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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF FRANKLIN
9

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

14 Plaintiffs,

15 v.

16 FRANKLIN COUNTY, CLINT DIDIER,
17 ROCKY MULLEN, BRAD PECK, in their
18 official capacities as members of the Franklin
County Board of Commissioners,

Defendants.

No. 21-2-25021-11

DEFENDANTS' ANSWER TO
COMPLAINT FOR INJUNCTIVE
RELIEF UNDER THE WASHINGTON
VOTING RIGHTS ACT

19 COME NOW Defendants Franklin County, Clint Didier, Rocky Mullen, and Brad Peck
20 (the "Defendants"), by and their counsel of record, and hereby answer Complaint for Injunctive
21 Relief Under the Washington Voting Rights Act (the "Complaint").
22

23 **I. INTRODUCTION**

24 1.1 Defendants deny the allegations in Paragraph 1.1.

25 1.2 Defendants admit that, as measured by data from the United States Census
26 Bureau, the Latino community has been growing in Franklin County. Except as specifically
27 admitted, Defendants deny the allegations in Paragraph 1.2.

DEFENDANTS' ANSWER TO COMPLAINT FOR
INJUNCTIVE RELIEF UNDER THE WASHINGTON
VOTING RIGHTS ACT - 1

No. 21-250210-11

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

1.3 Defendants deny the allegations in Paragraph 1.3.

1.4 Defendants deny the allegations in Paragraph 1.4.

1.5 Defendants admit that, based on data gathered to date, it is possible to create a three single-member district plan in which at least one district has an eligible voter population that is more than 50% Latino. Except as specifically admitted, Defendants deny the allegations in Paragraph 1.5.

1.6 Defendants deny the allegations in Paragraph 1.6.

1.7 Defendants deny the allegations in Paragraph 1.7.

1.8 Defendants deny the allegations in Paragraph 1.8.

II. PARTIES

2.1 Defendants admit the allegations in Paragraph 2.1.

2.2 Defendants admit the allegations in Paragraph 2.2.

2.3 Defendants admit the allegations in Paragraph 2.3.

2.4 Defendants admit the allegations in Paragraph 2.4.

2.5 Defendants are without sufficient knowledge and information as to the truth of the allegations in Paragraph 2.5 and therefore deny the same.

2.6 Defendants are without sufficient knowledge and information as to the truth of the allegations in Paragraph 2.6 and therefore deny the same.

2.7 Defendants are without sufficient knowledge and information as to the truth of the allegations in Paragraph 2.7 and therefore deny the same.

2.8 Defendants admit the allegations in Paragraph 2.8.

2.9 Defendants admit that Clint Didier, Rocky Mullen, and Brad Peck are current members of the Commission. Defendants further admit that the current members of the Commission are each sued in their official capacity only. Except as specifically admitted, Defendants deny the allegations in Paragraph 2.9.

III. JURISDICTION AND VENUE

3.1 Defendants admit the allegations in Paragraph 3.1

3.2 Defendants admit the allegations in Paragraph 3.2.

IV. FACTS

A. The Franklin County Commission

4.1 Defendants admit the allegations in Paragraph 4.1.

4.2 Defendants admit the allegations in Paragraph 4.2.

4.3 Defendants admit the allegations in Paragraph 4.3.

4.4 Defendants admit that voters from all districts in Franklin County vote for candidates for the Commission in Paragraph 4.4. Except as specifically admitted, Defendants deny the allegations in Paragraph 4.4.

4.5 Defendants admit the allegations in Paragraph 4.5.

4.6 Defendants admit that the most recent general election for Commissioner Districts 1 and 2 occurred on November 3, 2020. Defendants further admit that Commissioner Districts 1 and 2 serve four-year terms. Defendants also admit that the most recent general election for District 3 occurred on November 6, 2018. Defendants admit that Commissioner District 3 serves four-year terms. Except as specifically admitted, Defendants deny the allegations in Paragraph 4.6.

4.7 Defendants admit that the Commissioner is Franklin County's legislative authority. Except as specifically admitted, Defendants deny the allegations in Paragraph

4.8 Defendants are without sufficient knowledge and information as to the truth of the allegations in Paragraph 4.8 and therefore deny the same.

4.9 Defendants are without sufficient knowledge and information as to the truth of the allegations in Paragraph 4.9 and therefore deny the same.

4.10 Defendants admit that the County administers programs and services related to public health, environmental protection, housing, and public works. Except as specifically admitted, Defendants deny the allegations in Paragraph 4.9.

1 **B. Franklin County Demographics**

2 4.11 In answer to the allegations in Paragraph 4.11, Defendants respond that the
3 American Community Survey is a survey, not a headcount. As such, Defendants denies the
4 allegations in Paragraph 4.11.

5 4.12 In answer to the allegations in Paragraph 4.12, Defendants respond that the
6 American Community Survey is a survey, not a headcount. As such, Defendants denies the
7 allegations in Paragraph 4.12.

8 4.13 Defendants admit that, as measured by data from the United States Census
9 Bureau, the Latino community has grown in Franklin County. Except as specifically admitted,
10 Defendants deny the allegations in Paragraph 4.13.

11 4.14 Defendants admit that, as measured by data from the United States Census
12 Bureau, the Latino community has grown in Franklin County. Except as specifically admitted,
13 Defendants deny the allegations in Paragraph 4.14.

14 4.15 Defendants admit that there are substantial populations of Latino residents in the
15 cities of Pasco, Mesa, and Connell. Except as specifically admitted, Defendants deny the
16 allegations in Paragraph 4.15.

17 4.16 In answer to the allegations in Paragraph 4.16, Defendants respond that the
18 American Community Survey is a survey, not a headcount. As such, Defendants denies the
19 allegations in Paragraph 4.16.

20 4.17 Defendants are without sufficient knowledge and information as to the truth of
21 the allegations in Paragraph 4.17 and the accuracy of the “map” depicted immediately under
22 Paragraph 4.17 and therefore deny the same.

23 **C. The Washington Voting Rights Act**

24 4.18 In answer to Paragraph 4.18, Defendants respond that the allegations in
25 Paragraph 4.18 call for legal conclusions. As such, Defendants deny the same. By way of
26 further answer, RCW 29A.92.005 speaks for itself.

1 4.19 In answer to Paragraph 4.19, Defendants respond that the allegations in
2 Paragraph 4.19 call for legal conclusions. As such, Defendants deny the same. By way of
3 further answer, RCW 29A.92.005 speaks for itself.

4 4.20 In answer to Paragraph 4.20, Defendants respond that the allegations in
5 Paragraph 4.20 call for legal conclusions. As such, Defendants deny the same.

6 4.21 In answer to Paragraph 4.21, Defendants respond that the allegations in
7 Paragraph 4.21 call for legal conclusions. As such, Defendants deny the same. By way of
8 further answer, RCW 29A.92.020 speaks for itself.

9 4.22 In answer to Paragraph 4.22, Defendants respond that the allegations in
10 Paragraph 4.22 call for legal conclusions. As such, Defendants deny the same. By way of
11 further answer, RCW 29A.92.020 speaks for itself.

12 4.23 In answer to Paragraph 4.23, Defendants respond that the allegations in
13 Paragraph 4.23 call for legal conclusions. As such, Defendants deny the same. By way of
14 further answer, RCW 29A.92.030 speaks for itself.

15 4.24 In answer to Paragraph 4.24, Defendants respond that the allegations in
16 Paragraph 4.24 call for legal conclusions. As such, Defendants deny the same. By way of
17 further answer, the opinions of the United States Supreme Court from *Thornburg v. Gingles*,
18 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d (1985) speak for themselves.

19 4.25 In answer to Paragraph 4.25, Defendants respond that the allegations in
20 Paragraph 4.25 call for legal conclusions. As such, Defendants deny the same.

21 4.26 In answer to Paragraph 4.26, Defendants respond that the allegations in
22 Paragraph 4.26 call for legal conclusions. As such, Defendants deny the same. By way of
23 further answer, RCW 29A.92.020 speaks for itself.

24 **D. Elections in Franklin County Exhibit Polarized Voting**

25 4.27 Defendants deny the allegations in Paragraph 4.27.

26 4.28 In answer to Paragraph 4.28, Defendants respond that the allegations in
27 Paragraph 4.28 call for legal conclusions. As such, Defendants deny the same.

1 4.29 Defendants deny the allegations in Paragraph 4.29.
2 4.30 Defendants deny the allegations in Paragraph 4.30.
3 4.31 Defendants deny the allegations in Paragraph 4.31.
4 4.32 Defendants deny the allegations in Paragraph 4.32.
5 4.33 Defendants deny the allegations in Paragraph 4.33.
6 4.34 Defendants deny the allegations in Paragraph 4.34.
7 4.35 Defendants deny the allegations in Paragraph 4.35.
8 4.36 Defendants deny the allegations in Paragraph 4.36.
9 4.37 Defendants deny the allegations in Paragraph 4.37.
10 4.38 Defendants deny the allegations in Paragraph 4.38.
11 4.39 Defendants deny the allegations in Paragraph 4.39.
12 4.40 Defendants admit the allegations in Paragraph 4.40.
13 4.41 Defendants deny the allegations in Paragraph 4.41.
14 4.42 In answer to Paragraph 4.42, Defendants admit that the precinct-level results
15 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
16 Paragraph 4.42.
17 4.43 In answer to Paragraph 4.43, Defendants admit that the precinct-level results
18 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
19 Paragraph 4.43.
20 4.44 In answer to Paragraph 4.43, Defendants admit that the precinct-level results
21 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
22 Paragraph 4.43.
23 4.45 Defendants deny the allegations in Paragraph 4.45.
24 4.46 Defendants deny the allegations in Paragraph 4.46.
25 4.47 In answer to Paragraph 4.47, Defendants admit that the precinct-level results
26 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
27 Paragraph 4.47.

1 4.48 In answer to Paragraph 4.48, Defendants admit that the precinct-level results
2 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
3 Paragraph 4.48.

4 4.49 In answer to Paragraph 4.49, Defendants admit that the precinct-level results
5 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
6 Paragraph 4.49.

7 4.50 In answer to Paragraph 4.50, Defendants admit that the precinct-level results
8 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
9 Paragraph 4.50.

10 4.51 In answer to Paragraph 4.51, Defendants admit that the precinct-level results
11 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
12 Paragraph 4.51.

13 4.52 In answer to Paragraph 4.52, Defendants admit that the precinct-level results
14 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
15 Paragraph 4.52.

16 4.53 In answer to Paragraph 4.53, Defendants admit that the precinct-level results
17 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
18 Paragraph 4.53.

19 4.54 In answer to Paragraph 4.54, Defendants admit that the precinct-level results
20 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
21 Paragraph 4.54.

22 4.55 In answer to Paragraph 4.55, Defendants admit that the precinct-level results
23 speak for themselves. Except as specifically admitted, Defendants deny the allegations in
24 Paragraph 4.55.

25 4.56 Defendants deny the allegations in Paragraph 4.56.

26 4.57 Defendants deny the allegations in Paragraph 4.57.

1 4.58 In answer to Paragraph 4.58, Defendants respond that the allegations in
2 Paragraph 4.58 call for legal conclusions. As such, Defendants deny the same.

3 4.59 In answer to Paragraph 4.59, Defendants respond that the allegations in
4 Paragraph 4.59 call for legal conclusions. As such, Defendants deny the same.

5 4.60 In answer to Paragraph 4.60, Defendants respond that the allegations in
6 Paragraph 4.60 call for legal conclusions. As such, Defendants deny the same.

7 4.61 Defendants deny the allegations in Paragraph 4.61.

8 4.62 Defendants deny the allegations in Paragraph 4.62.

9 4.63 Defendants deny the allegations in Paragraph 4.63.

10 4.64 Defendants deny the allegations in Paragraph 4.64.

11 4.65 In answer to Paragraph 4.65, Defendants respond that the allegations in
12 Paragraph 4.65 call for legal conclusions. As such, Defendants deny the same. By way of
13 further answer, the consent decree speaks for itself.

14 4.66 In answer to Paragraph 4.66, Defendants respond that the allegations in
15 Paragraph 4.66 call for legal conclusions. As such, Defendants deny the same. By way of
16 further answer, the consent decree speaks for itself.

17 4.67 Defendants deny the allegations in Paragraph 4.67.

18 4.68 Defendants admit the allegations in Paragraph 4.68.

19 4.69 Defendants deny the allegations in Paragraph 4.69.

20 4.70 Defendants deny the allegations in Paragraph 4.70.

21 4.71 Defendants deny the allegations in Paragraph 4.71.

22 4.72 Defendants deny the allegations in Paragraph 4.72.

23 **E. Franklin County's At-Large Electoral System Dilutes the Voting Rights of Latinos**
24 **and Denies Latinos an Equal Opportunity to Elect Candidates of their Choice.**

25 4.73 Defendants deny the allegations in Paragraph 4.73. By way of further answer,
26 Defendants deny the allegations in the subparagraph heading.

27 4.74 Defendants deny the allegations in Paragraph 4.74.

1 4.75 Defendants deny the allegations in Paragraph 4.75.

2 4.76 In answer to Paragraph 4.76, Defendants admit that Commissioner Peck's public

3 comments speak for themselves. Except as specifically admitted, Defendants deny the

4 allegations in Paragraph 4.76.

5 4.77 Defendants deny the allegations in Paragraph 4.77.

6 4.78 Defendants deny the allegations in Paragraph 4.78.

7 4.79 Defendants deny the allegations in Paragraph 4.79.

8 4.80 Defendants deny the allegations in Paragraph 4.80.

9 4.81 Defendants deny the allegations in Paragraph 4.81.

10 4.82 Defendants are without sufficient knowledge and information as to the truth of

11 the allegations in Paragraph 4.82 and therefore deny the same.

12 4.83 Defendants deny the allegations in Paragraph 4.83.

13 4.84 Defendants deny the allegations in Paragraph 4.84.

14 4.85 Defendants deny the allegations in Paragraph 4.85.

15 4.86 Defendants deny the allegations in Paragraph 4.86.

16 4.87 Defendants deny the allegations in Paragraph 4.87.

17 4.88 Defendants deny the allegations in Paragraph 4.88.

18 4.89 Defendants deny the allegations in Paragraph 4.89.

19 4.90 Defendants deny the allegations in Paragraph 4.90.

20 4.91 Defendants deny the allegations in Paragraph 4.91.

21 4.92 Defendants admit that on February 10, 2015, Antonio Zambrano-Montes was

22 shot and killed by City of Pasco police officers. Except as specifically admitted, Defendants

23 deny the allegations in Paragraph 4.92.

24 4.93 Defendants deny the allegations in Paragraph 4.93.

25 4.94 In answer to Paragraph 4.94, Defendants admit that alleged caption speaks for

26 itself. Except as specifically admitted, Defendants deny the allegations in Paragraph 4.94.

27 4.95 Defendants deny the allegations in Paragraph 4.95.

1 4.96 In answer to Paragraph 4.96, Defendants admit that Commissioner Didier's
2 alleged public comments speak for themselves. Except as specifically admitted, Defendants
3 deny the allegations in Paragraph 4.96.

4 4.97 Defendants deny the allegations in Paragraph 4.97.

5 4.98 Defendants deny the allegations in Paragraph 4.98.

6 4.99 Defendants deny the allegations in Paragraph 4.99.

7 4.100 In answer to Paragraph 4.100, Defendants admit data from the United States
8 Census Bureau speak for themselves. Except as specifically admitted, Defendants deny the
9 allegations in Paragraph 4.100.

10 4.101 In answer to Paragraph 4.101, Defendants admit data from the United States
11 Census Bureau speak for themselves. Except as specifically admitted, Defendants deny the
12 allegations in Paragraph 4.101.

13 4.102 In answer to Paragraph 4.102, Defendants admit data from the United States
14 Census Bureau speak for themselves. Except as specifically admitted, Defendants deny the
15 allegations in Paragraph 4.102.

16 4.103 In answer to Paragraph 4.102, Defendants admit data from the United States
17 Census Bureau speak for themselves. Except as specifically admitted, Defendants deny the
18 allegations in Paragraph 4.103.

19 4.104 In answer to Paragraph 4.102, Defendants admit data from the United States
20 Census Bureau speak for themselves. Except as specifically admitted, Defendants deny the
21 allegations in Paragraph 4.103.

22 **V. CAUSE OF ACTION: WASHINGTON VOTING RIGHTS ACT**

23 5.1 Defendants reallege and reincorporate the foregoing.

24 5.2 Defendants deny the allegations in Paragraph 5.2.

25 5.3 Defendants deny the allegations in Paragraph 5.3.

26 5.4 Defendants deny the allegations in Paragraph 5.4.

27 5.5 Defendants deny the allegations in Paragraph 5.5.

1 5.6 Defendants deny the allegations in Paragraph 5.6.

2 5.7 Defendants deny the allegations in Paragraph 5.7.

3 5.8 Defendants deny the allegations in Paragraph 5.8.

4 5.9 Defendants deny the allegations in Paragraph 5.9.

5 5.10 Defendants deny the allegations in Paragraph 5.10.

6 5.11 Defendants deny the allegations in Paragraph 5.11.

7 5.12 Defendants deny the allegations in Paragraph 5.12.

8 5.13 Defendants deny the allegations in Paragraph 5.13.

9 **VI. REQUEST FOR RELIEF**

10 Defendants deny Plaintiffs' Request for Relief, including all subparts, and deny that
11 Plaintiffs are entitled to the relief so requested. By way of further answer, and as additional
12 defenses to Plaintiffs' Complaint for Injunctive Relief Under the Washington Voting Rights
13 Act, some of which are affirmative defenses and some of which relate to Plaintiffs' failure to
14 meet their burden of proof, Defendants allege as follows:

15 A. Plaintiffs have failed to state a claim against Defendants.

16 * * *

17 WHEREFORE, Defendants having fully answered Plaintiffs' Complaint for Injunctive
18 Relief Under the Washington Voting Rights Act and asserted affirmative defenses, request and
19 pray that the Court grant the following relief:

20 1. That Plaintiffs' Complaint for Injunctive Relief Under the Washington Voting Rights
21 Act be dismissed with prejudice and without an award of costs;

22 2. That Defendants be awarded its statutory costs and attorney fees in defending
23 this action; and

24 3. That Defendants be awarded further relief as the Court deems just and equitable
25 under the circumstances and pursuant to applicable law.

1 DATED this 12th day of May, 2021.

2
3 Respectfully submitted,

4 FLOYD, PFLUEGER & RINGER. P.S.

5 By: s/ John A. Safarli

6 John A. Safarli, WSBA No. 44056

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9 Seattle, WA 98119

10 (206) 441-4455 – tel

11 (206) 441-8484 – fax

DECLARATION OF SERVICE

Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of *DEFENDANTS' ANSWER TO COMPLAINT FOR INJUNCTIVE RELIEF UNDER THE WASHINGTON VOTING RIGHTS ACT* via the method indicated below to the following parties:

Edwardo Morfin *Counsel for Plaintiffs* ☐ Via Messenger
MORFIN LAW FIRM, PLLC ☒ Via Email
7325 W. Deschutes Avenue, Suite A ☐ Via Facsimile
Kennewick, WA 99336 ☐ Via U.S. Mail
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Luis Roberto Vera, Jr. *Counsel for Plaintiffs* ☐ Via Messenger
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Shawn Sant *Counsel for Defendant* ☐ Via Messenger
Franklin County Prosecutor ☒ Via Email
1016 N. 4th Avenue ☐ Via Facsimile
Pasco, WA 99301 ☐ Via U.S. Mail
ssant@co.franklin.wa.us

DATED this 12th day of May, 2021 at Seattle, Washington.

s/Sean C. Moore
Sean C. Moore, Legal Assistants

ACS DEMOGRAPHIC AND HOUSING ESTIMATES



Note: This is a modified view of the original table produced by the U.S. Census Bureau. This download or printed version may have missing information from the original table.

Franklin County, Washington		
Label	Estimate	Percent
> SEX AND AGE		
> RACE		
> Race alone or in combination with one or more other races		
✓ HISPANIC OR LATINO AND RACE		
✓ Total population	92,009	92,009
> Hispanic or Latino (of any race)	48,843	53.1%
✓ Not Hispanic or Latino	43,166	46.9%
White alone	37,140	40.4%
Black or African American alone	1,693	1.8%
American Indian and Alaska Native alone	291	0.3%
Asian alone	1,869	2.0%
Native Hawaiian and Other Pacific Islander alone	140	0.2%
Some other race alone	153	0.2%
> Two or more races	1,880	2.0%
Total housing units	28,063	(X)
✓ CITIZEN, VOTING AGE POPULATION		
> Citizen, 18 and over population	47,824	47,824

Table Notes

ACS DEMOGRAPHIC AND HOUSING ESTIMATES

Survey/Program: American Community Survey

Year: 2019

Estimates: 5-Year

Table ID: DP05

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities, and towns and estimates of housing units for states and counties.

Source: U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see ACS Technical Documentation). The effect of nonsampling error is not represented in these tables.

For more information on understanding race and Hispanic origin data, please see the Census 2010 Brief entitled, Overview of Race and Hispanic Origin: 2010, issued March 2011. (pdf format)

The 2015-2019 American Community Survey (ACS) data generally reflect the September 2018 Office of Management and Budget (OMB) delineations of metropolitan and micropolitan statistical areas. In certain instances, the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB delineation lists due to differences in the effective dates of the geographic entities.

Estimates of urban and rural populations, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Explanation of Symbols:

An "**" entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.

An "-" entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution, or the margin of error associated with a median was larger than the median itself.

An "-" following a median estimate means the median falls in the lowest interval of an open-ended distribution.

An "+" following a median estimate means the median falls in the upper interval of an open-ended distribution.

An "***" entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.

An "*****" entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.

An "N" entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.

An "(X)" means that the estimate is not applicable or not available.

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Technical Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on

the American Community Survey website in the Methodology section.

