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Attn.: Franklin County Public Utility District Commissioners  
1411 W. Clark Street  
Pasco, Washington 99301

Re: Violation of the Washington Voting Rights Act of 2018

Dear Franklin County Public Utility District Commissioners:

We are writing on behalf of individual Latino voters of the Franklin County Public Utility District (PUD). We write to provide written notice pursuant to the Washington Voting Rights Act of 2018 (WVRA; the Act), of our clients' intent to challenge the Franklin County PUD electoral system under the Act on behalf of themselves and Latino/a voters who do not have an equal opportunity to elect candidates of choice.

The evidence shows that the hybrid election system for the Franklin County PUD Commission, which utilizes districts for primary elections, but at-large voting for the general election, dilutes the votes of Latino voters in the PUD. A Latino candidate of choice has not been elected to the Franklin County Public Utility District despite the fact that the Latino eligible voter population in the area covering the PUD is 37%. No Latino/a has been elected as a commissioner in at least the past twenty years.

The PUD Commission's current election system presents a barrier for Latinos to have an equal opportunity to elect candidates of their choice, thus violating both the WVRA and the Washington State Constitution.

### **Washington Voting Rights Act**

The WVRA was enacted to "promote equal voting opportunity in certain political subdivisions."<sup>1</sup> The WVRA dictates that "local laws. . . related to the right to vote shall be construed liberally in favor of. . . ensuring that voters of race, color, and language minority groups have equitable access to fully participate in the electoral process in registering to vote and voting free from improper dilution or abridgement of voting power."<sup>2</sup>

<sup>1</sup> Washington Voting Rights Act of 2018, S. 6002, 65th Leg. (Wash. 2018) (codified at RCW § 29A.92 (2018)).

<sup>2</sup> RCW § 29A.92.720 (2018).

The Act prohibits political subdivisions from maintaining “method[s] of electing the governing body of a political subdivision . . . that impair[] the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgement of the rights of voters who are members of a protected class or classes.”<sup>3</sup>

A violation of the Act is established when elections in a political subdivision exhibit polarized voting *and* the electoral system dilutes the votes of a protected class of voters, such that those voters lack an equal opportunity to elect candidates of their choice.<sup>4</sup> A court need not consider explanations of why polarized voting in the subdivision exists to determine that it does exist.<sup>5</sup> Further, the amendments to the WVRA outlines factors that may indicate a political subdivision violates the Act, such as a history of discrimination, utilization by the political subdivision of electoral devices or voting practices or procedures that may enhance the dilutive effects of past discrimination, and the extent to which members of the protective class bear the effects of past discrimination in education, employment, and health, among other factors.<sup>6</sup> No single factor is dispositive or necessary to establish a violation.<sup>7</sup>

The Washington Supreme Court has affirmed the constitutionality of the WVRA and the U.S. Supreme Court has denied review of that decision. *See Portugal v. Franklin Cnty.*, 530 P.3d 994, 999 (Wash. 2023), *cert. denied sub nom., Gimenez v. Franklin Cnty., WA*, No. 23-500, 2024 WL 1607746 (U.S. Apr. 15, 2024).

### **Demographics of Franklin County**

In the last twenty years, like other surrounding counties, Franklin County has experienced a large growth of the Latino community.<sup>8</sup> According to the 2022 U.S. Census Bureau, Franklin County has a total population 98,678 and a total Citizen Voting Age Population (CVAP) of 52,042.<sup>9</sup> According to the 2022 American Community Survey (ACS), Latinos now account for over one-third, 37.1% of the CVAP of Franklin County.<sup>10</sup>

The Latino population is geographically compact and largely concentrated within select areas of Franklin County, including East Pasco. Below is a heat map demonstrating where the Latino population in Franklin County PUD is located. The green represents more Hispanic while the red represents less Hispanic by total population based on the U.S. Census.

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<sup>3</sup> *Id.* § 29A.92.020.

<sup>4</sup> *Id.* § 29A.92.030(1)(a)–(b).

<sup>5</sup> *Id.* § 29A.92.030(2).

