



June 6, 2011

Via E-Mail and U.S. Regular Mail

Washington State Redistricting Commission
1063 Capitol Way South, Suite 16
P.O. Box 40948
Olympia, WA 98504-0948

Re: Establishment of Majority-Minority State Legislative District in Eastern Washington

Dear Members of the Commission:

ACLU OF WASHINGTON
FOUNDATION
901 FIFTH AVENUE #630
SEATTLE, WA 98164
T/206.624.2184
WWW.ACLU-WA.ORG

JESSE WING
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

We write to urge the Commission to establish a majority-minority State Legislative District in Eastern Washington, and specifically in Yakima County. A map of this proposed district is attached as Exhibit 1, and the 2010 block groups are attached as Exhibit 2. The creation of such a district is necessary for both practical and legal reasons. As a practical matter, it is vital that this large and growing segment of Washington residents has the ability to elect candidates of their choice. According to the attached Declaration of Professor Luis Fraga, Associate Vice Provost and Professor of Political Science at the University of Washington, Latinos comprised 11.2% of Washington's population at the time of 2010 Census. If current birth and death patterns remain constant, this percentage will grow to 14.5% by the end of this decade. See Exhibit 3, Declaration of Luis Fraga at Page 2. The time has come for a district where Latinos and other minorities in Eastern Washington can elect candidates of their choice. Because it is possible to draw a majority-minority district in Yakima County, it is important as a matter of democratic governance that the Commission create such a district there.

More fundamentally, Section 2 of the Voting Rights Act compels the creation of a majority-minority district in Yakima County. See 42 U.S.C. § 1973. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the United States Supreme Court enunciated a three-factor threshold test to determine whether Section 2 requires the creation of a majority-minority district: (1) that the minority groups are "sufficiently large and geographically compact to constitute a majority" in the district," (2) that the groups are "politically cohesive," and (3) that majority voters' bloc voting enables them "usually to defeat the minority's preferred candidate." *Id.* at 50-51.

Once a party has shown these three factors, a court "must consider whether under the totality of the circumstances . . . the voting system operates to prevent the minority group from participating equally in the political process and electing representatives of its choice." *United States v. Blaine County, Montana*, 363 F.3d 897, 903 (9th Cir. 2004); *Thornburg*, 478 U.S. at 44-46. Courts examine a list of non-exhaustive factors in assessing this totality of the circumstances. These include: (1) the extent of any

history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process; (2) the extent to which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group; (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process; (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process; (6) whether political campaigns have been characterized by overt or subtle racial appeals; and (7) the extent to which members of the minority group have been elected to public office in the jurisdiction. Some cases also have examined whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group and whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous. *See Thornburg*, 478 U.S. at 45; *Blaine County*, 363 F.3d at 903.

These factors are not mechanically applied. Rather, courts take a functional view of the political process. Moreover, it is not necessary or even possible to show that every single non-exclusive factor has been met. While the factors are lengthy, they stem from a recognition that “[t]he essence of a § 2 claim is that a certain electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives.” *Thornburg*, 478 U.S. at 47. Importantly, intent to discriminate is not a factor in determining whether to create a majority minority district. Rather, parties must examine the totality of the circumstances.

The facts, history, and circumstances in Eastern Washington show the necessity of creating a majority-minority district. The proposed district meets the three threshold *Gingles* factors. As the attached map demonstrates, the district is geographically compact, comprising the southern half of the county and extending into the southeastern portion of the City of Yakima. The proposed district also would contain a majority of voting-age minority citizens. The minority Citizen Voting Age Population (“CVAP”) of the proposed district is 50%, with by far the largest proportion (37%) composed of Latinos but also including Native Americans (8.5%); African-Americans (1.1%); Asian-Pacific Islanders (1.1%); and Other Minorities (1.9%). Using 2010 Census data, the overall percentage of minorities in the proposed district is even higher – 73%. These minority groups are politically cohesive, and there has been a history of bloc-voting that enables the majority consistently to defeat the minority-preferred candidates.

The totality of the circumstances also strongly favors the creation of a majority-minority district. In addition to the Declaration of Professor Luis Fraga, we also have submitted Declarations from Professor Frances Contreras, Associate Professor and

Director of the Higher Education Program at the University of Washington College of Education (attached as Exhibit 4); and from Professor Paul Apostolidis, the Judge & Mrs. Timothy A. Paul Chair of Political Science at Whitman College (attached as Exhibit 5). These Declarations, both individually and collectively, demonstrate the pressing need for the creation of a majority-minority district.

For example, Professor Apostolidis concludes that in the Yakima valley, "racially polarized patterns of voting behavior has helped to produce severe deficits in Latino political representation." Apostolidis Declaration at ¶ 5. The Declaration specifically discusses evidence of racially polarized voting in Sunnyside and Wapato, among other places. Professor Apostolidis also discusses the barriers to political participation faced by Latinos; the educational hurdles they face in Eastern Washington; and the employment, health, and educational disparities between Latinos and whites in Eastern Washington. *See* Apostolidis Declaration at ¶¶ 6-13.

Professor Contreras demonstrates in her 17-page Declaration the persistent educational challenges Latinos face in Washington State, particularly in rural Washington. Latino students do not have comparable access to school resources, programs, or academic support. Professor Contreras concludes that in rural Washington, "Latinos have historically and continue to experience inequitable access to opportunities to learn." Contreras Declaration at Page 1.

In addition to discussing the demographic trends of the Latino population in Washington, Professor Fraga's Declaration discusses the employment, educational, and health disparities for Latinos both in Yakima County and in Washington. For example, in Yakima County, "13.3% of Latinos of working age are unemployed whereas only 7.6% of whites are unemployed." Fraga Declaration at Page 4. Professor Fraga also shows the differences between Latinos and other groups in health insurance and poverty. In Washington, "Latinos have the highest poverty rates in the state," with approximately 30% living below the poverty line. *Id.* at 2-3.

In short, the time has come for the creation of a majority-minority legislative district in Eastern Washington. Such a district will be geographically compact and will fulfill the democratic and legal imperative to create districts allowing full participation for all Washington citizens.

Respectfully Submitted,



Sarah A. Dunne
Legal Director
ACLU of Washington



Joaquin G. Avila
Director, National Voting Rights Advocacy
Initiative, Seattle University School of Law*

*by Sarah Dunne
with permission*

June 6, 2011

Letter to Washington State Redistricting Commission

Page 4

* The reference to Seattle University School of Law is for purposes of affiliation and identification only. The viewpoints expressed do not necessarily reflect the viewpoints of Seattle University School of Law.

Enclosures