

Attn: Port of Pasco Board of Commissioners
1110 Osprey Pointe Blvd., Suite 201
Pasco, Washington 99301

March 10, 2025

Re: Violation of the Washington Voting Rights Act of 2018

Dear Port of Pasco Board of Commissioners:

We are writing on behalf of residents of the Port of Pasco (“the Port”). We write to provide written notice pursuant to the Washington Voting Rights Act of 2018 (WVRA; the Act), of our clients’, Mr. Gabriel Portugal’s and Mr. Jose Trinidad Corral’s, intent to challenge the Port of Pasco 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 at-large voting system and the districts used by the Port for primary elections dilute Latino voters’ ability to elect candidates of choice within the Port district. A Latino candidate of choice has not been elected to the Port of Pasco Board of Commissioners even though the Latino eligible voter population in the area covering Franklin County is 41.8%. No Latino/a has been elected as a commissioner in at least the past twenty-one years.

The Port of Pasco 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.”¹ 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.”²

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.”³

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

² RCW § 29A.92.720 (2024).

³ *Id.* § 29A.92.020.

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.⁴ A court need not consider explanations of why polarized voting in the subdivision exists to determine that it does exist.⁵ Further, the amendments to the WVRA outlines factors that may indicate a political subdivision violates the Act, such as polarized voting, lack of equal opportunity for the protected class to elect candidates of their choice due to dilution or abridgment of rights of that class. Additionally, “[o]ther factors such as 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, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, 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” are “probative, but not necessary factors” to establish a violation.⁶

No single factor is dispositive or necessary to establish a violation, and proof of intent, geographical compactness, prior electoral success, shall not preclude the cause of action or a finding of polarized voting.⁷

The Washington Supreme Court has affirmed the constitutionality of the WVRA and the U.S. Supreme Court has denied review of that decision. *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, particularly in the large share of Franklin County covered by the Port of Pasco.⁸ According to the U.S. Census Bureau, in 2023, Franklin County had a total population 99,034 and a Citizen Voting Age Population (CVAP) of 57,690.⁹ According to the 2023 American Community Survey (ACS), Latinos now account for 24,123, or over two-fifths (41.8%), of the CVAP of Franklin County.¹⁰

⁴ *Id.* § 29A.92.030(1)(a)–(b).

⁵ *Id.* § 29A.92.030(2).

⁶ *Id.* § 29A.92.030(7).

⁷ *Id.* § 29A.92.030(4).

⁸ *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/>.

⁹ U.S. Census Bureau, *American Community Survey B05003* (2023), <https://data.census.gov/table/ACSST1Y2023.B05003?q=franklin%20county%20WA,%20sex%20by%20age%20by%20citizenship>.

¹⁰ U.S. Census Bureau, *American Community Survey B05003I* (2023),

<https://data.census.gov/table?q=franklin%20county%20WA,%20sex%20by%20age%20by%20citizenship%20latino>

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 is located. The green represents more Hispanic while the red represents less Hispanic by total population based on the U.S. Census. Overlaid is the map of the three port districts of Franklin County, while the remaining northeast portion of the County is under the Port of Kahlotus. The green is notably almost entirely within the confines of the Port of Pasco, and not the Port of Kahlotus.

