably since the first settlers came.” Ex. 21 (Elliott Dep.) at
11 110:25-111:5. Former County Board candidate Debra Manjarrez stated, “I would generally say
12 yes, I believe there’s been racial discrimination in the past.” Ex. 17 (Manjarrez Dep.) at 68:14-
13 20; *see also id.* at 78:15-79:4 (stating that people racially stereotype Latinos by assuming “they
14 barbecue goats in their backyard”). And these are by no means isolated statements. *See, e.g.*, Ex.
15 22 (Bouchey Dep.) at 91:1-4 (“Unfortunately, racial discrimination exists everywhere including
16 Yakima County.”); *id.* at 92:16-19 (acknowledging there is racial tension in Yakima County);
17 Ex. 18 (Linde Dep.) at 169:12-18 (acknowledging that members of the Latino community have
18 suffered from a history of discrimination in Yakima County); Ex. 13 (Anderson Dep.) at 189:15-
19 20 (same).

20 Further, Yakima County has a well-documented history of racial discrimination towards
21 the Latino community related to immigration. It is undisputed that, according to the expert report
22 of Dr. Luis Fraga of the University of Notre Dame submitted by the Plaintiffs in *Montes* (“Fraga
23 Report”), substantial Latino immigration to Yakima County began in 1942 with the
24 establishment of the Bracero Program, which legally brought Mexican laborers to work in
25 agriculture and other American industries during World War II. Ex. 28 (Fraga Report) at 5-6; *see*
26 *also* Ex. 4 (Def. Supp. Answers to Pls. First RFAs) at ¶ 148. Mexican migrant laborers planted
27 roots in Yakima County over time and established permanent communities throughout the

1 County. Ex. 4 (Def. Supp. Answers to Pls. First RFAs) at ¶ 149.²¹ But, according to the Fraga
2 report, the history of racial and ethnic relations between Latino and white communities in
3 Yakima County was often contentious and combative. *Id.* at ¶ 150. In addition, braceros who
4 worked in the Pacific Northwest, including Yakima County, “were especially prone to
5 discrimination in wages, dehumanizing working conditions, and racial animosity,” and
6 organizing activities by Latino farmworkers were historically met with harsh retaliation by white
7 growers. *Id.* at ¶¶ 151-52.

8 Defendants thus admit that, according to the Fraga report, “[t]he Yakima Valley has a
9 long history of racial animus and hostile responses by Whites to minority groups seeking to gain
10 more power or better position.” *Id.* at ¶ 153. Defendants also admit that, according to a 2015
11 report by the Yakima Herald-Republic, the “cultural conflict” between Latino and white
12 communities in Yakima is “apparent in public where Latinos and non-Latinos gather at different
13 parks and many businesses, and on the Internet, where forums and comment boards for local
14 audiences can often be loaded with xenophobic vitriol.” *Id.* at ¶ 156.²² Commissioner Ron
15 Anderson conceded that Latinos in Yakima County may face the generalization that they are
16 illegal immigrants, and that he has heard Latino residents referred to as “illegal aliens” and
17 “illegals.” Ex. 13 (Anderson Dep.) at 118:12-119:4; *see also* Ex. 21 (Elliott Dep.) at 29:15-21.
18 Commissioner Anderson also admitted that he may have used those terms to refer to Latinos, *id.*
19 at 119:5-13, as did recent ex-Commissioner Rand Elliott. Ex. 21 (Elliott Dep.) at 29:22-24. In
20 addition, Mr. Anderson agreed that there is still racial tension in Yakima County. Ex. 13
21 (Anderson Dep.) at 196:7-10; *see also* Ex. 18 (Linde Dep.) at 171:20-172:8 (noting that white
22 and Latino residents are “suspicious” of each other). A recent example of the continuing racial

23 ²¹ Defendants agree that, according to estimates created by the Migration Policy Institute
24 (“MPI”) of the total unauthorized immigrant population (*i.e.*, the total undocumented population)
25 in each County in the United States, the total unauthorized immigrant population (*i.e.*, the total
undocumented population) in Yakima County is 21,000, 98 percent of whom were born in
Mexico and Central America. Ex. 4 (Def. Supp. Answers to Pls. First RFAs) at ¶¶ 71-72.

26 ²² *See* Mike Faulk, *Yakima’s Cultural Divide*, YAKIMA HERALD (Oct. 16, 2015),
27 [https://www.yakimaherald.com/news/elections/yakima_city_council/yakimas-cultural-
divide/article_590c92b4-7416-11e5-949e-dbf62c94960.html](https://www.yakimaherald.com/news/elections/yakima_city_council/yakimas-cultural-divide/article_590c92b4-7416-11e5-949e-dbf62c94960.html).

1 tension in Yakima County is outlined in the federal lawsuit brought by the Selah Alliance for
2 Equality against the City of Selah, regarding the City’s removal of signs promoting racial
3 equality and protesting city policies. *See Selah Alliance for Equality v. City of Selah*, 1:20-cv-
4 03228, ECF No. 1 (Complaint) (E.D. Wash. 2020).

5 Finally, as the Ninth Circuit made clear in *Gomez v. City of Watsonville*, 863. F.2d 1407,
6 1418-19 (9th Cir. 1998), courts can consider “any relevant history or effects of discrimination
7 committed by others,” and not just discrimination by the defendant political subdivision itself.
8 Here, it is undisputed that “on August 22, 2014, the U.S. District Court for the Eastern District of
9 Washington struck down the pre-2015 election system used to elect the Yakima City Council,
10 finding that it had a ‘dilutive effect . . . on Latino votes’” and resulted in “City Council elections
11 [that] are not ‘equally open to participation’ by members of the Latino minority.” Ex. 4 (Defs.
12 Supp. Answers to Pls. First RFAs) at ¶ 145 (quoting *Montes*, 40 F. Supp. 3d at 1385). No Latino
13 candidate was ever elected to the Yakima City Council under its pre-2015 at-large election
14 system. *Id.* at ¶ 144 (citing *Montes*, 40 F. Supp. 3d at 1405). Former County Commissioner Leita
15 referred to the *Montes* lawsuit and efforts to change Yakima’s election system as “a vomiting of
16 a lot of anguish that had been pent up far too long.” Ex. 19 (Leita Dep.) at 131:19-133:24. As a
17 remedy to Yakima City’s pattern of vote dilution, the court ordered the City to use seven single-
18 member districts to elect its Council. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶ 146.²³
19 There is no dispute that Yakima is the most populous city in Yakima County, and that the most
20 recent American Community Survey (“ACS”) 5-Year data estimates that the City is 45.7 percent
21 Latino. *Id.* at ¶ 58.²⁴ In short, it is uncontested that Yakima City’s dilutive election system
22 hindered the political representation of Latinos in Yakima County.

23
24 ²³ Defendants do not dispute that, in 2015, under the City of Yakima’s new single-member
25 district system, three Latinas were elected to the Yakima City Council: Plaintiff Gutiérrez, Avina
26 Gutiérrez, and Carmen Mendez.” Ex. 29 (Defs. Initial Answers to Pls. First RFAs) at ¶ 147.

