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NO. 100999-2

SUPREME COURT OF THE STATE OF WASHINGTON

GABRIEL PORTUGAL, et al.,

Respondents,

v.

FRANKLIN COUNTY,

Defendant,

and

JAMES GIMENEZ,

Appellant.

**BRIEF OF FRED T. KOREMATSU CENTER FOR LAW
AND EQUALITY AND AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON AS AMICI CURIAE IN
SUPPORT OF RESPONDENTS**

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I. IDENTITY AND INTEREST OF AMICI

The statement of identity and interest of amici are set forth in the Motion for Leave to File that accompanies this brief.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

“The Washington Voting Rights Act puts power back into the hands of the people where it belongs. It will empower disenfranchised communities, and people of color, to elect leaders that reflect their values and the rich diversity of our state. This is a big step forward in realizing a truly representative government.”¹ Senator Rebecca Saldaña, primary sponsor of the WVRA, after the WVRA’s enactment in 2018. That was, and remains, the promise of the WVRA.

The WVRA was enacted against a complex historical and legal background. Discriminatory measures that restrict

¹ Governor’s Office, *Inslee Signs Bills to Improve State’s Democratic Process*, Medium (Mar. 19, 2018), available at <https://medium.com/wagovernor/inslee-signs-bills-to-improve-states-democratic-process-d2b9c903e089>.

minority representation, especially Latinxs,² in localities across the state permeate Washington and its history. The Legislature’s desire to remedy the ongoing effects of these laws was essential to the WVRA’s enactment. The Legislature also sought to expand and modernize protections given to all citizens under Section 2 of the 1965 Voting Rights Act (“FVRA”). Amici write to expand on the historical points raised by Respondents, and to highlight the significance of the Latinx population in the minds of the legislators and the limitations of the FVRA to address the voices of minority groups in Washington politics.

Amici further write with the hope that the promise of the WVRA becomes reality and ask the Court to uphold the WVRA.

² Amici adopt the convention used by this Court to refer to people who identify as or are referred to as “Hispanic” or “Latina/o.” *See State v. Zamora*, 199 Wn.2d 698, 704 n.6, 512 P.3d 512 (2022).

III. ARGUMENT

To understand the importance of the WVRA, one must first understand the history and issues that it was designed to address. This brief first examines the history of discrimination in voting and political participation in Washington State as the context for enactment of the WVRA. It next addresses two key motives for the Washington State Legislature in enacting the WVRA: discrimination against Latinxs, and the inherent limitations of the FVRA. The brief next discusses how the Legislature supplemented the protections in the FVRA to address those inherent limitations. Finally, the brief highlights some of the successes already achieved under the WVRA in its short history.

A. Washington Has a Long History of Discrimination in Voting and Political Participation.³

In Washington State, racial minorities faced challenges exercising their right to vote from the beginning of Washington’s existence as a territory. In 1853, the then Washington Territory adopted a measure denying Chinese people the right to vote.⁴ In 1896, the Washington State Constitution enshrined discrimination by providing that “Indians not taxed shall never be allowed the elective franchise.”⁵

The Washington’s Constitution also required that voters “be able to read and speak the English language.”⁶ Washington

³ Respondents include a detailed overview of the “long history of tensions between the white and Latino populations” in Franklin County. *See* Br. of Resp’ts 3–7.

⁴ Gwen Perkins, Wash. State History Museum, *Exclusion in Washington 2* (2007), available at <https://www.washingtonhistory.org/wp-content/uploads/2020/04/WAExclusion.pdf>.

⁵ Susan Cianci Salvatore, Nat’l Park Serv., *Civil Rights in America: Racial Voting Rights* 84 (2009), available at https://www.nps.gov/subjects/tellingallamericansstories/upload/CivilRights_VotingRights.pdf.