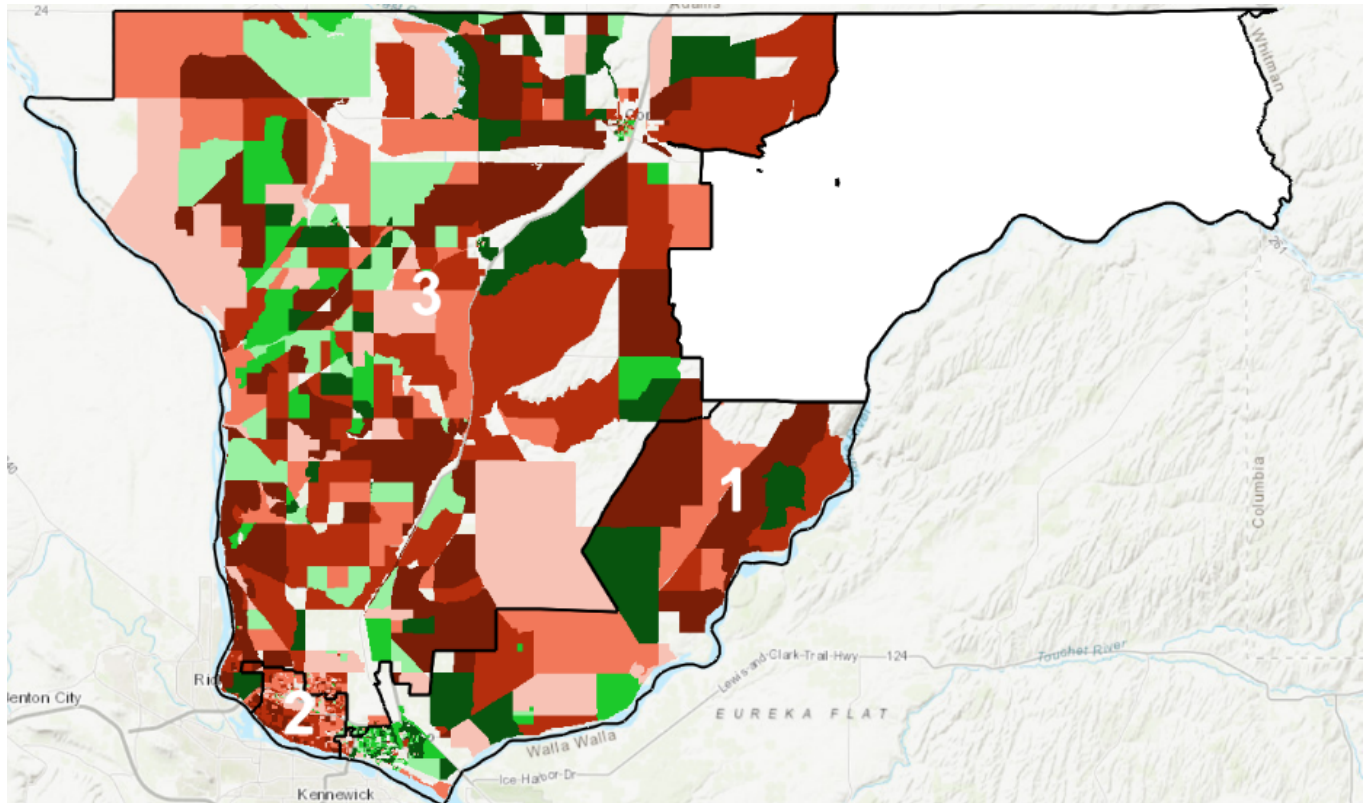


Figure 1: Port of Pasco with accompanying districts. (Green areas represent areas over 50 percent Hispanic/Latino. White areas represent portions of Franklin County not in the Port of Pasco)

