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SUPERIOR COURT OF WASHINGTON FOR KITTTITAS COUNTY

EVANGELINA AGUILAR, SUSAN SOTO PALMER, ROGELIO MONTES, CANDY GUTIERREZ, and ONEAMERICA, a Washington nonprofit corporation,

Plaintiffs,

v.

YAKIMA COUNTY, a Washington municipal entity, AMANDA MCKINNEY, LADON LINDE, RON ANDERSON, in their official capacities as members of the Yakima County Board of Commissioners,

Defendants.

No. 20-2.00180-19

MOTION TO APPROVE SETTLEMENT AND ENTER FINAL JUDGMENT

Plaintiffs Evangelina (“Bengie”) Aguilar, Susan Soto Palmer, Rogelio Montes, Candy (“Dulce”) Gutierrez, and OneAmerica respectfully request that the Court approve the parties’ agreement providing for settlement of the above-captioned case and enter a lawful remedy as final judgment pursuant to that agreement.

BACKGROUND

On January 15, 2020, Plaintiffs provided a notice letter pursuant to RCW 29A.92.060 to Yakima County alleging that its current system for electing its Board of Commissioners violates the Washington Voting Rights Act. On July 13, 2020, Plaintiffs filed this suit in Kittitas County Superior Court pursuant to RCW 29A.92.090.

On August 30, 2021, the parties agreed to settle this action pursuant to Superior Court Civil Rule 2A. The fully executed terms of the agreement are attached hereto as Exhibit 1 to the Harless

1 Declaration (“CR2A Agreement”). Plaintiffs informed the Court of this agreement in a notice filed
2 on August 31, 2021.

3 The parties have stipulated that there is sufficient evidence from which the Court could
4 find a violation of the Washington Voting Rights Act, and that the Court should order the following
5 remedy to satisfy RCW 29A.92.020:

- 6 • Yakima County will adopt a district-based system of election for both primary and
7 general elections for seats on the Yakima County Board of Commissioners. Each
8 candidate for county commission under the district-based system must reside in the
9 district in which they are running for a county commissioner’s seat.
- 10 • District-based elections for the Board of Commissioners will occur under a new
11 remedial district map.
- 12 • The remedial district map will first take effect in the 2022 electoral cycle. All three
13 district seats for the Yakima County Board of Commissioners will stand for election
14 under the new remedial map in the 2022 election cycle.
- 15 • Following the 2022 election cycle, District 1 will stand for election in 2026 and
16 every four years thereafter, and Districts 2 and 3 will stand for election in 2024 and
17 every four years thereafter.
- 18 • The Court shall retain jurisdiction over any disputes arising from the settlement
19 agreement. *See* Ex. 1.

20 With respect to the remedial district map, the parties came to agreement on a map, which
21 they incorporated into the CR2A agreement (“Map 3”), attached hereto as Exhibits 2-5 of the
22 Harless Declaration. *Id.* The parties agreed to submit the map to the Court, pending review by their
23 respective demographers in light of the adjusted 2020 census data. *Id.* ¶ 5. The parties agreed to
24 jointly file the map with the Court no later than 15 days after the County received the data from
25 the state, which was expected to occur no later than September 26, 2021.¹ *Id.* ¶ 9. If the parties
26 were unable to reach agreement on a final map to present jointly to the Court, the parties agreed
27 that they would submit separate proposed maps instead by that same deadline. *Id.* ¶ 6. The parties
also agreed that “[a]ny proposed map shall be materially the same as Map 3.” *Id.*

¹ Plaintiffs agreed in good faith to extend this deadline to Thursday, October 21, 2021 to consider Defendants’ proposed changes to Map 3.

1 On October 15, 2021, Defendants confirmed via counsel that their demographer had
2 reviewed Map 3 and found no changes to the map were necessary based on 2020 Census data.
3 Defendants indicated that they agree Map 3 should be implemented as the remedy in this case, but
4 only if current District 3 incumbent Commissioner LaDon Linde wins his upcoming special
5 election. If Commissioner Linde loses his upcoming special election to challenger Autumn Torres,
6 Defendants proposed to move Ms. Torres’s residence from District 1 in Map 3 to District 3 in Map
7 3. Plaintiffs rejected this proposal because it would necessitate shifting neighborhoods from
8 District 1 to District 3, thereby materially altering Map 3 for reasons not contemplated by the
9 CR2A Agreement. *See* Ex. 1 ¶¶ 5-6 (requiring any proposal to be “materially the same” as Map
10 3). The parties agree on all other terms of the CR2A Agreement.

11 The CR2A Agreement contemplates that if the parties are unable to reach agreement on a
12 map to present as a joint remedy, they will submit competing maps. *See id.* ¶ 6. Plaintiffs hereby
13 submit Map 3 to the Court and respectfully request that the Court approve the settlement agreement
14 and adopt Map 3 as the remedy in this case, as contemplated by the procedures and timeline
15 outlined in Paragraphs 6 and 9 of the CR2A Agreement. *See id.* ¶¶ 6, 9.