⁶ Const. art. 6, § 1 (1896).

officials enforced this constitutional requirement through a literacy test—one that was not required of each potential voter.⁷ Instead, each “registration officer” was able to decide if they were satisfied that the potential voter could read and speak English, and if not, “require [them] to read aloud and explain the meaning of some ordinary English prose.”⁸ Although this procedure later violated the Voting Rights Act of 1965, which required that literacy tests be administered to each voter if they were used at all, counties still administered tests in a discriminatory manner until 1967.⁹ That year, the Washington State Attorney General published an opinion clarifying that while the Washington literacy requirement could remain in

⁷ State Att’y Gen., AGO 1967 No. 21, *Administration of Literacy Test to Persons Registering to Vote* (June 15, 1967), available at <https://www.atg.wa.gov/ago-opinions/administration-literacy-test-persons-registering-vote>.

⁸ *Id.* (quoting RCW 29.07.070).

⁹ *Id.*

effect, the varying manner in which these tests were conducted could not continue.¹⁰

Not all counties complied with this guidance. In 1968, Mexican-American residents of Yakima County attempted to register to vote and were refused because they were “unable to speak and read the English language.”¹¹ A district court upheld this practice, after which the plaintiffs appealed to the United States Supreme Court.¹² On remand, a three-judge panel vacated the earlier ruling, holding that “requiring voters be able to read and speak the English language are in conflict with the Voting Rights Act of 1965” and required Yakima County to register applicants without requiring a literacy test.¹³

In 2004, Yakima County entered into a consent decree with the United States Department of Justice for violating

¹⁰ *Id.*

¹¹ *Mexican-Am. Fed.-Wash. State v. Naff*, 299 F. Supp. 587, 589–90 (E.D. Wash. 1969).

¹² *Id.* at 593; *Jimenez v. Naff*, 400 U.S. 986 (1971).

¹³ Order Vacating J., *Mexican-Am. Fed. v. Naff*, No. 68-cv-2457, at 3–4 (E.D. Wash. Sept. 27, 1971).

Section 203 of the FVRA by failing to provide Spanish translations of voting-related materials and Spanish language assistance at polling places.¹⁴ In 2014, a federal court ruled that Yakima’s at-large system for electing city council members diluted the voting power of Yakima’s Latinx residents, and subsequently ordered Yakima to implement single-member district seats.¹⁵ Following this change, Yakima elected the first Latinx city council members in its history.¹⁶

In the years leading up to the enactment of the WVRA, minority candidates across Washington experienced difficulty getting elected in numbers proportional to their representation in the population. Data from 2016 showed vast disparities between Latinx population and representation in Washington’s

¹⁴ Consent Decree, *United States v. Yakima Cnty.*, No. 04-cv-3072, at 3–4 (Sept. 3, 2004).

¹⁵ *Montes v. City of Yakima*, No. 12-cv-3108, 2015 WL 11120964, at *2 (E.D. Wash. Feb. 17, 2015).

¹⁶ *3rd Latina Elected to Yakima City Council*, Seattle Times, Nov. 6, 2015, available at <https://www.seattletimes.com/seattle-news/3rd-latina-elected-to-yakima-city-council/>.

most Latinx counties.¹⁷ Franklin County had one of the most dramatic splits, with a population that was 50.5 percent Latinx but only 2.7 percent Latinx officeholders.¹⁸ This disparity continued despite the rapid growth in the Latinx population.

The impact of racially polarized voting can perhaps best be seen in a few key races between a Latinx and non-Latinx candidate prior to the WVRA's enactment. In Justice Steven González's state Supreme Court race in 2012, a Kitsap County attorney named Bruce Danielson, who hardly raised any money or conducted a campaign, outperformed Justice González in many Central Washington counties.¹⁹ Dr. Matt Barreto, then a professor of political science at the University of Washington,

¹⁷ Lilly Fowler, *WA to Protect Against Voting Discrimination with New Law*, Crosscut (Mar. 6, 2018), available at <https://crosscut.com/2018/03/washington-voting-rights-act-legislature-discrimination-law-jay-inslee>.

