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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO
ARTEAGA,

Plaintiffs,

vs.

CITY OF YAKIMA; MICAH
CAWLEY, in his official capacity as
Mayor of Yakima; and MAUREEN
ADKISON, SARA BRISTOL, KATHY
COFFEY, RICK ENSEY, DAVE ETTL,
and BILL LOVER, in their official
capacity as members of the Yakima City
Council,

Defendants.

NO. 12-cv-3108-TOR

STATEMENT OF MATERIAL
FACTS IN SUPPORT OF
DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Telephonic Argument
August 18, 2014 – 9:00 A.M.
Call-in Number: (888) 273-3658
Access Code: 2982935
Security Code: 3018

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1 Pursuant to Local Rule 56.1, Defendants submit this Statement of Material
2 Facts in support of their Response to Plaintiffs' Motion for Summary Judgment.

3 **1. Background**

4 1. The City of Yakima adopted its current election system after voters
5 approved a Charter amendment in November 1976. *Declaration of John A.*
6 *Safarli* ("Safarli Decl."), *Exhibit A* [Charter amendment signed December 6,
7 1976.]

8 2. In 1980, the City's overall population was 49,826. *Safarli Decl., Ex.*
9 *B* [Declaration of William S. Cooper dated February 1, 2013] at ¶ 13. The Latino
10 population was 3,470. *Id.*

11 3. In August 2011, Proposition 1 was placed on the City ballot. *Safarli*
12 *Decl., Ex. C* [excerpts from the City's election file on Proposition No. 1].
13 Proposition 1 would have "abandon[ed] and abolish[ed] the current districting for
14 election of council members, consisting of four districts and three at-large
15 positions, and adopt[ed] districting for election of council members consisting of
16 seven districts; providing that each council member shall be elected by the voters
17 of his or her district." *Id.* at 2. The proposition failed, receiving only 41.50% of
18 the vote. *Id.*

19 4. In a letter dated December 14, 2010, Mary Baechler of Central
20 Washington Progress wrote a letter to the City Council urging that Proposition 1
21 be placed on the City ballot in February 2011. *Safarli Decl., Ex. D.* Ms. Baechler
22 wrote, "Let our voters decide on our form of government!" *Id.*

23 5. In August 2011, Plaintiff Rogelio Montes ran for a seat on the City
24 Council. *Safarli Decl., Ex. E* [excerpts from Yakima County's election results
25

1 from August 2011]. Mr. Montes ran for the District 2 position, which
2 encompasses the southern region of the City. *Safarli Decl., Ex. F* [depiction of the
3 City's four nomination districts]. Mr. Montes had two opponents: Rich Marcley
4 and Sara Bristol. *Safarli Decl., Ex. E*. Mr. Montes received the least amount of
5 votes of any candidate. *Id.*

6 6. Plaintiff Mateo Arteaga is the director of the Educational
7 Opportunities Center at Central Washington University. *Safarli Decl., Ex. G*
8 [excerpts of Mr. Arteaga's deposition transcript].

9 7. Over the course of two years of litigation, Defendants have produced
10 over 340,000 pages' worth of documents in response to Plaintiffs' discovery
11 requests. *Safarli Decl.* at ¶ 9.

12 8. Plaintiffs have retained four expert witnesses: William Cooper of
13 Virginia (first *Gingles* factor); Dr. Richard Engstrom of North Carolina (second
14 and third *Gingles* factors); Dr. Luis Fraga of Seattle, Washington (Senate factors);
15 and Dr. Frances Contreras of San Diego, California (Senate factors). These four
16 experts have produced 11 reports combined totaling 342 pages, not including the
17 curriculum vitae attached to their reports. *Safarli Decl.* at ¶ 9.

18 9. Defendants have retained three experts: Dr. Peter Morrison of
19 Massachusetts (first *Gingles* factor); Dr. John Alford of Houston, Texas (second
20 and third *Gingles* factor); and Dr. Stephan Thernstrom of Virginia (Senate
21 factors). Defendants' experts have produced 8 reports totaling 212 pages, not
22 including the curriculum vitae attached to their reports. *Safarli Decl.* at ¶ 9.

1 **2. The First *Gingles* Factor**

2 10. Plaintiffs' expert Mr. Cooper proposed several redistricting plans,
3 including Hypothetical Plans D and E. *Safarli Decl., Ex. H* [excerpts of the
4 Supplemental Declaration of William S. Cooper dated April 19, 2013]. In
5 Hypothetical Plan D, Mr. Cooper roughly equalized the allocation of all citizens
6 among his districts. In Hypothetical Plan E, he roughly equalized the allocation of
7 the citizen, voting-age population among his districts. *Id.*

8 11. In his deposition, Mr. Cooper was asked whether he was "concerned
9 about electoral imbalance as it relates to the voters" in Illustrative Plans 1 and 2
10 and Hypothetical Plans A, B, and C. *Safarli Decl., Ex. I* at 137:12-21. Mr. Cooper
11 answered that "[he] didn't look at that question carefully." *Id.* at 137:22.