SEX BY AGE BY NATIVITY AND CITIZENSHIP STATUS (HISPANIC OR LATINO)



Note: This is a modified view of the original table produced by the U.S. Census Bureau. This download or printed version may have missing information from the original table.

Franklin County, Washington		
Label	Estimate	
▼ Total:	48,843	
▼ Male:	24,965	
➤ Under 18 years:	10,011	
▼ 18 years and over:	14,954	
Native	6,079	
▼ Foreign born:	8,875	
Naturalized U.S. citizen	1,903	
Not a U.S. citizen	6,972	
▼ Female:	23,878	
➤ Under 18 years:	9,916	
▼ 18 years and over:	13,962	
Native	5,414	
▼ Foreign born:	8,548	
Naturalized U.S. citizen	2,453	
Not a U.S. citizen	6,095	

Table Notes

SEX BY AGE BY NATIVITY AND CITIZENSHIP STATUS (HISPANIC OR LATINO)

Survey/Program: American Community Survey

Universe: People who are Hispanic or Latino

Year: 2019

Estimates: 5-Year

Table ID: B05003I

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities, and towns and estimates of housing units for states and counties.

Source: U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see ACS Technical Documentation). The effect of nonsampling error is not represented in these tables.

Methodological changes to citizenship edits may have affected citizenship data for those born in American Samoa. Users should be aware of these changes when using 2018 data or multi-year data containing data from 2018. For more information, see: American Samoa Citizenship User Note.

The 2015-2019 American Community Survey (ACS) data generally reflect the September 2018 Office of Management and Budget (OMB) delineations of metropolitan and micropolitan statistical areas. In certain instances, the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB delineation lists due to differences in the effective dates of the geographic entities.

Estimates of urban and rural populations, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Explanation of Symbols:

An "**" entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.

An "-" entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution, or the margin of error associated with a median was larger than the median itself.

An "-" following a median estimate means the median falls in the lowest interval of an open-ended distribution.

An "+" following a median estimate means the median falls in the upper interval of an open-ended distribution.

An "***" entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.

An "*****" entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.

An "N" entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.

An "(X)" means that the estimate is not applicable or not available.

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Technical Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

SEX BY AGE BY NATIVITY AND CITIZENSHIP STATUS (HISPANIC OR LATINO)



Note: This is a modified view of the original table produced by the U.S. Census Bureau. This download or printed version may have missing information from the original table.

	Connell city, Washington	Mesa city, Washington	Pasco city, Washington
Label	Estimate	Estimate	Estimate
▼ Total:	2,588	425	40,459
▼ Male:	1,321	238	20,697
➤ Under 18 years:	492	129	8,373
▼ 18 years and over:	829	109	12,324
Native	332	13	5,441
▼ Foreign born:	497	96	6,883
Naturalized U.S. citizen	75	2	1,687
Not a U.S. citizen	422	94	5,196
▼ Female:	1,267	187	19,762
➤ Under 18 years:	563	71	8,156
▼ 18 years and over:	704	116	11,606
Native	368	25	4,572
▼ Foreign born:	336	91	7,034
Naturalized U.S. citizen	49	9	2,252
Not a U.S. citizen	287	82	4,782

Table Notes

SEX BY AGE BY NATIVITY AND CITIZENSHIP STATUS (HISPANIC OR LATINO)

Survey/Program: American Community Survey

Universe: People who are Hispanic or Latino

Year: 2019

Estimates: 5-Year

Table ID: B05003I

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities, and towns and estimates of housing units for states and counties.

Source: U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see ACS Technical Documentation). The effect of nonsampling error is not represented in these tables.

Methodological changes to citizenship edits may have affected citizenship data for those born in American Samoa. Users should be aware of these changes when using 2018 data or multi-year data containing data from 2018. For more information, see: American Samoa Citizenship User Note.

The 2015-2019 American Community Survey (ACS) data generally reflect the September 2018 Office of Management and Budget (OMB) delineations of metropolitan and micropolitan statistical areas. In certain instances, the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB delineation lists due to differences in the effective dates of the geographic entities.

Estimates of urban and rural populations, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Explanation of Symbols:

An "***" entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.

An "-" entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution, or the margin of error associated with a median was larger than the median itself.

An "-" following a median estimate means the median falls in the lowest interval of an open-ended distribution.

An "+" following a median estimate means the median falls in the upper interval of an open-ended distribution.

An "***" entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.

An "*****" entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.

An "N" entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.

An "(X)" means that the estimate is not applicable or not available.

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Technical Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Franklin County at epicenter of state's Hispanic explosion

PASCO – Ana Ochoa remembers when her parents owned the only Hispanic clothing store in town, opened with money they saved working in cherry orchards.

More than two decades later, that small shop has grown to several stores and employs Ana and four of her five siblings. Salsa music trumpets overhead, and beaded gowns in magenta, coral and cornflower blue satin line the walls of her bridal shop. Upstairs, her daughter darts through racks of white confirmation dresses for little girls.

The steady growth of the Ochoa family business mirrors the ascent of the region's Hispanic community in recent years as Franklin County became the first majority-Hispanic county in the Pacific Northwest.

According to 2006 Census estimates, the county is nearly 57 percent Hispanic, up from 47 percent in 2000. Neighboring Adams County quickly followed suit at 52 percent.

Overall, Washington state's Hispanic population grew by 28 percent from 2000 to 2006. That makes it the fastest-growing minority population in a state that borders not Mexico, but Canada.

Nowhere is that growth more evident than in south-central Washington's Franklin County, a rural, arid, sage-covered land east of the Columbia River. Irrigated fruit orchards and farm fields offer work for farm workers willing to venture north from California, Texas and Mexico, and the population center, Pasco, is expanding its food processing and retail sectors.

Pasco has always been considered the poorest and smallest of the Tri-Cities – the other two being Richland and Kennewick – built around weapons production and, later, environmental cleanup at the nearby Hanford nuclear reservation.

In 1978, Pasco's population was about 15,000. More than 50,000 people live there now, and home construction is barely keeping pace with growth. In the early 1990s, 60 homes were built "in a good year," said City Manager Gary Crutchfield. Since 2000, the number of new home permits has exceeded 600 each year, with a high of 1,032 in 2004.

Much of that growth has come from the Hispanic community. Mexican restaurants can be found on most every street in town, and Latino families own bakeries, travel agencies and countless businesses in between. The library offers a bilingual story hour for children, and morning announcements at the community's swelling high school are read in both English and Spanish.

"I look at our diversity as a strength, and I think that approach has really helped us tackle some difficult issues and be successful with them," said Sandra Hill, superintendent of Pasco schools for the past five years.

Hill started with the district in 1982, teaching the children of migrant farm workers, when the district had about 5,000 students. The district itself became majority Hispanic in the late 1980s or early 1990s, but today the student population is pushing 13,000 and growing.

Between 2000 and 2006, Pasco schools registered 3,700 new students – nearly enough to fill a new school every year. The district has built five schools since 1999, and 27 modular trailers serve as classrooms outside the high school until a new one opens in 2009.

Franklin County ranks 31st nationally among more than 3,100 counties for its growth rate, and it's the fastest-growing county in the Northwest.

That kind of growth only exacerbates the challenges the district already faces, Hill said. Sixty-five percent of the students come from homes where English is not spoken or is not the primary language, and many of their parents have limited experience with schools, let alone American schools. Low-income families dominate.

Successes this year have proven extra sweet. The dropout rate fell to 9 percent in the 2005-06 school year. The graduation rate improved to 64 percent – 74 percent for extended graduation, when students needed an extra year or two to learn the language.

But the bigger problem boils down to money, Hill said. Most of the tax base is residential, and it's not enough to pay to educate all the children in all those new homes. Many people work on farms, some of them in neighboring counties.

"What would help us is a more industrial or commercial tax base," she said. "It would hopefully not bring in as many young families, and it would lessen the burden on each taxpayer."

The city built a wastewater treatment plant in 1995 to attract food processors that use vast amounts of water to wash vegetables, saving companies the expense of building their own plants. Already, four of the six sites in the industrial center have been filled, offering about 1,000 new jobs for seasonal farm workers or their spouses.

Additional retail also is moving into the area, boosting its tax base.

In 1994, the year before the wastewater treatment plant was built, the city's

total assessed value was \$385 million. It grew to \$2 billion in 2007, Crutchfield said.

"If this was a Wall Street stock, you'd all be buying it – and wish you'd bought it 10 years ago," he said.

At the same time, crime rates have fallen dramatically, and emergency response times and public services, such as parks, have been drastically improved.

But Crutchfield cautions that the city and county can't sustain this growth pace forever.

"I don't think any community can sustain on the long term that kind of growth. It just becomes too much for the municipal and civil infrastructure," he said.

And for businesses, perhaps, as well.

Ochoa has seen plenty of businesses come and go over the years, unwilling or unable to adapt to a busy season that lasts only as long as the migrant workers are in town: April to September.

Sales drop about 70 percent in the winter, she said.

"There's a lot more competition. They all want a piece of the pie," she said. "But if we divide the pie so much, eventually we all end up with only a section of a sliver."

The Hispanic community also lacks representation in elected office, largely because the number of registered voters is low and Hispanic candidates rarely run for offices outside the school board.

Still, Crutchfield said friction in the community is fairly low.

Across the river, the city of Kennewick debated an ordinance that would have forbidden renting to illegal immigrants. It failed, but "the issue was never even discussed here," he said.

Cristina Buenrostro, 35, moved to Pasco two months ago from Milton-Freewater, Ore., with her husband and two children. Business has been slow at her clothing shop, but she still believes Pasco is a better place to raise her son and daughter and considers it home.

"I want to stay," she said.

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

PLAINTIFF NAMES,

Plaintiff,

v.

DEFENDANT NAMES,

Defendants.

Cause No. 21-6-10-FRA

DECLARATION OF MICHAEL RIOS

I, Michael Rios, do declare and state as follows upon personal knowledge:

I. Background and Qualification

1. I am currently a Research Analyst at the UCLA Voting Rights Project, where I have been the head data analyst since 2018.

2. At the UCLA VRP my duties entail downloading, processing, and conducting statistical analysis of precinct-level voting results, and working with census data or voter file data to assess racial/ethnic demographics of voting precincts.

3. Since 2018, I have collaborated with statisticians and political scientists to conduct racially polarized voting analysis in numerous jurisdictions. I completed racially polarized voting training with Dr. Matt A. Barreto, Dr. Gabriel Sanchez, and Dr. Loren Collingwood.

4. I received my Master in Public Policy degree from the UCLA Luskin School of Public Affairs in 2020. From 2018 to 2020 I took vigorous courses in statistical analysis in the departments of public policy, education, and sociology.

1 5. I received my B.A. in Political Science from the University of California,
2 Riverside in 2017.

3 **II. Scope of Work**

4 6. Plaintiffs in this action asked me to investigate the voting patterns of Latino and
5 non-Latino voters in Franklin County, Washington. The purpose of this investigation is to
6 determine whether Latino voters generally vote cohesively, and if there is racially polarized
7 voting in Franklin County that usually blocks Latino voters from having an equal opportunity to
8 elect candidates of their choice.

9 7. To conduct this analysis I relied on official precinct-level election results for
10 Franklin County, Washington as well as census and voter file demographics merged to the
11 precinct.

12 **III. Population Demographics in Franklin County**

13 8. According to 2019 American Community Survey (ACS) data, Franklin County
14 has a total population of 92,009. Latinos comprise 48,843 or 53.1% of the County's total
15 population.

16 9. The County has a citizen voting-age population (CVAP) of 47,825. Latinos make
17 up 15,850 or 33.1% of the County's CVAP.

18 10. Over the past twenty years, Franklin County has grown rapidly, and the
19 demographics have shifted. The Latino population has grown and has expanded its share of the
20 County's CVAP. Latino residents of Franklin County are largely geographically concentrated in
21 the Cities of Pasco, Mesa, and Connell. The Latino CVAP for these cities is 37.2%, 35.7%, and
22 24.1%, respectively, according to the 2019 ACS 5-Year Estimates.

23 **IV. Elections in Franklin County Exhibit Polarized Voting**

24 11. Elections in Franklin County exhibit racially polarized voting (RPV). Stated
25 simply, polarized voting occurs when members of different racial or ethnic groups prefer different
26 candidates than other racial or ethnic groups. RPV means that voters of different groups are voting

1 in polar opposite directions, rather than in a coalition. RPV measures the outcomes of voting
2 patterns and determines whether patterns exist based on the race or ethnicity of voters. The bottom
3 line is that minority voters are voting one way, and majority voters are voting the opposite way.
4 But because majority voters are more numerous in the district, minority voters systematically
5 lose, especially in at-large elections. The analysis is about the individual voters within a
6 jurisdiction. Even if a governing body is well intentioned, the individual voters across the county
7 may behave in a way that blocks minority voters from having an equal opportunity to election
8 candidates of their choice.

9 12. In Franklin County, across more than nine election contests I analyzed, White,
10 non-Hispanic voters and Latino voters demonstrate consistent patterns of supporting different
11 candidates and issues. Candidates who win a majority of the vote in high-density Latino voting
12 precincts receive very low support in high-density white precincts.

13 13. The lack of successful Latino-preferred candidates is not explained by the lack of
14 such candidates seeking office. Since 2008, at least five Latino-preferred candidates have run for
15 positions on the Franklin County Commission. None of these candidates were ultimately elected.

16 14. Latino voters in Franklin County are politically cohesive and consistently vote as
17 a bloc for common candidates of choice. When a clear candidate of choice emerges for Latino
18 voters, that candidate is never elected. Specifically, Latino voters have been unable to elect a
19 candidate of their choice under the county's at-large election scheme. While Latino voters would
20 fare better in a compact community of interest, because Latino voters do not constitute a majority
21 countywide, White voters frequently vote as a bloc *against* Latino preferred candidates, and there
22 are not enough crossover White votes to account for the different voting preferences between the
23 Latino and White populations.

24 15. This pattern is consistent across different elections and election years in Franklin
25 County. Franklin County Commission elections from 2008 to 2020 all exhibit racially polarized
26 voting. The difference in candidate preference between Latino and white voting precincts is large

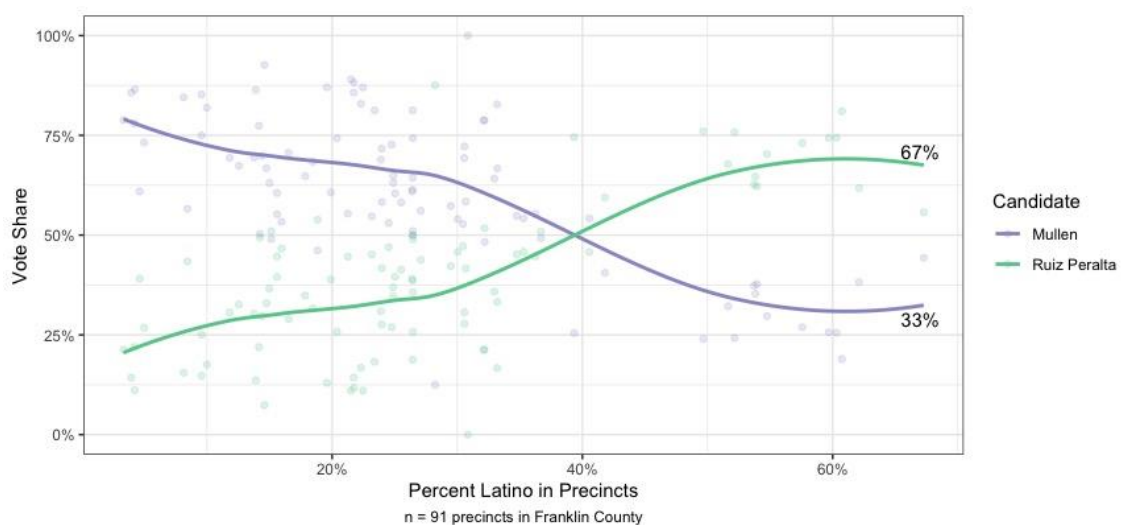
and is statistically significant across multiple regression tests employed.

16. In 2020, Ana Ruiz Peralta ran in District 2 during the primary, won, and advanced to the general election where she ultimately lost. Within District 2, Peralta was the preferred candidate in high-density Latino precincts. Homogenous precinct analysis shows that she won a majority of the vote share in the high-density Latino precincts such as Pct 004 (75% won), Pct 006 (68%), Pct 009 (67%), Pct 002 (65%), and Pct 005 (64%). The data is quite clear, Peralta was a Latino candidate of choice.

17. Peralta lost the vote in majority-white voting precincts, such as Pct 100, where only 8% voted for Peralta, Pct 101 (9% voted for Peralta), Pct 096 (10%), Pct 095 (13%), and Pct 092 (17%). The differences in support for Peralta between Latino and White precincts was stark and constitutes racially polarized voting.

18. Figure 1 below shows a similar trend for Ruiz Peralta in the general election. Precinct analysis demonstrates that, in the precincts higher in Latino voters, Ruiz Peralta was the minority preferred candidate with a near 2-to-1 vote share lead. In areas with very few Latino voters, Peralta was out-voted badly, by a 3-to-1 margin

Figure 1: Vote Share by Percent Latino Precincts in the 2020 Franklin County Commissioner District 2 General Race



1 19. Similar patterns have emerged over time, as high-density Latino precincts have
2 reported vote results that are the polar opposite of high-density white precincts.

3 20. Racially polarized voting was also observed in the 2018 County Commission
4 election between Clint Didier and Zahra Roach. In 2012, Al Yenney lost countywide in the
5 November general election, won a majority of the vote in Latino precincts, but lost badly in
6 precincts with substantial non-Latino populations. In 2008, Neva Corkrum, the Latino preferred
7 candidate, lost the countywide election in November but won a clear majority of the vote in high-
8 density Latino voting precincts.

9 21. This precinct analysis of voter trends reveals that Latino-preferred candidates are
10 losing county elections because the at-large election system dilutes the minority vote. The same
11 pattern of racially polarized voting has emerged across elections in Franklin County for other
12 local, legislative, and statewide offices. There is no doubt that a clear and consistent pattern of
13 racially polarized voting exists in Franklin County.

14 22. As I will outline in more detail below, the white population is cohesive in voting
15 and acts to block Latino voters from being able to elect preferred candidates due to the at-large
16 election scheme.

17 **A. Ecological Inference**

18 23. Ecological Inference involves estimating the voting behaviors of different groups
19 of voters using only data about election results and the number of people from each group that
20 turned out to vote. Because individual level vote choice is often unknown in local elections (*i.e.*
21 through an exit poll), the voting patterns of white and minority voters must be inferred using well
22 established statistical methods. Information regarding the candidates for which each individual
23 voter actually cast his or her ballot are not available from public sources. The only information
24 available is whether or not an individual voted. The estimates of the relative candidate preferences
25 of Latino and white voters are derived through a statistical method known as EI developed by
26

1 Prof. Gary King.¹ Since the late 1990s, EI “has been the benchmark method courts use in
2 evaluating racial polarization in voting rights lawsuits, and has been used widely in comparative
3 politics research on group and ethnic voting patterns.”² Indeed, according to the American
4 Constitution Society for Law and Policy³, EI is one of the three statistical analyses that must be
5 performed in voting rights research on racial voting patterns. King’s EI is sometimes referred to
6 as the iterative approach, in that it runs a 2-by-2 analysis of each candidate and each racial group,
7 in iterations. Recently published research⁴ has suggested King’s EI continues to be one of the
8 most accurate and reliable tools for estimating racial voting patterns in local elections.

9 24. Using a combination of Census citizen voting age population and voter file
10 surname analysis, I have compiled data on the percentage of voters who are Latino and white,
11 non-Hispanic in each precinct in Franklin County. This data is then merged (or joined) with
12 precinct-level voter choice from relevant election results for Franklin County from 2008 to 2020.
13 All election result data were derived from the state of Washington or Franklin County election
14 results website.

15 **B. Results of Ecological Inference Analysis**

16 25. Using the iterative ecological inference method, I analyzed Franklin County
17 Commission general elections from 2008 to 2020, state initiative measures from 2018, and other
18 Franklin County local office elections in 2010 for racially polarized voting. For the elections
19 discussed below, I provide a plot that shows the results of the iterative inference method. The plot
20

21 ¹ See Gary King, *A Solution to the Ecological Inference Problem Reconstructing Individual*
22 *Behavior from Aggregate Data*, Princeton University Press (1997).

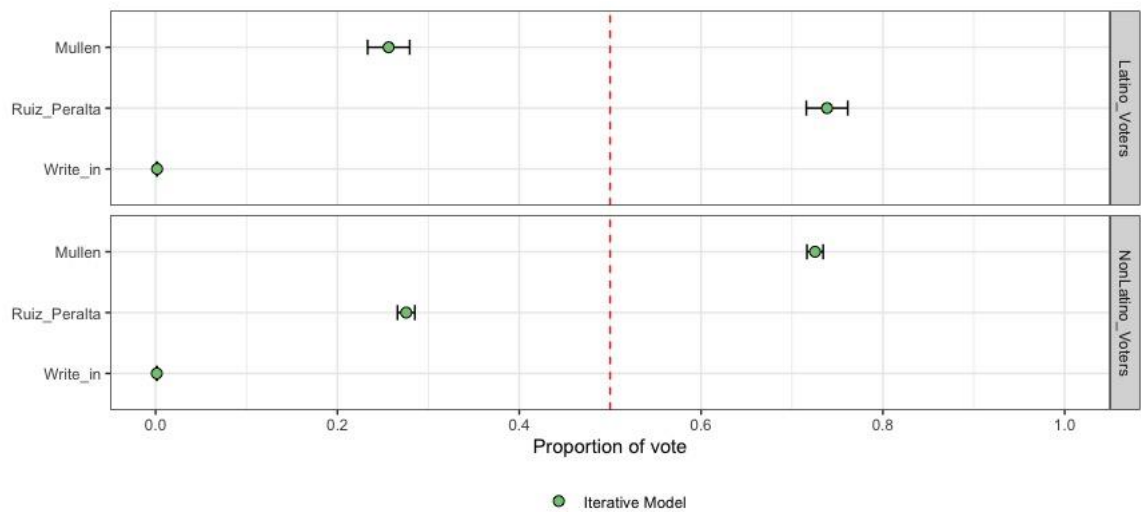
23 ² Loren Collingwood, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto, “eiCompare:
24 Comparing Ecological Inference Estimates across EI and EI:R x C,” *The R Journal*, vol. 8, at 93
(2016).