16 ARGUMENT

17 Plaintiffs respectfully request that this Court approve the settlement agreement between the
18 parties and enter the parties’ proposed single-member district remedy with Map 3’s remedial
19 districts as the final remedy and judgment in this case. *See* Exs. 2-5.

20 The parties agree that Map 3 would provide the Latino community with an equal
21 opportunity to elect their candidate(s) of choice to the Yakima County Board of Commissioners,
22 thereby satisfying Plaintiffs’ claims under the Washington Voting Rights Act. RCW 29A.92.020;
23 *see* Ex. 1. The proposed remedy also complies with Section 2 of the Federal Voting Rights Act.
24 52 U.S.C. §10301. Table 1 below shows each proposed district’s Hispanic, Native American, and
25 white Citizen Voting Age Population (“CVAP”), calculated from the 2015-2019 5-Year American
26 Community Survey, the most recent and accurate CVAP data available. As these numbers
27 demonstrate, Map 3 includes a majority-Latino district to afford the Latino community an equal
opportunity to elect candidates of its choice.

	District 1	District 2	District 3
Total Population	88,288	84,782	84,448
Ideal Population Deviation %	2.8%	-1.2%	-1.6%
Hispanic CVAP %	13.5%	32.8%	55.2%
Native American CVAP%	2.6%	2.7%	11.8%
White CVAP%	81.1%	60.3%	31.5%

The proposed districts in Map 3 also satisfy the constitutional and statutory requirement of maintaining districts of equal population. Table 1 above shows the total population of each proposed district, calculated using the 2020 census data as adjusted by the state and provided to Washington counties per RCW 44.05.140. It indicates that Map 3’s overall deviation from the ideal population, at only 4.4%, is well below the allowable deviation for local districting. *See Brown v. Thomson*, 462 U.S. 835, 842 (1983) (“Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.”). Minor deviations in population among the districts are in keeping with Washington’s standards for districting while ensuring that Map 3 satisfies the WVRA. *See* RCW 29A.76.010(4)(a) (“each . . . commissioner district shall be as nearly equal in population as possible”); *see also* RCW 29A.92.020.

The proposed districts in Map 3 are also compact and geographically contiguous in keeping with Washington’s mapping standards. *See* RCW 29A.76.010(4)(b-c). In addition, only two cities—Yakima and Terrace Heights—are split by the proposed map and those cities are less fractured in Map 3 than in the map presently used by Yakima County for its district-based primary elections. Accordingly, Map 3 maximally preserves municipalities’ related and mutual interests in keeping with state mapping standards. *See* RCW 29.A.010(4)(e).

In addition to satisfying both Washington and federal law, the terms of the proposed remedy in the CR2A Agreement, including Map 3, are entitled to full effect as terms of a legally enforceable settlement agreement. *See Smyth Worldwide Movers, Inc. v. Whitney*, 6 Wn.App. 176, 178, 491 P.2d 1356 (1971). That agreement binds the parties to propose Map 3, or a map that is materially the same. *See* Ex. 1. The only changes contemplated by the CR2A Agreement were minor tweaks to account for possible differences in the state’s adjusted 2020 Census data—which the County’s demographer has confirmed, and the County agrees, are not necessary. *See also* Table 1. Altering Map 3 to create a hypothetical benefit for a single, non-party individual is neither

1 appropriate nor contemplated by the CR2A Agreement. In addition, all parties were aware that
2 Ms. Torres was running in the 2021 election when the CR2A Agreement was negotiated and
3 signed, meaning no conditions have changed. The CR2A Agreement also binds the parties to a
4 timeline for bringing a remedy to the Court to ensure finality and certainty for Yakima County
5 citizens who will run and vote under the new remedial maps in 2022. The Court should therefore
6 decline to materially alter Map 3 for an improper purpose or to delay entering Map 3 as part of the
7 final remedy and judgment.

8 Dated this 21st day of October 2021.

9
10 Respectfully submitted,

11 /s/ Tiffany Cartwright
12 Tiffany M. Cartwright, WSBA #43564
13 MACDONALD HOAGUE & BAYLESS
14 1500 Hoge Building
15 705 Second Avenue
16 Seattle, WA 98104
17 Tel: (206) 622-1604
18 tiffanyc@mhb.com
19 Attorneys for Plaintiffs

20 Annabelle Harless
21 CAMPAIGN LEGAL CENTER
22 55 W. Monroe St., Ste. 1925
23 Chicago, IL 60603
24 Tel: (312) 312-2885
25 aharless@campaignlegal.org

26 Molly Danahy
27 Christopher Lamar
Simone Leeper
Aseem Mulji
Valencia Richardson
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
Tel: (202) 736-2200
mdanahy@campaignlegal.org
clamar@campaignlegal.org
sleeper@campaignlegal.org
amulji@campaignlegal.org
vrichardson@campaignlegal.org

Attorneys for Plaintiffs