12 12. In his initial report, Defendants' experts Dr. Peter Morrison
13 calculated that voters from Districts 6 and 7 in Mr. Cooper's Illustrative Plan 1
14 would exercise only 48% of the political power that the voters in District 1 would
15 exercise. *Safarli Decl., Ex. J* [excerpts of the Expert Report of Peter Morrison,
16 Ph.D.] at ¶¶ 40-41.

17 **3. The Second *Gingles* Factor**

18 13. Defendants' and Plaintiffs' expert witnesses disagree on whether
19 Latino voters in the City are politically cohesive. Defendants' expert Dr. Alford
20 testified that "[m]y conclusion is we're – we haven't established cohesion."
21 *Safarli Decl., Ex. K* at 137:4. Dr. Alford also testified that, given the wide
22 confidence intervals in the analysis of Plaintiffs' expert witness Dr. Richard
23 Engstrom, "[w]e're just not that confident" that Dr. Engstrom's point intervals
24 establish cohesiveness. *Id.* at 118:4. He further testified that Dr. Engstrom's point
25

1 estimates are “not something we are confident of.” *Id.* at 118:13-14. Dr.
2 Engstrom, in contrast, testified that “[i]n my opinion, yes, the Latinos in Yakima
3 are politically cohesive.” *Safarli Decl., Ex. L* at 70:18-19.

4 14. In his initial report, Dr. Engstrom determined that in the 2009
5 primary election involving Sonia Rodriguez, the point estimate for Latino voter
6 support for Ms. Rodriguez was 52.9% with a point estimate of 15.1% to 82.5%.
7 *Safarli Decl., Ex. M* [Report of Richard L. Engstrom, Ph.D., dated February 1,
8 2013] at 15.

9 15. He also determined that in the 2009 primary election involving
10 Benjamin Soria, the point estimate for Latino voter support for Mr. Soria was
11 59.5% with a point estimate of 16.5% to 83.8%. *Safarli Decl., Ex. M* at 15.

12 16. Dr. Engstrom further determined that in the 2011 primary election
13 involving Rogelio Montes, the point estimate for Latino voter support for Mr.
14 Montes was 53.5% with a point estimate of 16.8% to 82.8%. *Safarli Decl., Ex. M*
15 at 15.

16 17. In his supplemental report dated December 17, 2013, Dr. Engstrom
17 determined that in the 2013 primary election involving Isidro Reynaga, the Latino
18 voter support for Mr. Reynaga was 67.4% with a confidence interval of 45.9% to
19 81.4%. *Safarli Decl., Ex. N* [Supplemental Report of Richard L. Engstrom, Ph.D.
20 dated December 7, 2013] at 6.

21 18. Dr. Engstrom determined that in the 2013 primary election involving
22 Enrique Jevons, the Latino voter support for Mr. Jevons was 39.2% with a
23 confidence interval of 25.9% to 49.9%. *Safarli Decl., Ex. N* at 6.
24
25

1 19. Dr. Alford responded to Dr. Engstrom's report by producing his own
2 supplemental report dated January 17, 2014, which contain the results of his
3 independent ecological inference analysis. *Safarli Decl., Ex. O*. Dr. Alford
4 determined that in the 2013 primary election involving Mr. Reynaga, the Latino
5 voter support for Mr. Reynaga was 53.3% with a confidence interval of 38.6% to
6 62.3%. *Safarli Decl., Ex. O* at 3.

7 20. Dr. Alford determined that in the 2013 primary election involving
8 Mr. Jevons, the Latino voter support for Mr. Jevons was 45.4% with a confidence
9 interval of 33.3% to 58.7%. *Safarli Decl., Ex. O* at 3.

10 21. In his supplemental report, Dr. Alford concluded that the analysis of
11 the 2013 primaries "continues the pattern of weak to non-existent minority
12 cohesion that was evident" from the earlier election results. *Safarli Decl., Ex. O* at
13 3.

14 22. In his initial report dated March 22, 2013, Dr. Alford determined that
15 the results of his analytical methods for the 2009 and 2011 primary and general
16 City Council elections were "substantively very similar" to Dr. Engstrom's
17 results. *Safarli Decl., Ex. P* at 7. When asked in his deposition whether he would
18 be "amenable to testify based on Dr. Engstrom's results" given that his results
19 were "substantively very similar to Dr. Engstrom's [ecological inference]
20 analysis," Dr. Alford responded, "Sure." *Safarli Decl., Ex. K* at 179:21-25.