25 ³ <http://www.acslaw.org/sites/default/files/VRIGuidetoSection2Litigation.pdf>

26 ⁴ Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios and Kassra Oskooii. 2019. “Estimating
Candidate Support: Comparing Iterative EI and EI-RxC Methods” *Sociological Methods and*
Research. 48(4).

presents a panel for Latino voters and for non-Latino voters. Each panel has a row for each candidate in the election. The x-axis indicates the proportion of Latino and non-Latino votes that are estimated to have gone to each candidate in the election. I also use racial turnout and election results to apply ecological inference and provide tables on the estimated proportion of votes for each candidate for Latino and non-Latino voters.

Figure 2: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2020 General Election for Franklin County Commissioner, District 2



26. Figure 2 above shows the results of the iterative ecological inference method for the 2020 general election for Franklin County Commissioner, District 2. The top panel, which shows results for Latino voters, demonstrates that Latino voters preferred Ruiz Peralta over the other candidates in this election. The bottom panel yields different results for non-Latino voters, who show a strong preference for Mullen over Ruiz Peralta.

Table 1: Ecological Inference Estimates for Latino Voters in the 2020 General Election for Franklin County Commissioner, District 2

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Mullen	25.6	2.3	21.3	29.8
Ruiz Peralta	73.9	2.3	68.5	77.5
Write-in	0.7	0.0	0.1	0.2

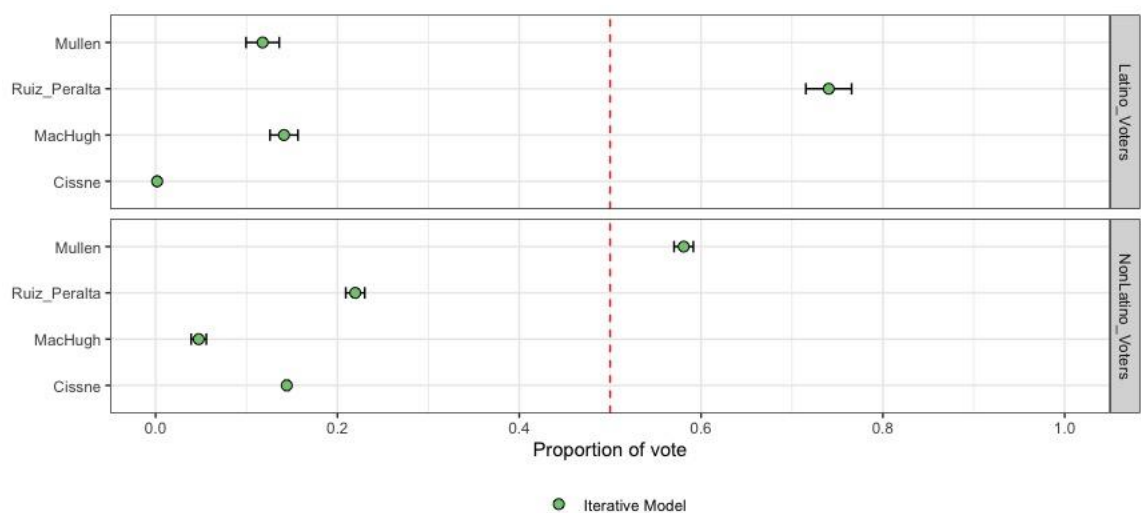
27. Table 1 above shows the estimated proportion of Latino votes for each candidate in 2020 general election for County Commissioner, District 2. The second column, titled ‘Mean,’ shows that Latino voters strongly preferred Ruiz Peralta by a margin 73.9%, compared to Mullen at 25.6%.

Table 2: Ecological Inference Estimates for Non-Latino Voters in the 2020 General Election for Franklin County Commissioner, District 2

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Mullen	72.5	0.9	70.8	74.4
Ruiz Peralta	27.6	1.0	26.0	29.5
Write-in	0.1	0.0	0.1	0.2

28. Table 2 above shows the estimated proportion of non-Latino votes for each candidate in 2020 general election for County Commissioner, District 2. The mean column shows that non-Latino voters significantly favored Mullen by a margin 72.5%, compared to Mullen at 27.6%.

Figure 3: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2020 Primary Election for Franklin County Commissioner, District 2



29. Figure 3 above shows the results of the iterative ecological inference method for the 2020 primary election for Franklin County Commissioner, District 2. The top panel reveals

that Latino voters widely preferred Ruiz Peralta over the other candidates in this election. The bottom panel returns different results for non-Latino voters, who show a strong preference for Mullen over Ruiz Peralta and the other primary candidates.

Table 3: Ecological Inference Estimates for Latino Voters in the 2020 Primary Election for Franklin County Commissioner, District 2

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Mullen	12.0	1.9	8.5	16.5
Ruiz Peralta	74.0	2.5	68.9	78.8
MacHugh	13.9	1.8	10.2	16.5
Cissne	0.2	0.0	0.2	0.2

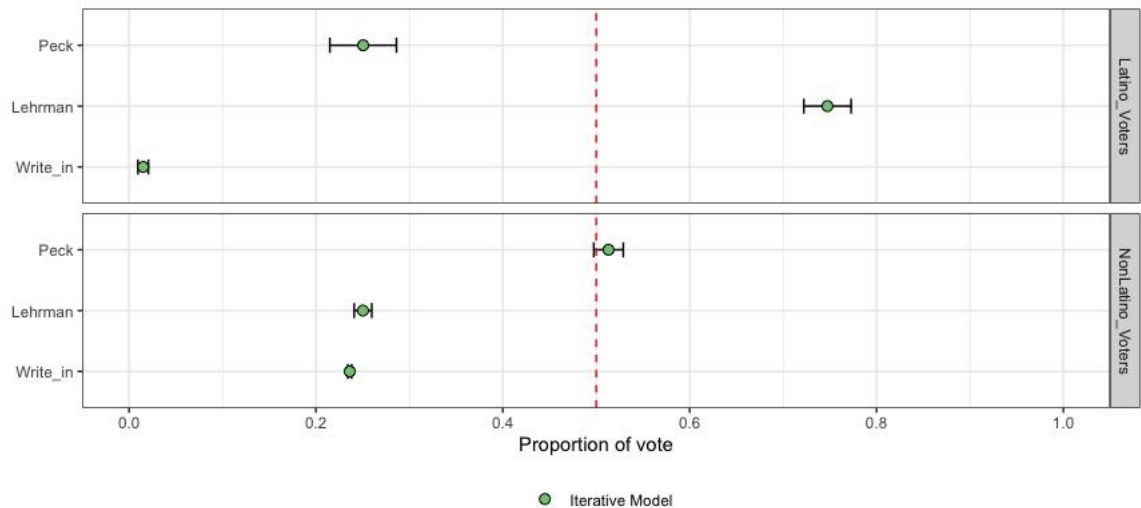
30. Table 3 above shows the estimated proportion of Latino votes for each candidate in 2020 primary election for County Commissioner, District 2. The mean column shows that Latino voters strongly preferred Ruiz Peralta by a margin 74.0%, and even voted for MacHugh over Mullen.

Table 4: Ecological Inference Estimates for Non-Latino Voters in the 2020 Primary Election for Franklin County Commissioner, District 2

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Mullen	57.9	1.4	55.3	60.0
Ruiz Peralta	21.8	1.5	18.6	24.7
MacHugh	4.8	1.0	3.0	6.7
Cissne	14.5	0.2	14.0	14.8

31. Table 4 above shows the estimated proportion of non-Latino votes for each candidate in 2020 primary election for County Commissioner, District 2. The mean column shows that non-Latino voters strongly preferred Mullen by a margin 57.9%, compared to Ruiz Peralta at 21.8%.

Figure 4: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2020 General Election for Franklin County Commissioner, District 1



32. Figure 4 above shows the results of the iterative ecological inference method for the 2020 general election for Franklin County Commissioner, District 1. The top panel indicates that Latino voters significantly favored Lehrman over the other candidates in this election. The bottom panel shows different results for non-Latino voters who voted in favor of Peck over Lehrman, and voted similarly for Lehrman and write-in candidates.

Table 5: Ecological Inference Estimates for Latino Voters in the 2020 General Election for Franklin County Commissioner, District 1

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Peck	25.1	3.6	19.1	32.8
Lehrman	74.8	2.5	69.1	79.6
Write-in	1.5	0.6	0.7	2.9

33. Table 5 above shows the estimated proportion of Latino votes for each candidate in 2020 general election for County Commissioner, District 1. The mean column shows that Latino voters strongly preferred Lehrman by a margin 74.8%, compared to Peck at 25.1%.

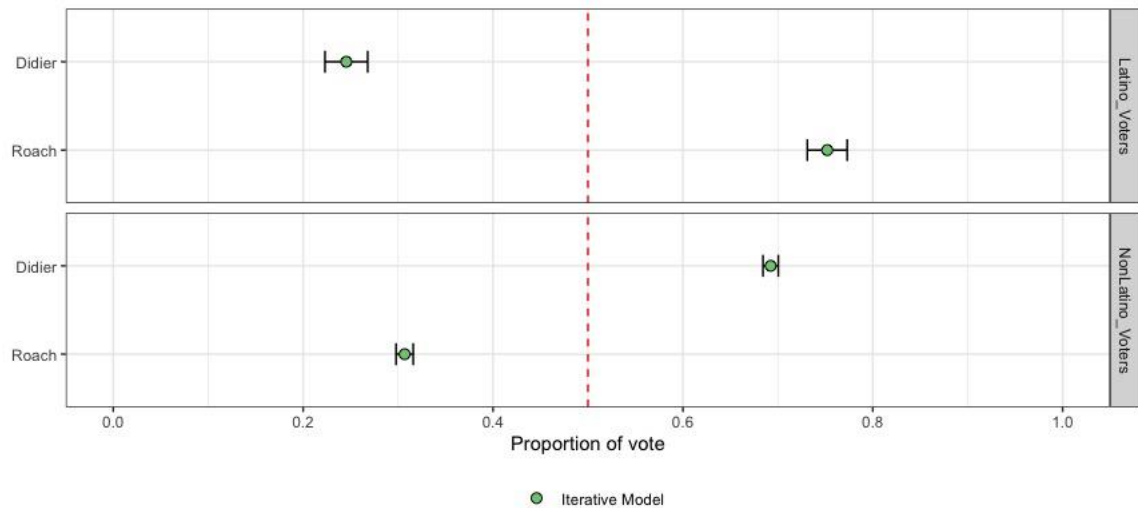
Table 6: Ecological Inference Estimates for Non-Latino Voters in the 2020 General Election for Franklin County Commissioner, District 1

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Peck	51.3	1.6	48.0	53.9

Lehrman	25.0	0.9	23.2	26.9
Write-in	23.6	0.2	23.2	23.9

34. Table 6 above shows the estimated proportion of non-Latino votes for each candidate in 2020 general election for County Commissioner, District 1. The mean column indicates that a majority of non-Latino voters preferred Peck and nearly split the remaining vote between Lehrman and write-in candidates.

Figure 5: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2018 General Election for Franklin County Commissioner, District 3



35. Figure 5 above shows the results of the iterative ecological inference method for the 2018 general election for Franklin County Commissioner, District 3. The top panel demonstrates that Latino voters largely preferred Roach over Didier. The bottom panel shows that non-Latino voters, voted in the virtually opposite manner to Latino voters and preferred Didier over Roach.

Table 7: Ecological Inference Estimates for Latino Voters in the 2018 General Election for Franklin County Commissioner, District 3

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Didier	24.6	2.3	19.9	29.1
Roach	75.2	2.1	71.0	78.8

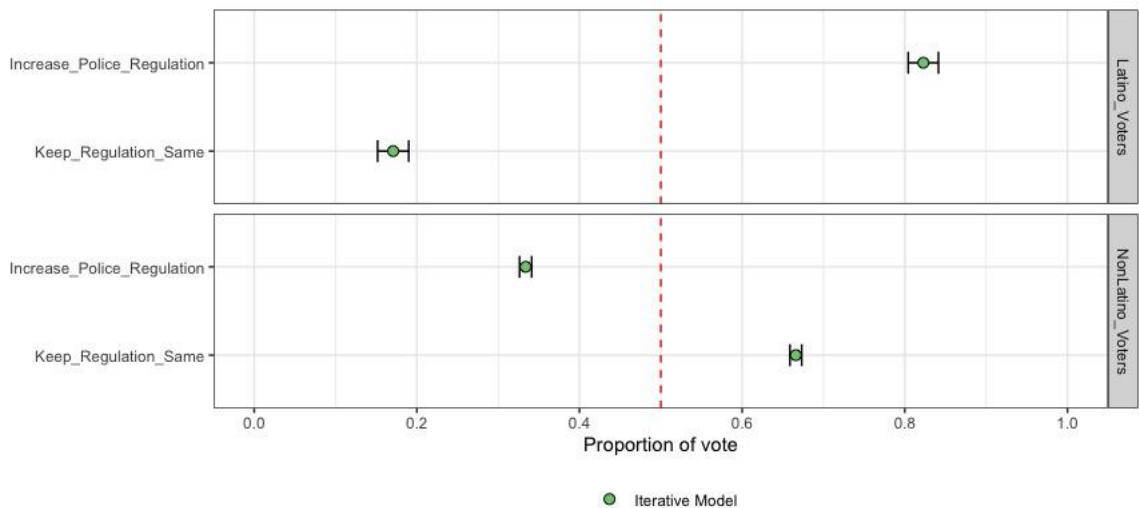
36. Table 7 above shows the estimated proportion of Latino votes for each candidate in 2018 general election for County Commissioner, District 3. The mean column shows that Latino voters strongly preferred Roach over Didier by a 3-1 vote margin.

Table 8: Ecological Inference Estimates for Non-Latino Voters in the 2018 General Election for Franklin County Commissioner, District 3

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Didier	69.2	0.8	67.8	70.8
Roach	30.7	0.9	29.8	32.6

37. Table 8 above shows the estimated proportion of non-Latino votes for each candidate in 2018 general election for County Commissioner, District 3. As shown in the mean column, non-Latino voters strongly preferred Didier by a margin of 69.2%, compared to Roach at 30.7%.

Figure 6: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2018 General Election for Washington Initiative 940



38. Figure 6 above shows the results of the iterative ecological inference method in the 2018 general election for Washington Initiative 940. This measure proposed the requirement for law enforcement to receive violence de-escalation, mental-health, and first-aid training, and

provide first-aid; and change standards for use of deadly force, adding a "good faith" standard and independent investigation. Voters in favor of the initiative are labeled under *increase police regulation*, and voters opposed are included in the *keep regulation the same* category. The top panel reveals that Latino voters overwhelming favored the initiative. The bottom panel shows that a large majority of non-Latino voters opposed the initiative.

Table 9: Ecological Inference Estimates for Latino Voters in the 2018 General Election for Washington Initiative 940

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Increase Police Regulation	82.3	1.9	79.0	86.2
Keep Regulation the Same	17.1	1.9	12.8	20.8

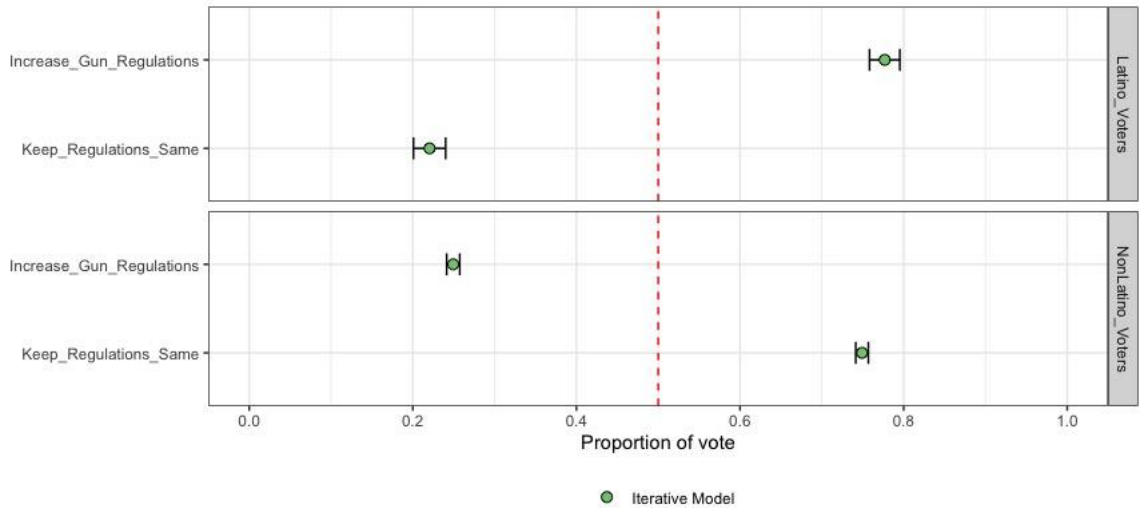
39. Table 9 above shows the estimated proportion of Latino votes in support or opposed to Initiative 940. The mean column shows that Latino voters voted in support of the initiative by an 82.3% margin.

Table 10: Ecological Inference Estimates for Non-Latino Voters in the 2018 General Election for Washington Initiative 940

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Increase Police Regulation	33.4	0.8	32.1	34.9
Keep Regulation the Same	66.6	0.7	64.9	68.1

40. Table 10 above shows the estimated proportion of non-Latino votes in support or opposed to Initiative 940. The mean column shows that non-Latino voters were opposed to the initiative by a near 2-1 margin, with 66.6% voting against it.

Figure 7: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2018 General Election for Washington Initiative 1639



41. Figure 7 above shows the results of the iterative ecological inference method in the 2018 general election for Washington Initiative 1639. This measure proposed requiring increased background checks, training, age limitations, and waiting periods for sales or delivery of semiautomatic assault rifles; criminalizing noncompliant storage upon unauthorized use; allowing fees; and enacting other provisions. Voters in favor of the initiative are labeled under *increase gun regulation*, and voters opposed are included in *the keep regulation the same* category. The top panel, which shows results for Latino voters, reveals that Latino voters largely favored the initiative. The bottom shows that a significant majority of non-Latino voters voted in an opposite manner and mostly opposed the initiative.

Table 11: Ecological Inference Estimates for Latino Voters in the 2018 General Election for Washington Initiative 1639

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Increase Gun Regulation	77.7	1.9	74.3	81.5
Keep Regulation the Same	22.0	2.0	18.7	25.2

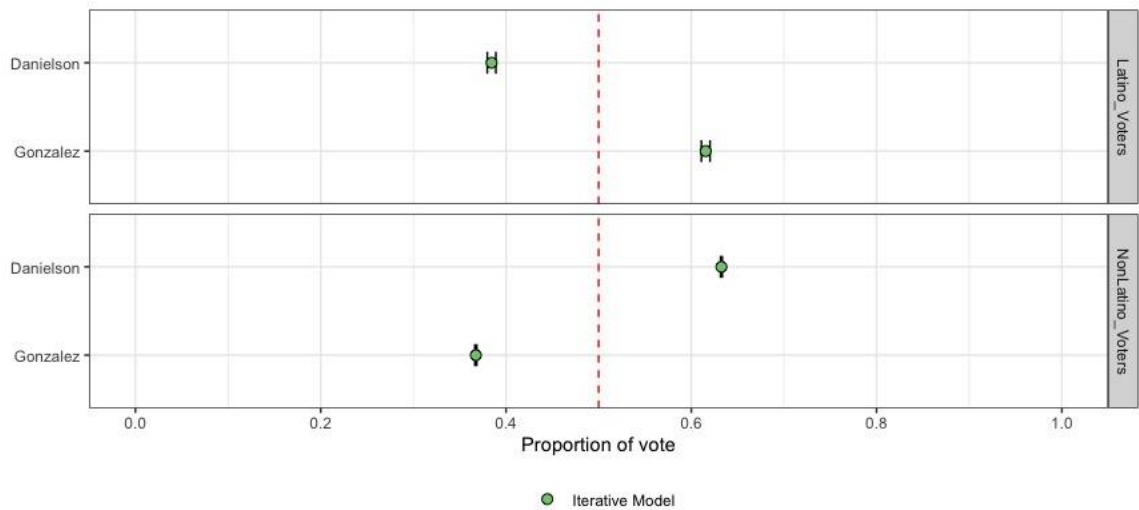
42. Table 11 above shows the estimated proportion of Latino votes in support or opposed to Initiative 1639. The mean column shows that more than a 3-1 majority of Latino voters supported the initiative at a 77.7% margin.

Table 12: Ecological Inference Estimates for Non-Latino Voters in the 2018 General Election for Washington Initiative 1639

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Increase Gun Regulation	24.9	0.8	23.5	26.4
Keep Regulation the Same	74.9	0.8	73.6	76.5

43. Table 12 above shows the estimated proportion of non-Latino votes in support or opposed to Initiative 1639. The mean column shows that non-Latino voters opposed the initiative by a 3-1 majority and voted against it at 74.9% margin.

Figure 8: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2012 Primary Election for Washington State Supreme Court, Position 8



44. Figure 8 above shows the results of the iterative ecological inference method for the 2012 primary election for Washington State Supreme Court, Position 8. The top panel

demonstrates that Latino voters largely preferred González over Danielson. The bottom panel shows that the majority of non-Latino voters supported Danielson.

