

Nos. 23-35595 & 24-1602

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, et al.,
Plaintiff-Appellees,

v.

STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and
the STATE OF WASHINGTON
Defendant-Appellees,

and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,
Intervenor-Defendant-Appellants

On Appeal from the United States District Court
for the Western District of Washington
Case No. 3:22-cv-05035
Hon. Robert S. Lasnik

**BRIEF OF LATINO COMMUNITY FUND OF WASHINGTON STATE AS
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

The Latino Community Fund of Washington State is a nonprofit organization organized under Section 501(c)(3) of the Internal Revenue Code. The Latino Community Fund neither has a parent corporation nor issues stock. There are no publicly held corporations that own ten percent or more of the stock of the Latino Community Fund.

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STATEMENT OF INTEREST

Amicus curiae, the Latino Community Fund of Washington State (“LCF”), is a nonprofit, nonpartisan organization dedicated to supporting a civically engaged Latino community in the state of Washington.¹ LCF works statewide, including in the Yakima Valley, to address the needs of Latinos by cultivating new leaders, supporting cultural and community-based non-profits, and promoting healthy families and the arts. LCF submits this brief in support of Plaintiffs-Appellees to provide additional context on the development of the Latino community in the Yakima Valley, the historic and ongoing discrimination Latinos in Yakima have faced, and the persistent barriers Latino citizens in Yakima have been forced to overcome to exercise their fundamental rights. As a Latino-led organization committed to encouraging Latino involvement in politics and ensuring that elected officials are responsive to their community’s needs, LCF has a strong interest in seeing the Voting Rights Act enforced to its fullest extent.

The Latino community in Washington – like the Latino community throughout the United States – is comprised of individuals from different national backgrounds and with varying life experiences, affiliations, and beliefs. As an

¹ All parties have consented to the filing of this brief. No party or party’s counsel authored any part of this brief, and no person contributed money to fund its preparation or submission.

organization committed to serving all Latinos, LCF recognizes and celebrates the strength and beauty of the Latino community in all its diversity. But no matter where they come from or what label they use, Latinos in Washington are unified by their shared membership in a vibrant community that loves and respects their roots in this continent. LCF urges this Court to affirm that all citizens, including Latinos, have the right to fully and equally participate in legislative elections in the state of Washington.

SUMMARY OF ARGUMENT

To find racial vote dilution under Section 2 of the federal Voting Rights Act, courts “must conduct ‘an intensely local appraisal’ of the electoral mechanism at issue, as well as a ‘searching practical evaluation of the past and present reality.’” *Allen v. Milligan*, 599 U.S. 1, 19 (2023) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986)). The district court diligently adhered to this requirement, analyzing how unique conditions experienced by the Yakima Valley’s Latino community interacted with the existing at-large election system to diminish the electoral influence of Latino voters. Nevertheless, in their opening brief, appellants argue that the district court’s findings related to the “totality of the circumstances” analysis under Section 2 of the Voting Rights Act rest “overwhelmingly on

ubiquitous generalities that apply virtually *everywhere* in the United States.”² This argument, which suggests there is nothing distinctive about the Latino community in the Yakima Valley or its struggle for inclusion in America’s democracy, erases the unique history and remarkable cohesion of a proud community.

This brief supplies additional context to help tell the story of Latinos in the Yakima Valley, a story characterized by a shared history of migration, participation in the agricultural labor force, and resilience in the face of racism and discrimination. First, this brief explains how Latinos came to the Yakima Valley in the middle of the twentieth century to fill vital agricultural jobs in the midst of severe labor shortages occasioned by the United States’ entry into World War II. These migrants quickly put down roots in the Valley, forming close-knit communities centered around shared cultural experiences and making profound contributions to the region. Second, this brief traces the decades-long fight of Latinos in the Valley to breathe life into their rights as citizens to participate in politics and make their voices heard in elections, a fight which continues to the present day. Latinos in the Yakima Valley have faced formal and informal barriers to their participation in state politics – both as candidates and as voters – and have frequently needed to resort to litigation to make their voices heard. Finally, this

² ECF 39 at 86.

brief describes the discrimination faced by Latinos in the Yakima Valley – particularly by Latino farmworkers – and the ways in which Latinos have organized to protect each other and promote their community’s collective wellbeing. While the remarkable efforts of Latino advocates and organizations is a testament to the Latino community’s strength, these efforts also illustrate the failure of elected officials and government entities to meet the needs of the workers and communities who make life in the Yakima Valley possible.

ARGUMENT

I. **The Latino community in the Yakima Valley is unique and cohesive.**

Spanish-speaking migrants began settling in Washington in the eighteenth and nineteenth centuries, but the Latino population of the Yakima Valley grew exponentially during the middle of the twentieth century, when the Valley’s “extremely productive” farmland and “low population density” led to “a reliance on non-resident labor pools for agricultural harvests and seasonal work.”³ The composition of these labor pools was, in turn, “influenced by broader global even[t]s and immigration acts,” most notably the “bracero program” implemented in response to labor shortages caused by the United States’ entry into World War

³ Ernesto Gamboa, *Yakima Valley Latino Study Survey: Reconnaissance Level Survey Documentation and Historical Context Statement*, WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION (Oct. 2016) at 16-17, <https://dahp.wa.gov/sites/default/files/latino%20study.pdf>.