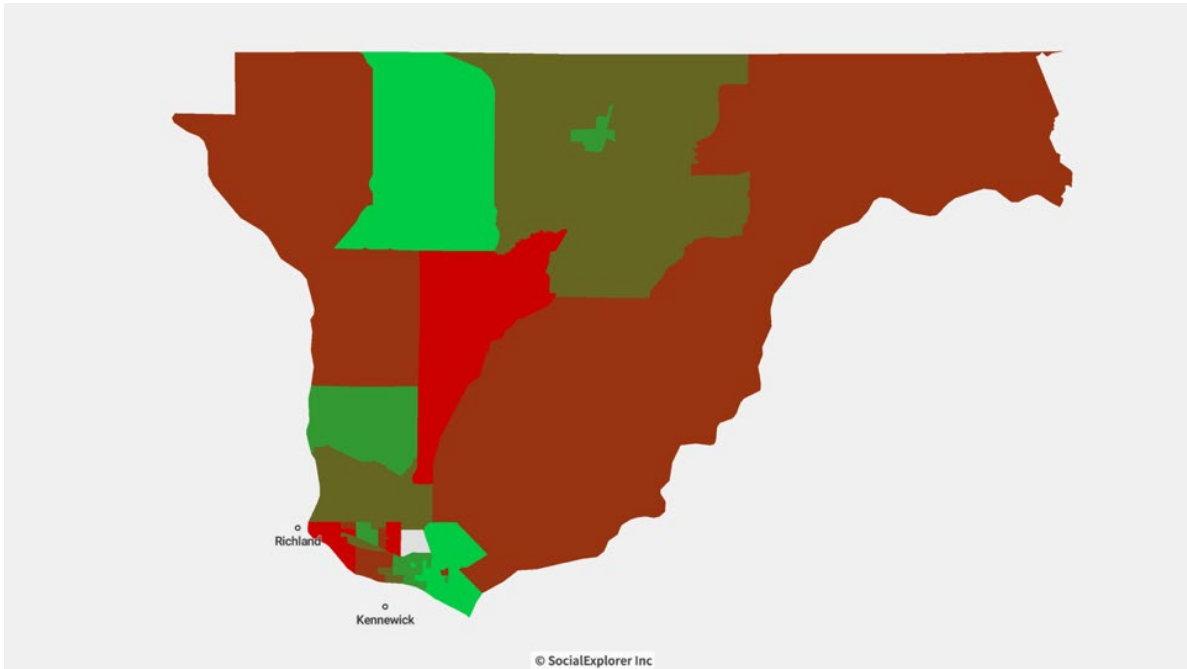
<sup>6</sup> *Id.* § 29A.92.030(7).

<sup>7</sup> *Id.* § 29A.92.030(4).

<sup>8</sup> *E.g.*, John Stucke, *2010 Census: Spokane Still No. 2; Valley Makes Top 10*, SPOKESMAN-REVIEW. (Feb. 24, 2011), <https://www.spokesman.com/stories/2011/feb/24/2010-census-spokane-still-no-2-spokane-valley/>.

<sup>9</sup> U.S. Census Bureau, *American Community Survey B05003* (2022), <https://data.census.gov/table/ACSST1Y2022.B05003?q=franklin%20county%20WA,%20sex%20by%20age%20by%20citizenship>.

<sup>10</sup> U.S. Census Bureau, *American Community Survey B05003I* (2022), <https://data.census.gov/table?q=franklin%20county%20WA,%20sex%20by%20age%20by%20citizenship%20latino>



### **The Franklin County PUD's Current Electoral System Violates the WVRA**

The elements of a WVRA violation exist within the Franklin County PUD's current electoral system.

First, there is racially polarized voting exhibited by the Franklin County PUD electorate. What that means is that Latino voters in the electorate exhibit different electoral choices for PUD candidates, ballot measures, other local and statewide elections, and electoral choices that affect the rights and privileges of Latinos, while white voters in the PUD electorate exhibit divergent and opposite electoral choices and do so at sufficient rates to usually defeat Latino candidates and electoral choices.