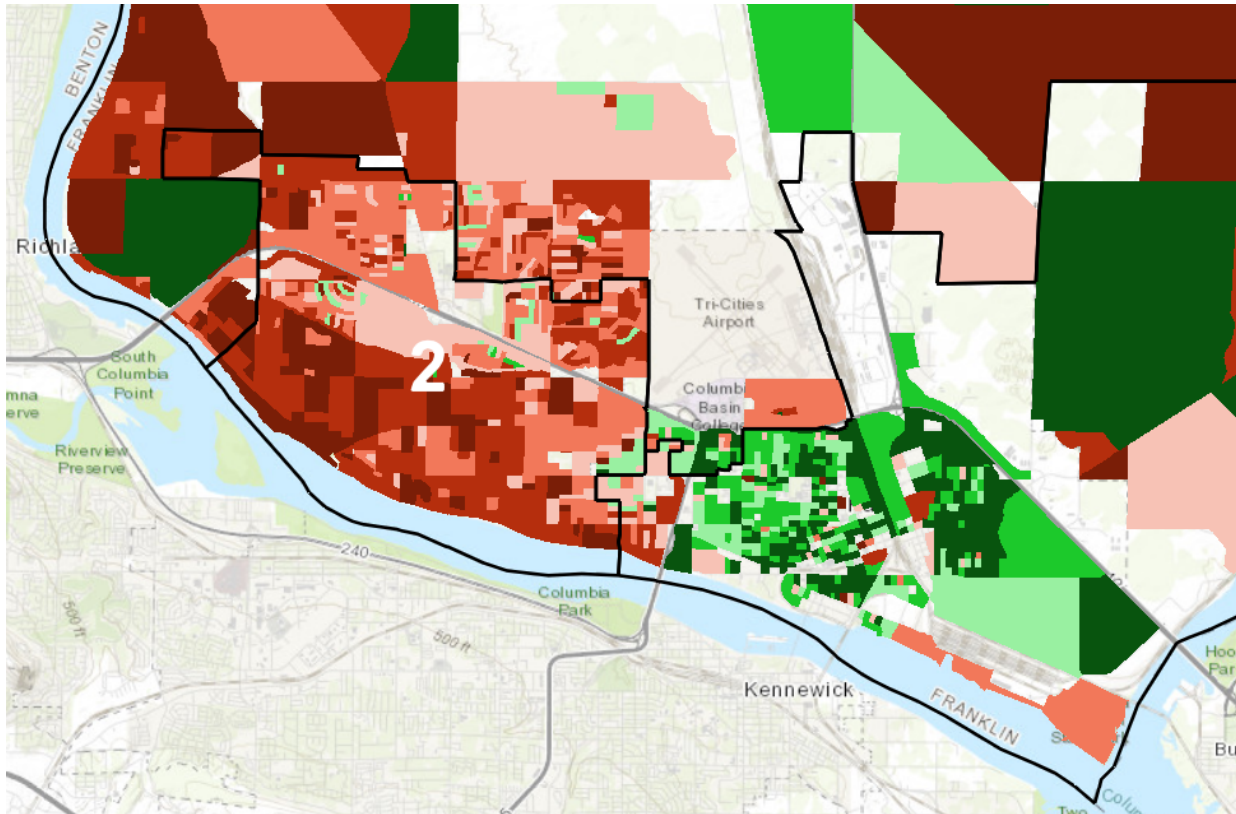


Figure 2: Zoomed in portion on the City of Pasco (Green areas represent areas over 50 percent Hispanic/Latino)

The Port of Pasco's Current Electoral System Violates the WVRA

The Port's current election system, in which there are district based primary elections and at-large voting in the general election, violates the WVRA.

First, racially polarized voting by the electorate exists within the Port district. Under the WVRA, polarized voting means “voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class or a coalition of protected classes, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.” In the Port district, polarized voting exists because Latino voters in the electorate exhibit different electoral choices for candidates, ballot measures, other local and statewide elections, and electoral choices that affect the rights and privileges of Latinos compared to non-Latino white voters. Indeed, white votes differ and diverge in their electoral choices from Latinos within the Port district at sufficient rates to usually defeat Latino candidates and electoral choices.

For example, in 2003, the only candidate in the past 21 years with a Latino surname who ran for the Port district commission, Lester Domingos, ran and was defeated in a three-way race by Bill Clark. Other elections that overlap with the Port of Pasco similarly show high degrees of racial polarization, as 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, almost the exact same voters for the Port of Pasco, exhibit a high degree of racial polarization in voting.

In addition to the dilutive at-large method of election, the unevenly drawn maps for the Port of Pasco Board of Commissioners 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 Port of Pasco 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 Port of Pasco 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.¹¹

All of the above factors are present in Franklin County and the Port of Pasco. 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 Port of Pasco has a history of ethnic and racial tension between the county's white and Latino communities.¹² 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.¹³ This historic discrimination has had long

¹¹ RCW § 29A.92.030(6).

¹² *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/>.

¹³ *Id.*

lasting effects on Latinos and other minorities in Franklin County. “Race and poverty . . . coalesced to create patterns that endured [in Pasco] for generations.”¹⁴

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 2023 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 about 7% of white residents.¹⁵
- Similarly, only 10.3% of Latinos in Franklin have a bachelor’s degree or higher, compared to 28.3% of white residents.¹⁶
- Latino residents in the County earn less than \$25,494 than white residents in per capita income.¹⁷

The disparities between the white population and the Latino community in Franklin County are also pervasive with respect to health insurance. According to the 2023 ACS 5-year estimates, approximately 19.5% of Latino residents in Franklin do not have healthcare, whereas only 5.5% White residents in Franklin lack healthcare.¹⁸¹⁹

Issues Affecting Latinos in the Port of Pasco

Over the past few decades, the Port of Pasco has been relatively unresponsive to the Latino community. Few Latino candidates have run for the Commission due to electoral structures, where the last elections that were even contested were held more than 10 years ago in 2013. In the elections that were contested, there is evidence of racially polarized voting and a lack of ability to elect Latino/a candidates of choice due to discrimination.