¹⁸ *Id.*

¹⁹ Matt A. Barreto et al., *Dissecting Voting Patterns in the González-Danielson Supreme Court Contest in Washington State 1* (2012), available at http://mattbarreto.com/papers/gonzalez_primary2012.pdf.

found that these results “strongly support[ed] the hypothesis that racial voting bias distorted the González-Danielson race in certain Washington counties.”²⁰ Professor Barreto also found that party and ideological preference did not account for the results in Yakima and Grant Counties; Danielson outperformed other conservative candidates who campaigned in the area, but did not have a Latinx opponent.²¹

Similarly, in 2009, Yakima City Councilmember Sonia Rodriguez True ran to retain her council seat to which she was appointed earlier that year.²² Her opponent—a conservative radio host—did little traditional campaigning and the Yakima Herald-Republic endorsed (now Judge) True.²³ Despite all this,

²⁰ *Id.*

²¹ *Id.* at 3.

²² Austin Jenkins, *Most City Councils in Northwest Have No Latinos*, Nat’l Pub. Radio (Sept. 21, 2012), available at <https://www.npr.org/templates/story/story.php?storyId=161738090>.

²³ Jim Brunner, *In Yakima, Other Areas, Growing Latino Population Invisible Politically*, Seattle Times (July 2, 2011), available at <https://www.seattletimes.com/seattle-news/in->

her opponent won after dominating Yakima’s majority-white neighborhoods.²⁴

Against this historical backdrop, including recent demographics trends and political polarization, the Legislature considered the WVRA.

B. The History of Political Exclusion of Racial Minorities, Especially Among Latinxs, and the Inherent Limitations of the FVRA Drove the Washington State Legislature to Enact the WVRA.

The Legislature’s motivations behind enacting the WVRA are clear from even a cursory review of the legislative history. Proponents trumpeted the difficulties Latinxs faced electing their candidates of choice despite a substantial and rapidly increasing Latinx population. Proponents also spoke to the need to supplement the FVRA. Although other concerns and priorities came up in the six years between the WVRA’s first introduction and its eventual enactment, the challenges

yakima-other-areas-growing-latino-population-invisible-politically/.

²⁴ *Id.*

faced by Latinx voters in Washington and ensuring such voters had an accessible path to justice remained paramount.

1. The WVRA Is a Necessary Tool to Enable Latinx Political Participation.

From its earliest iterations through its enactment in 2018, the Legislature intended that the WVRA protect communities of color and, in particular, the Latinx community.

From the first hearings on the WVRA in 2012, Proponents of the bill specifically noted that the WVRA must address fair representation in counties with high percentages of Latinx residents.²⁵ Professor Barreto, testifying in support of the WVRA, noted that racial minorities in Washington tend to be concentrated in specific areas, such as in Franklin County,

²⁵ See *Hearing on S.B. 6381 - WA Voting Rights Act of 2012 Before the Senate Governmental Ops., Tribal Relations & Elections Committee, 2011-2012 Leg., Reg. Sess. at 37:3, 43:00 (Wash. Jan. 24, 2012), available at <https://tvw.org/video/senate-government-ops-tribal-relations-elections-cmte-2012011140/>;*

but do not see a corresponding concentration of political representation.²⁶

Dr. Paul Apostolidis, then a professor of political science at Whitman College, who testified in support of the WVRA, noted that the WVRA was designed to address the disconnect between the low Latinx representation in local government when compared to overall Latinx representation in those areas.²⁷ Professor Apostolidis discussed areas where the Latinx population made up three-quarters of the population, and had minimal to no Latinx representation on local governing bodies.²⁸

Others testified to the importance of the bill to other protected classes, including, Asian Pacific Americans²⁹ and the Black community,³⁰ as well as democracy at large.³¹

²⁶ *Id.* at 43:14.

²⁷ *Id.* at 49:00.

²⁸ *Id.* at 47:15.

²⁹ *Id.* at 1:11:55.

³⁰ *Id.* at 1:33:50.

³¹ *Id.* at 1:25:40.

