

1
2
3
4
5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KITTITAS

9 EVANGELINA AGUILAR, SUSAN SOTO
10 PALMER, ROGELIO MONTES, CANDY
11 GUTIERREZ, and ONE AMERICA, a
Washington nonprofit corporation,

12 Plaintiffs,

13 v.

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

18 Defendants.

No. 20-2-00180-19

**DEFENDANTS' RESPONSE TO
MOTION TO APPROVE
SETTLEMENT AND ENTER FINAL
JUDGMENT**

19 **I. RESPONSE**

20 This matter is a case of first impression in Washington as the first lawsuit arising under
21 Washington's newly minted Voting Rights Act, RCW 29A.92. *See Plaintiff's Complaint, dated*
22 *July 13, 2020.* Plaintiffs challenged the electoral system used by Defendant Yakima County, a
23 political subdivision within the State of Washington. *Id.*

24
25 On August 30, 2021, the parties agreed to resolve this action pursuant to CR 2(a) in lieu
26 of a trial on the merits. *See Harless Declaration, Exhibit 1.* Therein, the parties stipulated that
27

1 there is sufficient evidence from which the Court could find a violation of the Washington
2 Voting Rights Act and that the Court should order a remedy that satisfies RCW 29A.92.020.
3 Pursuant, the parties agreed upon the contours of a remedy (a proposed redistricting map) to
4 submit to the Court pending review by their respective demographers and the County's receipt
5 of the forthcoming 2020 Census Data. Based on information provided by the state and Census
6 Bureau, the parties expected the Census Data would be in hand by the end of September 2021.
7

8 The Agreement provided that "[s]hould the parties be unable to reach agreement on a
9 map to present as a joint proposed remedy, each party will submit a proposed map and
10 accompanying briefing to the court for decision. Any proposed map shall be materially the
11 same as Map 3 [the map contemplated in the CR 2(a) Agreement]."

12 **Fortunately, Defendants agree with and offer no additional changes to the Map as**
13 **submitted by Plaintiffs to the Court.** *See Harless Declaration, Exhibits 2-5.* Plaintiffs'
14 motion suggests Defendants will produce an alternative map; this is incorrect. By way of
15 background on this topic, defense counsel was aware that Ms. Torres is currently challenging
16 incumbent LaDon Linde for his position as District 3's commissioner. The result of this
17 challenge will be decided in the upcoming November 2, 2021 election. As such, defense
18 counsel submitted a potential alternative map for comment by Plaintiffs' counsel to the extent
19 this became an issue. This alternative map was proposed by defense counsel **only** as a possible
20 solution to a possible issue that had not yet materialized. When the alternative was shown to
21 Plaintiffs' counsel, defense counsel made clear that any alternative map was contemplated only
22 by counsel and never approved by the County. *See Declaration of Brittany C. Ward, Exhibit 1.*
23 Because this issue was raised herein by Plaintiffs, Defendants must insist that consideration of
24
25
26
27

1 any alternative map is premature and that such a process has never been approved by the
2 County.

3 Moving forward with the only Map at issue here, the parties agreed to ask that the Court
4 issue an order putting in place the following stipulated remedy attending the proposed remedial
5 map:
6

- 7 • Yakima County will adopt a district-based system of election for both primary
8 and general elections for seats on the Yakima County Board of Commissioners.
9 The commissioner representing each district must run in a district-based
10 nonpartisan blanket primary and district-based top-two runoff general.
11
- 12 • Each candidate for county commissioner, under the district-based election
13 system, must reside in the district in which they are running for a county
14 commissioner's seat.
- 15 • The commissioner representing each district must run in a district-based
16 nonpartisan blanket primary and district-based top-two runoff general election.
- 17 • Yakima County will adopt the remedial district map, attached as Exhibits 2-5 to
18 the *Harless Declaration*. The remedial map will take effect for the 2022 election
19 cycle.
- 20 • All three district seats for the Yakima County Board of Commissioners will
21 stand for election under the new remedial map in the 2022 election cycle.
- 22 • Following the November 2022 election, District 1 will stand for election in 2026
23 and every four years thereafter, and Districts 2 and 3 will stand for election in
24 2024 and every four years thereafter.
- 25 • The Court shall retain jurisdiction over any disputes arising from the settlement
26 agreement.