26 ²⁴ In their supplemental RFA responses, Defendants stated that “to the extent this request
27 acknowledges that the quoted figure is an estimate, Defendants admit that the estimate is
accurately stated.” *Id.* at ¶ 58; *see supra* note 2. Since all ACS data are estimates, this is an
admitted and undisputed fact. *See* ACS 2014-2019 5-Year Demographic Estimates, City of
Yakima,

1 This history of discrimination in Yakima County—directly affecting the ability of the
2 Latino community to vote—is well-documented and based on undisputed evidence from
3 previous federal court findings as well as admissions by Defendants in this case. Thus, this factor
4 weighs heavily in Plaintiffs’ favor.

5 **2. The County Board Uses Electoral Devices and Other Voting**
6 **Procedures that Enhance the Dilutive Effects of its At-Large System**
7 **(Probative Factor 2).**

8 Under the federal VRA, this probative factor analyzes the extent to which a jurisdiction
9 “has used unusually large election districts, majority vote requirements, anti-single shot
10 provisions, or other voting practices or procedures that may enhance the opportunity for
11 discrimination against the minority group.” *Gingles*, 478 U.S. at 37, 44-45 (quoting S. Rep. No.
12 97-417 at 28-29). Analysis of this factor “merely inquires as to whether such mechanisms ‘may
13 enhance the opportunity for discrimination,’ not whether such mechanisms are the but-for cause
14 of a minority candidate’s electoral defeat.” *Luna*, 291 F. Supp. 3d at 1136 (citation omitted).
15 Applying a similar framework to this probative factor, it is undisputed that Yakima County uses
16 a number of voting practices that may enhance the dilutive effect of its at-large election system,
17 including (1) unusually large election districts, (2) numbered posts, (3) staggered terms, (4)
18 residency requirements, and (5) a majority vote requirement.

19 First, it is undisputed that Yakima County is large in terms of both population and
20 geographic area. Per the 2010 Census, Yakima County has a total population of 243,231, and an
21 estimated citizen voting age population (“CVAP”) of 145,235. Ex. 4 (Defs. Supp. Answers to
22 Pls. First RFAs) at ¶¶ 38, 52. In addition, according to a report produced by the County itself,
23 Yakima County is Washington’s second largest County in terms of square miles (4,296 miles).
24 See Ex. 30 (10 Year Homelessness Plan) at 9. Combined, these factors mean that, in the
25 County’s at-large general election, candidates for the County Board must campaign across an
26 unusually large area. See *Large*, 709 F. Supp. at 1217 (finding this factor favored Plaintiffs

27 <https://data.census.gov/cedsci/table?q=yakima%2520city%2520washington&tid=ACSDP5Y2019.DP05&hidePreview=false>.

1 where the County was the “second-largest in the state” and the “large size” of the County “makes
2 it more difficult to campaign Countywide, especially for Indian candidates who lack access to
3 financial resources, both personal and community”); *see also U.S. v. Blaine Cty., Montana*, 363
4 F.3d 897, 913-14 (9th Cir. 2004) (affirming finding that “the County’s enormous size makes it
5 extremely difficult . . . to campaign Countywide in at-large elections”).

6 As a number of County Board candidates have testified, it is incredibly resource intensive
7 and difficult to campaign across the entire County, a fact that only enhances opportunities for
8 dilution under the current election system. *See, e.g., Ex. 17 (Manjarrez Dep.)* at 96:18-97:4
9 (noting that she won her district in the primary and general elections for a County Board seat, but
10 lost the at-large general election); 125:10-24 (stating that it is more difficult to campaign under
11 Yakima County’s current election system because “Yakima County is very large,” “Yakima
12 County is three times the size of one district . . . you have a much larger group and territory you
13 have to cover,” and “[y]ou have 110 or 115,000 registered voters you have to try to get ahold of,
14 from Selah all the way out to White Swan.”); 126:7-10 (agreeing it is more expensive to
15 campaign in the entire County because it requires “more gas, more mailers, more postage.”);
16 127:6-13 (agreeing more advertising is required in the general election and “[i]t’s more costly,
17 yes.”); *Ex. 12 (Baker Dep.)* at 73:2-74:23 (noting that the large size of Yakima County makes
18 campaigning expensive and “pretty hard to door-knock” and that “it’s a barrier” to candidates);
19 179:19-180:22; *Ex. 22 (Bouchey Dep.)* at 39:18-24 (noting that, even in the primary election, he
20 put up signs throughout the entire County). The difficulties of campaigning County-wide are
21 compounded for Latino candidates, who face obstacles campaigning because of racial hostility.
22 *See Ex. 3 (Soto Palmer Decl.)* at ¶ 13 (“It was difficult to campaign in the general election
23 because I could not personally campaign in certain parts of the County without fearing for my
24 personal safety.”).

25 Second, Yakima County’s use of numbered posts further exacerbates the opportunity for
26 discrimination against Latino voters. The *Montes* court described a numbered post system as one
27 where “candidates file for a particular seat and compete only against other candidates who are

1 running for the same seat.” 40 F. Supp. 3d at 1386. Here, it is undisputed that candidates for the
2 Yakima County Board are first nominated in a non-partisan primary election by voters of their
3 district. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶ 31. The top two vote-getters in each
4 district in the primary election for a Board seat advance to the general election, where the voters
5 of the entire County then select the winner for each district seat. *Id.* at ¶¶ 32, 33. By forcing
6 voters to vote for each County Commissioner seat separately in the primary election, even
7 though the seats are elected at-large in the general election, the County’s “numbered post system
8 ‘enhances [the minority group’s] lack of access because it prevents a cohesive political group
9 from concentrating on a single candidate.’” *Montes*, 40 F. Supp. 3d at 1411 (quoting *Rogers v.*
10 *Lodge*, 458 U.S. 613, 627 (1982)); *see also City of Rome v. United States*, 446 U.S. 156, 184
11 n.19 (1980). As the *Montes* court explained:

12 The dilutive effect of a numbered post system is best illustrated by way of a
13 comparison to a “pure” at-large system. In a pure at-large system, all
14 candidates compete against each other in a single contest for a set number of
15 open seats. Voters are allowed a number of votes corresponding to the
16 number of open seats (*n*), but may only cast one vote for any given candidate.
17 At the end of the race, the candidates with the *n* highest vote totals fill the
18 open seats.

16 Minority voters can increase their voting strength in a pure at-large system by
17 voting cohesively for one specific candidate. If the majority distributes its
18 votes sufficiently across the entire field of candidates, the minority’s
19 preferred candidate will have a good chance of finishing among the top vote-
20 getters . . . Minority voters can further maximize their voting strength in a
21 pure at-large system by withholding their remaining votes (the so-called
22 “single-shot” strategy). This reduces the total number of votes cast in the
23 election, thereby increasing the relative weight of the votes amassed by the
24 minority’s chosen candidate.