II.⁴ Indeed, during this time there was a concerted effort to attract Latino farm workers to the Yakima Valley to fill agricultural jobs, involving “collaboration . . . [between] private labor contractors, the US Department of Agriculture, the state, Yakima [C]ounty, and the Washington State college farm extension.”⁵ As a result, “[b]y the late 1950s vibrant Latino communities were established in Wapato, Toppenish . . . and Granger, Sunnyside, Mabton, [and] Grandview,” mostly comprised of Mexican nationals originally from the Rio Grande Valley or individuals of Mexican ancestry who had relocated from farm communities in Colorado and Wyoming.⁶

As Latinos settled in the region, residents started businesses and founded cultural institutions which became central nodes for Latino community life. In 1951, a local entrepreneur “recognized the growing Latino consumer market and established El Ranchito in Zillah, making it one of the most important Mexican restaurants and social gathering sites in the entire Valley.”⁷ The restaurant “became a cultural retreat, welcoming local families to gather after Sunday church to listen

⁴ *Id.* at 17 (describing the confluence of factors which “created within the lower valley a unique set of conditions influencing where the Latino population came from, how and when they arrived to the valley, and the growth and influence of Latino cultural traditions within the valley and its communities”).

⁵ *Id.* at 18.

⁶ *Id.*

⁷ *Id.* at 30.

to Mexican music and to eat simple but freshly prepared dishes of menudo, tacos, and enchiladas.”⁸ Latino residents of the Valley also “ma[d]e an effort to reconstruct familiar ethnic traditions,” especially traditional Mexican music.⁹ They organized dances in “community centers, grange halls, and social halls in Catholic parishes,” with these events “emerging as a nucleus of the [Latino] community.”¹⁰ One resident, Herminia Mendez, started the Pacific Northwest’s first Spanish-language radio program, “broadcasting popular music, job announcements, and publicizing important social events and milestones to the growing masses of [Latino] Yakima families.”¹¹ For Latinos in the Yakima Valley, “community radio was the platform where listeners congregated on-air in a space that was intentionally created with them as the target audience.”¹²

The development of these cultural institutions was deeply intertwined with the community’s struggle against discrimination, as Latino residents and leaders in Yakima realized the need for media institutions that were reflective of the Latino

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 31.

¹¹ *Id.*

¹² Monica de la Torre, *The Voice of the Yakima Valley*, UNIVERSITY OF WASHINGTON MAGAZINE (Mar. 2022), <https://magazine.washington.edu/feature/book-details-rise-of-public-radio-as-a-lifeline-for-yakima-valley-farmworkers/>.

community and responsive to its concerns. At the time, “the Anglo newspapers of the valley came to be regarded by Chicanos as part of the power structure with Chicanos accusing them of reflecting the attitudes and prejudice of the Anglo residents.”¹³ This sentiment motivated the creation of Radio KDNA, which helped cultivate a strong sense of solidarity among Washington’s Latino and immigrant population by advocating for farmworker justice, educating workers of their rights, and providing information about housing, health, education, and recreation in the Valley. The radio came to be known as “la voz del campesino,” or “the voice of the farm worker.”¹⁴

During this period, despite significant barriers, Latino residents in the Yakima Valley engaged in and made profound contributions to the region’s civic life. Latinos enlisted in the armed forces and fought honorably in World War II, while their families at home, who “were no less patriotic[,] . . . contributed to winning the war by rationing their consumption of food and other items, as well as . . . purchasing war bonds.”¹⁵ Every year, Latino community groups “joined together and entered Mexican-themed floats or dressed in Mexican attire and rode

¹³ See Oscar Rosales Castañeda, *Radio KDNA: The Voice of the Farmworker*, THE SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT (2006), https://depts.washington.edu/civilr/farmwk_ch8.htm.

¹⁴ *Id.*

¹⁵ Gamboa, *supra* note 3 at 33.

horses in” local events and celebrations, including in the annual Fourth of July parade in downtown Toppenish.¹⁶ Latino parents “enrolled their children in the public schools alongside white children,” where Latino students “were often taunted, scorned, and humiliated.”¹⁷ Despite this treatment, many Latino children “excelled” – one first-generation Latino student was the valedictorian of the 1960 graduating class at Sunnyside High School.¹⁸

As the Latino population continued growing in the latter half of the twentieth century, Latino residents of the Yakima Valley organized politically to demand fair treatment and advocate for the needs of their collective community. Although their employment contracts often prohibited work stoppages or strikes, braceros in the Yakima Valley “were constantly on strike,” fighting for better wages, equal pay, and improved working conditions.¹⁹ In the 1960s, students and farmworkers founded organizations like MEChA (Movimiento Estudiantil Chicano de Aztlán), the Mexican American Youth Organization, and the Mexican American Federation to advocate for community development and the political

¹⁶ *Id.* at 32-33.

¹⁷ *Id.* at 34.

¹⁸ *Id.* at 34-35.

¹⁹ Ernesto Gamboa, *Braceros in the Pacific Northwest: Laborers on the Domestic Front, 1942-1947*, 56 *PACIFIC HISTORICAL REVIEW* 378, 393-97 (1987), <https://www.jstor.org/stable/3638664?seq=21>.

empowerment of Latino communities in the Yakima Valley.²⁰ Two students from Yakima Valley College co-founded the United Farm Worker's Cooperative, which organized strikes in the valley's hop fields and, working in conjunction with the American Civil Liberties Union and other legal services organizations, brought a series of lawsuits to secure equal voting rights for Latino citizens.²¹

Today, Latinos make up more than half the population of Yakima County.²² Much has changed since Latinos began settling in the Yakima Valley, but much remains the same. The local economy remains heavily dependent on agriculture and heavily reliant on the labor of Latino farmworkers.²³ Public radio stations

²⁰ See Oscar Rosales Castañeda, *The Chicano Movement in Washington State, 1967-2006*, THE SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT (2006), https://depts.washington.edu/civilr/Chicanomovement_part1.htm.