Supporters expressed similar views toward protecting communities of color and specifically the Latinx community when the Legislature considered a new iteration of the bill in 2015.³²

When the Washington State Senate passed the Washington Voting Rights Act of 2018, Senator Sam Hunt touted the protective effect the bill would have for the rights of “people of color.”³³ Representative Sharon Santos similarly spoke to the challenges “communities of color” face during traditional redistricting processes, calling the bill a “modern day solution” to those problems.³⁴

³² *See House State Government Committee, 2014-2015 Leg., Reg. Sess. (Wash. Feb. 5, 2015), available at <https://tvw.org/video/house-state-government-committee-2015021105/>.*

³³ *Senate Floor Debate, 2018-2019 Leg., Reg. Sess. at 43:15 (Wash. Jan. 19, 2018), available at <https://tvw.org/video/senate-floor-debate-2018011151/>.*

³⁴ *House Floor Debate, 2018-2019 Leg., Reg. Sess. at 22:25 (Wash. Feb. 27, 2018), available at <https://tvw.org/video/house-floor-debate-2018021342/>.*

When it enacted the WVRA, the Legislature found that “electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections” under the Washington State Constitution.³⁵ The Legislature intended to “remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.”³⁶

2. The WVRA Is a Necessary Expansion of the FVRA.

Proponents of an early version of the WVRA recognized the limitations of a FVRA claim as the only solution, at the time, for racially polarized voting: “A lawsuit under the federal [Voting Rights] Act would be expensive, it would be time consuming, and there’s really only one inflexible and outdated remedy available under that Act.”³⁷ Representative Luis

³⁵ RCW 29A.92.005.

³⁶ *Id.*

³⁷ *Senate Gov. Ops. Comm.*, 2013-2014 Leg., Reg. Sess. at 45:00 (Wash. Feb. 21, 2013), *available at*

Moscoso, the WVRA’s sponsor in 2013, argued that litigation under the FVRA was expensive, and the WVRA was designed to provide options for resolution prior to litigation and allow for solutions tailored to the local political subdivision’s needs.³⁸ At that same hearing, another supporter described the FVRA as a “clunky” option that only offered “punitive” solutions, portraying the WVRA as a more appropriate tool for Washington jurisdictions.³⁹

C. As an Expansion of the FVRA, the WVRA Provides More Efficient, Flexible, and Robust Relief, and Encourages Greater Participation Among Voters.

The WVRA addresses many of the inherent limitations of the FVRA, namely, trying to avoid costly litigation that limits participation in reshaping a locality’s election system, expediting resolution of a potential violation, lowering the

<https://tvw.org/video/senate-governmental-operations-committee-2013021094/>.

³⁸ *Senate Gov. Ops. Comm.*, 2013-2014 Leg., Reg. Sess. at 1:17:48 (Wash. Feb. 20, 2014), *available at* <https://tvw.org/video/senate-governmental-operations-committee-2014021251/>.

³⁹ *Id.* at 1:25.

burden on challengers to prove a violation of the statute, and allowing greater flexibility in crafting a remedy better tailored to the locality.

1. A Brief Overview of the FVRA

There are three necessary preconditions to a Section 2 FVRA vote dilution claim called the *Gingles* preconditions. First, the plaintiff must demonstrate that his or her minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district.”⁴⁰ Second, the plaintiff must establish that the minority group is “politically cohesive.”⁴¹ Third, the plaintiff must “demonstrate that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate.”⁴²

If the plaintiff satisfies the *Gingles* preconditions, the plaintiff must prove that under the totality of circumstances, minority voters have less opportunity than members of the

⁴⁰ *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).

⁴¹ *Id.* at 51.

⁴² *Id.*

majority group to participate in the political process and to elect representatives of their choice.⁴³ Plaintiffs do this through the seven “Senate Factors,” drawn from a report of the Senate Judiciary Committee accompanying the 1982 amendments to the FVRA.

2. The WVRA Expands the FVRA and Encourages Localities to Change Discriminatory Election Systems Without Costly and Protracted Litigation.