21 In a numbered post system, by contrast, seats are elected separately.
22 Candidates run in separate races and compete only against other candidates
23 who are running for the same seat. Voters may cast only one vote in each
24 seat-specific race. In order to win a seat, a candidate must win his or her race
25 outright (either by a plurality or majority of votes, depending upon the
26 jurisdiction). This system blunts the effectiveness of voting cohesively for
27 one candidate.

40 F. Supp. 3d at 1411-12.

1 Next, the County further heightens the dilutive nature of its system by staggering terms
2 for County Board elections. Defendants admit that Commissioners are elected to serve staggered
3 four-year terms, and Board elections take place every two years. Ex. 4 (Defs. Supp. Answers to
4 Pls. First RFAs) at ¶ 34; Ex. 25 (Fisher Dep.) at 25:3-15. Like numbered posts, staggered terms
5 remove Latino voters’ ability to utilize single-shot voting by reducing the number of candidates
6 and seats up for election at one time. *See, e.g., Benavidez*, 638 F. Supp. 2d at 726-27, 732
7 (finding that staggered terms, in combination with an at-large election system, majority-white
8 population, and racial bloc voting, diluted Latino voting strength); *City of Rome*, 446 U.S. at
9 183-85; *Blaine Cty.*, 363 F.3d at 913.

10 Two other practices utilized by the County also exacerbate the opportunity for
11 discrimination against Latino voters. The County’s residency requirement does so because when
12 “each [Commissioner is] required to live in a separate district but with voting still at large,” the
13 residency requirement “—just like numbered posts—separates one contest into a number of
14 individual contests.” *City of Rome*, 446 U.S. at 185 n.21. The County’s majority-vote
15 requirement for each district seat also enhances the opportunity for vote dilution. As Defendants
16 admit, only the top two candidates from the primary are listed on the ballot for each district seat
17 in the general election. Ex. 4 (Defs. Supp. Answers to Pls. RFAs) at ¶ 32. Thus, to win a County
18 Board seat, a candidate must win a majority of the votes from the entire County. *Id.* at ¶ 33. As
19 the *Montes* court found, “[t]he dilutive effect of the City’s numbered post system is further
20 intensified by the fact that only two candidates are allowed to compete for each seat in the
21 general election . . . the number of candidates competing in a seat-specific race directly impacts
22 the effectiveness of a cohesive voting strategy; the fewer the number of candidates, the more
23 difficult it becomes for the minority’s chosen candidate to win the race outright. The odds are
24 particularly long when the race is between only two candidates, since the minority candidate
25 must effectively win a majority of the total votes.” *Montes*, 40 F. Supp. 3d at 1411-12; *see also*
26 *City of Rome*, 446 U.S. at 184; *League of United Latin Am. Citizens, Council No. 4434 v.*
27 *Clements*, 986 F.2d 728, 749 (5th Cir. 1993) (“Majority vote requirements can obstruct the

1 election of minority candidates by giving white voting majorities a ‘second shot’ at minority
2 candidates who have only mustered a plurality of the votes in the first election.”).

3 Finally, Defendants admit that Yakima County’s current election system is the *same*
4 *system* used by the City of Yakima that was recently invalidated by a federal district court in
5 *Montes*. See Ex. 29 (Defendants’ Initial Answers to Pls. RFAs) at ¶¶ 142, 145. Thus, the finding
6 in *Montes* that the City’s system was “a prime example of an electoral system that is not ‘equally
7 open to minority voters,’” applies equally to this case—especially given the degree of racially
8 polarized voting noted above in Part I. See *Montes*, 40 F. Supp. 3d at 1412 (quoting *Gingles*, 478
9 U.S. at 79). Further, Plaintiffs here have shown the additional practice of an unusually large
10 election district in Yakima County. Since the *Montes* court found that the federal equivalent
11 “weigh[ed] very strongly in Plaintiffs’ favor,” there is no genuine dispute that Probative Factor 2
12 weighs heavily in Plaintiffs favor here as well. *Id.*

13 **3. Latino Residents in Yakima County Bear the Effects of Past**
14 **Discrimination in Areas such as Education, Employment, and Health,**
15 **Hindering their Ability to Participate Effectively in the Political**
Process (Probative Factor 4).

16 Under the federal VRA, this probative factor considers whether the minority group
17 “bear[s] the effects of discrimination in areas such as education, employment, and health, which
18 hinder the minority group’s ability to participate effectively in the political process. *Gingles*, 478
19 U.S. at 37 (quoting S. Rep. No. 97-417 at 28-29). “Under this [] factor, plaintiffs must
20 demonstrate both depressed political participation and socioeconomic inequality, but need not
21 prove any causal nexus between the two. *Luna*, 291 F. Supp. 3d at 1137 (citing *League of United*
22 *Latin Am. Citizens, Council No. 4434*, 986 F.2d at 750); see also *Benavidez*, 638 F. Supp. 2d at
23 727; *Teague*, 92 F.3d at 294. Facially, the WVRA’s Probative Factor 4 appears the same as the
24 federal equivalent.

25 In assessing this factor, federal courts routinely analyze data from the U.S. Census
26 Bureau—namely ACS estimates—relating to socioeconomic indicators. See, e.g., *Montes*, 40 F.
27 Supp. at 1413 (finding this factor weighed slightly in Plaintiffs’ favor based on ACS estimates);

1 *Luna*, 291 F. Supp. 3d at 1137; *Benavidez*, 638 F. Supp. 2d at 729-30. Defendants agree that
2 ACS population data is “among the reliable current demographic and population data available
3 for Yakima County.” Ex. 4 (Defs. Supp. Answers to Pls. RFAs) at ¶ 40.

4 Based on ACS data, there is ample and undisputed evidence that Latinos in Yakima
5 County bear the effects of past discrimination in ways that hinder their ability to participate in
6 the political process. According to 2015-2019 5-Year ACS estimates, socioeconomic indicators
7 show clear and significant disparities between Latino and white residents of Yakima County. *See*
8 Ex. 21 (Elliott Dep.) at 111:9-11 (agreeing that there are socioeconomic disparities between
9 Latino and white residents). For example, 21.9 percent of Latino residents had an income below
10 the poverty level, a rate almost double that of white residents (11.4 percent). Ex. 4 (Defs. Supp.
11 Answers to Pls. First RFAs) at ¶¶ 76, 78. Of all persons in Yakima County with an income below
12 the poverty level, 62.3 percent were Latino, while only 28.2 percent were white. *Id.* at ¶ 79.
13 Further, Defendants admit that, while the median income for households in Yakima County is
14 \$51,637, the median household income for white residents is higher, at \$57,398, while the
15 median household income for Latino residents is lower, at \$45,880. *Id.* at ¶¶ 80-82.