²¹ See Oscar Rosales Castañeda, *Chicano Movement in Washington: Political Activism in the Puget Sound and Yakima Valley Regions, 1960s-1980s*, WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION (Oct. 21, 2007), <https://www.historylink.org/file/7922>.

²² See Donald W. Meyers, *Census Data Shows Latinos Now Make up More than Half of Yakima County's Population*, YAKIMA HERALD-REPUBLIC (Aug. 17, 2021), https://www.yakimaherald.com/news/local/census-data-shows-latinos-now-make-up-more-than-half-of-yakima-countys-population/article_6ee0b9f7-b01c-5d4f-a54e-7f5c6310b0b2.html.

²³ See, e.g., Enrique Perez de la Rosa, *During Pandemic, Yakima Farmworkers Kept Their Jobs, Raising Risk Of Infection*, NORTHWEST NEWS NETWORK (June 14, 2020), <https://www.nwnewsnetwork.org/food-agriculture-and-animals/2020-06-14/during-pandemic-yakima-farmworkers-kept-their-jobs-raising-risk-of-infection>; Cory McCoy, *'Gone for good.' U.S. Workers Flee Farms, Leaving WA Growers Struggling Under Old Rules*, TRI-CITY HERALD (Apr. 10,

continue to provide the Latino community with Spanish-language news, music, and information about local events.²⁴ Indeed, Radio KDNA still plays a vital role in connecting the Latino community in the Yakima Valley, with programming that offers immigrants resources about healthcare and education services, provides information about public affairs, highlights employment opportunities, and publicizes community events.²⁵ Latino residents continue to celebrate their cultural heritage through community events, food, and music.²⁶ Latino workers,

2024), <https://www.tri-cityherald.com/news/local/article287013755.html#storylink=cpy>.

²⁴ See Libby Denkmann & Noel Gasca, *Voice of the Farmworker: How Spanish-Language Radio Cultivated Community in Yakima Valley*, KUOW (Apr. 19, 2022), <https://www.kuow.org/stories/the-voice-of-the-farmworker-how-a-radio-station-in-the-yakima-valley-built-community>.

²⁵ See Brendan Kiley, ‘Feminista Frequencies’ Explores How Female Radio Producers Built Community – and a Powerful Support System – at Spanish-Speaking KDNA in the Yakima Valley, THE SEATTLE TIMES (Mar. 20, 2022), <https://www.seattletimes.com/pacific-nw-magazine/feminista-frequencies-explores-how-female-radio-producers-built-community-and-a-powerful-support-system-at-spanish-speaking-kdna-in-the-yakima-valley/>.

²⁶ See, e.g., Jasper Kenzo Sundeen, *Día de los Muertos Dvents Planned Around the Yakima Valley in 2022*, YAKIMA HERALD-REPUBLIC (Oct. 28, 2022), https://www.yakimaherald.com/explore_yakima/d-a-de-los-muertos-events-planned-around-the-yakima-valley-in-2022/article_3442cddc-548c-11ed-804f-87c5e0112602.html; Alberto Perez, *The Food and People of Yakima, Home of Yahritza y Su Esencia*, L.A. TIMES (Aug. 21, 2023), <https://www.latimes.com/delos/story/2023-08-21/yahritza-y-su-esencia-yakima-mexico>; Julyssa Lopez, *The Future of Música Mexicana is a Family Band Led by a 15-Year-Old TikTok Sensation*, ROLLING STONE (Mar. 25, 2022), <https://www.rollingstone.com/music/music-latin/yahritza-y-su-esencia-soy-el-unico-1326023/>.

organizers, and advocates continue to fight for better working conditions, improved health and educational opportunities, and equal political rights.²⁷ Even as their community has grown and evolved, Latino residents of the Yakima Valley have deepened the traditions which have defined and sustained their community.

II. For generations, Latinos in the Yakima Valley have fought for full inclusion in the political process.

For as long as they have sought to exercise their rights, Latino citizens in the Yakima Valley have been subjected to discriminatory policies and practices which have inhibited their full and equal participation in the democratic process. The unlawful state legislative districts at issue in this case are only the latest in a long line of barriers Latino citizens in this region have been forced to overcome.

²⁷ See, e.g., Sarah Sax, *How WA Farmworkers Push for Climate Justice Amid Heat and Wildfire*, CASCADE PBS (Feb. 8, 2022), <https://www.cascadepbs.org/environment/2022/02/how-wa-farmworkers-push-climate-justice-amid-heat-and-wildfire>; Mai Hoang, *Organizations That Support and Empower Farmworkers Expand Reach*, YAKIMA HERALD-REPUBLIC (Dec. 6, 2020), https://www.yakimaherald.com/exclusives/extra/need/organizations-that-support-and-empower-farmworkers-expand-reach/article_2c199ca1-ab08-5bd4-8b22-7df6d16cf2f5.html; *Latino Community Fund of WA Brings “Alianza Youth Network” to Yakima*, NBC NEWS (June 25, 2015), https://www.nbcrightnow.com/archives/latino-community-fund-of-wa-brings-alianza-youth-network-to-yakima/article_6f3685db-df6e-54f4-9864-9c91a9b7e105.html; Erik Smith, *Tired of Photo-Op Politics, Prominent Washington Hispanics Form New Organization*, WASHINGTON STATE WIRE (Apr. 23, 2013), <https://washingtonstatewire.com/tired-of-photo-op-politics-prominent-washington-hispanics-form-new-organization/>.