In October 2017 the Port of Pasco published a summary report titled “Greater Pasco Area Economic Strategic Vision.” It identified the growing majority Hispanic population in Pasco,

¹⁴ *Id.*

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

¹⁶ 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>.

¹⁷ U.S. Census Bureau, *American Community Survey B19301I* (2023) <https://data.census.gov/table/ACSST5Y2023.B19301I?q=B19301I%20franklin%20county,%20washington>; U.S. Census Bureau, *American Community Survey B19301H* (2023), <https://data.census.gov/table/ACSST5Y2023.B19301H?q=B19301H%20franklin%20county,%20washington>.

¹⁸ U.S. Census Bureau, *American Community Survey C27001I*, (2023), <https://data.census.gov/table/ACSST5Y2023.C27001I?q=C27001I%20franklin%20county,%20washington..>

¹⁹ U.S. Census Bureau, *American Community Survey C27001H*, (2023), <https://data.census.gov/table/ACSST5Y2023.C27001H?q=C27001H%20franklin%20county,%20washington>.

promising bilingual material and a website (www.somospasco.org), which is currently now inactive), as well as financial backing and community outreach.²⁰ This commitment specifically noted the community's desire for education for all residents, including in both English and Spanish, as well as support for local businesses to serve the many Spanish-speaking households in Pasco.²¹ Furthermore, the report promised to pursue an arts and culture commission at the City of Pasco to create a Hispanic cultural center, a promise that has yet to be fulfilled. This failure to fulfill the promises made to the Hispanic community in the Port of Pasco area shows the acute need for representation on the Port of Pasco Commission.

2022 Redistricting Process

The 2022 Redistricting Process was rife with departures of normal procedure and demonstrate a lack of responsiveness by Port Commissioners. First, the Port of Pasco redistricted outside the legal time period for redistricting as denoted by RCW 29A.76.010. Washington law states that “no later than November 15th of each year ending in one, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.” RCW 29A.76.010(3). The Port, however, started the redistrict process three months after they were required to prepare a districting plan, in February of 2022.

Next, while Staff advised the Commission that the draft would be published in accordance with RCW requirements and would be in both English and Spanish,²² as of today, neither advertisement were listed on the Port of Pasco website. Then on April 14, 2022, the Commission held a public hearing to consider redistricting, with the public comment period beginning at 10:38 am. Ms. French then reviewed the redistricting process and the next steps depending on whether public comments were received. Commissioner Gordon requested public comment, no comment was provided, and Commissioner Gordon closed the public meeting just seven minutes after it began, at 10:45 am.²³ A mere two weeks later, the Commission moved to adopt the district boundaries as outlined in Option 1, the only option published, with the motion passing unanimously.²⁴ Staff were directed to provide the final districting plan to the County Auditor within 30 days of adoption.²⁵

Conducting the redistricting process months after the legally required date, not publishing materials in Spanish on the Port's website, and only allowing less than ten minutes for public comment, demonstrates procedural departures from the norm that are usually evaluated in determining if the redistricting process was intentionally discriminatory.

²⁰ Port of Pasco, *Greater Pasco Area Economic Strategic Vision—Summary Report: Somos Pasco* (October 2017), <https://www.portofpasco.org/uploads/general/Somos-Pasco-Summary-Report.pdf>.

²¹ *Id.*

²² Port of Pasco, *Minutes of Regular Meeting of Port Commission: Selection of Draft Option for Port Redistricting*, Mar. 10, 2022, at 1-2.

²³ Port of Pasco, *Minutes of Regular Meeting of Port Commission: Public Hearing to Consider Redistricting*, Apr. 14, 2022, at 1.

²⁴ Port of Pasco Board of Commissioners, Resolution No. 1577 (WA 2022).

²⁵ Port of Pasco, *Minutes of Regular Meeting of Port Commission: Resolution 1577- Redistricting of the Port of Pasco*, Apr. 28, 2022, at 1.

Proposed Remedies

In the spirit of collaboration and pursuant to the terms of the WVRA, we request the following changes: (1) adopt a district based election system for both primary and general elections for Port of Pasco Commissioner seats; (2) implement a Port of Pasco Board of Commissioners map that affords Latinos with an equal opportunity to elect candidates of 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.

Kindly address any communications regarding this matter to my attention, at the contact information hereon. 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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