16 Latinos in Yakima County also bear the effects of past discrimination in education. Over
17 half—51.6 percent—of the Latino population over the age of 25 in Yakima County does not
18 have a high school diploma or its equivalent, compared to only 9.6 percent of white residents. *Id.*
19 at ¶¶ 95, 102. This trend continues for higher education, where only 5.7 percent of the County’s
20 Latino residents over the age of 25 have a bachelor’s degree, compared to 24.1 percent of white
21 residents. *Id.* at ¶¶ 99, 106.

22 There are also stark disparities between Latino residents and white residents in
23 employment in Yakima County. Defendants admit that, according to the most recent ACS 5-
24 Year estimates, the overall unemployment rate in Yakima County is 6.4 percent. *Id.* at ¶ 83.
25 However, the unemployment rate for the Latino population is 7.8 percent—almost double the
26 rate of unemployment among white residents, which is only 4.2 percent. *Id.* ¶¶ 84-85. The
27

1 County itself has identified low rates of employment for Latinos in its workforce: a recent EEO
2 Utilization Report prepared by Yakima County and submitted to the U.S. Office of Civil Rights
3 identifies “underutilizations” for Hispanic employees in the following County departments:
4 officials/administrators, technicians, skilled craft, and service maintenance. Ex. 31 (2017 EEO
5 Report) at YC016498, YC016507-YC016508. The same report lists a “significant
6 underutilization” for Hispanic employees in the categories of professionals, administrative
7 support, service/maintenance, and technicians. *Id.* at YC016509. Overall, for 2017, Latino
8 employees made up 5 of the 8 specific underutilization areas specified by the County. *Id.* at
9 YC016498.

10 Latino residents of Yakima County also face major disadvantages in terms of housing
11 compared to white residents. According to the ACS 2015-2019 5-Year estimates, there are
12 30,687 occupied housing units in Yakima County with a Latino householder, compared to
13 46,921 housing units with white residents. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶¶
14 114, 117. Of the housing units with a Latino householder, only 31.3 percent are owner-occupied,
15 compared to 63.6 percent for whites. *Id.* at ¶¶ 115, 118; *see also* Ex. 13 (Anderson Dep.) at
16 189:10-14 (acknowledging that Latino residents of Yakima County have a lower homeownership
17 rate than white residents).

18 The County itself has provided some of the most clear-cut data on housing disparities for
19 Latino residents. A report prepared by the Homeless Network of Yakima County, an advisory
20 board to the Yakima County Board of Commissioners, states that Yakima County’s “current
21 housing stock does not meet the needs of low-income and minority populations. Many minority
22 families have larger than average family sizes and need larger homes or apartments to prevent
23 overcrowding.” Ex. 30 (10 Year Homelessness Plan) at 10. The report observes that “Hispanics
24 are twice as likely as non-Hispanics to be denied financing when applying for conventional loans
25 to purchase housing and to obtain refinancing of existing mortgages thereby limiting their
26 housing choices,” *id.* at 84, and concludes that:
27

1 Hispanic populations are at a major disadvantage as 72% of Hispanic renter
2 households have ‘housing problems’ (cost burdened or overcrowding) compared
3 to all County renters at 52%. Representing 41% of the total population in the
4 HOME Consortium, the affected Hispanic population is a significant segment of
the population in the area. . . . The impact of these factors is that minorities and
Hispanics are often forced to take rental housing that is too small for their needs,
is in substandard or dilapidated condition or is otherwise poorly maintained.

5 *Id.* at 85; *see also* Ex. 12 (Baker Dep.) at 206:10-210:1 (noting that many of the cities in Yakima
6 County that tend to get overlooked for affordable housing are predominantly Hispanic or
7 Latino); Ex. 21 (Elliott Dep.) at 53:12-21 (agreeing that affordable housing is a particular
8 problem for “Hispanics, farm workers, and special-needs people”).

9 Latino residents in Yakima County also bear the effects of past discrimination with
10 respect to health and healthcare access. According to 2015-2019 5-Year ACS estimates, 19.6
11 percent of Yakima County’s Latino population does not have health insurance, compared to only
12 5.9 percent of white residents. Ex. 4 (Defs. Supp. Answers to Pls. First RFAs) at ¶¶ 109-10.
13 Moreover, the Latino community in Yakima County has been disparately impacted by the
14 COVID-19 pandemic. *See* Ex. 16 (Palacios Dep.) at 63:14-23; Ex. 13 (Anderson Dep.) at
15 166:12-14; 168:14-21; Ex. 18 (Linde Dep.) at 37:14-38:16. As of April 26, 2021, the County’s
16 own public website reported that 44.2 percent of COVID-19 positive individuals in the County
17 are Hispanic or Latino, compared to 16.6 percent that are white.²⁵ Latinos in Yakima County
18 have also been disproportionately impacted by other serious health issues like water
19 contamination, including high nitrate levels and fecal matter in wells. *See, e.g.*, Ex. 16 (Palacios
20 Dep.) at 62:19-63:3 (agreeing that water contamination disproportionately affects the Hispanic
21 community); Ex. 17 (Manjarrez Dep.) at 134:1-19; Ex. 21 (Elliott Dep.) at 81:14-82:4 (admitting
22 that Latinos “may be the biggest group” impacted by water contamination in the Lower Yakima
23 Valley and that “[t]here’s a legacy of fertilizer down there and nitrates that goes back 50—well,
24 now, probably 70—post World War II, they started making chemical fertilizers and they’ve been
25 used liberally ever since, so it’s not something you can snap your fingers and change.”); Ex. 32

26 ²⁵ *See* Yakima Health District, *Race and Ethnicity Breakdown of COVID-19 Positive Individuals*,
27 <https://www.yakimaCounty.us/2440/Confirmed-Cases-Race-Ethnicity> (last updated Apr. 26,
2021).

1 (Mendoza Decl.) at ¶ 7 (discussing a finding that the area identified to be highly impacted by
2 water contamination is 70 percent Latino).

3 Former Yakima County Commissioner Leita agreed that Latinos also may face language
4 barriers to accessing County services. As Mr. Leita stated, “the barriers there would be common
5 to what my father experienced. Until he learned English, he really couldn’t participate fully. I
6 don’t know that he viewed those as barriers, but they, in fact, were.” Ex. 19 (Leita Dep.) at
7 118:16-21; *see also* Ex. 13 (Anderson Dep.) at 102:8-11 (noting that Spanish language
8 interpretation is not provided at weekly Board meetings).