The people of Washington enshrined discrimination against Latinos and other language-minorities into the state constitution in 1896, when they approved a constitutional amendment requiring that all voters “shall be able to read and speak the English language.”²⁸ The legislature subsequently enacted implementing legislation permitting registration officers to, in their discretion, “require [an] applicant to read aloud and explain the meaning of some ordinary English prose.”²⁹ After the passage of the federal Voting Rights Act in 1965, Washington’s Attorney General issued an opinion finding that the literacy test requirement was unenforceable, at least “[u]ntil Washington provides for the administration of literacy tests on a uniform basis in conformity with federal law.”³⁰ Despite this opinion, in 1968, officials in Yakima County refused to permit four Spanish-speaking Latino citizens to vote.³¹ These four citizens – members of the newly-formed Mexican-American Federation of Washington State – brought suit under the Voting Rights Act and, after initially losing at the district court, ultimately won

²⁸ Wa. Const. art. 6, § 1 (1896).

²⁹ *Mexican-Am. Fed'n-Washington State v. Naff*, 299 F. Supp. 587, 591 (E.D. Wash. 1969) (quoting RCW 29.07.070), *vacated sub nom. Jimenez v. Naff*, 400 U.S. 986 (1971).

³⁰ State Att’y Gen., AGO 1967 No. 21, Administration of Literacy Test to Persons Registering to Vote (June 15, 1967), <https://www.atg.wa.gov/agoopinions/administration-literacy-test-persons-registering-vote>.

³¹ *Naff*, 299 F. Supp. at 589-90.

a judgment striking down the literacy test requirement and ordering county officials to register eligible Spanish-speaking voters.³² Still, Yakima County persisted in discriminating against Spanish-speaking citizens. In 2004, the U.S. Department of Justice sued Yakima County under Section 203 of the Voting Rights Act for failing to provide adequate Spanish-language information about elections, resulting in a consent decree requiring the county to provide Spanish-language materials and translation services and to hire and train bilingual poll workers.³³

Although Yakima's Latino population continued to grow into the twenty-first century, Latino citizens remained persistently underrepresented in government and excluded from elected office.³⁴ In 2014, Latino residents of the City of Yakima filed a lawsuit alleging that the city's at-large election system unlawfully diluted the electoral influence of Latino voters.³⁵ Despite making up more than 40% of the city's population at the time, "no Latino candidate ha[d] ever been elected to the

³² Order Vacating Judgment, *Mexican-Am. Fed. v. Naff*, No. 68-cv-2457, at 3-4 (E.D. Wash. Sept. 27, 1971).

³³ See Consent Decree, *United States v. Yakima Cnty.*, No. 04-cv-3072 (Sept. 3, 2004), https://www.justice.gov/d9/case-documents/attachments/2004/09/03/yakima_cd_ro_tag_prop.pdf.

³⁴ See, e.g., Jim Brunner, *In Yakima, Other Areas, Growing Latino Population Invisible Politically*, THE SEATTLE TIMES (July 2, 2011), <https://www.seattletimes.com/seattle-news/in-yakima-other-areas-growing-latino-population-invisible-politically/>.

³⁵ See *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1385 (E.D. Wash. 2014).

City Council in the 37 years that the current voting system has been in place,” and “the only Latina to have ever been appointed to the City Council . . . was defeated by a non-Latino challenger when she subsequently ran for election.”³⁶ Ultimately, the district court concluded that the city’s at-large election system violated Section 2 of the Voting Rights Act because it permitted “the non-Latino majority in Yakima [to] routinely suffocate[] the voting preferences of the Latino minority.”³⁷ The results of this successful lawsuit were immediately apparent: in the first elections held after the lawsuit, voters elected multiple Latina candidates.³⁸ Critically, the changed composition of the council had meaningful consequences for the city’s Latino residents: whereas before the lawsuit, in the words of Latina activist and eventual city councilor Dulce Gutierrez, “[t]he city council was completely out of touch, never showing interest or understanding of the issues affecting the Latino community in Yakima,” after the lawsuit “councilmembers come from different backgrounds . . . are able to amplify different voices . . . [and] city residents now have more power to get their concerns heard because they have

³⁶ *Id.* at 1414.

³⁷ *Id.* at 1407.

³⁸ See Mike Faulk, *Historic Election: Two Latinos Elected to Yakima City Council*, YAKIMA HERALD-REPUBLIC (Nov. 3, 2015), https://www.yakimaherald.com/news/local/historic-election-two-latinos-elected-to-yakima-city-council/article_be4f5ff2-82b3-11e5-9bd0-371092904c06.html.

representatives pulling weight for them.”³⁹ More recently, the Yakima County Board of Commissions agreed to replace its at-large election system with single-member districts in response to a lawsuit brought by Latino community leaders raising similar claims under the Washington Voting Rights Act.⁴⁰

Latinos in Yakima have also suffered discrimination in the form of disparate application of the state’s ballot signature matching provisions. Studies have shown that in numerous Washington counties, including Yakima, Latinos account for a hugely disproportionate share of ballots rejected by election officials for signature mismatch,⁴¹ with one analysis concluding that, “in the eight Washington counties with the largest share of potential Latino voters, Hispanic-sounding names . . . are

³⁹ See Dulce Gutierrez, *Changing Our Voting System Helped My City Represent a Diversifying Electorate*, CAMPAIGN LEGAL CENTER (May 20, 2020), <https://campaignlegal.org/story/changing-our-voting-system-helped-my-city-represent-diversifying-electorate>.

⁴⁰ See Adrian Delgado, *Victory for Yakima Plaintiffs, Judge Approves 2022 Electoral Maps*, KIMA NEWS (Oct. 29, 2021), <https://kimatv.com/news/local/victory-for-yakima-plaintiffs-judge-approves-2022-electoral-maps>; see also *Aguilar v. Yakima Cnty.*, No. 20-2-0018019 (Kittitas Cnty. Super. Ct. 2020).