Table 13: Ecological Inference Estimates for Latino Voters in the 2012 Primary Election for Washington State Supreme Court, Position 8

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Danielson	38.7	0.5	0.9	2.8
González	61.3	0.5	1.7	3.6

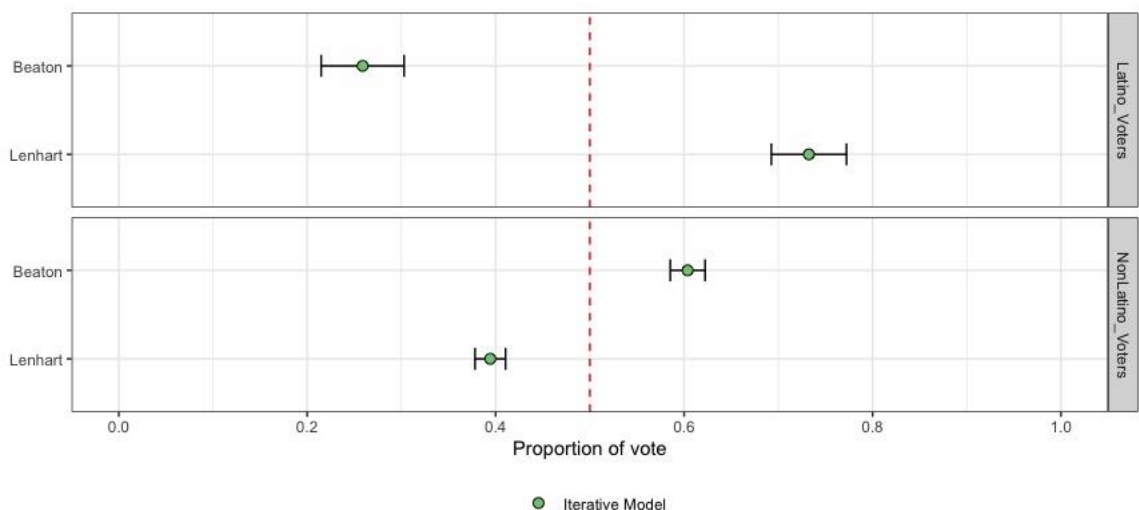
45. Table 13 above shows the estimated proportion of Latino votes in the 2012 primary election for Washington State Supreme Court, Position 8. The mean column shows that a significant majority of Latino voters preferred González by a margin of 61.3%, compared to Danielson at 38.7%.

Table 14: Ecological Inference Estimates for Non-Latino Voters in the 2012 Primary Election for Washington State Supreme Court, Position 8

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Danielson	63.2	0.1	24.7	25.1
González	36.8	0.1	14.3	14.8

46. Table 14 above shows the estimated proportion of non-Latino votes in the 2012 primary election for Washington State Supreme Court, Position 8. The mean column shows that non-Latino voters voted in the opposite manner and preferred Danielson by a margin of 63.2%, compared to González at 36.8%.

Figure 9: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2010 General Election for Franklin County Auditor



47. Figure 9 above shows the results of the iterative ecological inference method for the 2010 general election for Franklin County Auditor. The top panel demonstrates that Latino voters largely preferred Lenhart over Beaton. The bottom panel shows that the majority of non-Latino voters supported Beaton.

Table 15: Ecological Inference Estimates for Latino Voters in the 2010 General Election for Franklin County Auditor

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Beaton	25.9	4.4	16.6	32.9
Lenhart	73.3	4.0	66.4	80.5

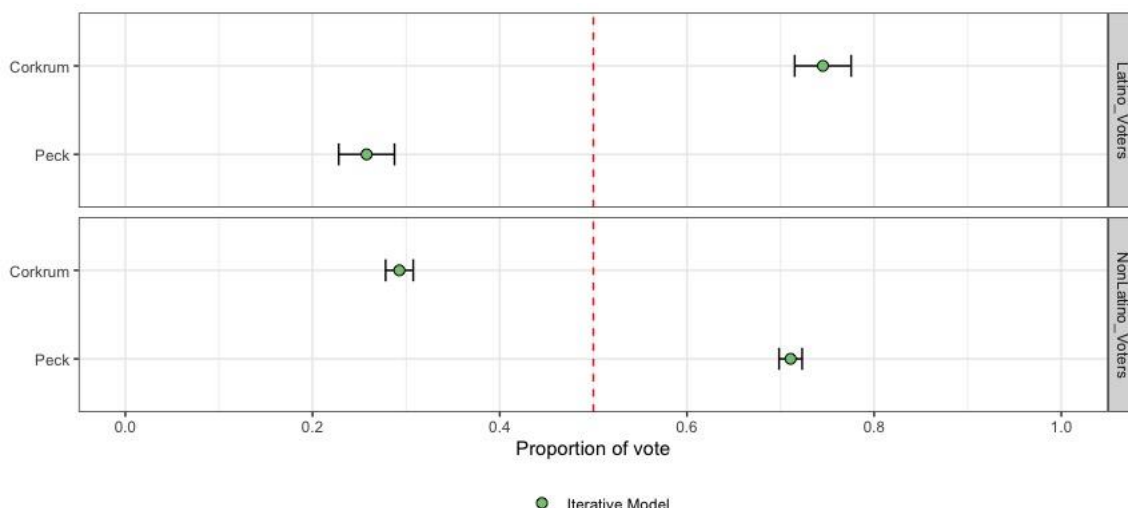
48. Table 15 above shows the estimated proportion of Latino votes in the 2010 general election for Franklin County Auditor. The mean column shows that a near 3-1 majority of Latino voters preferred Lenhart at a 73.3% margin, compared to Beaton at 25.9%.

Table 16: Ecological Inference Estimates for Non-Latino Voters in the 2010 General Election for Franklin County Auditor

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Beaton	60.4	1.9	56.7	63.2
Lenhart	39.4	1.6	36.2	42.6

49. Table 16 above shows the estimated proportion of non-Latino votes in the 2010 general election for Franklin County Auditor. The mean column shows that non-Latinos voted in favor of Beaton by a 60.4% margin, compared to 39.4% for Lenhart.

Figure 10: Ecological Inference Analysis of Latino and Non-Latino Voter Behavior in the 2008 General Election for Franklin County Commissioner, District 1



50. Figure 10 above shows the results of the iterative ecological inference method for the 2008 general election for Franklin County Commissioner, District 1. The top panel reveals that Latino voters largely preferred Corkrum over Peck. The bottom panel shows that candidate support was the polar opposite for non-Latino voters as they widely favored Peck.

Table 17: Ecological Inference Estimates for Latino Voters in the 2008 General Election for Franklin County Commissioner, District 1

	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Corkrum	74.5	3.0	68.9	79.8
Peck	25.8	2.9	19.0	30.3

51. Table 17 above shows the estimated proportion of Latino votes in the 2008 general election for Franklin County Commissioner, District 1. The mean column shows that a significant majority of Latino voters preferred Corkrum by a near 3-1 margin over Peck.

Table 18: Ecological Inference Estimates for Non-Latino Voters in the 2008 General Election for Franklin County Commissioner, District 1

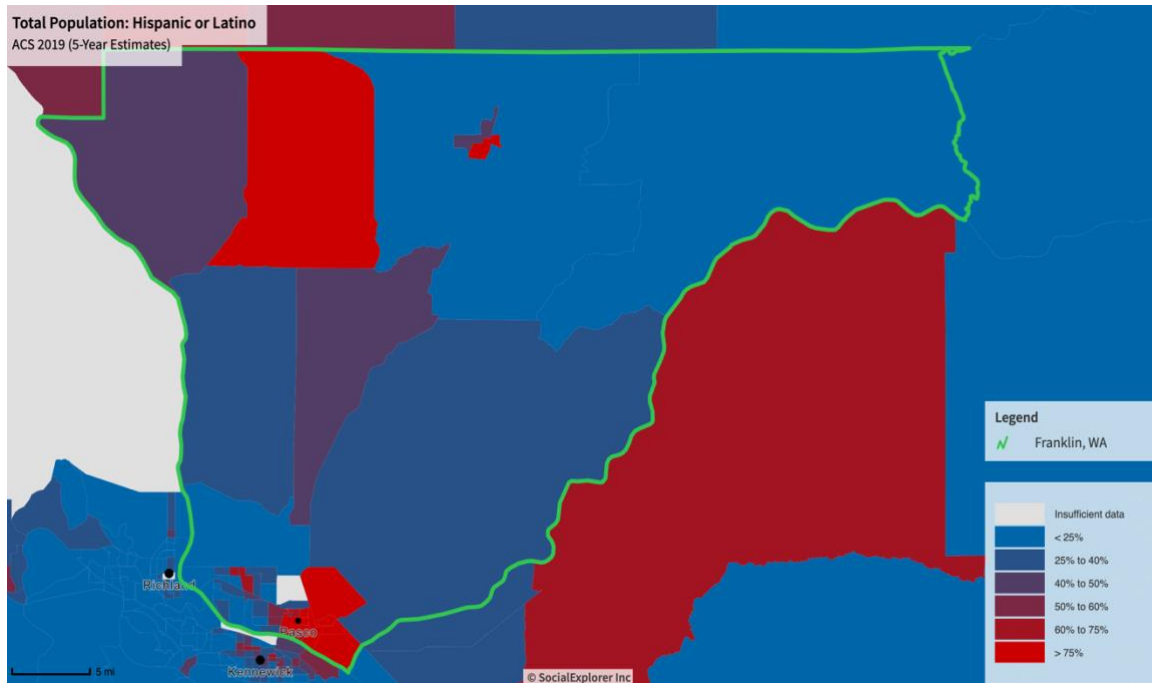
	Mean	Standard Deviation	95% CI (Lower)	95% CI (Upper)
Corkrum	29.3	1.5	26.7	32.9
Peck	71.1	1.2	68.9	73.9

52. Table 18 above shows the estimated proportion of non-Latino votes in the 2008 general election for Franklin County Commissioner, District 1. The mean column shows that a significant majority of non-Latino voters preferred Peck by a 71.1% margin, compared to Corkrum at 29.3%.

V. Plaintiff Proposed Map and Districts

53. Upon viewing a map of the population density using 2019 American Community Survey data, shown below as figure 11, it is evident that Latino population is large in size and geographically compact around the City of Pasco.

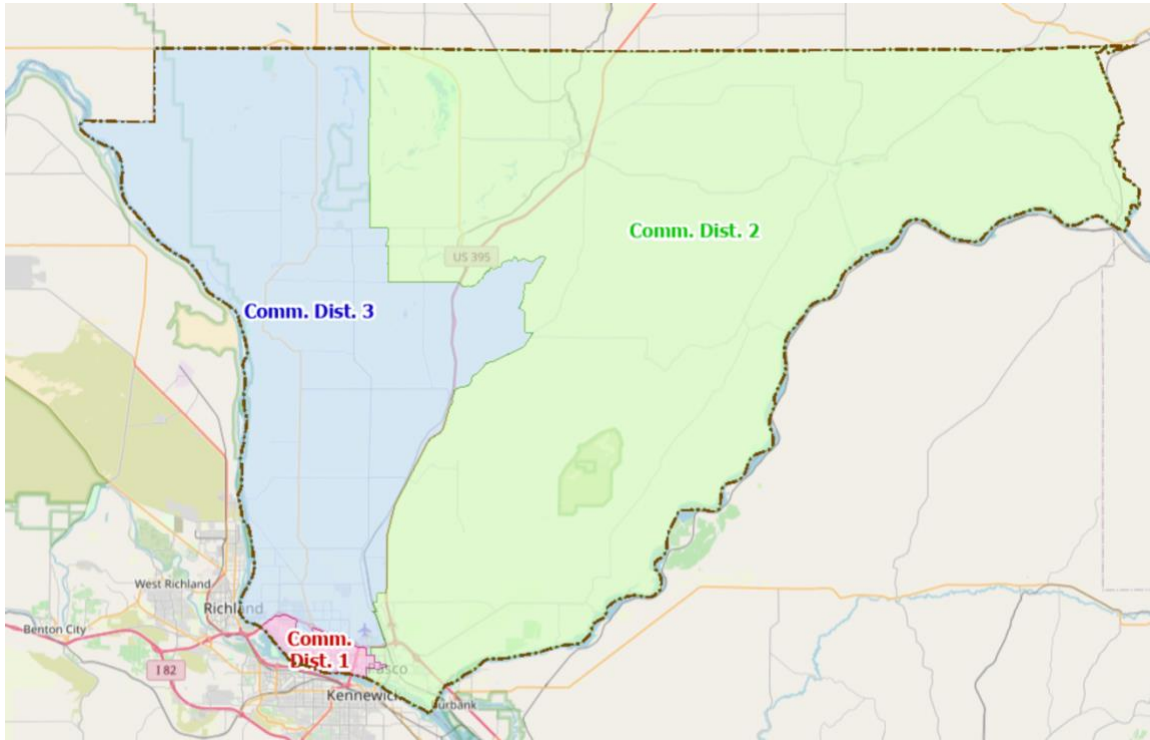
Figure 11: Social Explorer Heat Map of the Geographic Distribution Latinos in Franklin County



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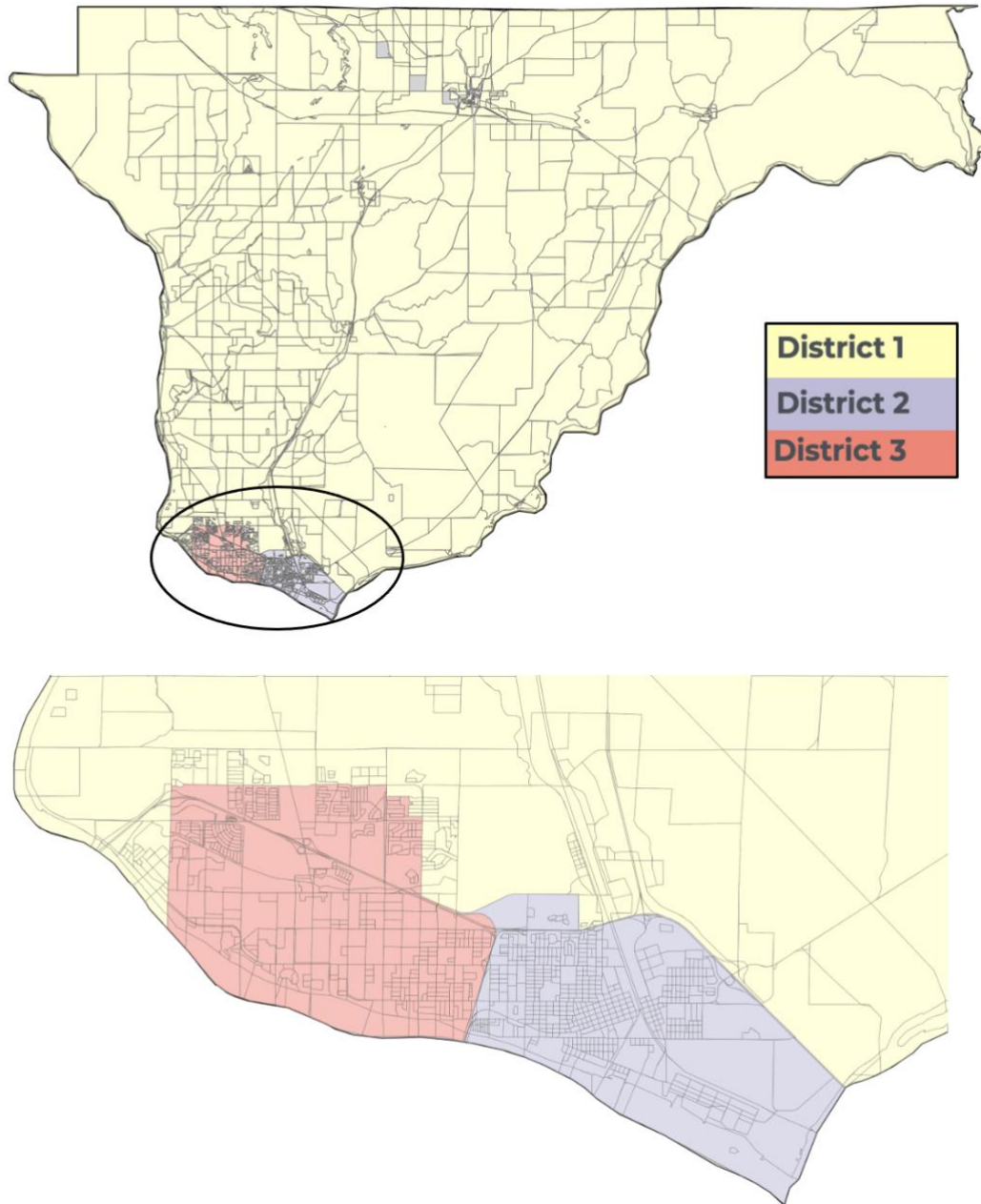
54. For reference, figure 12 below shows the current County Commission district boundaries. Comparing the current district boundaries to the population density map above shows that the City of Pasco, which is mostly populated by Latinos, is divided between all three districts.

Figure 12: Franklin County Commissioners District Map



55. I reviewed the proposed map that Plaintiffs sent to the Defendants and that the Defendants made publicly available [online](#). I have included the proposed map below as figure 13. Upon reviewing the proposed map, it is clear and evident that the Latino population in Franklin County is large in size and geographically compact such that it can constitute a majority of the citizen voting age population in a district. In comparison to the existing district boundaries, the Plaintiffs' proposed map includes more compact and contiguous districts that more appropriately group rural and urban residents by their respective communities. The proposed map also uses South 1st Avenue as a natural border to divide district 2 and district 3.

Figure 13: Plaintiff Proposed County Commission Districts Map



56. While the map proposed by the Plaintiffs appears visually suitable, I have compiled the following population data on Franklin County and the proposed map to determine if it meets the applicable population thresholds.

Table 19: Total Population and Citizen Voting Age Population Breakdown by Race and Ethnicity for Plaintiff Proposed County Commission Districts (2018 ACS 5-Year Estimates)

	County Total	District 1	District 2	District 3
Population (Total)	90,170	29,106	31,925	29,139
% Hispanic/Latino	52.9%	42.1%	81.6%	32.4%
% White	40.6%	50.7%	15.3%	58.3%
% Other	4.3%	4.1%	2.2%	6.8%
Population (CVAP)	46,443	16,593	11,793	18,057
% Hispanic/Latino	32.0%	23.1%	59.6%	22.3%
% White	60.7%	68.2%	34.4%	70.9%
% Other	4.7%	4.6%	4.4%	5.0%

57. Table 19 above shows the breakdown of Franklin County and the three plaintiff proposed County Commissioner districts by Hispanic/Latino, White, and other share of total population and citizen voting age population (CVAP) using 2018 ACS 5-year estimates. According to ACS estimates, the Latino share of CVAP rose from 32.0% in 2018 to 33.1% in 2019. The Latino share of CVAP appears to be increasing by approximately 1% each year, which means 2020 estimates could show 34 to 35% Latino CVAP. As indicated in the total population row, row 2, the three proposed districts are proportionately separated by population. The district 2 column shows that this proposed minority-majority district would be 81.6% Latino and would comprise a majority of voting age citizens that are Latino at 59.6%. The proposal of district 2 would help counteract the racially polarized voting observed in at-large elections that has repeatedly prevented a Latino preferred candidate from being elected.

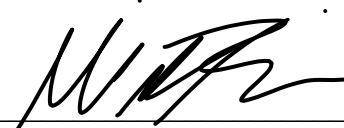
I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

Executed this 20th day of July 2021 at, Rancho Cucamonga California.

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(State)



Michael Rios

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via Franklin County E-Service and/or email upon the following:

DATED this 20th day of July 2021.

/s/ Sonni Waknin

Sonni Waknin



October 12, 2020

Franklin County Commission
Franklin County Courthouse
1016 N. 4th Ave
Pasco, WA 99301
VIA U.S. Mail and
Electronic Mail: kmilham@co.franklin.wa.us

Re: Violation of the Washington Voting Rights Act of 2018

Dear Franklin County, Washington County Commissioners:

We write to provide written notice pursuant to the Washington Voting Rights Act of 2018 (WVRA; the Act), of our clients' intent to challenge Franklin County's electoral system under the Act.¹ The undersigned, along with co-counsel, represent citizens of Franklin County, Washington, in collaboration with the University of California, Los Angeles Voting Rights Project (UCLA VRP) and the League of United Latin American Citizens (LULAC). The evidence we have developed, and would present in court, demonstrates that Franklin County's electoral system dilutes the votes of Latino/a citizens in Franklin County and thereby presents an effective barrier for Latinos to have an equal opportunity to elect candidates of their choice, violating the WVRA and the Washington State Constitution.²

Franklin County's electoral scheme violates the WVRA in two ways. First, the County's electoral scheme, which uses district-based voting for the primary election, but at-large voting for the general election, is an electoral method that impairs Latinos' ability to have an equal opportunity to elect candidates of their choice. This electoral method is akin to having Franklin County voters vote for a state representative in the primary then allowing the entirety of Washington to vote for Franklin County's state representative in the general election. Second, Franklin County's commission district lines crack the Latino population of the City of Pasco and divides the Latino population into three districts in order to impair their ability to elect candidate for their choice.

Franklin County has a total population of 95,222 and a Latino population of 51,001 which comprises more than half (53.6%) of the total county's population.³ Among the overall citizen voting age population (CVAP), over one-third (34.4%) are Latino.⁴ In the last twenty years, like other surrounding counties in the state, Franklin County has experienced large demographic

¹ WASH. REV. CODE § 29A.92.060 (2019).

² See e.g. *Id.*

³ U.S. Census Data Website:

<https://data.census.gov/cedsci/table?q=franklin%20county%20washington%20hispanic&tid=ACSDT1Y2019.B03002&hidePreview=false>

⁴ U.S. Census Bureau, 2018 American Community Survey.

changes fueled by the growth of the Latino community.⁵ The growth in the CVAP has been driven by U.S. born Hispanics turning 18 and becoming eligible to vote. The Latino population is largely concentrated within select areas of Franklin County. Today, three of the incorporated cities within the Franklin County have sizable Latino citizen voting age populations—accounting for almost one quarter to more than one third of the total CVAP in those cities.⁶ Yet because of the county’s discriminatory electoral scheme, Latino citizens have been unable to elect candidates of choice over years of elections.⁷ Indeed, a Latino candidate of choice has not been elected to the Franklin County Commission in the past 20 years.