27 There are thus no disputes as to the proposed remedial map and terms contemplated in
the CR 2(a) Agreement, submitted to this Court by Plaintiffs for review. This was the original
map contemplated in the August 30, 2021 CR 2(a) Agreement and it has since been confirmed
by Defendants' lead demographer as conforming with the 2020 Census Data and general
redistricting principles.

Indeed, this proposed map balances traditional districting criteria and preserves the voting strength of protected minorities in accordance with applicable legal standards. The proposed map will provide the Hispanic community with an equal opportunity to elect the candidate(s) of their choice to the Yakima County Board of Commissioners, thereby satisfying the Washington Voting Rights Act. RCW 29A.92.020. The proposed map also complies with Section 2 of the Federal Voting Rights Act. 52 U.S.C. §10301.

Below, Defendants offer a chart for this Court's consideration, which represents the demographic parameters of each district based on the new remedial plan, calculated using the 2020 Census Data adjusted per RCW 44.05.140.

Measure	District 1	District 2	District 3
Total Population (2020)	88,124	84,372	84,232
Deviation from ideal Total Pop.	3.0%	-1.4%	-1.6%
Hispanic share of Total Pop.	25.2%	55.6%	72.3%
Hispanic share of 18+ Pop.	20.9%	48.6%	68.2%
Hispanic share of CVAP (2018)	13.5%	32.8%	55.2%
Native American share of Total Pop.	4.2%	5.5%	13.7%
Native American share of 18+ Pop.	3.8%	5.3%	13.1%
Native Amer. share of CVAP (2018)	2.6%	2.7%	11.8%
NH White share Total Pop.	67.0%	36.8%	16.0%
NH White share of 18+ Pop.	71.7%	43.5%	19.9%
NH White share of CVAP (2018)	81.1%	60.3%	31.5%
Note: "Native American" refers to Native American and Alaskan Native alone.			

See Ward Dec, Exhibit 2.

The demographic data is substantially similar to the data offered by Plaintiffs with respect to the proposed remedial map. While there is a slight variance in the total population calculations offered by each party, the differences do not appear to be material. Defendants agree with Plaintiffs that the County's 2020 total population is substantially equal among the three Commissioner districts, to balance each district's total population as closely as possible to

1 the ideal number (85,576 persons per district). As stated by Plaintiffs, Defendants also agree
2 that the three districts need not be exactly equal in total population. Courts have allowed
3 districting plans with up to a 10-percent total deviation from this ideal. *See Plaintiffs' Motion,*
4 *pg. 4, lines 10-12.*

5 A plan's deviation from ideal is measured as the absolute difference between the most
6 populous district's population count and the least populous district's count, divided by the ideal
7 number (here, 85,576). For Yakima County, this 10-percent maximum threshold sets the 10-
8 percent maximum deviation at 8,558 persons (i.e., 10 percent of each district's "ideal"
9 population). The proposed Map registers a deviation from the ideal of only 4.55 percent (i.e.,
10 3,892). Thus, the Map balances each district's total population "substantially equally," based
11 upon the latest 2020 official Census.
12

13 Here, as shown above, each district's deviation from the ideal population is well below
14 the allowable 10-percent deviation for local districting. These minor deviations are
15 commensurate with Washington's standards for districting all the while ensuring the remedial
16 district satisfies the WVRA. *See RCW 29A.76.010(4)(a)* ("each...commissioner district shall
17 be as nearly equal in population as possible").
18

19 Defendants further agree that the proposed remedial Map complies with Washington
20 law to the extent the Map: (1) respects established neighborhood communities of interest within
21 the County; (2) forms districts to be geographically compact insofar as possible; and (3)
22 optimizes minority voting strength insofar as possible thereby preserving the voting strength of
23 protected minorities in accordance with applicable legal standards. *See RCW 29A.92.050.*
24 Additionally, no incumbents are paired in the proposed districts. *See Harless Dec, Exhibit 1.*
25
26
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

DATED this 27th day of October, 2021.