21 23. However, Dr. Alford's point estimates and confidence intervals for
22 the 2013 primaries noticeably differed from those of Dr. Engstrom. *See ¶¶ 17-20,*
23 *infra*. The underlying causes for the differences in ecological inference results
24 from the 2013 primaries were discussed but not conclusively identified. *Safarli*
25

1 *Decl., Ex. K* at 177:21-179:20. Dr. Alford believed that the differences likely
2 “reflect[ed] more than just normal differences in [ecological inference]
3 estimation.” *Id.* at 178:16-18.

4 24. Dr. Alford’s March 2013 initial report contained seven scatterplots,
5 which are visual representations of data for each precinct within the City. *Safarli*
6 *Decl., Ex. P* at 13-16. The x-axis represents the percentage of Latino population
7 in each precinct, which is found in data provided by the Census Bureau. *Id.* at 11.
8 The y-axis represents the percentage of overall votes cast within each precinct for
9 the alleged Latino candidate of choice; this voting data is publicly available
10 through Yakima County. *Id.* at 11. A visual examination of these scatterplots
11 indicates that precincts with similar Latino populations vote at different levels for
12 the Latino candidates. *Id.* at 13-16. Dr. Alford concluded in his March 2013
13 report that, with only one exception, these scatterplots do not exhibit “a classic
14 pattern of polarization.” *Id.* at 11.

15 25. In his reply report dated April 19, 2013, Dr. Engstrom dismissed the
16 evidentiary value of Dr. Alford’s scatterplots. *Safarli Decl., Ex. Q* at 9. Dr.
17 Engstrom discounted them even though scatterplots were relied on by Dr. Robert
18 R. Brischetto, who was retained by some plaintiffs in a different Section 2 vote
19 dilution case to analyze the second and third *Gingles* factors. *Safarli Decl., Ex. R*
20 [Declaration of Dr. Robert R. Brischetto, filed in *Perez v. Perry*, No. 5:11-cv-
21 00360-OLG-JES-XR (W.D. Tex.)] at 10.

22 **4. The Third *Gingles* Factor**

23 26. In his initial report from March 22, 2013, Dr. Alford determined that
24 Latinos are about 40% of the City’s overall population, but only 21.6% of the
25

1 City's adult citizen population. *Safarli Decl., Ex. P* at 4. Latinos comprise 18.5%
 2 of registered voters, but typically make up only 7% of actual voters. *Id.*

3 27. Dr. Alford concluded that this "low level of Hispanic turnout was
 4 critical." *Safarli Decl., Ex. P* at 9. For example, based on the ecological inference
 5 estimates, Sonia Rodriguez would have won her election if Latino voters made up
 6 16% of actual voters, a level comparable to their share of the registered voters. *Id.*

7 **5. The Senate Factors**

8 28. Jesse Palacios, a Latino, was elected as Yakima County
 9 Commissioner in 1998 and re-elected in 2002. *Safarli Decl., Exs. S, T.* In 2002,
 10 Mr. Palacios defeated Wylie G. Mills, receiving more than twice as many votes as
 11 his opponent. *Safarli Decl., Ex. T.*

12 29. Vickie Ybarra was elected to the Yakima School Board of Directors
 13 in 2003. *Safarli Decl., Ex. U.* She received 46.7% of the vote, while her opponent,
 14 Steve Camerer, received 38.0%. *Id.*

15 30. In his initial report dated April 5, 2013, Dr. Thernstrom took issue
 16 with Dr. Fraga's opinions regarding the alleged use of racial appeals in City of
 17 Yakima elections. *Safarli Decl., Ex. V* at 37-39. Dr. Thernstrom concluded that
 18 Dr. Fraga believes "[a]ny reference to the ethnic background of a candidate . . .
 19 constitutes a 'racial appeal.'" *Id.* at 38. This view, according to Dr. Fraga, is
 20 unreasonable. *Id.* at 37-39.

21 31. In her deposition, Plaintiffs' potential fact witness Luz Bazan
 22 Gutierrez was asked, "Do you think there's any benefit from having an elected
 23 official elected on a citywide basis?" *Safarli Decl., Ex. W* at 108:10-12. Ms.
 24 Gutierrez responded, "I think it is better to have elections representatives within
 25

1 each district and then have the three elected at large by everyone.” *Id.* at 108:13-
2 15. To clarify her testimony, Ms. Gutierrez was asked, “You’re saying there is a
3 benefit to having some at-large representation?” *Id.* at 108:24-109:1. Ms.
4 Gutierrez responded, “Some.” *Id.* at 109:2.

5
6 RESPECTFULLY SUBMITTED this 22nd day of July, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the date noted below, a true and correct copy of the foregoing was delivered and/or transmitted in the manner(s) noted below:

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DATED this 22nd day of July, 2014

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