The WVRA encourages resolution of potential violations without protracted litigation in two important ways: authorizing localities to change election systems to resolve a potential WVRA violation on their own and require that any potential plaintiffs engage with the locality in a good faith effort to resolve the issue before filing a lawsuit. The FVRA offers no such processes for pre-litigation engagement and resolution.

Under the WVRA, a locality is authorized to change its electoral systems, on its own volition, to remedy a potential or

⁴³ 52 U.S.C. § 10301(b).

actual violation of the WVRA.⁴⁴ There is no corollary authorization under the FVRA.

Without the WVRA, many localities lack the power to voluntarily change their electoral systems.⁴⁵ Without the power to change electoral systems with demographic and other changes, many localities helplessly diluted the voting power of minority groups.⁴⁶ The Legislature expressly intended to “modify existing prohibitions in state laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.” *Id.*

But before a locality can voluntarily change its election system, the WVRA requires the locality to provide notice to its

⁴⁴ RCW 29A.92.040.

⁴⁵ *See* RCW 29A.92.005.

⁴⁶ *Id.*

residents about the proposed change and hold at least one public hearing on the plan in advance of adopting it.⁴⁷ The notice provision is designed to engage the very community that will be impacted by the new electoral system, to understand the needs of the community from the community members, and to ensure the right system is put in place.

The WVRA also requires that anyone (other than the locality itself) who intends to challenge a locality's electoral system under the WVRA to provide notice (and a proposed plan) to the locality before filing suit.⁴⁸ The locality is then required to work in good faith with the person providing the notice to implement a remedy that complies with the WVRA.⁴⁹

These processes, which allow community members to take a more proactive role in ensuring representative systems and reward political subdivisions who make a good faith effort

⁴⁷ RCW 29A.92.050(1)(a), (b).

⁴⁸ RCW 29A.92.060.

⁴⁹ RCW 29A.92.070.

to implement reforms, allow faster and more cost-efficient resolution than FVRA litigation.

3. The WVRA Has a Lower, More Flexible Liability Standard than the FVRA, Which Opens a Path for Additional Protection for Protected Classes.

The FVRA only confers protection to protected classes that are “sufficiently large and geographically compact to constitute a majority in a single-member district.”⁵⁰ As a result, protected classes who suffer from vote dilution that are large, but not large or compact enough to constitute a majority, have no federal remedy. The WVRA purposefully removed this requirement to expand the protection of protected classes that could still “influence the outcome of an election.”⁵¹ Moreover, the WVRA authorizes two or more protected classes to form a “coalition district” for purposes of a WVRA claim, so long as

⁵⁰ *Gingles*, 478 U.S. at 50.

⁵¹ RCW 29A.92.005, .060.

they vote together.⁵² The FVRA does not recognize coalition districts.⁵³

The WVRA opens the courthouse doors to a much wider group of voters who have suffered vote dilution and racial polarization, but do not form a “compact” majority of voters in a single potential district as required by the FVRA.

Finally, the WVRA does not require the same fact-intensive and unpredictable “totality of the circumstances” analysis as the FVRA. As a result, the WVRA does not require the same wide-ranging evidentiary display from either side through additional experts, data, history, and other analysis.

⁵² See RCW 29A.92.110, 005. A coalition district is a district where the combined racial minorities make up a majority of the population and where the voters from these different racial groups vote together to elect the minority-preferred candidate.

⁵³ See *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (voters who reside in a coalition district, but not a majority-minority district, do not have an actionable claim under Section 2 of the federal Voting Rights Act).

4. Even if a WVRA Violation Goes Through Litigation, the WVRA Provides a Faster, Less Complicated, and Less Expensive Path to Resolution.

Vote dilution claims under the FVRA are historically lengthy, expensive, and complex, but the WVRA provides a faster and less expensive alternative.