By: Francis S. Floyd, WSBA No. 10642

By: Brittany Ward
Brittany C. Ward, WSBA No. 51355

DEFENDANT'S RESPONSE TO MOTION TO
APPROVE SETTLEMENT AND ENTER FINAL
JUDGMENT- 6
Kittitas County No. 20-2-00180-19

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

1 **DECLARATION OF SERVICE**

2 Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the
3 State of Washington that on the below date, I delivered a true and correct copy of the foregoing
4 via the method indicated below to the following parties:

5 Tiffany M. Cartwright *Counsel for Plaintiff* [] Via Messenger
6 MacDonald Hoague & Bayless [X] Via Email
1500 Hoge Building [] Via Facsimile
7 705 Second Avenue [] Via U.S. Mail
Seattle, WA 98104
8 tiffanyc@mhb.com

9 Annabelle Harless *Counsel for Plaintiff –* [] Via Messenger
10 Campaign Legal Center *Pro Hac Vice* [X] Via Email
55 W. Monroe Street, Suite 1925 [] Via Facsimile
11 Chicago, IL 60603 [] Via U.S. Mail
Tel: (312) 312-2885
12 aharless@campaignlegalcenter.org

13 Molly Danahy *Counsel for Plaintiff –* [] Via Messenger
14 Christopher Lamar *Pro Hac Vice* [X] Via Email
Aseem Mulji [] Via Facsimile
15 Campaign Legal Center [] Via U.S. Mail
1101 14th Street NW, Suite 400
16 Washington, DC 20005
17 mdanahy@campaignlegalcenter.org
clamar@campaignlegalcenter.org
18 amulji@campaignlegalcenter.org

19 DATED this 27th day of October, 2021 at Seattle, Washington.

20
21 s/ Sean C. Moore
22 Sean C. Moore, Legal Assistant
23
24
25
26
27

1
2
3
4
5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KITTITAS

9 EVANGELINA AGUILAR, SUSAN SOTO
10 PALMER, ROGELIO MONTES, CANDY
11 GUTIERREZ, and ONE AMERICA, a
Washington nonprofit corporation,

12 Plaintiffs,

13 v.

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

18 Defendants.
19

No. 20-2-00180-19

**DECLARATION OF BRITTANY C.
WARD IN SUPPORT OF
DEFENDANTS' RESPONSE TO
MOTION TO APPROVE
SETTLEMENT AND ENTER FINAL
JUDGMENT**

20 I, Brittany C. Ward declare as follows:

21 1. I am over the age of eighteen years of age and I am one of the attorneys of
22 record for the Defendants in this matter. I am competent to testify to the matters herein, and I
23 offer this declaration in support of Defendants' Motion to Continue Trial Date.

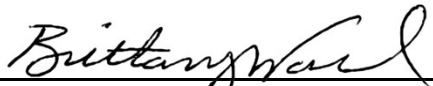
24 2. Attached as **Exhibit 1** to this Declaration is a true and correct copy of an
25 October 18, 2021 email I sent to all counsel for Plaintiffs offering several drawings of a
26 proposed "plan B" to the original Map as well as a population breakdown for comparison. I
27

1 made clear therein that there had been no approval by the County on the topic, which were
2 submitted to Plaintiffs' counsel in the interest of keeping the case moving along.