9 Finally, as Defendants themselves have acknowledged throughout this litigation, voter
10 registration and turnout levels in Yakima County are substantially lower among Latino residents
11 than white residents. *See* Ex. 13 (Anderson Dep.) at 209:15-210:13; 198:5-12 (admitting that
12 discrimination could have an impact on political participation); Ex. 12 (Baker Dep.) at 69:3-24;
13 Ex. 16 (Palacios Dep.) at 60:12-22. According to January 2021 data from the Yakima County
14 Elections Office—which County Commissioner Ron Anderson specifically requested before his
15 deposition in this case—there are 127,512 registered voters Countywide, but only 35,150 of
16 those are “Spanish surnamed registered voters.” Ex. 20 (2021 Yakima County Voter Stats); Ex.
17 25 (Fisher Dep.) at 28:2-32:2.²⁶ The Yakima County Auditor also publicly provides information
18 on voter participation in elections by surname on the Yakima County website.²⁷ According to the
19 Yakima County Auditor, for the 2020 general election, ballots were issued to 37,978 voters with
20 a Spanish surname, but only 21,281 (56 percent) of those ballots were returned. By comparison,
21 of the 89,713 ballots issued to voters with a non-Spanish surname, 75,704 (84 percent) of those
22 ballots were returned.²⁸ Ex. 34 (2020 Gen. Election Yakima County Auditor Stats). Thus, the

23
24 ²⁶ Commissioner Anderson also requested statistics regarding Spanish-surnamed registered
25 voters immediately after the County received Plaintiffs’ notice letter in this case in January 2020.
26 *See* Ex. 33 (2020 Voter Stats Request).

27 ²⁷ *Voting by Surname*, Yakima County, <https://www.yakimaCounty.us/Archive.aspx?AMID=69>
(last visited May 2, 2021).

²⁸ *2020 General Election Voter Participation by Surname*, Yakima County, <https://www.yakimaCounty.us/ArchiveCenter/ViewFile/Item/1130> (last visited May 2, 2021).

1 County’s own publicly available and regularly collected data shows a clear disparity in political
2 participation between Latino and white voters.

3 Latino voters in the County also have their ballots challenged and rejected at higher rates
4 than white voters. Defendants admit that, according to an investigative report conducted by
5 InvestigateWest on ballot signature rejection rates in Washington state (“InvestigateWest
6 Report”), all counties in Washington moved to vote-by-mail elections in 2011, and Washington
7 voters must sign an oath on their ballot envelope, confirming their identity and eligibility to vote.
8 Ex. 4 (Def’s. Supp. Answers to Pls. First RFAs) at ¶¶ 164-65.²⁹ Defendants also admit that,
9 according to the InvestigateWest Report, the rate at which Latino voters’ ballots are challenged
10 because of allegedly mismatched signatures is higher than other voters; Latino voters cure or fix
11 their challenged ballots at a lower rate than other voters; and Yakima County election officials
12 ultimately reject ballots of voters with Latino surnames due to perceived signature mismatches at
13 a rate 7.5 times higher than that of other voters. *Id.* at ¶¶ 166-68.

14 In sum, there is no question that Latino residents in Yakima County suffer the effects of
15 past discrimination in the areas of socioeconomic status, housing, education, health, and
16 employment, along with depressed levels of political participation. *See Gingles*, 478 U.S. at 69
17 (“[P]olitical participation by minorities tends to be depressed where minority group members
18 suffer effects of prior discrimination such as inferior education, poor employment opportunities,
19 and low incomes.”). This factor weighs heavily in Plaintiffs’ favor.

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24 ²⁹ Joy Borkholder, *Latino Voters Have Higher Than Average Ballot Signature Rejection Rates in*
25 *Washington State*, INVESTIGATEWEST (Feb. 15, 2021), [https://www.invw.org/2021/02/15/latino-](https://www.invw.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/#box)
26 [voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/#box](https://www.invw.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/#box); Joy
27 Borkholder, *How InvestigateWest Analyzed Voter Signature Rejection Rates*, INVESTIGATEWEST
(Feb. 15, 2021), [https://www.invw.org/2021/02/15/how-investigatwest-analyzed-voter-](https://www.invw.org/2021/02/15/how-investigatwest-analyzed-voter-signature-rejection-rates/)
[signature-rejection-rates/](https://www.invw.org/2021/02/15/how-investigatwest-analyzed-voter-signature-rejection-rates/).

1 **4. Political Campaigns in Yakima County Often Involve Racial Appeals**
2 **(Probative Factor 5).**

3 Under the federal VRA, this probative factor examines “the use of overt or subtle racial
4 appeals in political campaigns.” *Gingles*, 478 U.S. at 44-45. “Racial appeals can take a variety of
5 forms, including the use of racially charged campaign tactics and the highlighting of racially
6 charged campaign issues ‘that prey[] on racial anxiety’” *Missouri State Conference of the*
7 *NAACP v. Ferguson-Florissant School Dist.*, 201 F. Supp. 3d 1006, 1078 (E.D. Missouri 2016)
8 (internal citations omitted). There are several recent examples of racial appeals in elections in
9 Yakima County.

10 For instance, on February 22, 2016, “during just at or just before” the start of his
11 campaign for a County Board seat, Mr. Anderson shared a Facebook post stating that “Illegals
12 are being seduced into America by Democrats to steal our elections. Act of Treason, Arrest all
13 involved!” The post also linked to an article. Ex. 13 (Anderson Dep.) at 145:2-146:5; Ex. 35
14 (Feb. 22, 2016 Facebook Post). Asked whether he agreed “with the post that illegals are being
15 seduced into America to steal our elections,” Mr. Anderson replied, “I think to some degree,
16 that’s very—I think that’s very accurate, but—to some degree.” *Id.* at 147:11-14. The post was
17 public and visible to all of Mr. Anderson’s constituents. *Id.* at 145:23-146:1. Despite publicly
18 sharing the post, Mr. Anderson admitted that the term “illegals” is “derogatory.” *Id.* at 147:5-10.
19 The post is an explicit example of an appeal to white voters relying on racist rhetoric about
20 alleged election fraud by Latino voters. *See, e.g., Bone Shirt*, 336 F. Supp. 2d at 1041 (finding
21 racial appeals based on two news articles focusing on allegations of voter fraud by Native
22 American residents).

23 On April 16, 2016, well into his campaign for a County Board seat, Mr. Anderson shared
24 another post to his Facebook page with an article titled “IRS Commissioner: Illegal Aliens can
25 use Stolen SSNs to File Tax Returns” *Id.* at 148:23-149:21; Ex. 36 (Apr. 16, 2016 Facebook
26 Post). This post was public and visible to all of Mr. Anderson’s constituents during his
27 campaign. *Id.* 149:22-150:1. When asked what message he was sending to his constituents by

1 sharing this post, Mr. Anderson replied, “As it states, there’s a possibility that social security
2 numbers are being used by people who shouldn’t be using them.” *Id.* at 150:8-12. Mr. Anderson
3 conceded that he did not consider whether any of his Latino constituents would view this post as
4 perpetuating stereotypes about undocumented Latino immigrants. *Id.* at 150:24-151:2. *See, e.g.,*
5 *Holloway v. City of Virginia Beach*, No. 2:18-cv-69, 2012 WL 1226554 at *51 (E.D. Va. March
6 31, 2021) (noting that “coded language can be evidence of racial appeals based on the context in
7 which those words are used” and that “coded language” can “trigger deeply seated racial
8 stereotypes and animus to catalyze white communities to vote . . .”).