⁴¹ See Gina Castro, *Gerrymandering, Signature Rejections Dilute Latino Vote in Washington State*, THE CENTER FOR PUBLIC INTEGRITY (Oct. 6, 2022), <https://publicintegrity.org/politics/elections/who-counts/gerrymandering-signature-rejections-dilute-latino-vote-in-washington-state/>.

nearly four times more likely than other voters to have their ballot rejected.”⁴² In Yakima County, the signature rejection rate for Latinos was 7.5 times greater than for other voters.⁴³ When a group of plaintiffs (including *amicus* LCF) filed suit in federal court, the initial judge assigned to the matter – Judge Salvador Mendoza, Jr., the first Latino judge appointed to the U.S. District Court for the Eastern District of Washington – recused himself because his *own* ballot “was initially rejected due to a perceived signature mismatch” during the prior election cycle.⁴⁴ As litigation was ongoing, a report by the Office of the State Auditor confirmed that non-English speaking and Latino voters – and especially young voters – were disproportionately likely to have their ballots rejected.⁴⁵ Ultimately, Yakima County settled and agreed to provide updated training to election officials.⁴⁶

⁴² Joy Borkholder, *Latino Voters Have Higher Than Average Ballot Signature Rejection Rates in Washington State*, INVESTIGATE WEST (Feb. 15, 2021), <https://www.invw.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/>.

⁴³ *Id.*

⁴⁴ Order of Recusal, *Reyes et al. v. Chilton et al.*, No. 4:21-cv-05075-SMJ (E.D. Wa., Sep. 9, 2021).

⁴⁵ *See Performance Audit: Evaluating Washington’s Ballot Rejection Rates*, OFFICE OF THE WASHINGTON STATE AUDITOR (Feb. 1, 2022) at 17-23, https://sao.wa.gov/sites/default/files/audit_reports/PA_Evaluating_WA_Ballot_Rejections_ar-1029711.pdf.

⁴⁶ *See* Order on Agreed Stipulation of Dismissal of Yakima County Defendants, *Reyes et al. v. Chilton et al.*, No. 4:21-cv-05075-MKD (E.D. Wa., Dec. 6, 2023); *see also* Khirstia Sheffield, *Yakima County Resolves Voting Racial*

In addition to laws and policies that have diminished the Latino community's voting power, Latino candidates for elected office in Yakima County have also experienced racism and encountered other informal but no less pernicious barriers. In 2014, a Latina candidate for the Yakima School District Board named Graciela Villanueva – who had previously served as an appointed member of the Board, which oversaw a student body that was nearly three-quarters Latino – lost to a white candidate named Jeni Rice who had withdrawn from the race months before election day and did not actively campaign.⁴⁷ Ten years later, candidates for school board supported by a local community organization, Empowering Latina Leaders and Action, were subjected to racist attacks, including people referring to their organization as a “cartel” or “gang.”⁴⁸ When she was a candidate for Yakima City Council, Dulce Gutiérrez was accosted by a resident who heard her speaking Spanish to a group of campaign volunteers and told her to

Discrimination Lawsuit With \$75k in Legal Fees, KIMA NEWS (Dec. 12, 2023), <https://kimatv.com/news/local/yakima-county-resolves-voting-racial-discrimination-lawsuit-with-75k-in-legal-fees>.

⁴⁷ See Maria L. La Ganga, *Yakima Valley Latinos getting a voice, with court's help*, LOS ANGELES TIMES (Sep. 25, 2014), <https://www.latimes.com/nation/la-na-cl-yakima-latinos-elections-20140925-story.html>.

⁴⁸ See LaVendrick Smith, *Issue Spotlight: Fighting for Voting Rights in Sunnyside and Beyond*, ACLU OF WASHINGTON (May 22, 2024), <https://www.aclu-wa.org/story/issue-spotlight-fighting-voting-rights-sunnyside-and-beyond>.

“Go back to Mexico!”⁴⁹ These and other incidents of racial hostility contribute to Latinos’ diminished political power in the Yakima Valley.

III. Latinos in the Yakima Valley rely on local organizations, advocates, and each other to support their community because they cannot rely on elected officials.

As a result of the Latino community’s historic and ongoing exclusion from the political process, state and local legislative bodies have been largely unresponsive to their particularized needs. Given the apathy of their elected officials, the Latino community has had to turn elsewhere to advocate for their fundamental rights. This history of Latino advocacy highlights the strength and unity of the Latino community. It also underscores the community’s isolation from the state’s elected bodies. The gap between Latinos in the Yakima Valley and their elected officials is most apparent in the areas of labor, employment, immigration, and health policy.

State law has consistently excluded farmworkers, the overwhelming majority of whom are Latino, from labor and employment statutory schemes and protections.⁵⁰ In response, farmworkers have organized to improve labor

⁴⁹ See Dionne Searcey & Robert Gebeloff, *The Divide in Yakima Is the Divide in America*, THE NEW YORK TIMES MAGAZINE (Nov. 19, 2019), <https://www.nytimes.com/2019/11/19/us/politics/yakima-washington-racial-differences-2020-elections.html>.

⁵⁰ See Gene Johnson, *Washington Supreme Court: Farmworkers to Get Overtime Pay*, THE SEATTLE TIMES (Nov. 6, 2020),

conditions in the Yakima Valley. Inspired by the work of Cesar Chavez and his farmworker advocacy, Tomas Villanueva and Guadalupe Gamboa - sons of Yakima Valley farmworkers - established the United Farm Workers Cooperative in Toppenish in 1967 to begin pushing for farmworker rights.⁵¹ In turn, these efforts garnered the attention of Chavez, who appeared several times on Radio KDNA to discuss organizing efforts.⁵² In the 1980s, Chavez led a two-day march from Granger to Yakima in support of the community and to protest low wages.⁵³ Galvanized by Chavez's support and the growing solidarity among farmworkers, the United Farm Workers of Washington was established in 1986. In its first two years, the union organized over 25 strikes and picketed outside the Yakima Office of Employment and Security.⁵⁴ Finally in 1995, the union, after decades of

<https://www.seattletimes.com/seattle-news/farmworkers-to-get-overtime-pay-washington-state-high-court-rules/>.

