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MICHAEL J. KILLIAN  
FRANKLIN COUNTY CLERK

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

JOSE TRINIDAD CORRAL, and  
GABRIEL PORTUGAL,  
  
Plaintiffs,  
  
v.  
  
FRANKLIN COUNTY PUBLIC UTILITY  
DISTRICT COMMISSION, a Washington  
municipal entity; WILLIAM "BILL"  
GORDON, STUART NELSON, ROGER  
WRIGHT, in their official capacities as  
members of the Franklin Public Utility  
District Commission,  
  
Defendants.

24-2-50948-11  
No.  
  
COMPLAINT FOR RELIEF UNDER  
THE WASHINGTON VOTING  
RIGHTS ACT

**I. INTRODUCTION**

1.1 The current election system used by Defendant, Franklin County Public Utility District Commission ("PUD"), dilutes the votes of Latino/a<sup>1</sup> voters in the PUD, denying them the equal opportunity to elect candidates of their choice in violation of the Washington Voting Rights Act ("WVRA" or "the Act"), RCW 29A.92.060.

<sup>1</sup> This complaint uses the terms "Latino" and "Hispanic" interchangeably to refer to individuals who self-identify as Latino or Hispanic. Additionally, the terms "Latino" and "Hispanic" mean persons of Hispanic Origin as defined by the United States Census Bureau and U.S. Office of Management and Budget (OMB).



1           1.2     The PUD's electoral system violates the WVRA in two ways. First, the hybrid  
2 system, which uses a district-based system for primary elections, but at-large method of election  
3 for general elections utilized by the PUD, prevents Latinos from being able to successfully elect  
4 candidates of choice to the commission in primary elections because the district map cracks the  
5 Latino population of East Pasco. Second, due to strong racially polarized voting in the area, the  
6 at-large method of general elections prevents the Latino minority from having a meaningful  
7 opportunity to elect candidates of choice.  
8

9           1.3     Despite the rapid growth of the Latino population over the past two decades, no  
10 Latino has been elected as a PUD commissioner in Franklin County for at least the past twenty  
11 years.  
12

13           1.4     Egregiously, the PUD has only exacerbated Latino vote dilution. During the 2021  
14 redistricting of the PUD, the PUD chose a district plan that appears to have been drawn such that  
15 one district appears to include a Latino citizen-voting-age majority, but nevertheless does not  
16 allow the Latino citizens a meaningful opportunity to elect candidates of choice. In fact, the  
17 particular contours of the district lines are hard to explain based on any legitimate policy  
18 rationale, and instead it appears the motivation was to sort citizens on the basis of race and  
19 participation in the electorate, with the intent to create a district that appeared to provide Latino  
20 electoral opportunity when, in fact, it does not.  
21

22           1.5     Latino voters within the PUD are left unable to effectively participate in the  
23 PUD's political process.  
24

25           1.6     As such, this action challenges the PUD's electoral system in Franklin County,  
26 alleging that the system deprives Latino voters of their equal right to elect candidates of their  
27 choice, as guaranteed by the WVRA and Washington Constitution.  
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## II. PARTIES

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

2.2 Plaintiff PORTUGAL has voted in previous Franklin County elections and plans to vote in future elections.

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

2.4 Plaintiff TRINIDAD CORRAL has voted in previous Franklin County elections and plans to vote in future elections.

2.5 Defendant FRANKLIN COUNTY PUBLIC UTILITY DISTRICT COMMISSION (“PUD”) is a Washington municipal corporation and a political subdivision within the meaning of and subject to the requirements of the WVRA. *See* RCW 29A.92.010(5). The PUD maintains a system in which candidates for PUD Commissioner are first voted on in a district-based primary, and then elected through a County-wide at-large election.

2.6 Defendants WILLIAM “BILL” GORDON, STUART NELSON, ROGER WRIGHT (collectively “DEFENDANTS”) are current commissioners of the PUD. The PUD has the authority to change its electoral system to remedy a violation of the WVRA. *See* RCW 42.12.010. The Commissioners are each sued in their official capacity as members of the Franklin County Public Utility District Commission only.

## III. JURISIDCTION AND VENUE

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



1           4.9     The PUD has the same geographic boundaries as Franklin County and the same  
2 electorate.

3           4.10    According to the 2022 U.S. Census, Franklin County has a total population of  
4 98,678, and a total Citizen Voting Age Population (CVAP) of 52,042.

5           4.11    According to the 2022 American Community Survey, Latino citizens make up  
6 over one third, or 37.1%, of Franklin County's CVAP.  
7

8           4.12    Latinos comprise 56% of the population in Pasco, Washington, the largest city in  
9 Franklin County.