For example, in 2012, the American Civil Liberties Union of Washington filed a lawsuit against the City of Yakima on behalf of two Latinx registered voters and residents of the City of Yakima alleging that the City’s at-large election system violated Section 2 of the VRA by impermissibly diluting the Latinx vote (“*Montes*”).⁵⁴ The *Montes* complaint alleged that no Latinx candidate had ever won an election for a seat on the city council.⁵⁵

This lawsuit ultimately resulted in summary judgment for the plaintiffs, but not until two years after the lawsuit was

⁵⁴ Compl., *Montes v. City of Yakima*, No. 12-cv-3108, at 2 (E.D. Wash. Aug. 22, 2012).

⁵⁵ *Id.* at 5.

filed.⁵⁶ It took another six months of litigating to reach a remedial plan that was entered in February 2015.⁵⁷

The ACLU of Washington filed a similar lawsuit on behalf of Bertha Aranda Glatt in 2016, challenging the City of Pasco's at-large election system.⁵⁸ Ms. Glatt was a Latina candidate for Pasco City Council's at-large Position 6 in 2015. Non-Latinx candidate Matt Watkins decisively defeated her despite Ms. Glatt's strong support from Latinx voters.⁵⁹ Ms. Glatt and Pasco reached an agreement that Pasco was in

⁵⁶ See Order on Cross-Mots. for Summ. J., *Montes v. City of Yakima*, No. 12-cv-3108 (E.D. Wash. Aug. 22, 2014).

⁵⁷ Final Inj. and Remedial Districting Plan, *Montes v. City of Yakima*, No. 12-cv-3108 (E.D. Wash. Feb. 17, 2015).

⁵⁸ Compl., *Glatt v. City of Pasco*, No. 16-cv-5108, at 2 (E.D. Wash. Aug. 4, 2016).

⁵⁹ Mem. Op. and Order, *Glatt v. City of Pasco*, No. 16-cv-5108, at 8 (E.D. Wash. Jan. 27, 2017).

violation of Section 2 of the FVRA,⁶⁰ but litigation over a proper remedy stretched on for another nine months.⁶¹

The WVRA, in contrast, requires that Washington courts resolve challenges brought under the WVRA on an expedited timeline by setting a trial date for no later than one year after the filing of the complaint.⁶² The FVRA has no such requirement.

Although it has played a key role in protecting the voting rights of racial and language minority groups, litigating under the FVRA is an expensive and onerous process for both plaintiffs and localities. The FVRA's *Gingles* factors and "totality of the circumstances inquiry" requires extensive expert and specialized testimony. Both sides must retain experts to draw proposed maps (to establish liability and to propose

⁶⁰ Joint Mot. for Entry of Partial Consent Decree, *Glatt v. City of Pasco*, No. 16-cv-5108, at 2 (E.D. Wash. Aug. 22, 2016).

⁶¹ See Am. J., *Glatt v. City of Pasco*, No. 16-cv-5108 (E.D. Wash. May 4, 2017).

⁶² RCW 29A.92.100.

alternatives), analyze local election data, estimate voting patterns, speak to historical practices of the local, recount experiences with discrimination, and more.

In *Montes*, both plaintiffs and the City of Yakima spent nearly \$3 million *each* to litigate the single FVRA claim.⁶³ Their experience was not unique.

Such protracted and expensive litigation drains community resources but also limits potential plaintiffs to those who can afford such litigation costs or partner with an organization with deep pockets.

5. The WVRA Allows for More Flexible Cures for Vote Dilution Claims.

Without the WVRA, the FVRA and Washington state law limit the possible remedies for vote dilution.⁶⁴ Absent the

⁶³ Fowler, *supra* n.17; Order re: Pls.’ Mot. for Costs and Attys’ Fees, *Montes v. City of Yakima*, No. 12-cv-3108, at 2 (E.D. Wash. June 19, 2015).

⁶⁴ *Dillard v. Baldwin Cnty. Comm’rs*, 376 F.3d 1260, 1268 (11th Cir. 2004) (“[A]ny remedy for a Voting Rights Act violation must come from within ‘the confines of the state’s system of government.’” (quoting *Nipper v. Smith*, 39 F.3d 1494, 1533 (11th Cir. 1994) (en banc))).