9 Next, in July of 2016, also during his campaign for a County Board seat, Mr. Anderson
10 shared an article from “Sons of Liberty Media” titled “ICE Director to Congress: We follow
11 Obama’s policies, not law.” Ex. 13 (Anderson Dep.) at 151:3-152:11; Ex. 37 (July 10, 2016
12 Facebook Post). The post was public and visible to Mr. Anderson’s constituents during his
13 campaign. *Id.* at 152:12-16. The article that Mr. Anderson shared states, in part: “If you are the
14 director of US Immigration and Customs Enforcement (ICE) and your name is Sarah Saldana,
15 you would follow your employer’s directive and commit a crime . . . being this concerns illegal
16 alien invasion across our southern border, surely [Ms. Saldana] isn’t suggesting that she’s
17 helping Mexico, as well as the United States, at the direction of Obama.” The post plainly
18 furthers a racial stereotype of Latinos as “illegal aliens” to constituents and potential voters
19 during Mr. Anderson’s 2016 campaign for a County Board seat.

20 These examples are particularly relevant as racial appeals to white voters because Mr.
21 Anderson’s opponent in the 2016 County Board race was Ms. Debra Manjarrez. Ex. 13
22 (Anderson Dep.) at 132:25-133:1. Ms. Manjarrez is not Latina, but she has a Latina surname. *Id.*
23 at 133:2-5. Ms. Manjarrez testified that it was possible voters thought she was Latina based on
24 her last name in her race against Mr. Anderson. Ex. 17 (Manjarrez Dep.) at 130:22-131:1; Ex. 22
25 (Bouche Dep) at 87:11-88:3 (noting that he thought Ms. Manjarrez was Latina when she ran in
26 2016). Ms. Manjarrez was also the candidate of choice of Latino voters in the 2016 election, but
27 not that of white voters. *See supra* Part I.B-C; *Patino*, 230 F. Supp. 3d at 715 (noting the

1 significance of racial appeals occurring “in a racially polarized election”); *Goosby v. Town Bd. of*
2 *Town of Hempstead, N.Y.*, 180 F.3d 476, 488 (2nd Cir. 1999) (noting that “racial appeals might
3 be attributable to the heightened racial tension” in a jurisdiction).

4 Additionally, Latino candidates for public office frequently face racial appeals from the
5 community while campaigning in Yakima County. When Plaintiff Soto Palmer campaigned on
6 behalf of a Latino candidate for state senate, Gabriel Munoz, she knocked on doors in the
7 predominately white town of Union Gap. Ex 3 (Soto Palmer Decl.) at ¶ 12. At one home, a white
8 resident who saw the campaign literature for Mr. Munoz immediately said: “I’m not gonna vote
9 for him, I’m racist.” *Id.* Plaintiff Gutierrez recalled instances during her campaign for Yakima
10 City Council where a white resident told her to “Go back to Mexico,” and where another
11 individual asked her why they “had to vote for a Mexican.” Ex. 2 (Gutierrez Decl.) at ¶ 10;
12 *Large*, 709 F. Supp. 2d at 1221 (citing evidence of negative and hostile responses from white
13 voters as racial appeals); *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1341 (C.D. Cal.
14 1990) (citing evidence of doors shut in candidate’s face, literature destroyed as racial appeals).
15 Plaintiff Bengie Aguilar also encountered racial appeals during her re-election campaign for the
16 Sunnyside City Council, when a local businessman distributed hate mail that expressed racial
17 animus against the Latino community. Ex. 1 (Aguilar Decl.) at ¶ 14.

18 In sum, recent elections in Yakima County have been marked by racial appeals,
19 highlighting that the political process is not equally open to Latino voters. This factor weighs in
20 favor of Plaintiffs.

21 **5. The County Board is Unresponsive to the Particularized Needs of the**
22 **Latino Community (Additional Probative Factor).**

23 In addition to the factors identified above, the WVRA does not preclude consideration of
24 other factors relevant to vote dilution, including those examined under the federal VRA. *See*
25 RCW 29A.92.030(6) (listing “other factors *such as . . .*”); *see also Gingles*, 478 U.S. at 45
26 (stating that under the federal VRA, “other factors may be relevant and may be considered”).
27 Thus, Plaintiffs present uncontested evidence relevant to one other factor often analyzed in

1 federal VRA cases: the significant lack of responsiveness on the part of elected officials to the
2 particularized needs of the Latino community. *See, e.g., Luna*, 291 F. Supp. 3d at 1139-41.

3 The County Board has displayed a lack of responsiveness to the particularized needs of
4 the Latino community in at least three ways. First, the County Board has regularly failed to
5 recognize that Latino residents make up a community with particularized needs. Second, the
6 County Board’s purportedly colorblind approach to governing has left Latino community
7 members without meaningful opportunities to engage with local government. Third, even when
8 Latino community members have made specific requests of the Commissioners, the County
9 Board has either ignored the requests, refused to act, or acted in a manner directly contrary to the
10 preferences of the Latino community. This evidence further shows that Yakima County’s
11 election system denies Latino voters an equal opportunity to participate in the political process.

12 **a. Defendants Rarely Acknowledge the Presence of the Latino**
13 **Community in Yakima County and Are Therefore Willfully**
14 **Ignorant of Racial and Ethnic Disparities.**

15 Commissioners and County staff make no effort to ascertain the particularized needs of
16 the Latino community. *See, e.g., Ex. 12 (Baker Dep.)* at 128:23-129:6 (has not looked at the data
17 on whether low-income residents in Yakima County are predominantly Latino); *Ex. 38*
18 *(McKinney Dep.)* at 247:20-248:3 (could not say whether there are socioeconomic disparities
19 between Latino and white residents of Yakima County); *Id.* at 178:1-19 (testifying affirmatively
20 that she would not consider whether the Board’s policies have a racially disparate impact on any
21 particular group living in Yakima County); *Ex. 39 (Warner Dep.)* at 69:9-70:25 (recognizing that
22 he had not looked into whether socioeconomic disparities existed between Latino and white
23 residents); *Ex. 39 (Warner Dep.)* at 36:17-23 (Board didn’t examine how the 2021 budget would
24 impact different racial and ethnic groups, or examine any racial equity impacts of the 2021
25 budget).

26 It is therefore unsurprising the County Board does not know whether it has been
27 responsive to the needs of the Latino community. *See e.g., Ex. 21 (Elliott Dep.)* at 50:20-25
(testifying “I’m not sure we have”); *Ex. 40 (Def. Supp. Answers to Pls. First ROGs and RFPs)*

1 at ROG 8 (failing to identify any specific pieces of legislation adopted to address racial and
2 ethnic disparities because “[t]he role of the Board of Yakima County Commissioners is to govern
3 for the benefit of the entire community”); Ex. 18 (Linde Dep.) at 109:25-110:4 (Commissioners
4 don’t typically “look[] through the lens of color” when assessing policies).

