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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF FRANKLIN

GABRIEL PORTUGAL, BRANDON
PAUL MORALES, JOSE TRINIDAD
CORRAL, and LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,

Plaintiffs,

v.

FRANKLIN COUNTY, a Washington
Municipal Entity, and CLINT DIDIER,
RODNEY J. MULLIN, and LOWELL J.
PECK, in their official capacities as
Members of the FRANKLIN COUNTY
BOARD OF COMMISSIONERS,

Defendants.

NO. 21-2-50210-11

ORDER DENYING MOTION
FOR JUDGMENT ON THE
PLEADINGS

This matter came before the court for hearing on December 13, 2021 on Intervenor, Clint Didier's, Motion for Judgment on the Pleadings. At the time of the hearing, the court granted One America's unopposed Motion to File Amicus Brief. After considering the motion, Plaintiffs' Response, Intervenor's Reply, the amicus brief filed by One America

1 and the arguments of counsel, the court finds that Intervenor's Motion for Judgment on the
2 Pleadings should be denied.

3
4 Intervenor first asks the court to take judicial notice of the fact that Latino residents
5 make up a majority rather than a minority of residents in Franklin County and, for that
6 reason, the court should find that the plaintiffs in this case lack standing to bring this action.
7 However, this court finds that the Intervenor's reading of the Washington Voting Rights
8 Act, which is clearly a remedial statute, limiting consideration to the specific county in
9 question, is too narrow. The Washington Voting Rights Act (WVRA) specifically states
10 that "protected class" means a class of voters who are members of a race, color or language
11 minority group, as defined by the federal voting rights act. Therefore, the court finds that
12 standing to proceed is not limited to those who are a minority within the specific county in
13 question. Further, counsel for the Plaintiffs has also pointed out that Latinos actually make
14 up a minority of the eligible voters in Franklin County. Counsel for Intervenor did not
15 contest this assertion. Since the WVRA specifically refers to "voters" who are members
16 of a race, color or language minority, these Plaintiffs have standing as members of a
17 protected class under the statute even accepting Intervenor's narrow reading of its
18 provisions.
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21 This court also finds that the WVRA does not violate the Equal Protection Clause
22 of the United States Constitution. First, the WVRA is not itself a district plan and no
23 specific district boundaries have been adopted. Therefore, the issue of unconstitutional
24 racial gerrymandering is, at best, premature.

1 The Intervenor has made a facial challenge to the constitutionality of the WVRA.
2 Such challenges are disfavored and in order to prevail, Intervenor must establish that no
3 set of circumstances exists where the statute would be valid. *United States v. Salerno*, 481
4 U.S. 739, 745 (1987). See also *Wash. State Grange v. Wash. State Republican Party*, 552
5 U.S. 442, 451 (2008). After reviewing the pleadings in this matter, this court finds that the
6 Intervenor has failed to establish that there are no set of circumstances where the WVRA
7 would be valid.
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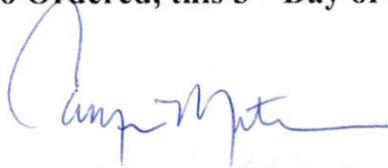
9 Intervenor relies in large part on the assertion that the WVRA lacks the requirement
10 of what has been termed “compactness” and therefore violates the Equal Protection
11 provisions of the United States Constitution. Intervenor relies in large part on the U.S.
12 Supreme Court case of *Thornburg v. Gingles*, 478 U.S. 30 (1986) as support for this
13 position. However, a careful reading of the *Gingles* case indicates that the compactness
14 requirement that the record was referring to had to do with compliance with the section 2
15 of the Federal Voting Rights Act rather than being any type of constitutional requirement.
16 Consequently, the court finds no authority for the assertion that the legislature’s decision
17 not to include a compactness requirement in the WVRA renders it violative of the Equal
18 Protection Clause of the federal Constitution.
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21 Finally, this court finds that the WVRA does not violate the Privileges and
22 Immunities clause of the Washington State Constitution. The WVRA is essentially
23 identical to the California Voting Rights Act that was reviewed by the Ninth Circuit Federal
24 Court of Appeal and found to be constitutional in *Higgins v. Becerra*, 786 Fed. Appx. 705

1 (9th Cir. 2019). As pointed out, states have wide authority to adopt measures designed “to
2 eliminate racial disparities through race-neutral means.” *Id.* at 707. Consistent with the
3 Ninth Circuit, this court finds that the WVRA, while race conscious, does not discriminate
4 based on race. The court further finds that the WVRA represents a closely tailored, race-
5 neutral means to accomplish its legitimate goals as a remedial statute and, therefore passes
6 the rational basis review standard applicable in this case.
7

8 Based on the foregoing analysis, the court finds that the Intervenor’s Motion for
9 Judgment on the Pleadings should be denied.

10 **So Ordered, this 3rd Day of January 2022**

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13 **Judge Cameron Mitchell**