3 3. Attached as **Exhibit 2** to this Declaration is a true and correct copy of a chart
4 created for the purpose of supporting the demographic parameters of each remedial district
5 based on the new remedial Map, calculated using the 2020 census data adjusted per RCW
6 44.05.140.

7 I certify under penalty of perjury of the laws of the State of Washington that the
8 foregoing declaration and the attending exhibits are true and correct to the best of my
9 knowledge.
10

11 Executed in Seattle, King County, Washington on this 27th day of October, 2021.
12

13
14 
15 Brittany C. Ward, WSBA No. 51355
16
17
18
19
20
21
22
23
24
25
26
27

1 **DECLARATION OF SERVICE**

2 Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the
3 State of Washington that on the below date, I delivered a true and correct copy of the foregoing
4 via the method indicated below to the following parties:

5 Tiffany M. Cartwright *Counsel for Plaintiff* [] Via Messenger
6 MacDonald Hoague & Bayless [X] Via Email
1500 Hoge Building [] Via Facsimile
7 705 Second Avenue [] Via U.S. Mail
Seattle, WA 98104
8 tiffanyc@mhb.com

9 Annabelle Harless *Counsel for Plaintiff –* [] Via Messenger
10 Campaign Legal Center *Pro Hac Vice* [X] Via Email
55 W. Monroe Street, Suite 1925 [] Via Facsimile
11 Chicago, IL 60603 [] Via U.S. Mail
Tel: (312) 312-2885
12 aharless@campaignlegalcenter.org

13 Molly Danahy *Counsel for Plaintiff –* [] Via Messenger
14 Christopher Lamar *Pro Hac Vice* [X] Via Email
Aseem Mulji [] Via Facsimile
15 Campaign Legal Center [] Via U.S. Mail
1101 14th Street NW, Suite 400
16 Washington, DC 20005
17 mdanahy@campaignlegalcenter.org
clamar@campaignlegalcenter.org
18 amulji@campaignlegalcenter.org

19 DATED this 27th day of October, 2021 at Seattle, Washington.

20
21 s/ Sean C. Moore
22 Sean C. Moore, Legal Assistant
23
24
25
26
27

Exhibit 1

FP&R

October 18, 2021 at 4:06 PM

F

Re: Aguilar v. Yakima County - FW: Yakima County - Census Data

Details

To: Tiffany Cartwright, Cc: Annabelle Harless, Simone Leeper, Francis S. Floyd, Aseem Mulji & 5 more



Hi Tiffany,

Thanks for taking my call a few moments ago. I've attached several drawings of a proposed "plan B" to the original "Map 3," as well as a plan B population breakdown for comparison. As previously stated, no approval from the County has taken place yet but in the interest of keeping things moving along, we wanted to pass the attached along so your expert could review.



Plab B to Map
3- "10...Rd.pdf

Brittany C. Ward

Attorney

Floyd, Pflueger & Ringer, P.S.

200 West Thomas Street, Suite 500

Seattle, WA 98119-4296

206-441-4455

Fax: 206-441-8484

bward@floyd-ringer.com

www.floyd-ringer.com

Exhibit 2

Measure	District 1	District 2	District 3
Total Population (2020)	88,124	84,372	84,232
Deviation from ideal Total Pop.	3.0%	-1.4%	-1.6%
Hispanic share of Total Pop.	25.2%	55.6%	72.3%
Hispanic share of 18+ Pop.	20.9%	48.6%	68.2%
Hispanic share of CVAP (2018)	13.5%	32.8%	55.2%
Native American share of Total Pop.	4.2%	5.5%	13.7%
Native American share of 18+ Pop.	3.8%	5.3%	13.1%
Native Amer. share of CVAP (2018)	2.6%	2.7%	11.8%
NH White share Total Pop.	67.0%	36.8%	16.0%
NH White share of 18+ Pop.	71.7%	43.5%	19.9%
NH White share of CVAP (2018)	81.1%	60.3%	31.5%
Note: "Native American" refers to Native American and Alaskan Native alone.			