WVRA’s expanded remedies, courts applying the FVRA in Washington localities are largely confined to at-large elections, district-based elections, or some combination thereof.⁶⁵

The WVRA, on the other hand, expands available remedies and gives voters, localities, and courts significant room to craft a remedy that fits the locality’s unique circumstances. In fact, the WVRA makes any type of election system a possible remedy.⁶⁶ New potential remedies available under the WVRA include district-based voting, cumulative voting, ranked choice voting, or limited voting.⁶⁷ The WVRA

⁶⁵ See RCW 35.17.020(2) (commissioners must be elected at large); RCW 35.18.020(2) (councilmembers may be elected at large, in districts, or some combination thereof).

⁶⁶ See RCW 29A.92.110 (“The court may order appropriate remedies including, but not limited to, the imposition of a district-based election system.”); *see also* RCW 29A.92.040.

⁶⁷ Under a limited voting system, a voter receives fewer votes than there are candidates to elect. Under a cumulative voting system, a voter receives as many votes as there are candidates to elect, but the voter may cast multiple votes for a single candidate. Under a ranked choice voting system, voters rank candidates in order of preference, and votes are transferred

allows the parties or the court to tailor a remedy to the needs and circumstances of that locality while making more modern election systems available.

6. A Similar Law, the California Voting Rights Act, Withstood Constitutional Challenges and Increased Participation Among Minority Voters.

In 2002, California enacted the California Voting Rights Act (“CVRA”).⁶⁸ As with the WVRA, the California Legislature “wanted to provide a broader cause of action for vote dilution than was provided for by federal law.”⁶⁹

The CVRA withstood its own constitutional challenge. In 2004, Latinx voters from Modesto challenged the city’s at-large method of electing city council members.⁷⁰ Defendants, including the city, argued before the trial court that the CVRA was facially invalid under the Equal Protection Clause of the

to lower-ranked candidates who are not elected on first-place voters if a majority is not reached.

⁶⁸ Cal. Elec. Code § 14025 et seq.

⁶⁹ *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 669, 51 Cal. Rptr. 3d 831 (2006).

⁷⁰ *Id.* at 666.

Fourteenth Amendment and the equivalent provision of the California Constitution.⁷¹

The California Court of Appeals upheld the CVRA, finding it is race neutral and that it was not subject to strict scrutiny.⁷² The court noted that the CVRA actually gives a cause of action to “*any* racial or ethnic group that can establish that its members’ votes are diluted through the combination of racially polarized voting and an at-large election system.”⁷³ As for the second point, the statute did not “introduce a racial classification or a burden on the right to vote,” so only rational-basis review applied, which the CVRA “readily passe[d].”⁷⁴

The CVRA has been hugely successful. Between 2011 and 2021, the number of California cities, counties, school districts, and special districts holding elections by districts more

⁷¹ *Id.* at 670.

⁷² *Id.* at 666, 680.

⁷³ *Id.* at 666.

⁷⁴ *Id.* at 680.

than doubled from 160 to over 500.⁷⁵ These jurisdictions primarily received demand letters from voters or anticipated they may receive one, and so made a voluntary change.⁷⁶

The success of the CVRA in moving political subdivisions, either voluntarily or through litigation, to district-based elections shows the potential for the WVRA to enact similar change.

D. Even in Its Short History, the WVRA Has Already Successfully Reshaped Local Elections in Washington.

In the last three years, there are at least three documented instances of localities changing their election system from a traditional at-large system to a district system to comply with—and as a direct result of—the WVRA. All three localities have predominant Latinx populations. And all three highlight the more robust protections under the WVRA than the FVRA.

⁷⁵ *California's Voting Rights Act Continues to Force More Local Governments into By-District Elections*, Nat'l Demographics Corp. (Sept. 19, 2022), available at <https://www.ndcresearch.com/cvra-by-district-elections/>.