10          4.13    Over the past twenty years, Franklin County has grown rapidly, and the County's  
11 demographics have shifted.  
12

13          4.14    This population growth has changed the demographics of Franklin County's  
14 CVAP and increased the percentage of eligible voters who are Latino.

15          4.15    Franklin County's Latino population is geographically compact and largely  
16 concentrated within select areas of Franklin County, including East Pasco.  
17

### 18           **C. The Washington Voting Rights Act**

19          4.16    The Washington state legislature enacted the Washington Voting Rights Act  
20 (WVRA) in 2018 to ensure that "minority groups have an equal opportunity to elect candidates  
21 of their choice or influence the outcome of an election." RCW 29A.92.005.  
22

23          4.17    The WVRA aims to "promote equal voting opportunity in certain political  
24 subdivisions." Washington Voting Rights Act of 2018, S. 6002, 65th Leg. (Wash. 2018)  
25 (codified at RCW § 29A.92 (2018)).  
26  
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1           4.18 Any electoral system that denies minority groups' ability to elect candidates of  
2 their choice is "inconsistent with the right to free and equal elections" guaranteed by the  
3 Washington State Constitution. RCW 29A.92.005.

4           4.19 The WVRA requires that "local laws . . . related to the right to vote shall be  
5 construed liberally in favor of . . . ensuring that voters of race, color, and language minority  
6 groups have equitable access to fully participate in the electoral process in registering to vote and  
7 voting free from improper dilution or abridgement of voting power." RCW § 29A.92.720 (2018).

8           4.20 The WVRA gives local governments the opportunity to remedy discrimination in  
9 election schemes to provide protected classes the opportunity to elect candidates of choice. RCW  
10 29A.92.070.

11           4.21 The WVRA requires that district maps afford minority voters an equal  
12 opportunity to elect candidates of their choice. RCW 29A.92.020.

13           4.22 Political subdivisions are prohibited from maintaining election schemes that dilute  
14 or abridge this electoral opportunity. RCW 29A.92.020.

15           4.23 The WVRA prohibits diluting the voting power or influence of protected classes  
16 through at-large elections. RCW 29A.92.030.

17           4.24 At-large elections dilute the voting power of minorities because "where minority  
18 and majority voters consistently prefer different candidates, the majority, by virtue of its  
19 numerical superiority, will regularly defeat the choices of minority voters." *Thornburg v.*  
20 *Gingles*, 478 U.S. 30, 48 (1986).

21           4.25 Combined with racially polarized voting, where the minority population votes for  
22 different candidates than the majority population, at-large elections work to dilute the voting  
23 power of minority populations.  
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1           4.26   Where there is racially polarized voting in a political subdivision and the votes of  
2 a racial minority are diluted, such that those voters lack an equal opportunity to elect candidates  
3 of their choice, that subdivision is in violation of the WVRA. RCW 29A.92.020.  
4

5           4.27   A court need not consider explanations of why polarized voting in the subdivision  
6 exists to determine that such polarized voting does exist. RCW 29A.92.030(2).  
7

8           4.28   The amendments to the WVRA outline factors that may indicate a political  
9 subdivision violates the Act. RCW 29A.92.030(7).  
10

11           4.29   These factors include a history of discrimination; utilization by the political  
12 subdivision of electoral devices or voting practices or procedures that may enhance the dilutive  
13 effects of past discrimination; and the extent to which members of the protected class bear the  
14 effects of past discrimination in education, employment, and health, among factors. RCW  
15 29A.92.030(7).  
16

17           4.30   No single factor is dispositive or necessary to establish a violation of the WVRA.  
18 RCW 29A.92.030(4).  
19

20           4.31   The Washington Supreme Court has affirmed the constitutionality of the WVRA,  
21 and the U.S. Supreme Court denied review of that decision. *See Portugal v. Franklin Cnty., WA*,  
22 530 P.3d 994, 999 (Wash. 2023), *cert. denied sub nom., Gimenez v. Franklin Cnty., WA*, No. 23-  
23 500, 2024 WL 1607746 (U.S. Apr. 15, 2024).  
24

25           4.32   The settlement agreement provided that all future elections for the office of  
26 Franklin County Commissioner would be conducted using a single-member district election  
27 system for both primary and general elections.  
28

          4.33   The PUD's current electoral system exhibits all the elements of a WVRA  
violation.

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**D. PUD Commission Elections Exhibit Polarized Voting**

4.34 The PUD’s electorate exhibits racially polarized voting.

4.35 Polarized voting occurs when members of different racial or ethnic groups make different electoral choices for candidates, ballot measures, and other local and statewide elections than other racial or ethnic groups. RCW 29A.92.010.

