

February 20, 2024

Yakima City Council
129 N 2nd St
Yakima, WA 98901

re: Strong-Mayor Election System

Dear Council Members Leo Roy, Danny Herrera, Patricia Beyers, Janice Decio, Rick Glenn, Matt Brown, and Reedy Berg,



Washington

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It came to our attention that several council members expressed openness to changing Yakima’s council-manager form of government to a council-mayor form of government.¹ When considering this proposal, we hope that the council members will consider the order of the Federal District Court for the Eastern District of Washington permanently enjoining Yakima from holding at-large elections for city council.² An at-large council-mayor form of government would likely violate that injunction and the Federal Voting Rights Act. If the City of Yakima changes its City Council election system or adopts an at-large mayoral seat, we are prepared to take action to protect the voting rights of the Latinx community in Yakima.

In *Montes v. City of Yakima*, the U.S. District Court found that Yakima’s at-large voting system violated the Voting Rights Act because it diluted Latinx votes. In response, Yakima proposed a hybrid election system consisting of a mix of at-large positions and district-based positions — a proposal that is like the council-mayor form of government the Council seems to be currently considering. The Eastern District of Washington rejected the proposal, finding that “the use of a hybrid at-large and single-member district electoral system yields the same fractured and unequal access to political office that is present in the current electoral system.”³ The Court permanently enjoined Yakima from using at-large election systems in council elections. The injunction binds all parties to that litigation and their successors, including the current council.

The District Court’s carefully considered order established a delicate balance in which Latinx voters would have “rough proportionality” in their

¹ Jasper Sundeen, *New Yakima Council Members Open to Idea of Strong Mayor Form of Government*, Yakima Herald-Republic (June 10, 2024), https://www.yakimaherald.com/news/local/government/new-yakima-council-members-open-to-idea-of-strong-mayor-form-of-government/article_a57fd4d4-af22-11ee-a41b-0380f5345c04.html#:~:text=Yakima%27s%20current%20form%20of%20city,time%20and%20require%20voter%20approval.

² See *Montes v. City of Yakima*, No. 12-CV-3108-TOR, 2015 WL 11120964, at 11 (E.D. Wash. Feb. 17, 2015).

³ *Montes v. City of Yakima*, No. 12-CV-3108-TOR, 2015 WL 11120964, at 9 (E.D. Wash. Feb. 17, 2015).

opportunity to participate in the political process. Adding an additional at-large political office with substantial powers would again dilute Latinx voters' political power in clear violation of the Court's order.

In addition to violating the Court's order, such a system would likely violate the Voting Rights Act. At-large voting schemes "tend to minimize voting strength of minority groups."⁴ Even small reductions in political power, such as reducing the possibility of proportional representation to "14% rather than 20%" can represent "unconstitutional vote dilution."⁵ Further, where such systems are maintained after it becomes evident that they dilute minority voting strength, it leads to a reasonable conclusion that they are maintained for discriminatory reasons.⁶ This would be the effect of the proposed council-mayor election system. It would shift power from the Council to the mayor, making each council seat less powerful and diluting Latinx political power by making it almost impossible for them to elect a candidate of their choice to the mayoral seat. Courts have considered and invalidated at-large mayoral systems where they dilute Hispanic votes.⁷

The history of voting rights violations in Yakima County would only increase the likelihood that the Court would find a violation. Since *Montes*, Yakima County settled another lawsuit alleging Voting Act violations in *Soto Palmer v. Hobbs*. Under the Voting Rights Act, "the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group..." is an important factor in determining whether there is a Voting Rights Act violation.⁸ Yakima County's history, when combined with the diluting effect of this plan, makes this a violation of the Voting Rights Act.

This electoral scheme would upset the delicate balance fashioned by the court in *Montes*. It would violate the Court's order and the Voting Rights Act. We are prepared — again — to protect Latinx voters in Yakima and encourage the Council to not adopt this deeply flawed proposal. In addition to the time and energy that would be spent in litigation, it is important to consider the expense involved. The Court in *Montes* ordered the City of Yakima to pay attorney's fees and costs to the ACLU-WA and cooperating counsel in the amount of \$1,842,372.76. If the City proceeded with this plan, Yakima could again be responsible for substantial costs.

Thank you,

David Montes

⁴ *Rogers v. Lodge*, 458 U.S. 613, 616, 102 S. Ct. 3272, 3275, 73 L. Ed. 2d 1012 (1982).

⁵ *McMillan v. Escambia Cnty.*, Fla., 559 F. Supp. 720, 729 (N.D. Fla. 1983).

⁶ *Rogers*, 458 U.S. at 626.

⁷ *Gomez v. City of Watsonville*, 863 F.2d 1407, 1419 (9th Cir. 1988).

⁸ *Thornburg v. Gingles*, 478 U.S. 30, 45, 106 S. Ct. 2752, 2763, 92 L. Ed. 2d 25 (1986).