⁵¹ See Oscar Rosales Castañeda, *The Fusion of El Movimiento and Farm Worker Organizing in the 1960s*, THE SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT (2006), https://depts.washington.edu/civilr/farmwk_ch6.htm.

⁵² See Castañeda, *Radio KDNA*, *supra* note 13.

⁵³ See Oscar Rosales Castañeda, *The Creation of the Washington State UFW in the 1980s*, THE SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT (2006), https://depts.washington.edu/civilr/farmwk_ch9.htm.

⁵⁴ See Donald W. Meyers, *It Happened Here: United Farm Workers Organizes a Union in Yakima in 1985*, YAKIMA HERALD-REPUBLIC (Sep. 3, 2023), https://www.yakimaherald.com/news/local/happened/it-happened-here-united-farm-workers-organizes-a-union-in-yakima-in-1986/article_d9b60226-49b8-11ee-8799-c7399b935d61.html.

struggle, secured a binding agreement with an agricultural employer, Chateau Ste Michelle winery.⁵⁵

Decades later, unions and worker groups continue the fight for Latino farmworkers. Workers at Ostrom Farms, a mushroom producer in Yakima County, began organizing in 2020 in response to poor working conditions and COVID-19 related health and safety concerns.⁵⁶ Around 2022, the campaign started gaining more publicity as workers began rallying to protest the company's anti-union tactics and discriminatory employment practices. The workers were eventually able to unionize, but soon after, Ostrom Farms was purchased, and the new owner, Windmill Farms, refused to recognize the union⁵⁷ and allegedly retaliated against workers who participated in the organizing drive.⁵⁸ Lacking political support, these farmworkers put their livelihoods on the line to advocate for their basic rights.

⁵⁵ See Castañeda, *Washington State UFW*, *supra* note 53.

⁵⁶ See Jasper Kenzo Sundeen, *Efforts to Unionize Agricultural Workers in WA Face Long-Standing Hurdles*, YAKIMA HERALD-REPUBLIC (Apr. 30, 2023), https://www.yakimaherald.com/news/local/efforts-to-unionize-agricultural-workers-in-wa-face-long-standing-hurdles/article_5b65dba8-e522-11ed-a7ff-bf8e075e37e0.html.

⁵⁷ *Id.*

⁵⁸ Lauren Girgis, *Workers Sue WA Mushroom Farm, Allege Wrongful Firings, Labor Violations*, THE SEATTLE TIMES (Nov. 28, 2023), <https://www.seattletimes.com/seattle-news/law-justice/workers-sue-wa-mushroom-farm-alleging-wrongful-firings-labor-violations/>.

Until 2020, agricultural workers were excluded from overtime eligibility under Washington’s Minimum Wage Act.⁵⁹ This state law exclusion mirrored similar exclusions in the federal analog, the Fair Labor Standards Act, which were motivated by a desire to maintain racial hierarchy.⁶⁰ Although many other legislatures in states with large farmworker populations have enacted laws extending overtime protections to farmworkers,⁶¹ Washington’s law only changed when dairy workers in the Yakima Valley brought a successful lawsuit challenging their exclusion under the state constitution.⁶²

In that case, *Martinez-Cuevas*, the majority explained that Washington’s state constitution provides all workers with a “fundamental right . . . to health and safety protection.”⁶³ As Justice González explained in his concurring opinion, the

⁵⁹ See Eilis O’Neill, *Washington Farmworkers Ask State Supreme Court For Overtime Pay*, NPR (Aug. 2, 2020), <https://www.npr.org/2020/08/02/897211483/washington-farmworkers-ask-state-supreme-court-for-overtime-pay>.

⁶⁰ See Marina Multhaup, *A Legal Challenge Against Racist Labor Exclusions Finds Life in Washington*, ONLABOR (Dec. 15, 2020), <https://onlabor.org/a-legal-challenge-against-racist-labor-exclusions-finds-life-in-washington/>.

⁶¹ *Id.*; see also Assembly Bill 1066, 2015-2016 Reg. Sess. (Cal. 2016) (extending wage protections to farmworkers); Minn. Stat. § 177.25 (2016) (same); Md. Code Ann., Lab. & Empl. § 3-420(c) (2016) (same); Haw. Code R. § 387-3(a) (2013) (same).

⁶² See *Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc.*, 196 Wash.2d 506 (2020).

⁶³ *Id.* at 520.

unreasonable denial of this fundamental right to predominantly Latino farmworkers resulted directly from their political marginalization:

We . . . apply a form of heightened scrutiny to laws that single out politically powerless and marginalized groups for differential treatment with respect to important rights. Because such groups do not enjoy equal access to the legislative process, the judiciary must be especially vigilant to make sure laws that treat them differently are justified. . . . In Washington, 99% of farmworkers are Latino, and more than three-quarters of farmworkers do not read or write in English. Very few farmworkers have health insurance or adequate access to medical care. . . . Farmworkers remain some of the most impoverished and socially excluded members of our society. It is no coincidence the law continues to disfavor them. Subjugated to second-class worker status, farmworkers are precisely the type of politically powerless minority whose interests are a central concern of equal protection.⁶⁴

The fight for overtime pay is only the latest in the Latino community's ongoing struggle for their fundamental rights. It was not until 1989 that the legislature expanded minimum wage protections to farmworkers.⁶⁵ The state's workers' compensation law also excluded farmworkers, and farmworkers again were forced to resort to the courts, eventually gaining protections when the Washington Supreme Court struck down this discriminatory system.⁶⁶

⁶⁴ *Id.* at 527-32 (Gonzalez, J., concurring).