The large and growing Latino population in the Franklin County area have placed jurisdictions within and near Franklin County under minority voter scrutiny for violations of the Washington State Voting Rights Act and Federal Voting Rights Act of 1965. Following a 2016 lawsuit by voters against the City of Pasco, the largest city in Franklin County, for violating the Federal Voting Rights Act,⁸ a court found that the city’s at-large city election system diluted the electoral power of Pasco Latino voters.⁹ In response to that lawsuit, the city replaced its at-large system with a hybrid district-based system.¹⁰ Despite the forced changes to Pasco’s discriminatory electoral system, the Latino voting power in Franklin County, as a whole, continues to be diluted.

Yakima County has been served a notice letter under the Washington Voting Rights Act for their election scheme that is similar to Franklin. In July, voters filed a lawsuit against Yakima County alleging that the county’s at-large system for electing county commissioners dilutes the electoral power of Latino voters, thus denying them equal opportunity to elect candidates of their choice.¹¹ Franklin County’s total Latino population is higher than in Yakima County and it has never elected a Latino preferred candidate to serve on the Franklin County commission. Our research indicates that Franklin County’s at-large election method dilutes the influence of Latino voters—a protected class—and deprives them of their right to elect a candidate of their choice.

Franklin County’s Current Election System Violates the WVRA

The Washington Voting Rights Act was enacted by the state legislature in 2018 to give local governments the opportunity to remedy discriminatory electoral schemes “so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.”¹² The WVRA requires that district maps afford minority voters an equal

⁵ E.g., John Stucke, *2010 Census: Spokane Still No. 2; Valley Makes Top 10*, *Spokesman-Rev.* (Feb. 24, 2011), <https://www.spokesman.com/stories/2011/feb/24/2010-census-spokane-still-no-2-spokane-valley/>.

⁶ The City of Pasco has a Latino CVAP of 35.59%, the City of Mesa has a Latino CVAP of 32.09%, and the City of Connell has a Latino CVAP of 22.32%. U.S. Census Bureau, 2018 American Community Survey 5-Year Estimates. “Trends and experts” have forecasted that Pasco’s Latino CVAP “is likely to exceed 40% by 2021.” Memorandum Opinion and Order at 7, *Glatt v. City of Pasco*, No. 4:16-cv-05108 (E.D. Wash. Jan. 27, 2017), ECF No. 40.

⁷ See Lilly Fowler, *WA to Protect Against Voting Discrimination With New Law*, CROSSCUT (March 6, 2018), <https://crosscut.com/2018/03/washington-voting-rights-act-legislature-discrimination-law-jay-inslee> (displaying a chart showing that Latinos made up only 2.7% of all office holders in Franklin County in 2016).

⁸ 52 U.S.C. § 10301 (2018).

⁹ See Memorandum Opinion and Order, *supra* note 5, at 2.

¹⁰ Of the seven Pasco City Council seats, six seats are district-based while one continues to be at-large.

¹¹ Complaint at 8, *Aguilar v. Yakima County*, No. 20-2-00180-19 (Wa. Super. Ct. July 13, 2020).

¹² WASH. REV. CODE § 29A.92.005 (2019).



opportunity to elect their preferred candidates.¹³ The law further prohibits the dilution of protected classes' influence over elections through the use at-large electoral schemes (as opposed to district-based schemes).¹⁴ At-large election systems are conducive to diluting minority voting rights¹⁵ because "where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters."¹⁶ Vote dilution is shown through racial polarized voting, in which the majority class of voters will vote for one candidate, whereas the minority class will vote for their preferred candidate in stark polarization.¹⁷ Where there is racially polarized voting in a political subdivision and the votes of a protected class are diluted, that subdivision is in violation of the WVRA.

Although Franklin County's partisan elected commissioners must be nominated in primary elections by the voters in the district in which they reside, all three commissioners are elected at-large by voters throughout the entire county during the general election.¹⁸ The county is divided into three commissioner districts: District 1, a small district centered within the city of Pasco, and Districts 2 and 3, much larger districts which include parts of Pasco and extend into the northern parts of the county.¹⁹ Elections are held every two years, with Districts 1 and 2 voted on during presidential election years and District 3 voted on during midterm election years. Despite Latinos living throughout the County, with a heavy concentration in the City of Pasco, as a result of the County's discriminatory electoral scheme, there are no Latino preferred candidates currently serving on the Franklin County Board of Commissioners, nor has there ever been one elected to serve on the commission.²⁰

Our investigation shows the Franklin County Commission's electoral scheme dilutes Franklin Latinos' right to vote in violation of the WVRA and Federal Voting Rights Act. The at-large general elections for commissioners prevent Latinos from electing a candidate of choice to the Franklin County Commission. Franklin County's Latino population votes cohesively and accounts for more than a third of a county with three commissioners. Yet Latinos have been

¹³ *Id.* § 29A.92.020 (2019).

¹⁴ *See id.* § 29A.92.030 (2019).

¹⁵ *See Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

¹⁶ *Id.* at 48.

¹⁷ *See* WASH. REV. CODE § 29A.92.010(3) (2019).

¹⁸ *See* FRANKLIN CTY COMM'R'S OFFICE, <https://www.co.franklin.wa.us/commissioners/index.php> (last visited July 17, 2020); *see also* WASH. REV. CODE § 29A.52.112(2) (mandating that for partisan offices the top two vote-getters in the primary election will advance to the general election).

¹⁹ District 2 covers the northeast part of the county and includes the cities of Connell, Kahlotus, and Mesa, Washington. District 3 covers the northwest part of the county, including Basin City, Washington; *see also Franklin County Commissioners District Map*, FRANKLIN CTY COMM'R'S OFFICE, http://www.co.franklin.wa.us/commissioners/forms/COMMISSIONER_DISTRICTS-COUNTY.pdf (last visited July 19, 2020).

²⁰ *See Elected Officials List*, FRANKLIN CTY AUDITOR'S OFFICE <http://www.co.franklin.wa.us/auditor/myuploads/file/elections/research/franklin-county-elected-officials2019.pdf> (last visited July 17, 2020) (going as far back as 1984).

unable to elect a candidate of choice under the county's at-large elections because they constitute less than a majority and vote differently from the white population.

One only needs to look at the county's largest city, Pasco, to see how the same at-large system has been deployed to dilute the power of Latino voters to elect their candidates of choice. In nearly every election cycle since 1990 a Latino ran for a city council position, however, not one won a contested city council election under the at-large system.²¹ In ordering the city to switch from at-large to a hybrid district based election system, the court found that racially polarized voting existed in Pasco's city council elections.²²

The discriminatory three-district plan the County utilizes to nominate candidates in the primary also places the County in violation of the WVRA. Franklin County has diluted the Latino community's votes by cracking the population into different districts. Though the majority of Pasco, which has a majority Latino population, is located in District 1, the city, including eastern Pasco, is split into Commissioner Districts 2 and 3. As Commissioner Brad Peck noted at the February 4, 2020 commissioner meeting, the "homogenous" eastern part of Pasco—"the predominantly Latino east Pasco"²³—has historically been "carved up into pieces to make the other districts balanced."²⁴ Cracking the eastern Pasco Latino community between electoral districts impedes its ability to rally behind a candidate of choice in the primary, there may not even be a Latino candidate of choice in the general election. Likewise, if this map were used in the general election, it would likely prevent Latinos from electing a candidate of choice to the Commission. The choice to divide this predominately Latino city between electoral districts demonstrates a conscious choice to crack the Latino population in such a way as to prevent Latinos from having the opportunity to elect their candidates of choice.

When the voting system is not discriminatory, Franklin County Latinos do coalesce around candidates of choice. Following the City of Pasco's 2017 change to a hybrid district-based system, Latinos now occupy three out of seven city council seats, including two out of the three Latino majority-minority districts. Two of these council members have also taken on the role of Pasco's mayor and mayor pro tem.²⁵ The fact that no Latino candidate of choice was able to win a contested Pasco city council election until the system changed shows the significant dilutive effect of at-large election systems on Latino voters in Franklin County, including the County Commission's own system.

²¹ Complaint at 7, *Glatt v. City of Pasco*, No. 4:16-cv-05108 (Jan. 27, 2017), ECF No. 1.

²² See Memorandum Opinion and Order, *supra* note 5, at 32 ("Racially polarized bloc voting existed in five [City Council contests from 2005, 2009, and 2015], where Hispanic candidates received support from an estimated 58.3% to 86% of Latino voters compared to only 7.1% to 39.5% of non-Latino voters."). Latinos had to be appointed to council member positions. Complaint, *supra* note 22, at 7. Even then, one lost their subsequent election and the other ran unopposed. *Id.*

²³ Memorandum Opinion and Order, *supra* note 5, at 36.

²⁴ Franklin County Commission recordings available on the Franklin County Commission webpage, <https://www.co.franklin.wa.us/commissioners/recordings.php>.

²⁵ Ashley Nanfria, *Pasco's New Mayor and Mayor Pro-tem Make History*, NBC RIGHT NOW (Jan. 7, 2020), https://www.nbcrightnow.com/news/pascos-new-mayor-and-mayor-pro-tem-make-history/article_9c5d87d8-31b5-11ea-b811-b757cad7999d.html



Other Factors That Implicate Franklin County is Violating the WVRA

Under both the Washington Voting Rights Act and Federal Voting Rights Act, the existence of historic and present racial discrimination in the jurisdiction further support 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 are.²⁶

Franklin County has a history of ethnic and racial tension between the county's white and Latino communities.²⁷ In fact, according to historians, 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.²⁸ 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."²⁹

Racial tensions between white and Latino communities in the county persist even today. On February 10, 2015 local Pasco police, itself not racially reflective of the community, shot seventeen times and killed Antonio Zambrano-Montes after he was allegedly throwing rocks at cars.³⁰ Weeks of demonstrations calling for justice and more scrutiny over Pasco's policing of the Latino community followed.³¹ Even county officials have publicly declared racially insensitive viewpoints: In 2016, a Franklin County official shared an image of a white farmer with the caption, "When is white history month?" and on the corner of the image a white raised fist used by white supremacists with the words "100% White, 100% Proud."³²

²⁶ WASH. REV. CODE § 29A.92.030(6).

²⁷ 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/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Tyrone Beason, *Family of a Mexican Farmworker Fatally Shot by Police in Pasco Receives a \$750,000 Settlement*, SEATTLE TIMES (Dec. 20, 2018), <https://www.seattletimes.com/pacific-nw-magazine/a-settlement-is-reached-in-lawsuit-over-the-2015-death-of-mexican-farmworker-antonio-zambrano-montes/>.

³¹ *Id.*

³² Jake Dorsey, *Franklin County Coroner Posted a 'White Power' Meme. Some Say his Apology isn't Enough*, YAKIMA HERALD (Mar. 15, 2018), https://www.yakimaherald.com/news/local/franklin-county-coroner-posted-a-white-power-meme-some-say-his-apology-isn-t-enough/article_3b232aa8-2871-11e8-8f6b-03319b4b7e81.html

Franklin County officials have also expressed anti-immigrant sentiment against the county's immigrant population—an overwhelming majority of which is Latino.³³ When current county commissioner, Clint Didier, was asked about immigration while running for his seat he stated he wanted to secure borders and that until then, “[w]e work with ICE.”³⁴ Law enforcement officials have also sought ways to collaborate with immigration enforcement officials, including receiving Spanish language training from U.S. Border Patrol agents, which has undermined trust between them and the overwhelming Latino immigrant community.³⁵

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 reveal a number of discrepancies between the white and Latino communities in the county. Latino residents in Franklin are much less likely to have a high school diploma than white Franklin residents.³⁶ Similarly, only 7.1% of Latinos in Franklin have a bachelor's degree or higher, compared to 29.9% of whites.³⁷ While 7.5% of Franklin's white population lives below the poverty line, more than one out of five Latinos in the County live below the poverty line.³⁸ The disparities between the white population and the Latino community in Franklin County are also pervasive with respect to job earnings³⁹ and access to health care.⁴⁰ White Franklin County residents also earn substantially more at their jobs on average than do Latino residents.⁴¹

³³ Latino residents make up 89.8% of the immigrant population in Franklin County. U.S. Census Bureau, 2018: American Community Survey 5-Year Estimates Subject Table, <https://bit.ly/2E416bO> (last visited July 19, 2020).

³⁴ Wendy Culverwell, *Franklin County Face-off Debates Pot Ban, TRAC Future, Immigrant Crackdown*, TRI-CITY HERALD (July 21, 2018), <https://www.tri-cityherald.com/news/local/article214985235.html>.

³⁵ *Pasco Police Got Free Spanish Training. This Latino Group Wants The Chief Fired Over It*, NEWS BREAK (July 1, 2018), <https://www.newsbreak.com/news/0DFLlaxg/pasco-police-got-free-spanish-training-this-latino-group-wants-the-chief-fired-over-it?s=oldSite>.

³⁶ While 93% of white residents have high school diplomas, only 49.8% of Latino residents have one. U.S. Census Bureau, Educational Attainment, 2018: American Community Survey 1-Year Estimate, Franklin County, Washington, <https://bit.ly/3fMVAbx> (last visited July 19, 2020).

³⁷ *Id.*

³⁸ U.S. Census Bureau, Poverty Status in the Past 12 Months, 2018: American Community Survey 5-Year Estimates Subject Tables, Franklin County, Washington, <https://bit.ly/30zSstj> (last visited July 19, 2020).

³⁹ While the median income for white residents was \$77,937, the median income for Latino residents was \$50,675. U.S. Census Bureau, Median Income In The Past 12 Months (In 2018 Inflation-Adjusted Dollars), 2018: American Community Survey 5-Year Estimates Subject Tables, Franklin County, Washington, <https://bit.ly/3fRTPtC> (last visited on July 19, 2020).

⁴⁰ In 2018 while only 237 white residents under 19 years old and 1,971 over 19 years old lacked access to health insurance, 1,041 Latino residents under 19 years old and 9,413 over 19 years old in the county lacked access to such coverage. U.S. Census Bureau, Health Insurance Coverage Status By Age, 2018: American Community Survey 5-Year Estimates Detailed Tables, Franklin County, Washington (comparing “White Alone, Not Hispanic or Latino” with “Hispanic or Latino tables”).

⁴¹ While the median income for white residents was \$77,937, the median income for Latino residents was \$50,675. U.S. Census Bureau, Median Income In The Past 12 Months (In 2018 Inflation-Adjusted Dollars), 2018: American Community Survey 5-Year Estimates Subject Tables, Franklin County, Washington, <https://bit.ly/3fRTPtC> (last visited on July 19, 2020).



Racially Polarized Voting in Franklin County

In a political subdivision, when the right to vote of a protected class is diluted, as Franklin County's Latino population is, and racially polarized voting exists, that subdivision is in violation of the WVRA.⁴² The experts at UCLA VRP have performed racially polarized voting (RPV) analyses and have determined that racially polarized voting exists in Franklin County elections. Simply put, white, non-Hispanic voters and Latino voters demonstrate consistent patterns of voting for different candidates. Candidates who win a majority of the vote in high-density Latino voting precincts receive very low support in high-density white precincts. This pattern is consistent across different elections, across the county, and across years.

To illustrate the presence of RPV, we examined five Franklin County Commission elections between 2008 and 2020 to determine whether high percentage non-Latino precincts vote differently than high percentage Latino precincts. The Franklin County Commission is made up of three commissioners that run within geographic-based districts during the primary election; then, the general election is held at-large countywide. Since 2008, no Latino candidate has been elected to the County Commission even though Latinos have run. In 2020, Ana Ruiz Peralta ran in District 2 and advanced to the general election. Within District 2, Peralta was the preferred candidate in high-density Latino precincts, such as Pct 004 where she won 75% of the vote, Pct 006 (68% won), Pct 009 (67%), Pct 002 (65%), Pct 005 (64%). By contrast, Peralta lost the vote in majority-white voting precincts such as Pct 100 where only 8% voted for Peralta, Pct 101 (9% voted for Peralta) Pct 096 (10%), Pct 095 (13%), Pct 092 (17%). The difference in candidate preference between Latino and white voting precincts is quite large, statistically significant, and a text-book example of racially polarized voting.

Racially polarized voting was also observed in the 2018 County Commission election between Clint Didier and Zahra Roach. Roach, was the candidate of choice in majority-Latino voting precincts, winning 82% in Pct 004, 77% in Pct 006 and Pct 012 and gaining majority support in nearly every high-density Latino precinct. In contrast, Didier, who won countywide, received his highest support in majority-white precincts, winning over 90% of the vote in multiple majority-white voting precincts. Looking countywide, the 2018 general election demonstrates extremely strong evidence of racially polarized voting.

Similar patterns emerge over time with high-density Latino precincts reporting vote results which are the polar opposite of high-density white precincts, the definition of racially polarized voting. In 2012, Al Yenney lost countywide in the November general election but he won a

⁴² See WASH. REV. CODE § 29A.92.

majority of the vote in Latino precincts and lost badly in precincts with much smaller Latino populations. Likewise, in 2008, Neva Corkrum lost the countywide election in November, but won a clear majority of the vote in high-density Latino voting precincts, winning as much as 74% of the vote in majority-Latino precincts, but losing badly, with less than 20% of the vote in majority-white precincts.

The same patterns emerge across elections in Franklin County for other local, legislative, and statewide offices. There is no doubt that a clear and consistent pattern of racially polarized voting exists in Franklin County in which Latino voters are cohesive in their candidate preference, but countywide at-large elections block them from ever being able to get a preferred candidate elected.

This precinct analysis of voter trends reveals that Latino-preferred candidates are losing county elections because of minority vote dilution as a result of county's at-large election system. More sophisticated ecological inference analyses confirm these results. While minority-preferred candidates receive the most votes in high percentage Latino precincts, they are obstructed from winning the general election because of the increased participation of majority-white precincts that vote differently.

Franklin County's Continued Refusal to Follow the WVRA

Washington counties have a responsibility "to periodically redistrict [their] governmental unit[s], based on population information from the most recent federal decennial census."⁴³ Districts in these plans must be as "compact as possible" and the data used for these plans must not be utilized "for purposes of favoring or disfavoring any racial group or political party."⁴⁴ Where feasible district boundaries in these plans have to "coincide with existing recognized natural boundaries" and "preserve existing communities of related and mutual interest,"⁴⁵ like Franklin County's Latino community. Under these guidelines, a commissioner district that respects the almost one third of Franklin County citizens who are Latino could be plainly drawn and would give Latinos a reasonable opportunity to elect at least one county commissioner in the three districts.

Yet, the county's current district map and the initial 2020 redistricting plan fail to take into account the growth of the Latino community, especially in Pasco, or to create a majority-minority district or an opportunity district for Latino citizens. Commissioner meetings on the county's 2020 redistricting proposals⁴⁶ throughout January and February noted the potential consequences of its plan being subjected to litigation for violation of the WVRA because of this

⁴³ WASH. REV. CODE § 29A.76.010 (2019).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Franklin County Commission recordings available on the Franklin County Commission webpage, <https://www.co.franklin.wa.us/commissioners/recordings.php>; see also Franklin County Redistricting Proposal Public Hearing Notice (Mar. 17, 2020), <http://www.co.franklin.wa.us/redistricting.php>.



failure.⁴⁷ Nevertheless, two of the three commissioners expressed an unwillingness to incorporate the feedback of Latino community representatives into a final redistricting proposal.⁴⁸ Now, the county has postponed its redistricting process due to COVID-19.⁴⁹ Instead of finding an alternative way to engage the public amidst the pandemic, the commission has chosen to further delay redistricting until the completion of the 2020 Census.⁵⁰ The commission's inaction on a new redistricting plan leaves intact the current district map and continues the County's tradition⁵¹ of dividing a politically cohesive Latino community into districts that fail to offer Latino voters an equal opportunity to elect a candidate of their choice. The county goes into the 2020 elections and into the foreseeable future knowing it electorally disempowers Latino voters in violation of the WVRA.

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 county commissioner districts during general elections and replace this voting system with a solely district-based voting scheme; (2) redraw the district map in furtherance of creating a majority-Latino district centered around the City of Pasco to be used in primary and general elections; and (3) ensure that elections for any commissioner district occurs on the same day as the election for electors for President.

Next Steps

Be advised that under the WVRA, you have 180 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.

⁴⁷ See Veronica Barriga, *Franklin County Commissioners Meet to Discuss Redistricting Amid Complaints From Voting Rights Advocates*, NBC RIGHT NOW (Feb. 26, 2020), <https://bit.ly/3hhVjxy>

⁴⁸ At the February 18, 2020 commissioner meeting, Commissioner Koch stated he was not going "to go for [Proposals] 3 or 4," proposals that County Administrator Keith Johnson stated were created as a result of meeting with a representative of the Latino community. Franklin County Commission recordings available on the Franklin County Commission webpage, <https://www.co.franklin.wa.us/commissioners/recordings.php>. Commissioner Clint Didier stated that Proposal 1, the original redistricting proposal, was the best one to get to equal population, *id.*, even though it is only one of many other criteria in the redistricting process. See WASH. REV. CODE § 29A.76.010 (2019). This is also despite the fact that the county's "chief civil deputy" reviewed Proposals 3 and 4 and felt they were a better representation "of a district boundary line that could be defensible against a proposed challenge under the voting rights act." *Id.*

⁴⁹ March 24, 2020 Franklin County Commission Meeting Agenda and Minutes, <https://www.co.franklin.wa.us/commissioners/pdf/minutes/2020/20200324%20%20Commissioner%20Meeting%20Agenda%20and%20Minutes.pdf>.

⁵⁰ *Id.*

⁵¹ At the February 4, 2020 commissioner meeting Commissioner Didier stated he did not "think a threat of a lawsuit [should] completely upend the way the county has been drawn up for the history of the county and its been drawn up this direction for a reason and I think that we need to try to keep up our historical guidelines as much possible intact." Franklin County Commission recordings available on the Franklin County Commission webpage, <https://www.co.franklin.wa.us/commissioners/recordings.php>.