4.36 Non-Hispanic white voters and Latino voters within the PUD consistently demonstrate different electoral choices for PUD Commission candidates and other local and statewide elections.

4.37 This pattern of different electoral choices is consistent across different PUD elections, county-wide elections within Franklin County, and across election years.

4.38 Latino voters within the PUD are politically cohesive, vote consistently as a bloc for common candidates of choice and exhibit different electoral choices than those of non-Latinos.

4.39 At the same time, white voters in the PUD Commission electorate exhibit divergent and opposite electoral choices than Latino voters.

4.40 White voters within the PUD electorate are politically cohesive, vote consistently as a bloc, and exhibit different electoral choices at sufficient rates to usually defeat Latino candidates and electoral choices.

4.41 This split, in which candidates who win a majority of the vote in high-density Latino voting precincts but receive low or very low support in high-density white precincts, is emblematic of racially polarized voting.



1           4.42 For example, in the 2018 PUD Commissioner #3 race, candidate Cynthia N.  
2 Parker received the most votes in high-density Latino voting precincts, but the lowest number of  
3 votes in high-density white precincts.

4           4.43 Other PUD elections have shown high degrees of racially polarized voting.

5           4.44 Other Franklin County elections that affect the rights of voters demonstrate  
6 polarized voting.  
7

8           4.45 Franklin County Commissioner elections from 2008 to 2020 all exhibit racially  
9 polarized voting.

10           4.46 In 2020, Ana Ruiz Peralta ran for Franklin County Commissioner District 2, won  
11 the primary election, advanced to the general election, and then lost to Commissioner Mullen;  
12 because while she was the most preferred candidate in high-density Latino precincts, she was the  
13 least preferred candidate in high-density White precincts.  
14

15           4.47 The difference in candidate preference between Latino and white voting precincts  
16 is quite large and is statistically significant. Indeed, Latino voters' candidates of choice are rarely  
17 elected, and Latino voters have been unable to elect a candidate of their choice under the PUD'  
18 at-large election scheme.  
19

20           4.48 Federal courts have already found racially polarized voting in Franklin County  
21 and the City of Pasco. *See Glatt v. City of Pasco*, 4:16-cv-05108-LRS (E.D. Wash. Jan. 27,  
22 2017); *Soto Palmer v. Hobbs*, No. 3:22-CV-05035-RSL, 2023 WL 5125390, at \*7 (W.D. Wash.  
23 Aug. 10, 2023), *cert. denied before judgment sub nom.*, *Trevino v. Palmer*, 144 S. Ct. 873  
24 (2024).  
25

26           4.49 Additionally, Franklin County recently settled a WVRA lawsuit against it.  
27  
28

1           4.50    This is because Franklin County’s own expert found that voters within Franklin  
2 County, the same voters for the Franklin County PUD, exhibit a high degree of racially polarized  
3 voting.

4           4.51    Latino voters within the PUD are able to show that there is racially polarized  
5 voting occurring during PUD elections, county-wide elections, and other elections relevant under  
6 the WVRA.

7           4.52    Because there is racially polarized voting, under the WVRA, there is evidence  
8 sufficient to show that Latino voters are suffering from vote dilution.

9           4.53    Latino voters across Franklin County suffer from vote dilution in violation of the  
10 WVRA due to the PUD’s at-large election system.

11  
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13           **E. The PUD’s At-Large Electoral System Dilutes the Voting Rights of Latinos**  
14           **and Denies Latinos an Equal Opportunity to Elect Candidates of their Choice**

15           4.54    PUD’s hybrid district and at-large election model dilutes the voting power of the  
16 Latino community and denies Latino voters the equal opportunity to elect candidates of their  
17 choice.

18           4.55    The PUD’s primary district map cracks the Latino population of East Pasco to  
19 ensure that there is not an effective majority such that Latinos are able to elect candidates of  
20 choice.

21           4.56    The PUD district map does this by disregarding existing recognized natural  
22 boundaries, not respecting existing communities of interest, and using population data to disfavor  
23 Latino voters in violation of RCW 29A.76.010.

24           4.57    For example, the PUD Commissioner District 3 crosses U.S. Highway 395,  
25 groups together East and West Pasco by including majority white-voting precincts 25, 26, 27, 20,  
26  
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1 and 31, and leaves out voting precinct 2, which is a large, majority-Hispanic voting district in  
2 East Pasco.