5 **b. The County Board’s Colorblind Approach Deprives the Latino**
6 **Community of Meaningful Opportunities to Voice Their**
7 **Concerns and Participate in Civic Life.**

8 By refusing to consider the effects of its actions on particular racial groups, the County
9 Board regularly deprives the Latino community of meaningful participation in government. For
10 example, in the 2011 decennial redistricting process, former Commissioners Bouchey, Elliott,
11 and Leita all testified that they only considered whether each district had equal population in
12 drawing County Board district boundaries. *See* Ex. 22 (Bouchey Dep.) at 100:15-101:8; Ex. 21
13 (Elliott Dep.) at 119:7-120:7; Ex. (Leita Dep.) at 147:3-149:14. As a result, the only change was
14 to move a single precinct in Union Gap from District 3 to District 2. *See* Ex. 40 (2011 Yakima
15 County Redistricting Ordinance) at YC0003-0004; Ex. 22 (Bouchey Dep.) at 102:24-103:6; Ex.
16 19 (Leita Dep.) at 147:3-149:14; Ex. 21 (Elliott Dep.) at 120:8-121:12. The Commissioners did
17 not consider the size and location of the County’s Latino population or whether a district could
18 be drawn with a majority Latino citizen voting-age population, and they failed to analyze
19 whether racially polarized voting exists in Yakima County to ensure compliance with the federal
20 VRA. *See id.*; 52 U.S.C. Section 10301.

21 In addition, Defendants have failed to provide accessible translation and interpretation
22 services for monolingual Spanish-speaking constituents to engage with County Board business.
23 A variety of County Board materials including the budget, Warner Dep. at 34:7-15, resolutions
24 and ordinances, Ex. 18 (Linde Dep.) at 109:16-18, and notably, the meeting agendas and agenda
25 request forms, *see* Ex. 42 (County Board Agenda Request Form), all appear to be publicly
26 available only in English. If monolingual Spanish speakers wish to attend and understand County
27 Board meetings or budget hearings, the onus is on them to somehow learn that the meeting is

1 happening, request a translator in advance and, at least in the case of budget hearings, make that
2 request to the clerk of the board. Ex. 12 (Baker Dep.) at 59:2-12; Ex. 39 (Warner Dep.) at 32:15-
3 21. Commissioners have considered providing language interpretation at meetings as a matter of
4 course but rejected the idea despite their recognition that lack of language access poses a serious
5 barrier to civic participation. Ex. 19 (Leita Dep.) at 90:20-91:5, 118:16-24; Ex. 18 (Linde Dep.)
6 at 175:1-9. The de-prioritization of language access is an established pattern of Yakima County,
7 which, for example, in 2018 explicitly opposed a bill in the state legislature that would require
8 public notices of public health, safety, and welfare to be provided in a language other than
9 English. Ex. 43 (2018 Bill Positions Report) at YC029123.

10 Moreover, multiple current and former Commissioners testified that they took no effort to
11 conduct specific outreach to the Latino community or the monolingual Spanish-speaking
12 community in their election campaigns. *See, e.g.*, Ex. 13 (Anderson Dep.) at 144:5-15 (did not
13 make any posts on Facebook in Spanish or with the intent of reaching Latino voters); Ex. 22
14 (Bouchey Dep.) at 42:17-43:1, 43:10-14 (did not reach out to any Latino organizations in
15 Yakima County or conduct any campaign events in Spanish, did only one interview with the
16 local Spanish-language radio station KDNA, did not seek or receive endorsements from any
17 Latino community organizations); Ex. 21 (Elliott Dep.) at 41:18-43:4 (did not reach out to seek
18 speaking engagements at Latino community clubs or groups, did not do any outreach in Spanish
19 or any interviews with Spanish language media, did not seek or receive endorsements from any
20 Latino-led community organizations); Ex. 19 (Leita Dep.) 66:25-71:7 (did not make any
21 particular outreach for Latino voters, never had a translator at his campaign events, did not seek
22 or receive endorsements from Latino organizations); Ex. 38 (McKinney Dep.) 164:7-165:6 (did
23 not reach out to any organizations in Yakima County specifically serving Latino community
24 members, and that “there was no need” for her to conduct any of her campaign events in Spanish
25 or with a Spanish interpreter).

1 **c. Even When Defendants Are Made Aware of the Needs of the**
2 **Latino Community, They Are Not Responsive.**

3 This section outlines four areas where the Latino community had identifiably different
4 interests to that of the white community, and yet the County Board refused to take steps to
5 further the interest of the Latino community.

6 **i. Yakima County’s Failure to Address the COVID-19**
7 **Pandemic Has Been Nonresponsive to the Needs of the**
8 **Latino Community.**

9 The County Board’s mismanagement of the COVID-19 response from the start of the
10 pandemic left Spanish-speaking monolingual community members without sufficient
11 information on how to stop the spread of the novel coronavirus. Ex. 6 (Stolz Decl.) at ¶ 19. The
12 failure of the County Board and the Yakima Health District, which is overseen by the County
13 Board, to enforce statewide mandates as they applied to warehouses left the predominantly
14 Latino warehouse workers without sufficient protection when severe outbreaks hit their places of
15 work. Ex. 5 (Montes Decl.) at ¶ 9; Ex. 6 (Stolz Decl.) at ¶ 20-21. Months into the pandemic,
16 many of the warehouse workers got sick and consequently went on strike at which point the
17 County Board finally began enforcing statewide mandates for the warehouses. Ex. 5 (Montes
18 Decl.) at ¶ 9. Commissioner Linde acknowledged that COVID-19’s impact on farmworkers and
19 warehouse workers was an issue of particular concern to the Latino community. Ex. 18 (Linde
20 Dep.) at 77:21-78:20. And while Commissioner Linde cited some efforts by Defendants to be
21 responsive to the Latino community through testing and outreach about vaccines, he was only
22 somewhat aware that farmworkers had gone on strike to protest the lack of sufficient personal
23 protective equipment at their worksites. *Id.* at 158:1-159:3; Ex. 5 (Montes Decl.) at ¶ 9.
24 Commissioner McKinney was even less attuned to the needs of the Latino farmworkers and
25 factory workers during this time, claiming she was “not aware of any specific complaints” from
26 farmworkers about the lack of testing at agricultural worksites. Ex. 38 (McKinney Dep.) at
27 205:17-20.

1 Additionally, the County Board, which decides how to spend funds received through the
2 federal CARES Act, failed to conduct or consider any analysis about the potential racial equity
3 impacts of how that money might be spent in its decision-making process. Ex. 39 (Warner Dep.)
4 at 43:21-44:6.