⁷⁶ *Id.*

1. Yakima County Board of Commissioners

On January 15, 2020, four Latinx registered voters in Yakima County and OneAmerica sent Yakima County a letter notifying the County that its at-large electoral system for its Board of Supervisors position violated the WVRA.

After Yakima County failed to change its at-large election system to comply with the WVRA, in July 2020, those same four registered voters and OneAmerica filed a lawsuit in Washington State Superior Court.⁷⁷

The lawsuit alleged that the Latinx community made up nearly half of the total population in Yakima County and one-third of its citizen voting age population.⁷⁸ But, in the history of Yakima County, only *one Latinx candidate* had ever won a seat on the Yakima County Commission. Importantly, the plaintiffs

⁷⁷ *Evangelina Aguilar, et al v. Yakima Cnty., et al*, Case No. 20-2-00180-19 (Kittitas Cnty. Sup. Ct.).

⁷⁸ Compl., *Evangelina Aguilar, et al v. Yakima Cnty., et al*, Case No. 20-2-00180-19 at ¶ 1.2 (Kittitas Cnty. Sup. Ct. July 13, 2020).

only brought a WVRA claim, and the Kittitas County Superior Court only had jurisdiction because of the WVRA.⁷⁹

Ultimately, Yakima County agreed to a court-ordered change, 16 months later, where Yakima County would replace its at-large electoral system with single-member districts.

2. Pasco School Board

In 2017, a community member addressed the school district's changing demographics during public comments at a school board meeting. The community member noted that the demographic makeup of the school board had not been representative of the school district's changing demographics over the last several election cycles. At that time, no elected school board members identified as Latinx, and all five Board of Director seats were elected at large. But, according to U.S. Census data, in 2020, 56% of the population living within the Pasco School District was Latinx.

⁷⁹ *Id.* at ¶¶ 1.2, 3.1-3.2; 5.1-5.8.

During the 2017–2018 school year, the Pasco School Board began studying the issue, but determined that without a change to state law, there was no process available at that time that allowed Washington school districts to proactively change an at-large election system to a district-based election system.⁸⁰

Soon after the WVRA passed, the Pasco School Board of Directors began studying how the Board could *voluntarily comply* with the WVRA as RCW 29A.92.040 expressly allows and encourages.

After analyzing the 2020 census data, holding several community meetings, giving public presentations, and issuing a community survey, the Pasco School Board replaced its at-large election system with director districts for four out of the School Board’s five seats in an effort to comply with the WVRA. The change established two Latinx-majority director districts.⁸¹

⁸⁰ *Board of Directors Election System, Pasco Sch. Dist. #1, available at <https://www.psd1.org/Page/13196>.*

⁸¹ *Id.*

The voluntary change provision of the WVRA worked precisely how it was supposed to.

3. Wenatchee School Board

In April 2022, the Wenatchee School Board determined that its current five-member at-large voting system may violate the WVRA.⁸² To ensure compliance with the WVRA, in November 2022, the Wenatchee School Board adopted a new, district-based, voting system with four director districts and one at-large position. Under the new system, the four members must reside in the specific voting district and get elected only by voters within that same electoral district. The first election under the new system will take place in November 2023.

Here again, the voluntary change provision of the WVRA worked precisely how it was supposed to.

⁸² *District-Based School Board Elections, Wenatchee Sch. Dist., available at* <https://www.wenatcheeschools.org/board/district-based-school-board-elections>.

IV. CONCLUSION

It's clear from the historical context from which the WVRA arose and the legislative history that political exclusion of racial minorities, especially Latinxs, and the inherent limitations of the FVRA drove the Washington State Legislature to enact the WVRA. Amici write in support of Respondents and urge the Court to uphold the WVRA.

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RESPECTFULLY SUBMITTED this 27th day of March, 2023.

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I declare under penalty of perjury under the laws of the State of Washington, that on March 27, 2023, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 27th day of March, 2023.

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