This letter is sent on behalf of our clients Gabriel Portugal, Brandon Paul Morales, and 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.⁵² Also, kindly address any communications regarding this matter to my attention, at the contact information hereon.

Gabriel Portugal
[REDACTED]

Brandon Paul Morales
[REDACTED]

Jose Trinidad Corral
[REDACTED]

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,



Chad W. Dunn
Director of Litigation
UCLA Voting Rights Project
chad@uclavrp.org

Edwardo Morfin
Attorney at Law
Morfin Law Firm
eddie@morfinlawfirm.com

Luis Roberto Vera, Jr.
LULAC National General Counsel
lrvlaw@sbcglobal.net

On behalf of voters: Gabriel Portugal, Brandon Paul Morales, and Jose Trinidad Corral as well as the League of United Latin American Citizens

⁵² Wash. Rev. Code § 29A.92.060(2).

FLOYD, PFLUEGER & RINGER

FRANCIS S. FLOYD⁺
KIM C. PFLUEGER (1954-2005)
REBECCA S. RINGER (RETIRED)
NABEENA C. BANERJEE[†]
DAVID J. COREY*
KERRY B. GRESS
LEVI S. LARSON
SEAN E.M. MOORE *
THOMAS B. NEDDERMAN [‡]
AMBER L. PEARCE
JOHN A. SAFARLI

DOUGLAS K. WEIGEL ⁺
OF COUNSEL

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AMANDA D. DAYLONG
WILLIAM J. DOW
JANE J. LIU
MATTHEW J. MCCAULEY
ANNA K. MITCHELL [†]
NICHOLAS A. REYNOLDS*
DAKOTA L. SOLBERG
BRITTANY C. WARD

*ALSO ADMITTED IN AK
⁺ALSO ADMITTED IN AK, OR
[‡]ALSO ADMITTED IN AK, OR, IL
*ALSO ADMITTED IN OR
[†]ALSO ADMITTED IN NY

October 16, 2020

VIA EMAIL ONLY

Chad W. Dunn
UCLA Voting Rights Project
chad@uclawvrp.org

Edwardo Morfin
Attorney At Law
eddie@morfinlawfirm.com

Luis Roberto Vera, Jr.
lrqlaw@sbcglobal.net

Re: Washington Voting Rights Act Notice Letter

Dear Messrs. Dunn, Morfin, and Vera, Jr.,

I represent Franklin County regarding the Washington Voting Rights Act notice letter dated October 12, 2020. Please direct all future communication regarding this matter to our office. We will respond further to your notice letter next week.

Sincerely,

s/ John A. Safarli
John A. Safarli

Re: Franklin County Inbox x



Chad Dunn <chad@uclavrp.org>

Wed, Mar 10, 11:48 AM



to John, eddie@morfinlawfirm.com, lrvlaw@sbcglobal.net, me ▾

John,

Thank you for your email. When we last heard from you, I recalled that you said you were going to get back to us. We are certainly willing to talk and I think the applicable statutes encourage us to do so.

Let me visit with my team and we can prepare some responses to your questions and then perhaps set up a call.

On Wed, Mar 10, 2021 at 1:10 PM John Safarli <jsafarli@floyd-ringer.com> wrote:

Counsel,

I haven't heard from you since I sent my representation letter dated October 16, 2020.

I've been asked by my client to reach out and see if we can jump start the conversation.

A few follow-up questions to get us started:

1. Do you have any single-member district plans that you'd be willing to share?
2. Page 9 of your letter requests the following change: "[E]nsure that elections for any commissioner district occurs on the same day as the election for electors for President" (emphasis added). As I read this, all three



LUSKIN SCHOOL OF PUBLIC AFFAIRS
UCLA Voting Rights Project
3250 Public Affairs Building
Los Angeles, CA 90095-1656
Uclavrp.org

March 24, 2021

Franklin County Commission
Franklin County Courthouse
1016 N. 4th Ave
Pasco, WA 99301
Via Electronic Mail: jsafarli@floyd-ringer.com

Dear Mr. Safarli:

I am writing in response to your March 10, 2021 communication. Hopefully we can have a productive discussion and resolve this matter. It is unfortunate the county elected to wait so long after our October 12, 2020 notice letter to reach out to us. As you know, on April 10, 2021, the notice period expires, and litigation may commence absent court approval of a remedial plan.

You have requested a proposed plan and we enclose one herein. This plan has been prepared by the UCLA Voting Rights Project experts as one possible remedy to the violation of Washington State law that we have described in our earlier letter. There may be other maps that can adequately remedy the violation. Critically, any acceptable remedy would include single member districts. Obviously before the enclosed plan (or another) can be accepted, meaningful public input must be received and considered. Additionally, our clients have not fully reviewed this plan and they may have proposed adjustments. Because of the tight timing we are now faced with, we wanted to get this plan to you and your clients as soon as practicable.

To answer your other inquiry, and as noted above, public input is important in the adoption of any redistricting map. Furthermore, RCW 29A.92.080 requires the county seek a court order acknowledging that the remedy complies with RCW 29A.92.020. We would expect the reviewing court to look for careful public consideration of the plan. This process should include community input, allowing for residents to voice their questions, comments, and concerns for two minutes each. Additionally, if these hearings should occur in-person, the locations of the hearings must span the entire county in order to allow for a range of voices to be heard and to allow for maximum accessibility. In doing so, hearings should occur in all of Franklin County's zip codes: 99301 (Pasco), 99326 (Connell), 99330 (Eltopia), and 99343 (Mesa). Furthermore, the ability to participate remotely must be made available regardless of whether hearings occur in-person or not.

In the final response to your letter, we note that Wash. Rev. Code § 29A.92.110(1), (2), (3)(a), and (3)(b) provide for the remedies we requested in our notice letter. In addition to single member districts and adoption of a district plan, we believe moving the election schedule to align with November elections is an appropriate remedy to the historical electoral discrimination that

has occurred in Franklin County. Whether or not the current election schedule is adjusted, careful consideration should be made by appropriate experts as to the electoral impact of such change.

We are happy to discuss this issue with your clients in the appropriate setting.

Given the short amount of time remaining in the notice period, we would propose scheduling this dispute for mediation. If this is agreeable, we would ask that Franklin County appoint attendee(s) to the mediation with authority to reach an agreement that is highly likely to gain acceptance by the governing body in an appropriately noticed public hearing that complies with state law. We would likewise attend mediation with clients and full authority to resolve this case. Assuming a settlement is reached, appropriate public input proceedings can be scheduled.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Chad W. Dunn', with a long horizontal flourish extending to the right.

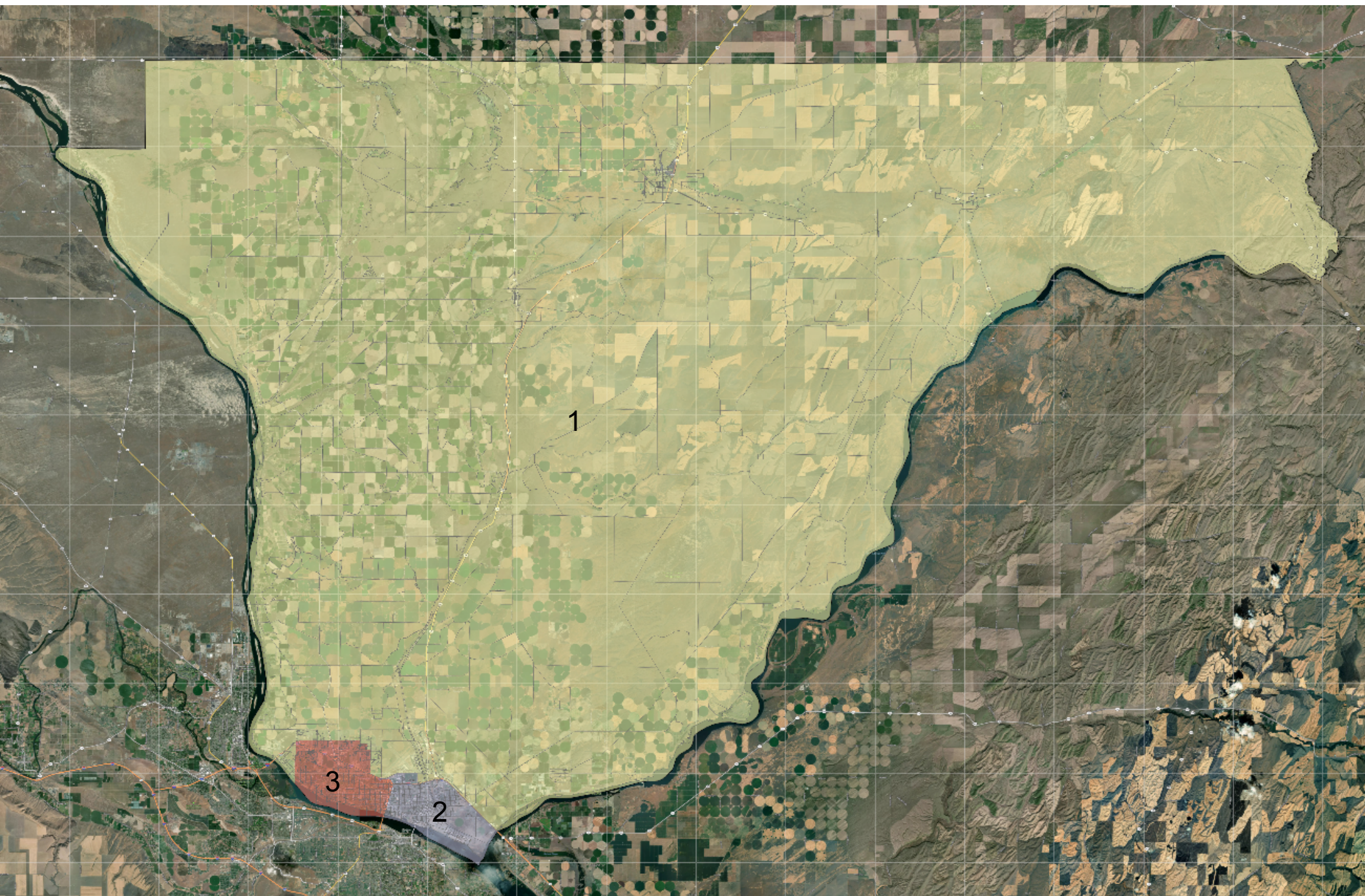
Chad W. Dunn
Legal Director
UCLA Voting Rights Project

CC:

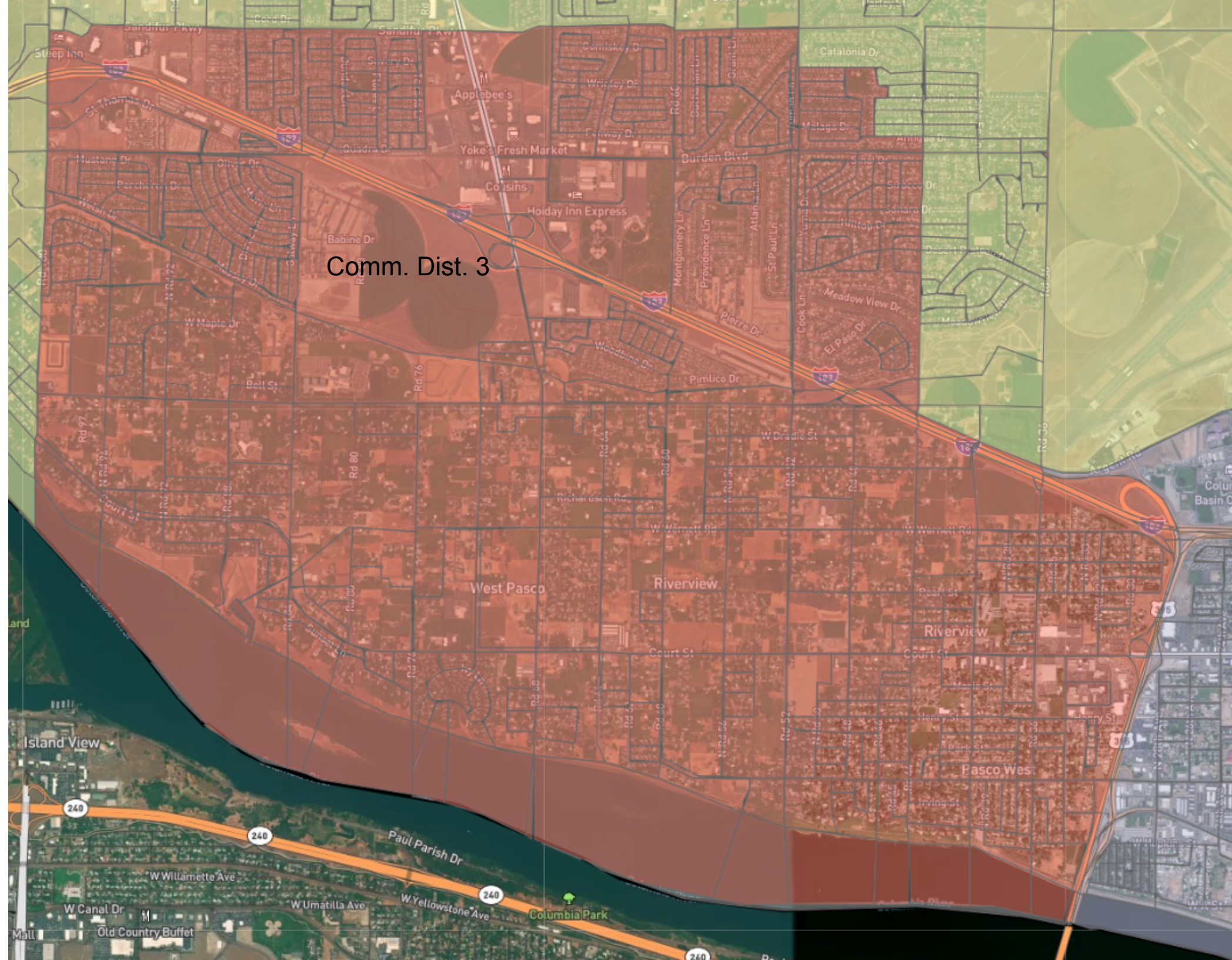
Edwardo Morfin
Attorney at Law
Morfin Law Firm
eddie@morfinlawfirm.com

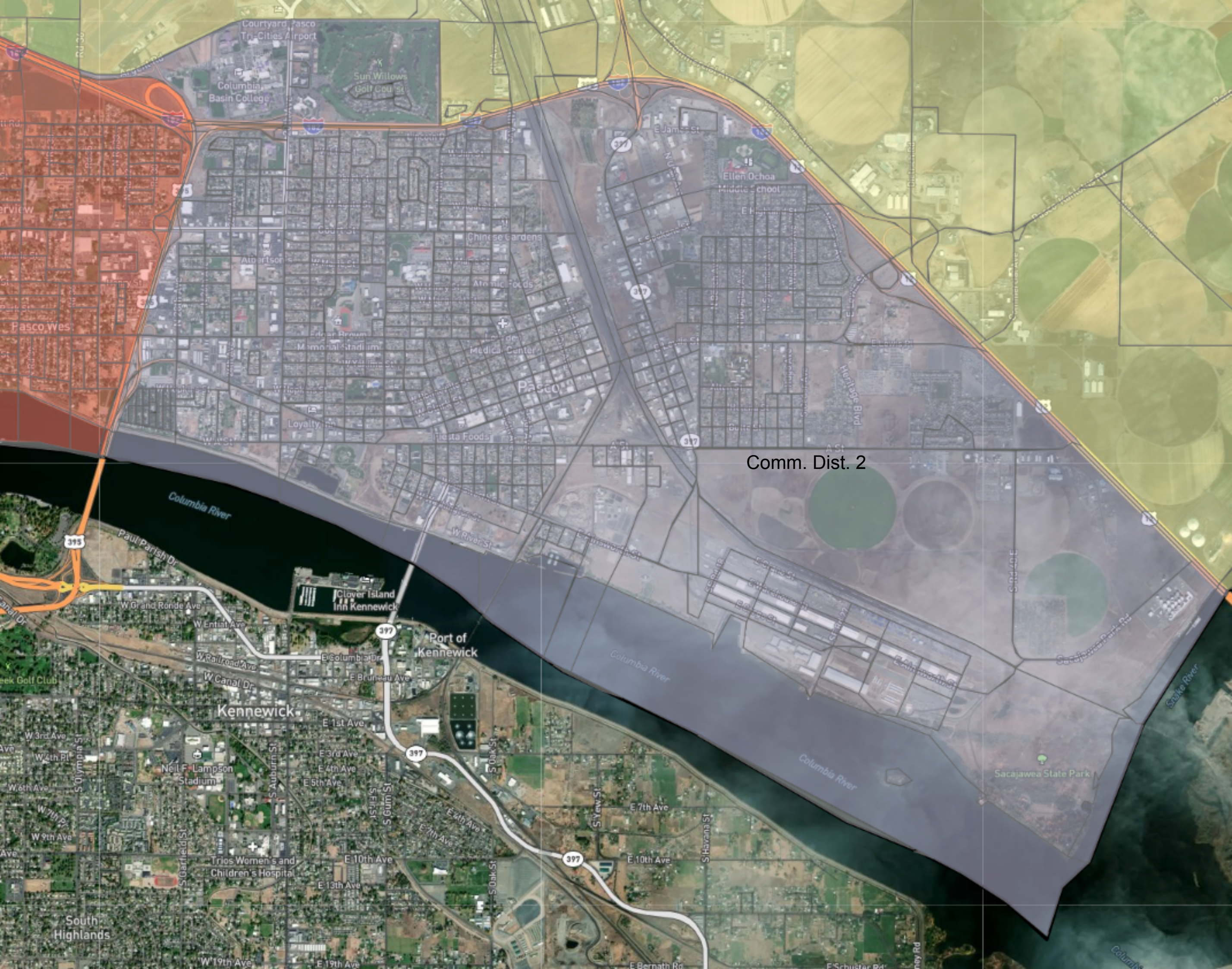
Luis Roberto Vera, Jr.
LULAC National General Counsel
LULAC
lrqlaw@sbcglobal.net

On behalf of voters: Gabriel Portugal, Brandon Paul Morales, and Jose Trinidad Corral, as well as the League of United Latin American Citizens.



Comm. Dist. 3





Comm. Dist. 2

District	Hispanic/Latino (CVAP) Percent	Hispanic/Latino (CVAP)	Population (CVAP)	Hispanic/Latino (Total)	Population (Total)
1	23.02%	3828	16626	12252	29145
2	59.59%	7027	11793	26047	31925
3	22.31%	4028	18057	9429	29139



Keith Johnson
County Administrator

BOARD OF COMMISSIONERS
FRANKLIN COUNTY
WASHINGTON

BRAD PECK
District 1

ROBERT KOCH
District 2

CLINT DIDIER
District 3

AGENDA
Regular Board Meeting
Tuesday, February 4, 2020

Franklin County Courthouse, Commissioners' Meeting Room
1016 North Fourth Avenue, Pasco, Washington

This is a preliminary agenda. Discussion items may be added, deleted or modified. Public Hearings will not start earlier than the advertised time. Other agenda times are approximate and provided to aid in planning.

9:00 a.m. Call to Order and Pledge of Allegiance

9:01 a.m. Approval of Minutes  
January 14, 2020 Commissioners' Meeting Minutes

9:02 a.m. Draft Salary Commission Ordinance- Discussion

[09:01:23 AM \(00:01:18\)](#)



Presented by Human Resources Director Carlee Nave

9:12 a.m. Franklin County Redistricting Plan Discussion

[09:27:03 AM \(00:26:59\)](#) **20 min Executive Session**

Presented by County Administrator Keith Johnson

9:35 a.m. Public Comment-

[10:32:33 AM \(00:56:36\)](#)

We welcome your comments, as they are important to us. Please note that although it is not required to give your name, it is helpful to the Board. The purpose of a Public Comment is to address the Board with your statement. If you would like to discuss items with the Commissioners, please feel free to contact them by phone or arrange a meeting with them. Please limit your comments to three minutes.

9:45 a.m. Office Business

[10:39:35 AM \(01:03:38\)](#)

1. Approval of Payroll Rosters
2. Approval of Warrant Registers
3. Approval of Consent Agenda

1. Resolution 2020-033 Amendment I to Sheriff's Support 2019-2021 Collective Bargaining Agreement  

2. Resolution 2020-034 Position Changes Approved with the 2020 Budget  [↩](#)
3. Resolution 2020-035 Franklin County Data Breach Response Plan  [↩](#)
4. Resolution 2020-036 Support Agreement with ATS Inland NW for Automation Control Systems  [↩](#)
5. Resolution 2020-037 Waive Competitive Bidding for Sheriff's Office to Purchase Two Used Vehicles  [↩](#)
6. Resolution 2020-038 Memorandum of Agreement for Adverse Effect on Coyan Bridge 617  [↩](#)
7. Resolution 2020-039 CRP 621 Safety - Countywide Intersection Improvement Contract with Construction Ahead  [↩](#)  [↩](#)
8. Resolution 2020-040 Grant Agreement 2020-HHAA-OXFORD between Franklin County Human Services and Oxford House  [↩](#)
9. Resolution 2020-041 Grant Agreement 2020-HHAA-CBVC between Franklin County Human Services and Columbia Basin Veterans Coalition  [↩](#)
10. Resolution 2020-042 Personal Service Contract between Benton Franklin Counties and Redwood Toxicology  [↩](#)

9:50 a.m. Administration Office Business

10:00 a.m. Public Comment

10:05 a.m. Executive Session (if necessary)

10:10 a.m. Adjourn

[10:44:28 AM \(01:08:32\)](#)



Keith Johnson
County Administrator

BOARD OF COMMISSIONERS
FRANKLIN COUNTY
WASHINGTON

BRAD PECK
District 1

ROCKY MULLEN
District 2

CLINT DIDIER
District 3

AGENDA
Regular Board Meeting
Tuesday, January 26, 2021

Franklin County Courthouse, Commissioners' Meeting Room
1016 North Fourth Avenue, Pasco, Washington

This is a preliminary agenda. Discussion items may be added, deleted or modified. Public Hearings will not start earlier than the advertised time. Other agenda times are approximate and provided to aid in planning.