5 **ii. Yakima County’s Cooperation with Immigration and**
6 **Customs Enforcement (ICE) is Nonresponsive and**
7 **Hostile to the Needs of the Latino Community.**

8 In 2011, the County Board considered whether to participate in the Secure Communities
9 Program, a program in which local law enforcement agreed to send fingerprints of individuals
10 detained in Yakima County jails to the FBI and Immigration and Customs Enforcement (ICE).
11 Ex. 6 (Stolz Decl.) at ¶ 16; Ex. 5 (Montes Decl.) at ¶ 10; Ex. 22 (Bouche Dep.) at 59:23-60:7. A
12 group of Latino community leaders wrote to the Commissioners, requesting a private meeting to
13 discuss the harm that the Secure Communities Program would inflict on Yakima’s Latino
14 community and inviting the Commissioners to a community meeting with the same topic. Ex. 5
15 (Montes Decl.) at ¶ 10-11. Meeting with this group of community leaders would have been
16 consistent with the then-Commissioners’ usual practice with other residents. *See, e.g.*, Ex. 44
17 (March 2018 Constituent Complaint); Ex. 45 (Aug. 2018 Constituent Complaint); Ex. 46 (Jan.
18 2015 Constituent Complaint); Ex. 47 (2018 Migrant Housing Complaint). But none of the
19 Commissioners took the time to meet with Latino residents regarding their significant concerns
20 about the Secure Communities Program, nor did they attend the community meeting on the
21 program which drew more than 100 concerned community members. *See* Ex. 5 (Montes Decl.) at
22 ¶ 10-11; Ex. 6 (Stolz Decl.) at ¶ 16. Ex. 22 (Bouche Dep.) at 70:24-71:1.

23 Mr. Bouchey estimated that regular weekly commission meetings generally had between
24 ten to fifteen total attendees. Ex. 22 (Bouchey Dep.) 46:21-47:15. However, at least one of the
25 County Board meetings regarding the implementation of the Secure Communities Program drew
26 more than thirty Latino community members and leaders who came to oppose the program, Ex.
27 22 (Bouchey Dep.) at 71:25-72:7, a number that Mr. Elliott recognized was atypical, Ex. 21
(Elliott Dep) at 99:4-15. Despite this opposition, the Commissioners’ decision to adopt the

1 Secure Communities Program remained unchanged. Indeed, Commissioner Bouchey testified
2 that he weighed the recommendation of the Department of Corrections, Ex. 22 (Bouchey Dep.)
3 at 79:7-23, without regard for whether the Program was in the best interest of Yakima’s Latino
4 community. *Id.* at 80:17-81:16.

5 Additionally, not one of the Commissioners named the Secure Communities Program as
6 an issue of importance to the Latino community that was raised during their time in office. *See*
7 Ex. 22 (Bouchey Dep.) at 48:11-14 (could not recall any specific concerns expressed by the
8 Latino community in his time as commissioner); Ex. 21 (Elliott Dep.) at 51:4-14 (saying that no
9 issues of specific importance to the Latino community came to mind except for the issue of
10 Latino representation on the Board); Ex. 19 (Leita Dep.) at 86:24-88:20 (failing to name any
11 particular issues of importance to the Latino community and claiming that, to the best of his
12 knowledge, no issues were brought to his attention that he was not responsive to). The mere fact
13 that the Commissioners forgot about this important moment of advocacy by the Latino
14 community speaks to their disregard for the needs of that community.

15 **iii. Yakima County’s Actions Related to Groundwater**
16 **Contamination in the Lower Yakima Valley Has Been**
17 **Nonresponsive to the Needs of the Latino Community.**

18 In or around 2008, an EPA investigation confirmed that there was a dangerous level of
19 nitrates in the groundwater in the Lower Yakima Valley. Ex. 32 (Mendoza Decl.) at ¶ 6.
20 Although environmental activists had been raising concerns over groundwater contamination for
21 decades, the County failed to respond until after the EPA investigation was made public. *Id.*
22 Only then did the County create a Groundwater Management Area (GWMA) to assess the
23 groundwater contamination in the Lower Yakima Valley. *Id.* Commissioner Elliott confirmed
24 that it is a “reasonable assumption” that many of the residents of the GWMA are recent
25 immigrants with more limited English proficiency and lower education levels. Ex. 21 (Elliott
26 Dep.) at 69:12-20. However, Mr. Elliott demurred when asked if those demographics were taken
27 into account when the GWMA was addressing the water contamination, simply stating that the
group was creating a plan to reduce nitrates “regardless of race.” *Id.* at 69:21-25. Mr. Elliott also

1 confirmed that consistent with this race-neutral approach, the County has not conducted any
2 studies to investigate whether groundwater contamination has a racially disparate impact. *Id.* at
3 65:9-18.

4 An environmental organization in Yakima County called Friends of Toppenish Creek
5 (“FOTC”) raised concerns with the County that the GWMA and its proposed action plan
6 excluded the residents of Yakima most impacted by groundwater contamination: the
7 predominantly Latino farmworker residents of Lower Yakima Valley. Ex. 32 (Mendoza Decl.) at
8 ¶ 7 (discussing a report by the FOTC showing that the area comprising the GWMA is 70 percent
9 Latino). The Commissioners ignored these complaints. Former Commissioner Elliott, the
10 County’s representative for the GWMA, declined to respond to FOTC’s complaints or
11 investigate whether the GWMA should change course based on them. Ex. 32 (Mendoza Decl.) at
12 ¶ 7. The GWMA moved more slowly to produce a report than even then-Commissioner Elliott
13 would have liked, not publishing its final opinion until approximately 2018 after he had left
14 office. Ex. 21 (Elliott Dep.) at 77:16-78:23; 79:3-12 (stating there was “no benefit in taking six
15 years” to develop a plan).

16 Current Commissioner McKinney—who testified that she had “absolutely no knowledge
17 of any details” regarding what percentage of GWMA residents are Latino, Ex. 38 (McKinney
18 Dep.) at 236:8-11—asserted that the responsibility to conduct a study to investigate whether the
19 groundwater contamination has a racially disparate impact should lie with federal or state
20 agencies, not the County Board. *Id.* at 235:10-236:7. Similarly, Commissioner Linde indicated
21 that though he had heard of the GWMA Plan, he was largely unfamiliar with what steps the
22 County had taken to respond to the water contamination crisis in the Lower Yakima Valley. Ex.
23 18 (Linde Dep.) at 144:17-22, 145:19-146:1. In contrast to current and former Commissioners,
24 Ms. Manjarrez, who was the Latino community’s candidate of choice in 2016 for Commissioner
25 District 2, testified that the “Yakima County Board of Commissioners should be a leader . . . to
26 try to find a solution to the problem” of water contamination in the Lower Yakima Valley. Ex.
27 17 (Manjarrez Dep.) at 135:7-15.

1 majority vote requirement, and staggered terms heighten the opportunity for vote dilution,
2 evidenced by the fact that only one Latino candidate has *ever* been elected to the County Board.
3 As the *Montes* court stated, “The existing record, undisputed in all material respects, supports
4 only one rational conclusion: that under the totality of the circumstances,” County Board
5 “elections are not ‘equally open to participation’ by Latino voters.” *Montes*, 40 F. Supp. 3d at
6 1414.

7 CONCLUSION

8 For the foregoing reasons, Plaintiffs’ Motion for Summary Judgment should be granted.

9 DATED this 3rd day of May, 2021.

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