⁶⁵ *Id.*

⁶⁶ *See Macias v. Dep't. of Labor and Indus.*, 100 Wash.2d 263 (1983).

Lacking political representation, Latino union organizers and farmworker advocates in the Yakima Valley have been forced to confront not only their employers, but also the elected officials in state and local government who are supposed to represent their interests. In 1997, for example, the state legislature attempted to pass a bill that would have permitted employers to maintain substandard conditions for farmworker housing, which the Governor only vetoed after significant pressure from farmworkers and unions.⁶⁷ Unions have been forced to go far beyond traditional labor and employment arenas to advocate on a range of topics integral to Latino community life in Yakima Valley, including immigrant rights. In 2006, for the “Day Without Immigrants” demonstrations, over 15,000 people took to the streets of Yakima, several businesses closed, and students staged mass walkouts to demonstrate support and solidarity with the region’s immigrant population.⁶⁸ Every year on May Day, Latino workers and community members march and demonstrate in events organized by several local Latino community

⁶⁷ See Oscar Rosales Castañeda, *The Struggle Continues: 1997 - 2006*, THE SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT (2006), https://depts.washington.edu/civilr/farmwk_ch10.htm.

⁶⁸ *Id.*

organizations, including the Fair Work Center and *amicus* LCF, in support of the community's broader demands for social justice.⁶⁹

Despite a track record of hard-fought victories, elected officials remain generally unresponsive to the Latino community's needs. In 2019, after King County banned Immigration and Custom Enforcement ("ICE") officials from using county runways for deportation flights, ICE turned to Yakima.⁷⁰ The news was met with immediate outrage from the Latino community, with groups including the Yakima Immigrant Response Network petitioning in front of city council chambers and holding rallies and protests opposing the move.⁷¹ Despite this concerted pushback, the city council voted to allow ICE to use Yakima's resources to deport predominantly Latino immigrants.⁷²

The persistent gap between the Latino community in the Yakima Valley and their elected officials was made especially apparent during the recent COVID-19

⁶⁹ See Questen Inghram & Jasper Kenzo Sundeen, *Hundreds Attend Yakima May Day Rally in Support of Worker Rights*, YAKIMA HERALD-REPUBLIC (May 2, 2024), https://www.yakimaherald.com/news/local/hundreds-attend-yakima-may-day-rally-in-support-of-worker-rights/article_ba8e67a8-08ad-11ef-b2a3-9f36670a2e48.html.

⁷⁰ See Searcey & Gebeloff, *supra* note 49.

⁷¹ See Lex Talamo, *Community Speaks Out Against ICE-Chartered Flights in Yakima*, YAKIMA HERALD-REPUBLIC (May 21, 2019), https://www.yakimaherald.com/news/local/community-speaks-out-against-ice-chartered-flights-in-yakima/article_46c4a98e-cbac-5271-a251-e7bae94499c7.html.

⁷² *Id.*

pandemic. At the pandemic's peak, Yakima County had the highest per capita rate of COVID-19 infections on the entire West Coast - the county had a 19.5% positive rate, while the rest of the state averaged 7.2%.⁷³ The increased vulnerability of Yakima residents to COVID-19 was a direct consequence of the lack of strong health and safety protections for agricultural workers. During this period, farmworkers made dozens of complaints to the state's Department of Labor regarding workplace violations of social distancing and sanitizing standards.⁷⁴ More than 50% of these complaints were from ten agriculture facilities in Yakima, where employees were trying to raise awareness about the lack of personal protective equipment, clean water for hand washing, social distancing measures, and procedures for isolating infected workers.⁷⁵ Despite these complaints, elected officials did little to respond to the health and workplace safety needs of agricultural workers, even as they applauded them for continuing their "essential"

⁷³ See Donald W. Meyers, *Yakima County's Coronavirus Rate Highest on West Coast*, YAKIMA HERALD-REPUBLIC (May 2, 2020), https://www.yakimaherald.com/news/local/yakima-countys-coronavirus-rate-highest-on-west-coast/article_203862c6-d516-5ae7-b9f4-87a278221d14.html.

⁷⁴ See Lex Talamo, *Groups Distribute Masks to Farmworkers as Workplace Concerns Continue*, YAKIMA HERALD-REPUBLIC (May 11, 2020), https://www.yakimaherald.com/news/local/groups-distribute-masks-to-farmworkers-as-workplace-concerns-continue/article_c2ee7e06-8716-55a4-b7c7-8571be85ab4b.html.

⁷⁵ *Id.*

work.⁷⁶ As one farmworker advocate, Roalinda Guillén, described in the summer of 2020:

[She had] heard from a lot of farmworkers that early on in the pandemic, in February and March, there were no masks, no social distancing and no sanitation. Advocates knew it was going to grow into a much larger problem, she said. She talked with state officials, including [Washington State Governor Jay] Inslee, but felt she wasn't heard. "How can you not talk about agriculture when you talk about the growing numbers of COVID infections in Yakima?" Guillén asked. "It blows my mind. It's so disrespectful. It's so racist. It's so familiar to what we've had to deal with for generations in Washington state. It's heartbreaking because people are dying and will die."⁷⁷

Once again, in the absence of responsive elected officials, Latino advocates and community members in the Yakima Valley organized collectively to demand change. Workers from seven agriculture employers in Yakima Valley went on strike, citing health and safety concerns.⁷⁸ They asked for basic safety measures

⁷⁶ *Id.*

⁷⁷ Emily McCarty, *Yakima County Farmworkers Called 'Sacrificial Lambs' of Pandemic*, CASCADE PBS (June 29, 2020), <https://www.cascadepbs.org/2020/06/yakima-county-farmworkers-called-sacrificial-lambs-pandemic>.