For example, in the 2018 Public Utility District Commissioner #3 race, candidate Cynthia N. Parker was the top vote getter in high-density Latino voting precincts, but the lowest vote receiver in high-density white precincts. Other elections similarly show high degrees of racial polarization. Also, federal courts have found racially polarized voting in Franklin County and the City of Pasco. *See Glatt v. City of Pasco*, 4:16-cv-05108-LRS (E.D. Wash. Jan. 27, 2017); *Soto Palmer v. Hobbs*, No. 3:22-CV-05035-RSL, 2023 WL 5125390, at \*7 (W.D. Wash. Aug. 10, 2023), *cert. denied before judgment sub nom., Trevino v. Palmer*, 144 S.Ct. 873 (2024).

Franklin County recently settled a WVRA lawsuit filed against it and its own expert concluded that voters within Franklin County, the same voters for the PUD, exhibit a high degree of racial polarization in voting.

Second, the at-large system utilized by the PUD in general elections only, in conjunction with the existence of polarized voting, results in blocking Latino voters from being able to elect candidates of choice. This is because Latinos are not a majority of voters within the Franklin

County PUD and the levels of polarized voting are such that non-Latinos do not vote or cross-over to support Latino candidates of choice.

### **Other Factors Demonstrating a WVRA Violation**

The area covered by the Franklin County PUD exhibits other factors that demonstrate a WVRA violation. Under both the Washington Voting Rights Act and Federal Voting Rights Act, the existence of historic and present racial discrimination in the jurisdiction supports a finding that challenged voting methods are discriminatory. In making this determination, courts consider a variety of factors including:

the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at large elections, . . . the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.<sup>11</sup>

All the above factors are present in Franklin County and the PUD District. A federal court has already found that a history of discrimination exists within Eastern Washington towards Latinos and that Latinos in the region bear the effects of past discrimination in education, employment, and health that impacts their ability to participate in the political process. *See Soto Palmer v. Hobbs*, No. 3:22-CV-05035-RSL, 2023 WL 5125390, at \*7 (W.D. Wash. Aug. 10, 2023), *cert. denied before judgment sub nom., Trevino v. Palmer*, No. 23-484, 2024 WL 675259 (U.S. Feb. 20, 2024).

Furthermore, the geographic area covering the Franklin County PUD has a history of ethnic and racial tension between the county's white and Latino communities.<sup>12</sup> In fact, East Pasco was once the only part of the city open to minorities and even in East Pasco there were efforts by white residents to target and remove non-whites from the city entirely.<sup>13</sup> This historic discrimination has had long lasting effects on Latinos and other minorities in Franklin County. "Race and poverty . . . coalesced to create patterns that endured [in Pasco] for generations."<sup>14</sup>

Not surprisingly, Franklin County Latino voters endure the widespread effects of past and present discrimination in areas such as education, employment, and health, which impacts their ability to engage in the local political process. U.S. Census statistics from the 2022 ACS 5-year estimates reveal several discrepancies between the white and Latino communities in the County:

- Latino residents in Franklin County are more likely to live below the poverty line—almost one in five Latinos in the County live below the poverty line compared to only 7% of white residents.<sup>15</sup>

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<sup>11</sup> RCW § 29A.92.030(7).

<sup>12</sup> *See* Kate Brown, *Only Part of the Story Is Being Told About the Police Shooting in Pasco*, TIME (Mar. 3, 2015), <https://time.com/3729247/police-shooting-pasco-history/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Census Bureau, *American Community Survey B17001I* (2022), <https://data.census.gov/table?q=B17001I&g=050XX00US53021>.