In-Public attendance PROHIBITED at this time.
Please join us Streaming Live on YouTube
(Franklin County Commissioners Meeting 01/26/2021).

9:00 a.m. Call to Order, Moment of Silence and Pledge of Allegiance

9:00 a.m. Potts and Associates Legislative Updates
Presented by Zak Kennedy and Jim Potts

9:15 a.m. Certificate of Appreciation to Assessor Peter McEnderfer

9:17 a.m. Discussion on Position Changes Approved with 2021 Budget
(Resolution 2021-018 upon approval) Continued from 1/19/21 meeting

9:25 a.m. Public Comment by Phone: 509-546-5859
We welcome your comments, as they are important to us.
Please limit your comments to three minutes.

9:35 a.m. Office Business

1. Approval of Payroll Rosters
 2. Approval of Warrant Registers
 3. Approval of Consent Agenda
-
1. Resolution 2021-026 Re-appointing Michelle Andres to Franklin County Civil Service Commission
 2. Resolution 2021-027 2021 Road Levy Certification and Estimated Revenue to County Road Administration Board
 3. Resolution 2021-028 Renewal of Rattlesnake Mt. Insurance Coverage 2021

9:40 a.m. Administration Office Business

- Discussion on Redistricting
- Discussion on Traffic Data on Wernett Road
- Discussion on Web Ex for Commissioner Meetings

10:20 a.m. Unfinished or Additional Business

- Canvassing Board Update
- Discussion on Prayer or Moment of Silence
- Discussion on Assessor Replacement
(Applicants will introduce themselves prior to Board going into Executive Session)

10:40 a.m. Executive Session 42.30.110 (1) (h)

Evaluate Qualifications of Candidate for Appointment to Elective Office
(Final Action is taken in Open Session)

11:10 a.m. Public Comment

Executive Session-RCW 42.30.110 (1) (i) Litigation or Potential Litigation

11:20 a.m. Adjourn



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

The Minutes of the Board of Commissioners proceedings are not verbatim. Access to an electronic audio recording of meetings are available on the Franklin County website or upon request.

9:00 a.m.

Call to Order

Commission Chairman Clint Didier called the Franklin County Commissioners' Regular Board Meeting to order at 9:00 a.m., in the Commissioners' Meeting Room in the Franklin County Courthouse located at 1016 North Fourth Avenue, Pasco, Washington.

Commissioners Present Telephonically: Commission Chair Clint Didier, Chair Pro Tem Rocky Mullen and Member Brad Peck

Commissioner Peck briefly spoke of his beliefs and preferred twenty seconds of silence.

Pledge of Allegiance

9:02 a.m. **Certificate of Appreciation for Assessor Peter McEnderfer**

Commissioner Didier read a letter from the County, expressing their appreciation to Mr. McEnderfer for the many years of service as an Appraiser and Assessor in Franklin County. Commissioner Peck also thanked Mr. McEnderfer for his outstanding service. Commissioner Mullen appreciated the time and efforts he put forth in the Office.

9:06 a.m. **Discussion on Position Changes Approved with 2021 Budget**

Administrator Keith Johnson recommended approving this resolution with another motion to delay the hiring of a position in the Administration office and the Appraisers office until the county is fully opened again. He would like to see a time frame on that motion and revisit approving the former positions in March or April.

Commissioner Peck did not concur with Mr. Johnson's recommendation. He saw an opportunity to hire two positions and help at least two members of the community.

Commissioner Mullen thanked constituents and the community for reaching out and expressing their thoughts. He mentioned that Commissioners are stewards of the county funds. The government does not have any money, except for what it collects from taxes. He believed that the government needed to supply security for its residents, infrastructure to accommodate safe travel and commerce for the community as a whole. He believed in performance reviews to make sure the county is working as efficiently as possible.

Commissioner Peck had concerns, as these positions had been previously incorporated into the 2021 budget and believed it would do more harm to the county by not filling these positions.

❖ *Commissioner Peck moved to approve Resolution 2021-018 as presented with the understanding that the person who got laid off from their job yesterday, could be working for the county tomorrow.*

Commissioner Mullen requested clarification on the resolution. Commissioner Peck requested no discussion without a second. Commissioner Didier asked for a second. With no second, the motion failed.



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

Administrator Keith Johnson asked for resolution 2021-018 to be a motion, with a second motion dealing with any hiring restrictions you wish to put in place.

❖ *Commissioner Peck moved to approve Resolution 2021-018 as presented.*

Commissioner Didier would like to amend the motion that the Appraiser II position and the Budget and Policy Analyst would be frozen until the county and our schools are opened. Commissioner Mullen seconded.

Discussion.

Commissioner Peck wanted to verify with Human Resources and Legal Counsel if this was legal since these positions had been approved, and included in the 2021 budget.

Mr. Johnson reiterated the reason he would like the motion on the original resolution and a second motion, was to single out the two positions that Commissioner Didier and Commissioner Mullen did not wish to approve.

❖ *All in favor of the amendment and the motion carried. All in favor of Resolution 2021-018 as presented and the motion carried.*

9:25 a.m. Potts and Associates Legislative Updates

Zak Kennedy followed up with Commissioner Didier's question as to whether the four corners had signed the proclamation. Mr. Kennedy responded that the four corners did not sign the proclamations. On the twenty-three proclamations, they went out on party lines.

Additional Bills that were discussed.

2021 House Bill 1332 Concerning property tax deferral during the COVID-19 pandemic

2021 House Bill 1152: Supporting measures to create comprehensive public health districts

2021 Senate Bill 5078: Addressing firearm safety measures to increase public safety

2021 Senate Bill 5051: Concerning state oversight and accountability of peace officers and corrections officers

2021 Senate Bill 5122: Concerning the jurisdiction of juvenile court.

9:34 a.m. Public Comment

- Michelle Andres SB5134 Enhancing public trust and confidence in law enforcement and strengthening law enforcement accountability for general authority Washington peace officers, excluding department of fish and wildlife officers added ten new sections on January 14th, 2021. In addition, SB5055 concerning law enforcement personnel collective bargaining. Ms. Andres asked for this to be brought before the civil service board for discussion.
- Erica would like to see a county committee to compose maps of redistricting.
- Keith Johnson read a letter written by Todd Harris for public comment. Mr. Harris expressed his concerns on the experimental COVID 19 vaccine. He would like to see an audit done on the voting machine. In addition, he would like to see schools open. He urged the Commissioners to find a way to open the county.



FRANKLIN COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

9:40 a.m. Approval of Fund Expenditure Warrants

01/26/2021

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims.

Action: As of this date, 01/26/2021

Move that the following warrants be approved for payment:

Certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Warrants \ Check Numbers:	00367739 - 00367839	\$528,077.13
EFT Check Numbers:	00000703 - 00000717	\$46,890.06
		<u>\$574,967.19</u>

Fund Expenditures	Amount Issued
CURRENT EXPENSE	\$531,274.82
AUDITOR O & M	\$235.81
ELECTION EQUIP REVOLVING	\$625.29
BOATING SAFETY	\$56.89
JAIL COMMISSARY	\$2,680.44
ENHANCED 911	\$3,984.66
COUNTY ROADS	\$20,607.35
SOLID WASTE	\$256.39
THE HAPCO CENTER	\$3,562.28
FRANKLIN COUNTY RV PARK	\$3,903.74
MOTOR VEHICLE	\$7,779.52

In the amount of: \$574,967.19

The motion was seconded by: Brad Peck
Approved Telephonically

And passed by a vote of: 3 to 0

Reviewed by the County Administrator: [Signature]

The attached vouchers have been approved by Auditor or Deputy:
[Signature]
Matt Beaton

Vouchers Audited By:
[Signature]
Paola Mendoza

v.co.franklin.wa.us/auditor

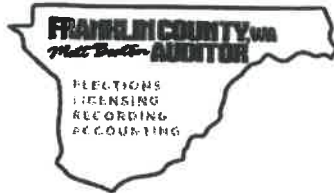
- ❖ Commissioner Mullen moved to approve Fund Expenditures audited and certified by the auditing officer for warrants prepared for the week of January 26, 2021 for payment totaling \$574,967.19. Commissioner Peck seconded and the motion carried.



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

9:40 a.m. Approval of Salary Clearing and Emergency Management Payroll



1016 N 4th Ave, Pasco,
WA 99301
509-545-3502

1/126/2021

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Action: As of this date, 1/126/2021

moves that the following warrants be approved for payment.

<u>FUND</u>	<u>WARRANT</u>	<u>AMOUNT</u>
Salary Clearing Payroll:		
Net Payroll Checks	00367444-00367447	\$ 5,597.73
Net EFT Payroll Checks	00031334-00031598	\$ 469,210.38
Deduction and Contribution Checks	00367448-00367465	\$ 500,975.89
	Total	\$ 975,784.00
Emergency Mgmt Payroll:		
Net EFT Payroll Checks	00031330-00031333	\$ 7,734.21
Deduction and Contribution Checks	00367466-00367482	\$ 12,205.54
	Total	\$ 19,939.75
Grand Total All Payrolls		\$ 995,723.75

In the total amount of **\$995,723.75**

The motion was seconded by Brad Peck Approved Telephonically and passed by a vote of 3 to 0.

The attached payroll has been approved by Auditor or Deputy

Payroll Prepared by Peter Gadomsky

- ❖ *Commissioner Mullen moved to approve Salary Clearing and Emergency Management Payroll totaling \$995,723.75. Commissioner Peck seconded and the motion carried.*



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

9:40 a.m. Approval of Consent Agenda

1. Resolution 2021-026 Re-appointing Michelle Andres to Franklin County Civil Service Commission
2. Resolution 2021-027 2021 Road Levy Certification and Estimated Revenue to County Road Administration Board
3. Resolution 2021-028 Renewal of Rattlesnake Mt. Insurance Coverage 2021

❖ *Commissioner Mullen moved to approve the Consent Agenda. Commissioner Peck seconded and the motion carried. Commissioner Didier asked for discussion on item #1 and asked Administrator Keith Johnson to clarify the role of the County Civil Service Commission. After discussion, the motion carried.*

9:44 a.m. Administration Office Business

- Mr. Johnson reiterated the previous discussions on redistricting and the notice of challenge the county received based on the current system. There are no statues available to supply guidance in creating a redistricting committee. Mr. Johnson recommended meeting with our legal team and the Board to discuss the matter under executive session prior to moving forward with a plan.

Commissioner Mullen would like to move forward with establishing a redistricting committee as soon as possible.

Commissioner Peck has spoken out about redistricting since 2017 and has cautioned the county of the events that might happen if action did not take place. He believed the time to create a commission was not a viable option. He believed a lawsuit was heading towards the County.

Commissioner Didier reviewed the RCW's and found no prohibition as to our authority to compose a committee to initiate, evaluate and propose for our consideration a change to precinct boundaries. He would like to move forward on this action immediately. He proposed a plan to Administrator Keith Johnson.

Chief Deputy Prosecuting Attorney Jen Johnson suggested we meet with outside council to discuss this in executive session.

10:00 a.m.

- Mr. Johnson gave an update from the Public Works Department, in regards to traffic concerns on Wernett Road. Public Works Director Matt Mahoney also explained they have done all that they can do with their limited resources to slow down the traffic, which includes speed limit sign postings and digital read out signs. Mr. Mahoney stated it was a nationwide problem. Sheriff Raymond let the Commissioners know that he would place as much law enforcement into this area as possible but noted that his staff limited.



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

10:26 a.m.

- Administrator Keith Johnson spoke of the concerns on the use of Web Ex for Commissioner Meetings. The Commissioners asked if the chat feature and security would be an issue in using WebEx. In discussing the matter with Information Services, Mr. Johnson was assured that WebEx would meet the criteria for holding safe Commissioner Meetings online. The Clerk of the Board requested to start the process in two weeks, to allow her time to set up and familiarize herself with the program prior to going live.
- ❖ ***The Commissioners were in consensus with using WebEx for the Commissioners Meetings starting February 9, 2021.***

Unfinished or Additional Business

10:32 a.m.

- Mr. Johnson discussed moving forward with a Canvassing Board meeting. He recommended scheduling a night meeting to involve the public and answer any questions they may have. Auditor Matt Beaton would help the Clerk of the Board with a detailed public notice that would be advertised in the Franklin County Graphic.
- Mr. Johnson discussed the matter of prayer or moment of silence with legal. After discussion, his recommendation to the Commissioners would be a moment of silence. Commissioner Peck stated that as a Christian he enjoyed his prayer time, and is not offended by Christian prayers in Board meetings. However, he thought that it violated the liberty of other citizens if they have dispart views. He preferred a moment of silence. Commissioner Mullen approved a moment of silence as well. Commissioner Didier read the preamble of the Supreme Court, which allows prayer and he is in favor of holding prayer that is non-denomination. Only seeking for wisdom and guidance for the Commissioners to make correct choices on behalf of the county.
- ❖ ***Commissioner Peck moved that it would be the policy of the Franklin County Board of Commissioners that we make a regular part of our meeting agendas a 30-second moment of silence, respecting the individual liberties to pray or not of their choosing, that the Board effectively do the will of the people. There was no second and the motion failed.***

Commissioner Peck mentioned that the subject needed to be removed from the agenda or come to an agreement of how it is to be handled between the Commissioners.

- ❖ ***Commissioner Peck moved for a Board adoption of a practice of incorporating a 30-second moment of silence as part of our Board meeting agendas. No second and the motion fails.***
- ❖ ***Commissioner Peck moved that we remove any references of prayer or a moment of silence from the weekly agendas of the Franklin County Board of Commissioners. No second and the motion fails.***



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING
JANUARY 26, 2021

Commissioner Mullen asked Prosecuting Attorney Shawn Sant if this created a liability for the county. Mr. Sant suggested going into executive session to discuss legalities of this matter.

- ❖ ***The Commissioners will go into Executive Session-RCW 42.30.110 (1) (i) Litigation or Potential Litigation to discuss this matter later in the meeting.***
- Mr. Johnson reported that the Franklin County Republican Central Committee has submitted three nominees to fill the recently vacated Assessors position. The following names have been submitted, Chief Deputy Assessor Piper Mitchell, John Rosenau and James Gimenez.

Mr. Gimenez was at his current work place and was unable to give a brief statement.

Ms. Mitchell gave a background of her education and stated she has worked for the county since 1987 under various duties related to the Assessor's Office. She has been Chief Deputy Assessor for twenty-five years.

Mr. Rosenau stated that his background over the last twenty-five years has been in leadership, finance, and management in banking. He has managed twenty-six financial centers and over five hundred employees.

11:00 a.m. Executive Session 42.30.110 (1) (h) Evaluate Qualifications of Candidate for Appointment to Elective Office

Commissioner Didier recessed into Executive Session at 11:08 a.m., for up to 25 minutes with the opportunity to extend if necessary to Evaluate Qualifications of Candidate for Appointment to Elective Office. Invited to attend, Legal Counsel, Board members. Administrator, Clerk of the Board and Human Resources Director.

Commissioner Didier reconvened the Regular Meeting at 11:36 a.m. with no action taken.

Technical Difficulties

- ❖ ***Commissioner Peck moved for appointment of Piper Mitchell as the incoming County Assessor to fill the seat until such time as proper election is held. No second and the motion dies.***
- ❖ ***Commissioner Mullen moved to have John Rosenau fill the position until November. (elections) Commissioner Didier second. After discussion the motion carried, 2:1 with Commissioner Peck opposed.***



**FRANKLIN COUNTY, WASHINGTON
BOARD OF COMMISSIONERS**

**REGULAR MEETING
JANUARY 26, 2021**

11:41 a.m. Executive Session-RCW 42.30.110 (1) (i) Litigation or Potential Litigation

Commissioner Didier recessed into Executive Session at 11:41 a.m., for up to 30 minutes with the opportunity to come out early. Invited to attend, Legal Counsel, Board Members. Administrator and Clerk of the Board

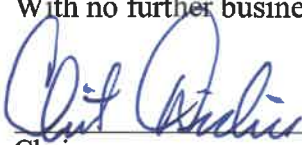
Commissioner Didier reconvened the Regular Meeting at 12:13 p.m. with no action taken.

Resuming discussion on prayer.

- ❖ *Commissioner Peck moved that the Franklin County Commissioners undertake a policy that forgoes our meeting with prayer or even a moment of silence and in lieu of that, we encourage all of our citizens to join us in pre meeting prayers, either on the courthouse steps, or on a suitable location. Commissioner Mullen seconded the motion. After discussion, the motion carried 2:1 with Commissioner Didier abstained.*

Adjourn

With no further business to bring before the Board, the meeting adjourned at 12:16 p.m.


Chair


Clerk of the Board

3-9-2021
Date



Sam Fishman <sam@uclavrp.org>

Fwd: Franklin County

Sonni Waknin <sonni@uclavrp.org>
To: Sam Fishman <sam@uclavrp.org>

Thu, May 27, 2021 at 12:09 PM

----- Forwarded message -----

From: **John Safarli** <jsafarli@floyd-ringer.com>

Date: Tue, Apr 13, 2021 at 11:37 PM

Subject: RE: Franklin County

To: Chad Dunn <chad@uclavrp.org>, Eddie Morfin <Eddie@morfinlawfirm.com>, Irvlaw@sbcglobal.net <Irvlaw@sbcglobal.net>

Cc: Sonni Waknin <sonni@uclavrp.org>

Good evening,

This morning I was able to confer with my client on this matter.

I've been directed by the County's legal staff to engage in discussions with your side around the possibility of Franklin County voluntarily changing its election system under RCW 29A.92.040. To be clear, I am still serving about the County's attorney for this matter and will continue to do so going forward. But the County's prosecutor is still the head attorney of the County and I work under the supervision of his office.

Before I go any further, I want to be clear about the Open Public Meetings Act in Washington. Generally speaking, the OPMA says that local governments may only take "action" in a meeting that is "open and public." The Commissioners haven't taken "action" in response to your letters and proposed districting plan, but I can still dialogue with your side about a path forward.

I can represent that the Commissioners are willing to seriously explore adopting a districting plan with one majority-minority district (out of three districts total). That's about all I can say. I hope that's enough to hold off filing a lawsuit for now.

What comes next is a little less clear, but I want to offer some thoughts.

1. First, the County created some districting plans a while ago. I was not involved in them, but I understand that one of the plans looks similar to your proposal. Have you seen those plans?
2. Second, you can imagine the County isn't crazy about going from where we are now to a mediation where plans are discussed, etc. There will need to be a public process. Obviously if the County adopts a plan under RCW 29A.92.040, then the procedural requirements of .050 become relevant. Even if we are under the .070 umbrella (remedy adopted that *specifically* takes a notice letter into account), the process of seeking a court order will need to come *after* a public process of some kind. Again, I don't have authority to specify what that process might look like. But the County certainly wants to invite the public to participate even if we are in .070 territory.

Maybe we should schedule a call soon to discuss further? At this point, I'm hoping we can avoid litigation. I think it would be a sign of good faith on your side. Meanwhile, we can continue our dialogue and hopefully explore other common ground (aside from the conceptual agreement that a three single-member district plan with one majority-minority district is probably the most reasonable alternative to the status quo).

Thanks.

John A. Safarli | Partner

Floyd, Pflueger & Ringer, P.S.

200 W. Thomas St., Ste. 500

Seattle, WA 98119-4009

(206) 441-4455 – p | (206) 441-8484 - f

jsafarli@floyd-ringer.com

From: John Safarli

Sent: Monday, April 12, 2021 7:31 AM

To: Sonni Waknin <sonni@uclavrp.org>

Cc: Chad Dunn <chad@uclavrp.org>; Eddie Morfin <Eddie@morfinlawfirm.com>; lrllaw@sbcglobal.net

Subject: RE: Franklin County

Counsel,

Thank you for your letter and proposed districting plan.



Keith Johnson
County Administrator

BOARD OF COMMISSIONERS
FRANKLIN COUNTY
WASHINGTON

BRAD PECK
District 1

ROCKY MULLEN
District 2

CLINT DIDIER
District 3

AGENDA
Regular Board Meeting and Public Hearing
Tuesday, May 4, 2021

Franklin County Courthouse, Commissioners' Meeting Room
1016 North Fourth Avenue, Pasco, Washington

This is a preliminary agenda. Discussion items may be added, deleted or modified. Public Hearings will not start earlier than the advertised time. Other agenda times are approximate and provided to aid in planning.

In-Public attendance is limited and masks are required.
Please follow our Franklin County website link and join us via AV Capture Live Stream.

- 9:00 a.m. Call to Order and Pledge of Allegiance**
- 9:00 a.m. Approval of Minutes**
April 13, 2021 Commissioners Meeting Minutes
April 20, 2021 Commissioners Meeting Minutes
- 9:03 a.m. Certificate of Appreciation- Director of IS Kevin Scott**
- 9:05 a.m. Commissioner/Administrator Updates**
- 9:15 a.m. CLOSED RECORD HEARING:** Columbia Bluff Subdivision: An application requesting approval for a 9-lot residential subdivision (Resolution 2021-089 upon approval)
- 9:30 a.m. CLOSED RECORD HEARING:** CUP 2020-05/SEPA 2020-12: An application requesting a deviation from Franklin County subdivision regulations (Resolution 2021-090 upon approval)
- 9:40 a.m. Public Comment by Phone: 509-546-5859**
We welcome your comments, as they are important to us.
Please limit your comments to four minutes.
- 9:50 a.m. Office Business**
1. Approval of Payroll Rosters
 2. Approval of Warrant Registers
 3. Approval of Consent Agenda

1. Resolution 2021-091 Personal Services Contract between Michael Henry and Juvenile Justice Center
2. Resolution 2021-092 Approval of Additional Planner Position
3. Resolution 2021-093 Public Works Contract between Franklin County and KPFF Inc. for Services on CRP 629- Muse Drive Bridge

9:55 a.m. Administration Office Business

10:05 a.m. Public Comment

10:10 a.m. Adjourn



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

The Minutes of the Board of Commissioners proceedings are not verbatim. Access to an electronic audio recording of meetings are available on the Franklin County website or upon request.