⁷⁸ See Lex Talamo & Mai Hoang, *Thursday Sees 7th Strike by Yakima Valley Farmworkers Protesting Conditions During COVID-19 Pandemic*, YAKIMA HERALD-REPUBLIC (May 14, 2020), https://www.yakimaherald.com/news/local/thursday-sees-7th-strike-by-yakima-valley-farmworkers-protesting-conditions-during-covid-19-pandemic/article_6bcee867-37b0-5ae0-a065-ccfcd594ef9a.html.

like six feet of social distancing in the workplace, protection from employer retaliation, and hazard pay.⁷⁹ Despite the testimonies of workers, community support, and evidence showing disparate infection rates, the Yakima Health District determined that all the employers were meeting the minimum recommended guidelines.⁸⁰ So workers, once again, turned to the judicial system to enforce their rights in the workplace. Two unions, the United Farm Workers and Families Unidas Por La Justicia AFL-CIO, filed a lawsuit against the state's Department of Health asking for revised regulations for farmworkers and better oversight of agriculture employers.⁸¹ This time, however, relief was not forthcoming: agriculture groups also filed suit asking for relief from COVID-19 regulations, and a Yakima County Superior Court Judge granted a stay prohibiting enforcement of regulations imposing basic safety protocols like providing medical visits to isolated farm workers with COVID-19.⁸²

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Lex Talamo & Mai Hoang, *State Issues Coronavirus Guidelines for Agriculture; Unions File Lawsuit*, YAKIMA HERALD-REPUBLIC (Apr. 18, 2020), https://www.yakimaherald.com/news/local/state-issues-coronavirus-guidelines-for-agriculture-unions-file-lawsuit-saying-its-not-enough/article_ce0c9730-dba3-5a62-8823-13b43ad395b5.html.

⁸² See Cameron Probert, *Judge Halts Several WA State COVID Rules Intended to Protect Farm Workers*, TRI-CITY HERALD (Apr. 25, 2021), <https://www.tri-cityherald.com/news/business/agriculture/article250845254.html>.

One local advocacy group, the Yakima Immigrant Response Network, describe the sense of frustration and helplessness Latinos in the valley experienced when they felt they had been abandoned by their elected officials: “We were seeing they are in dire need of resources or are sick, and they don’t know where to go if they are mistreated at work. They are considered essential, but they don’t have the same resources to advocate for themselves.”⁸³ Local community organizations like the Yakima Valley Farm Workers Clinic stepped into the breach to ensure the Latino community had access to vaccinations and other healthcare needs: in July 2021, 60% of the state’s Latino community was unvaccinated, including 64% of Latinos in Yakima County.⁸⁴ The community reported challenges getting to vaccine and health care locations and faced language barriers in accessing care, as well as “a shortage of accurate information about vaccines in Spanish.”⁸⁵ Local advocacy groups planned their own educational campaigns to fill these gaps. Local groups including *amicus* LCF, in conjunction with a range of community partners,

⁸³ Talamo, *Groups Distribute Masks to Farmworkers as Workplace Concerns Continue*, *supra* note 72.

⁸⁴ See Margaux Maxwell, *Yakima County Health Forum Combats Vaccine Misinformation in the Latino Community*, YAKIMA HERALD-REPUBLIC (Feb. 11, 2021), https://www.yakimaherald.com/news/local/lower_valley/yakima-county-health-forum-combats-vaccine-misinformation-in-the-latino-community/article_aa9e246f-7b1e-5261-bf91-fe621c246e82.html.

⁸⁵ *Id.*

held open forums to provide a safe space for community members to come and get their questions answered.⁸⁶ Once again, the community found a way to take care of itself and each other, though not without far too much preventable suffering.⁸⁷

CONCLUSION

The Latino community in the Yakima Valley is vibrant, proud, and cohesive, and it has made profound contributions to the region's economy and civic life. For decades, in the face of ongoing racism and discrimination, Latinos have fought for the ability to fully and equally participate in politics and make their voices heard in elections. They have demonstrated their immense collective power as they have continually found ways to support each another and come together in solidarity to advocate for their fundamental rights. However, this power has not been reflected in the state's legislative bodies, which have remained unresponsive to the Latino community's needs. This lawsuit is a continuation of the Latino community's struggle and a testament to their patriotism and resilience. For the foregoing reasons, *amicus* respectfully ask this Court to affirm the decision below.

⁸⁶ *Id.*

⁸⁷ See, e.g., Agueda Pacheco Flores, *Latinos in Washington Likely Suffering Silently From Long COVID*, SOUTH SEATTLE EMERALD (Apr. 5, 2023), <https://southseattleemerald.com/2023/04/05/latinos-in-washington-likely-suffering-silently-from-long-covid/>.

Dated: September 6, 2024

Respectfully submitted,

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Pursuant to FRAP 32(g)(1), I hereby certify that the foregoing amicus brief complies with the type-volume limitations of FRAP 29(a)(5) and 32(A)(7)(b) because it consists of 5,968 words. The brief complies with the typeface and type style requirements of FRAP 32(a)(5) because it has been prepared in a proportionally spaced typeface using 14-point font.

Dated: September 6, 2024

/s/ Ruth Greenwood

Ruth Greenwood

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I hereby certify that on September 6, 2024, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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/s/ Ruth Greenwood

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