- Similarly, only 8% of Latinos in Franklin have a bachelor’s degree or higher, compared to 28.7% of white residents.<sup>16</sup>
- Latino residents in the County earn less than \$25,000 than white residents in per capita income.<sup>17</sup>

The disparities between the white population and the Latino community in Franklin County are also pervasive with respect to home ownership. Latino homeownership rates are 35.4% compared to white homeownership rate of 76.2% in the County according to the 2020 U.S. Census.<sup>18</sup> Latinos are less likely to have health insurance compared to white residents in the County.<sup>19</sup>

### Issues Affecting Latinos in Franklin County PUD

In 2018, a class action lawsuit *Fellman v. Public Utility District No. 1 of Franklin County* alleged that the PUD unfairly burdened poor, mostly Latino customers, who use the lowest amount of power in the district, by hiking the residential monthly base rate twice since 2013.<sup>20</sup> The monthly base rate increased from \$11.45 to \$34 between 2013 and 2018. Plaintiffs argued that the rate structure “effectively transfers \$4 million per year from low-income Hispanic customers to subsidize both commercial customers using large amounts of electricity and also relatively wealthy residential customers.”<sup>21</sup>

More recently, the PUD raised utility rates for the first time in six years.<sup>22</sup> This 3% hike would extend all the way until 2027, further burdening lower income residents of the Port of Pasco area who very often are Hispanic.<sup>23</sup>

### Proposed Remedies

In the spirit of collaboration and pursuant to the terms of the WVRA, we request the following changes: (1) remove the at-large voting system for the PUD commissioner districts during general elections and replace this voting system with a solely district-based; (2) implement a PUD commissioner map that provides Latinos with an equal opportunity to elect candidates of

<sup>16</sup> U.S. Census Bureau, *American Community Survey C15002H* (2022), <https://data.census.gov/table/ACSST5Y2022.C15002H?q=C15002H>; U.S. Census Bureau, *American Community Survey C15002I* (2022),

<https://data.census.gov/table/ACSST5Y2022.C15002I?q=C15002I%20franklin%20county,%20washington>.

<sup>17</sup> U.S. Census Bureau, *American Community Survey B19301H* (2022)

<https://data.census.gov/table/ACSST5Y2022.B19301H?q=B19301H%20franklin%20county,%20washington>; U.S. Census Bureau, *American Community Survey B19301H* (2022),

<https://data.census.gov/table/ACSST5Y2022.B19301H?q=B19301H%20franklin%20county,%20washington>.

<sup>18</sup> U.S. Census Bureau, *American Community Survey C27001I*, (2020),

<https://data.census.gov/table/ACSST5Y2022.C27001I?q=C27001I&g=050XX00US53021>

<sup>19</sup> U.S. Census Bureau, *American Community Survey C27001H*, (2020),

<https://data.census.gov/table/ACSST1Y2022.C27001H?q=C27001H%20franklin%20county,%20washington>.

<sup>20</sup> Annette Cary, *Poor Customers Overcharged \$4 Million a Year for Electricity, Says Franklin County Lawsuit*, TRI-CITY HERALD (Feb. 26, 2019), <https://www.tri-cityherald.com/news/local/article226830239.html>.

<sup>21</sup> *Id.*

<sup>22</sup> Annette Cary, *Electric bills could climb in Pasco, Franklin County for 1st time in 6 years*, TRI-CITY HERALD (Mar. 27, 2024), <https://www.tri-cityherald.com/new/local/article287104935.html>.

<sup>23</sup> *Id.*

choice; and (3) ensure that elections for any Latino-opportunity commissioner district occurs on the same day as the election for electors for President.

**Next Steps**

Be advised that under the WVRA, you have **90 days** to consider and take action in response to this letter. If we are not satisfied with your response, or do not receive a response, we will proceed with our client's claims and remedies under the Act and any other applicable laws.

This letter is sent on behalf of our client Mr. Gabriel Portugal and Mr. Jose Trinidad Corral. Their contact information is provided below and we ask that you redact this information when you make your public posting, as required by law.<sup>24</sup>

Gabriel Portugal  
[REDACTED]

Jose Trinidad Corral  
[REDACTED]

They may be contacted through their counsel at the information provided hereon below. Thank you for your careful consideration of the issues raised herein. If you would like to schedule a conference to discuss these issues or arrange our help in remedying the issues we raise, we are available to you for that purpose.

Sincerely,



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<sup>24</sup> RCW 29A.92.060(2).