3 4.58 The current district map ensures that Latino voters comprise only 50.17% of the  
4 eligible voter population, excluding high-turnout Latino voting precincts as a way to disfavor  
5 Latino voters and dilute their votes. Drawing such a slim majority of Latino CVAP in the district,  
6 coupled with the exclusion of a portion of historic East Pasco, demonstrates intentional  
7 discrimination in violation of the WVRA, Federal Voting Rights Act, and both the Washington  
8 and United States Constitution.

9  
10 4.59 Latino voters in Franklin County have not been able to elect a candidate of their  
11 choice to the PUD in at least two decades.

12  
13 4.60 There are no Latino-preferred candidates currently serving on the PUD.

14 4.61 At-large voting systems within the PUD geographic area have already been found  
15 to be vote dilutive and prohibited under law.

16  
17 **F. Franklin County Exhibits Historic and Ongoing Racial Discrimination That**  
18 **Demonstrates a WVRA Violation.**

19 4.62 Historic and contemporaneous discrimination within the PUD geography against  
20 Latinos supports finding a WVRA violation.

21 4.63 Under both the WVRA and the Federal Voting Rights Act, the existence of  
22 historic and present racial discrimination supports a finding that challenged voting methods are  
23 discriminatory.

24 4.64 In determining whether there is historical or ongoing discrimination, courts  
25 consider a variety of factors, including: the history of discrimination; the use of electoral devices  
26 or other voting practices or procedures that may enhance the dilutive effects of at large elections;  
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1 the extent to which members of a protected class bear the effects of past discrimination in areas  
2 such as education, employment, and health, which hinder their ability to participate effectively in  
3 the political process; and the use of overt or subtle racial appeals in political campaigns.

4  
5 4.65 A federal court has already found that a history of discrimination exists within  
6 Eastern Washington toward Latinos and that Latinos in the region bear the effects of past  
7 discrimination in education, employment, and health that impacts their ability to participate in  
8 the political process. *See Soto Palmer v. Hobbs*, No. 3:22-CV-05035-RSL, 2023 WL 5125390, at  
9 \*7 (W.D. Wash. Aug. 10, 2023), *cert. denied before judgment sub nom., Trevino v. Palmer*, No.  
10 23-484, 2024 WL 675259 (U.S. Feb. 20, 2024).

11  
12 4.66 Franklin County has a history of ethnic and racial tension between the county's  
13 white and Latino communities.

14 4.67 East Pasco was once the only part of the city open to minorities. In other words,  
15 the reason Latinos live where they live in Pasco is because the White majority forced it to be so;  
16 at the least, their community can be drawn whole in a single electoral district. The WVRA  
17 promises them that much.

18  
19 4.68 Even in East Pasco, there were efforts by white residents to target and remove  
20 non-whites from the city entirely.

21 4.69 This historic discrimination has had long-lasting effects on Latinos and other  
22 minority communities in Franklin County.

23  
24 4.70 Franklin County officials have expressed anti-immigrant sentiment against the  
25 county's immigrant population—an overwhelming majority of which is Latino.

26 4.71 In addition to the above, Latino voters in Franklin County endure the widespread  
27 effects of past and present discrimination in areas such as education, employment, and health.  
28

- 1           4.72 This discrimination impacts their ability to engage in the PUD political process.
- 2           4.73 U.S. Census statistics from the 2022 ACS five-year estimates reveal several
- 3 discrepancies between the white and Latino communities in Franklin County.
- 4
- 5           4.74 Latino residents in Franklin County are more likely to live below the poverty line.
- 6 Almost one in five Latinos in Franklin County lives below the poverty line, compared to only
- 7 seven percent of white residents.
- 8           4.75 Latino residents in Franklin County are much less likely to have a high school
- 9 diploma than white Franklin County residents.
- 10
- 11           4.76 Only eight percent of Latinos in Franklin County have a bachelor's degree or
- 12 higher, compared to 28.7% of white residents.
- 13           4.77 The disparities between the white population and the Latino community in
- 14 Franklin County are also pervasive with respect to job earnings and access to health care.
- 15           4.78 Latino homeownership rates are 35.4%, compared to a white homeownership rate
- 16 of 76.2% in Franklin County, according to the 2020 U.S. Census
- 17
- 18           4.79 According to the 2020 American Community Survey, Latinos are less likely to
- 19 have health insurance compared to white residents in Franklin County.
- 20           4.80 On average, white Franklin County residents also earn substantially more at their
- 21 jobs on average than do Franklin County's Latino residents.
- 22           4.81 Latino residents in Franklin County earn \$25,000 less than white residents in per
- 23 capita income.
- 24
- 25           4.82 Latinos' inability to elect candidates of choice to the PUD adversely impacts
- 26 Latino residents of Franklin County.
- 27
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1           4.83    In 2018, a class action lawsuit, *Fellman v. Public Utility District No. 1 of Franklin*  
2 *County*, alleged that the PUD unfairly burdened poor, mostly Latino customers, who use the  
3 lowest amount of power in the district, by hiking the residential monthly base rate twice since  
4 2013. The monthly base rate increased from \$11.45 to \$34 between 2013 and 2018.