9:00 a.m.

Call to Order and Pledge of Allegiance

Commission Chairman Clint Didier called the Franklin County Commissioners' Regular Board Meeting to order at 9:00 a.m., in the Commissioners' Meeting Room in the Franklin County Courthouse located at 1016 North Fourth Avenue, Pasco, Washington.

Commissioners Present: Commission Chair Clint Didier, Chair Pro Tem Rocky Mullen and Member Brad Peck

9:00 a.m. **Approval of Minutes**

- ❖ *April 13, 2021 Commissioners Meeting Minutes were approved as presented.*
- ❖ *April 20, 2021 Commissioners Meeting Minutes were approved as presented.*

9:01 a.m. **Certificate of Appreciation- Director of Information Services Kevin Scott**

Commissioner Didier read a letter of appreciation to Kevin Scott and thanked him for his many years of service to the County. Commissioner Mullen and Commissioner Peck thanked Kevin for his great work.

9:04 a.m. Commissioner Didier opened the Closed Record Hearing on CUP 2021-01.

AHBL Contractor Nicole Stickney presented the Board with information on the Columbia Bluff Subdivision 2021-01: An application requesting approval to subdivide three parcels, which total approximately 10.1 acres into 9 single-family residential lots.

Ms. Stickney asked the Commissioners if they had any ex parte communications or any conflict of interest with this parcel. The Commissioners answered no.

The Planning Commissioner did recommend a preliminary approval of SUB 2021-01, based on six findings of fact and six conditions of approval.

9:14 a.m. Commissioner Didier closed the Closed Record Hearing.

- ❖ *Commissioner Mullen moved to approve resolution 2021-089, Columbia Bluffs SUB 2021-01. Commissioner Peck seconded and the motion carried.*



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

9:15 a.m. Commissioner Didier opened the Closed Record Hearing on CUP 2020-05, Jeffery Burns.

Planning and Building Director Derrick Braaten brought an application for deviation from Franklin County land subdivision regulations. The request is to allow for a 2-parcel short-plat of an approximately 5-acre property.

The recommendation of the Planning Commission is a denial of the application.

❖ *There was no motion to approve and the application failed.*

9:39 a.m. Public Comment

- Pasco Land Owner asked the Commissioners to be mindful of the AP-20 zoning and reevaluate the statutes. Inequity in land use from the river area to the 395 area.
- Lawanda Hatch voiced her concerns on obtaining a redistricting committee and the sense of urgency to do so.
- George Dockstader asked the Commissioners to obtain staffing help in the Planning Department. He supports 2% tax deferral from Ben Franklin transit to go bi-county projects. He would like to see an email list for Commissioners meetings and business.
- Administrator Keith Johnson explained that there are two positions posted for the Planning and Building Department to alleviate the backlog of permits.
- Mr. Johnson announced that there would be a bi-county Commissioners Special Meeting on June 2, 2021 to discuss a possible 1% tax deferral from Ben-Franklin Transit to a Mental Health project. Also, discussion on the Juvenile Justice Center.

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FRANKLIN COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

9:50 a.m. Approval of Fund Expenditure Warrants

05/04/2021

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims.

Action: As of this date, 05/04/2021

Move that the following warrants be approved for payment:

Certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Warrants \ Check Numbers:	00370481 - 00370609	\$426,581.22
EFT Check Numbers:	00000804 - 00000806	\$8,068.76
		<u>\$434,649.98</u>

Fund Expenditures	Amount Issued
CURRENT EXPENSE	\$320,402.21
AUDITOR O & M	\$97.42
TREASURER O & M	\$1,150.00
COURTHOUSE FACILITATOR	\$525.00
JAIL COMMISSARY	\$14,588.75
COUNTY ROADS	\$29,024.96
SOLID WASTE	\$138.92
BF MENTAL HEALTH	\$1,847.49
THE HAPO CENTER	\$24,467.49
FRANKLIN COUNTY RV PARK	\$2,618.28
MOTOR VEHICLE	\$20,880.30
FR CO UNEMPLOYMENT	\$18,909.16

In the amount of: \$434,649.98

The motion was seconded by: [Signature]

And passed by a vote of: 3 to 0

Reviewed by the County Administrator: [Signature]

The attached vouchers have been approved by Auditor or Deputy:
Matt Beaton

[Signature]
Vouchers Audited By:
Paola Mendoza

www.co.franklin.wa.us/auditor

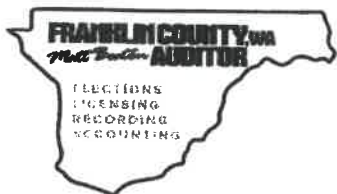
- ❖ Commissioner Mullen moved to approve Fund Expenditures audited and certified by the auditing officer for warrants prepared for the week of May 4, 2021 for payment totaling \$434,649.98. Commissioner Peck seconded and the motion carried.



FRANKLIN COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

9:51 a.m. Approval of Salary Clearing and Emergency Management Payroll



1016 N 4th Ave, Pasco,
WA 99301
509-545-3502

May 4, 2021

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Action: As of this date, May 4, 2021

moves that the following warrants be approved for payment.

Rodney J. Mullen

FUND	WARRANT	AMOUNT
Salary Clearing Payroll:		
Net Payroll Checks	00370361-00370366	\$ 10,721.72
Net EFT Payroll Checks	00033198-00033456	\$ 497,070.04
Deduction and Contribution Checks	00370476-00370480	\$ 343,217.52
Total		<u>\$ 851,009.28</u>
Emergency Mgmt Payroll:		
Net EFT Payroll Checks	00033194-00033197	\$ 8,014.61
Deduction and Contribution Checks	00370472-00370475	\$ 5,422.68
Total		<u>\$ 13,437.29</u>
Grand Total All Payrolls		<u>\$ 864,446.57</u>

In the total amount of \$864,446.57

The motion was seconded by *Rene Peck* and passed by a vote of 3 to 0.

Wendy Beale
The attached payroll has been approved by Auditor or Deputy

Peter Gadomski
Payroll Prepared by Peter Gadomski

❖ *Commissioner Mullen moved to approve Salary Clearing and Emergency Management Payroll totaling \$864,446.57. Commissioner Peck seconded and the motion carried.*



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

9:51 a.m. Approval of Consent Agenda

1. Resolution 2021-091 Personal Services Contract between Michael Henry and Juvenile Justice Center
2. Resolution 2021-092 Approval of Additional Planner Position
3. Resolution 2021-093 Public Works Contract between Franklin County and KPFF Inc. for Services on CRP 629- Muse Drive Bridge

❖ *Commissioner Mullen moved to approve the Consent Agenda items 1-3. Commissioner Peck seconded and the motion carried.*

9:52 a.m. Administration Office Business

Administrator Keith Johnson Update

- Mr. Johnson asked the Commissioners if they were available June 2, 2021 for a Bi-County Commissioners Meeting. They were in consensus to hold this meeting on Wednesday June 2.
- Discussed a proposed a public hearing meeting for May 18, 2021 to discuss the “Controlled Substance Ordinance,” if the Governor does not sign the state bill pertaining to this.
- Mr. Johnson and Commissioner Mullen presented a PowerPoint presentation to the Tri-City Chamber, which provided an update on Franklin County.
- Met with the Port of Pasco to work on projects in the Reimann Industrial Center area.
- Continuing to work on the Shoreline Reconveyance.
- Working on the American Recovery Act with other entities.
- Mr. Johnson ordered an appraisal of the Wilson House to verify its worth.

Commissioner Didier asked if there were any updates on organizing a redistricting committee. Mr. Johnson directed the question to Attorney Shawn Sant. Mr. Sant mentioned that the county has been served and that he will work with Attorney John Safarli and the litigants to form whatever committee might be agreeable to resolve that lawsuit.

Commissioner Mullen Update

- Commissioner Mullen sat in on the WSAC redistricting webinar. Their recommendation is to set up the redistricting committees now so that when the census numbers come in, they will be ready to work on the maps.
- He spoke with Dr. Raul Garcia who has concerns over the metric to collect COVID data. Dr. Garcia had positive thoughts on Franklin County’s ability to start opening.



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

Commissioner Peck Update

- Commented that listening to the differences of doctors opinions makes it difficult for the public.
- The WSAC webinar on redistricting is focused mostly on the state districts.
- Had a meeting with CRAB County Road Administration Board and had a broad range of transportation issues.
- Participated in LSC Legislative Steering Committee Meeting
- Shoreline Reconveyance discussion
- Tri-City Chamber meeting

Commissioner Didier Update

- Hanford Communities meeting
- Workforce Development meeting
- Attended the meeting where Assessor John Rosenau, Chief Deputy Assessor Piper Mitchell and Chief Appraiser Nikki Morgan presented a PowerPoint on Personal Property Tax for the public. Commissioner Mullen said it was very informative.
- Questioned the possibility of mandated vaccinations.

Commissioner Mullen asked Public Works Director Matt Mahoney when the postings of the Planning positions will take place. Mr. Mahoney explained that the postings are taking place and the Contracting agency AHBL is working extra hours to help in the Planning Department.

Human Resources Director Carlee Nave stated that they have advertised in several venues to fill the positions.

Mr. Mahoney would like to see the public portal used more frequently to help in the process of permits. Using the portal would make the process run smoother.

10:24 a.m. Public Comment

- Lawanda Hatch appreciated Commissioner Mullen's comments on the redistricting. She would like to see a redistricting committee put together as soon as possible. She appreciated Dr. Garcia's input on COVID issues.
- Commissioner Peck responded to Ms. Hatch's allegations on redistricting.
- Steve Bauman voiced his concerns with the Planning and Building Department and the challenges in obtaining permits. He would like to be part of the solution. He stated there is a real problem with affordable housing in Franklin County.
- Michelle Andre appreciated the civility and candor of the Board when dealing with tough issues. She supports the builders of this area. She appreciated the Commissioners' updates.



FRANKLIN COUNTY, WASHINGTON BOARD OF COMMISSIONERS

REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021

- Assessor John Rosenau spoke on the Agriculture Real and Personal Property Tax meeting his office presented to the public. He and his staff are working on a web base system to allow public access to information on the Franklin County website. It has been a challenge filling the open appraiser position.

10:41 a.m. Public Comment

- Dr. Raul Garcia voiced his opinion after seeing the numbers, he is cautiously optimistic about where we are with the COVID pandemic. He would like to see better transparency and more consistency in the way data is captured. He reported that 80 percent of people over the age of 65 have been vaccinated. Contributing to an optimistic outcome is the data for administered vaccinations, reduction in hospitalizations, and those who have previously had COVID. There is a need to get an end game plan. He hoped that we do not go back to phase 2.

10:46 a.m. Redistricting Discussion

Commissioner Mullen asked about the normal process of redistricting. Commissioner Peck explained the difference between State Legislative Districts and County Districts.

Commissioner Mullen would like to move forward with forming a redistricting committee and start meetings with the public.

- ❖ *Commissioner Mullen moved to move forward with organizing a committee to redistrict the County. Commissioner Didier seconded with an amendment that we make this a nine person board and the Administrator is the organizer of this meeting, and the nine person board would be a person from the Auditors office, a person from Pasco Hispanic Chamber, a person from the Pasco Chamber, a person from the Farm Bureau, a person from the Cattlemen's Association, each Commissioner gets to pick one person, and one person from IS(Information Services). This would be a nine-person committee headed up by Keith Johnson that would be ready to move when the census report comes out. Commissioner Mullen seconded the amendment.*

Discussion on the amendment did not take place. Commissioner Peck wanted discussion on the main motion in creating a redistricting committee. He was concerned with harmony and mutual understanding of where we are going. Commissioner Peck asked Commissioner Didier and Commissioner Mullen if there was any discussion on this. Commissioner Didier and Commissioner Mullen replied no, only what has been discussed during Commissioner Meetings.

10:59 a.m.

- ❖ *Clint Didier moved to end discussion and to vote on the amendment and to vote on the motion. Commissioner Mullen seconded. The motion to end discussion and to vote.*



**FRANKLIN COUNTY, WASHINGTON
BOARD OF COMMISSIONERS**

**REGULAR MEETING AND
PUBLIC HEARING
MAY 4, 2021**

- ❖ *First, Commissioner Didier moved to vote on the amendment of the nine-person board, including the entities I put forth. The motion carried 2:0 Commissioner Peck nay.*
- ❖ *Second, Commissioner Didier moved to create this nine-person committee to draw maps for Franklin County, so that the Commissioners remove themselves from all appearance of gerrymandering.*
- ❖ *Commissioner Didier moved to end discussion on the primary motion. No second.*

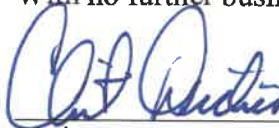
Discussion

- ❖ *Commissioner Didier moved to approve the main motion to create a redistricting committee. Motion carried 2:0 with Commissioner Peck abstaining.*

Commissioner Didier asked Administrator Keith Johnson to move forward with the process of obtaining a redistricting committee and preparing the committee with whatever action is needed to be ready when the census becomes available.

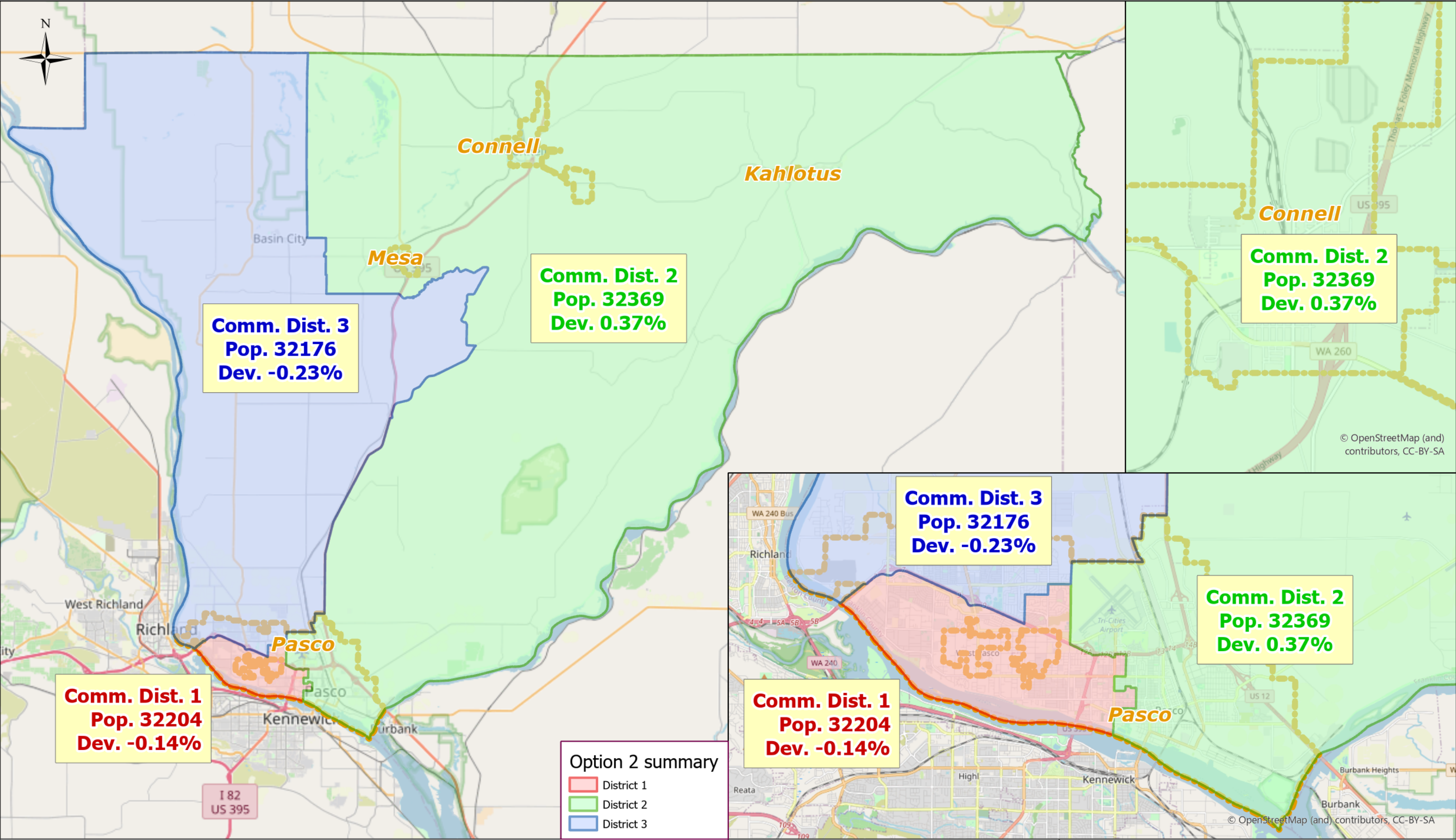
Adjourn

With no further business to bring before the Board, the meeting adjourned at 11:07 a.m.


Chair


Clerk of the Board

5-18-2021
Date



Redistricting Option 2

Casey M. Bruner
cmb@witherspoonkelley.com
Direct Dial: 509.755-2044

September 1, 2021

Via E-Mail: ssant@co.franklin.wa.us

Shawn P. Sant, Prosecutor
Franklin County Prosecutor's Office
1016 N. 4th Ave.
Pasco, WA 99301

Re: Confidential Legal Analysis

Dear Mr. Sant:

Please share the following correspondence with the Board of County Commissioners as a memorialization of the August 31, 2021 executive session wherein litigation strategy was discussed in the matter of *Portugal, et. al. v. Franklin County, et al.* If you or the Commissioners have any questions, comments, or clarifications, please let me know promptly as I am preparing summary judgment pleadings consistent with the plan presented at yesterday's meeting and as summarized below. Please reiterate that this document and the conversations that I have had with them on this topic are not to be shared or disclosed as they represent the attorney-client privilege and work product of Franklin County.

After Franklin County retained me and Witherspoon Kelley to represent Franklin County in the matter of *Portugal, et. al. v. Franklin County, et. al.*, I was able to meet with the Franklin County Board of County Commissioners on the following dates: June 15, 2021, August 3, 2021, August 24, 2021, August 26, 2021, and August 31, 2021. I have also been able to have multiple other in person meetings with you, Ms. Jen Johnson, and Mr. Keith Johnson.

During these meetings, I believe that I have been afforded the full opportunity to explain the law (Washington Voting Rights Act, the federal Voting Rights Act, related Supreme Court case law), as well as the factual, demographic realities to the Board of County Commissioners. On August 31, 2021, I was able to make my final litigation recommendation and provide a litigation plan to you and the Board of County Commissioners.

In summary, the Latino Voting Age population for Franklin County is approximately 33% based on 2017 ACS Survey's and Washington's OFM data. Based on the 2020 Census data and the 2020 OFM estimates, the total Latino population exceeds 50% of Franklin County's population.

Further, our experts were able to provide the racial demographics for each election precinct within Franklin County based on the 2020 Census data. I was able to compare that data with the 2020 election results. I analyzed both 2020 Commissioners' races, the 4th Congressional race, a State Supreme Court election, the Lieutenant Governor's election, and other regional races. Every race exhibited racially polarized voting. The polarization became what was the most polarized in races where a Latino candidate was running. Based on this data, there is not much evidence we can proffer to the court to overcome summary judgment on the issue of whether the current election system violates Washington's Voting Rights Act.

I understand that Commissioner Didier has retained counsel to represent him in his individual capacity as a citizen and candidate for office to challenge the validity and constitutionality of Washington's Voting Rights Act. Given that a facial challenge is coming, I recommend the following plan for Franklin County:

Step 1: Stipulate, based on the facts and demographic data, that Franklin County's current election system is in violation of Washington's Voting Rights Act but do so in a way that is based on an honest view of the evidence. This step can be done while acknowledging the significance of the decision and why the county wanted to wait on the 2020 Census data. This can also be done while reiterating that the violation is a natural result of shifting demographics and not the result of intentional discrimination by the county or its officials. Doing this allows the greatest flexibility for Franklin County and, as explained below, puts the county in the best position to mitigate potential attorney fees award and costs.

Step 2: This acknowledgment would be made with the full understanding that a challenge to the validity of Washington's Voting Rights Act is coming from Commissioner Didier as a citizen. I recommended that the County not oppose Commissioner Didier's intervention as a private citizen and candidate and take no position on the validity or constitutionality of the law. In the event that the challenge is successful, then the agreement in step 1 does not prejudice the county and no violation would exist because the law is void.

Step 3: Focus on drawing a remedial plan that best serves the citizens of Franklin County. By stipulating or acknowledging step 1 above and allowing step 2 to proceed, the County is saving our legal strength, credibility, and best arguments for the remedial stage. Coming to the court with the best data and credibility intact, puts the County in the best position of prevailing at the remedy stage.

This plan allows the greatest flexibility for Franklin County, puts the county in the best position to mitigate (as best as we can at this point) the potential for an attorney fees award and costs, and keeps the highest credibility with the court as we propose our plan as the best for the citizens. This plan also allows for the constitutional challenge to move forward. If it succeeds, then the concession is moot. If it does not succeed, then Franklin County is in the best position to prevail

at the remedial stage of litigation. This is the plan I shared with the Commissioners at the August 31, 2021 executive session. Some Commissioners shared comments or questions but there was no consensus on this plan and no expressed opposition to this plan.

If you or the Commissioners disagree with this summary of the August 31, 2021 meeting, my recommended litigation plan, and their positions and responses, please have them let you know promptly and share that with me as I will be preparing summary judgment pleadings consistent with this plan over the next few days for a Monday, September 6, 2021 filing.

Please let me know if you have any questions, thoughts, or concerns.

Very truly yours,

WITHERSPOON ■ KELLEY

Sent Without Signature to Avoid Delay

Casey M. Bruner

CMB/mn