5  
6           4.84    More recently, the PUD raised utility rates for the first time in six years. This  
7 three-percent hike would remain in effect until 2027, further burdening lower income residents  
8 of the area, who very often are Latino.

9  
10          4.85    Latino voters' inability to elect candidates of choice to the PUD has resulted in  
11 policies that harm Latinos within the PUD.

#### 12                           **V. CAUSE OF ACTION: WASHINGTON VOTING RIGHTS ACT**

13          5.1    Plaintiffs repeat, replead, and incorporate by reference, all allegations of this  
14 Complaint.

15          5.2    A violation of the WVRA is established when elections in a political subdivision  
16 exhibit polarized voting and members of a protected class do not have equal opportunity to elect  
17 candidates of their choice as a result of vote dilution or abridgement.

18          5.3    Latinos are a protected class.

19          5.3    Elections for PUD and within the geography of the PUD exhibit polarized voting  
20 along racial lines.

21          5.4    Latino voters within the PUD do not have equal opportunity to elect candidates of  
22 their choice because the PUD's hybrid district-based and at-large electoral system illegally  
23 dilutes Latino votes.

24          5.5    Latino voters within the PUD have also experienced historic and ongoing racial  
25 discrimination that further demonstrates a violation of the WVRA.

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- 1 4. Enjoin Defendants, their agents and successors in office, and all persons acting in  
2 concert with, or as an agent of, any Defendants in this action from administering,  
3 implementing, or conducting any future elections for the Franklin County PUD  
4 Commission under the current hybrid electoral system.
- 5
- 6 5. Order the implementation of an electoral system for Franklin County PUD  
7 Commission that complies with RCW 29A.92.020 and other provisions of the  
8 WVRA.
- 9
- 10 6. Adopt one of Plaintiffs' proposed remedial district-based PUD Commission maps for  
11 implementation to ensure that Latino voters are provided with an equal opportunity to  
12 elect candidates of choice to the PUD as required under the law.
- 13
- 14 7. Order that all future elections until 2031 for Franklin County PUD Commissioner are  
15 held under the Plaintiffs' remedial plan.
- 16
- 17 8. Order that all future elections for any Latino-opportunity commissioner district occur  
18 on the same day as the election for electors for President, to the extent possible.
- 19
- 20 9. Grant Plaintiffs' attorneys' fees, costs, and litigation expenses pursuant to RCW  
21 29A.92.130.
- 22
- 23 10. Grant any other relief that the Court may deem just and equitable.

24 DATED this 9<sup>th</sup> day of September 2024.

25 MORFIN LAW FIRM, PLLC

26 By: 

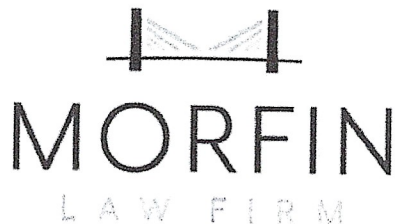
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# EXHIBIT A



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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/ACSDT1Y2022.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/ACSDT5Y2022.C15002H?q=C15002H>; U.S. Census Bureau, *American Community Survey C15002I* (2022),

<https://data.census.gov/table/ACSDT5Y2022.C15002I?q=C15002I%20franklin%20county,%20washington>.

<sup>17</sup> U.S. Census Bureau, *American Community Survey B19301I* (2022)

<https://data.census.gov/table/ACSDT5Y2022.B19301I?q=B19301I%20franklin%20county,%20washington>; U.S. Census Bureau, *American Community Survey B19301H* (2022),

<https://data.census.gov/table/ACSDT5Y2022.B19301H?q=B19301H%20franklin%20county,%20washington>.

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

<https://data.census.gov/table/ACSDT5Y2022.C27001I?q=C27001I&g=050XX00US53021>

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

<https://data.census.gov/table/ACSDT1Y2022.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).