No. 100999-2

SUPREME COURT OF THE STATE OF WASHINGTON

GABRIEL PORTUGAL, et al.,

Respondents,

v.

FRANKLIN COUNTY, et al.,

Defendants,

and

JAMES GIMENEZ,

Appellant.

BRIEF OF *AMICI CURIAE* ONEAMERICA AND CAMPAIGN LEGAL CENTER

Tiffany Cartwright, WSBA #43564
MacDONALD HOAGUE & BAYLESS
705 2nd Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604
tiffanyc@mhb.com

Attorney for OneAmerica & Campaign Legal Center

Mark P. Gaber (admitted to practice in California (inactive) and Washington, D.C.)
Molly E. Danahy (admitted to practice in Maryland, New York, and Washington, D.C.)
Simone Leeper (admitted to practice in Florida and Washington, D.C.)

Aseem Mulji (admitted to practice in California and Washington, D.C.)
Valencia Richardson (admitted to practice in Louisiana and Washington, D.C.)
Benjamin Phillips (admitted to practice in Washington, D.C.)
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, DC 2005
(202) 736-2200
mgaber@campaignlegal.org
mdanahy@campaignlegal.org
sleeper@campaignlegal.org
amulji@campaignlegal.org
vrichardson@campaignlegal.org
bphillips@campaignlegal.org

Annabelle Harless (admitted to practice in Illinois)
CAMPAIGN LEGAL CENTER
55 Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Appellant Mr. Gimenez is not an aggrieved party eligible for appellate review and his appeal should accordingly be dismissed. If Mr. Gimenez's appeal is not dismissed, the Court should not reach the constitutional issues; Appellant's facial challenge to the WVRA under the Equal Protection Clause of the U.S. Constitution must fail because the WVRA is a race-neutral discrimination law to which strict scrutiny does not apply and which provides for race-neutral remedies to electoral discrimination. Rather, if the appeal is not dismissed, the Court should consider only statutory questions, including finding that Respondents are clearly members of a protected class as plainly defined in the WVRA.

II. IDENTITIES AND INTERESTS OF AMICI

OneAmerica is one of the largest organizing, civic engagement, and advocacy organizations in Washington with grassroots community members across the state. OneAmerica advances justice and democracy by building power in immigrant and refugee communities at the local, state, and federal level, with key allies. OneAmerica intends to bring tangible improvement to the lives and opportunities of its members and communities by electing people from their own communities into office, creating a more reflective democracy. OneAmerica's members advocated for more than six years for reforms to Washington State election laws, finally succeeding in

2018 when the Legislature enacted the WVRA which allows local jurisdictions to change election systems that deny minority voters equal opportunity to elect candidates of choice. OneAmerica also joined four Latino voters as a plaintiff in *Aguilar v. Yakima County*, the first lawsuit filed—and successfully settled—under the WVRA.

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive work on redistricting and voting rights, CLC seeks to ensure that every U.S. resident receives fair representation at federal, state, and local levels. CLC has supported the enactment of state-level voting rights acts in Washington, Oregon, Virginia, and New York, as well as proposed acts in Maryland, Connecticut, and New Jersey. CLC served as counsel for the plaintiffs in *Aguilar v. Yakima County* and has also litigated a number of cases under the federal Voting Rights Act.

III. STATEMENT OF THE CASE

Amici concur with and adopt the statement of the case set forth in the Brief of Respondents at pp. 13-15.

IV. ARGUMENT

A. The Legislature enacted the WVRA to ensure that local electoral systems do not impair voting rights based on race, color, or language minority status.

The WVRA was enacted in 2018 to ensure fair representation in local government for all members of the state's increasingly diverse electorate. Census Bureau Data issued in 2016 showed that racial and ethnic diversity was growing across the state.[1] But legislative bodies of local governments throughout the state—the vast majority of which are elected through at-large voting systems—remained stubbornly homogenous.[1] For example, Latino residents made up nearly 60 percent of the population in Adams County and more than 50 percent of the population in Franklin County, yet fewer than 3.6 and 2.7 percent of office holders in those counties, respectively, were Latino.[2]

---

[1] See Zachary Duffy, *Unequal Opportunity: Latinos and Local Political Representation in Washington State*, The State of the State for Washington Latinos 20 (Dec. 11, 2009), http://walatinos.net/wp/wp-content/uploads/2011/11/UnequalOpportunityZachDuffy.pdf (finding that ninety-two percent of elections for local offices in Washington were conducted at-large). *See also* Ashira Pelman Ostrow, *The Next Reapportionment Revolution*, 93 Ind. L. J. 1033, 1048–49 (2018) (noting that almost two-thirds of municipalities nationwide use at-large elections).

[2] Lilly Fowler, *WA to protect against voting discrimination with new law*, Crosscut (March 6, 2018), https://crosscut.com/2018/03/washington-voting-rights-act-legislature-discrimination-law-jay-inslee.

As the Legislature found in 2018, the prevalence of at-large systems among Washington's local governments had "in some cases . . . resulted in an improper dilution of voting power for . . . minority groups," offending both the state constitution's right to free and equal elections and the right to vote protected by the Fourteenth and Fifteenth Amendments to the U.S. Constitution. RCW 29A.92.050. Narrow prescriptions in state law regulating local governments made it difficult for jurisdictions to remedy vote dilution on their own. RCW 29A.92.050. And beyond costly litigation under the federal Voting Rights Act, voters in Washington had no recourse under state law to remedy the harms from discriminatory race-based vote dilution.

Against this backdrop, the Legislature enacted the WVRA to "promote equal voting opportunity in political subdivisions" and to ensure that electoral systems do not deny the constitutional rights of members of race, color, or language minority groups by diluting their votes. Laws of 2018, ch. 113 (codified at RCW 29A.92); *see also* RCW 29A.92.005.[3] The

---

[3] The WVRA was first introduced in 2013 and revised, reintroduced, and debated in 2015 and 2017 before its final passage in 2018. Intervenor-Defendant's assertion that the legislation was passed in "haste" to serve as a '"test-case law" is wrong. MJOP at 2. The law was carefully considered over three legislative sessions, revised and re-revised in committee hearings, and debated multiple times on the House and Senate floor to

Act bars jurisdictions from maintaining any electoral system "that impairs the ability of members of a protected class . . . to have equal opportunity to elect candidates of their choice as a result of the dilution or abridgement of the rights" of such voters. RCW 29A.920.20, 010(4). The law permits any political subdivision to proactively "change its electoral system" to remedy a potential violation, RCW 29A.92.040, and permits voters harmed by a violation to sue for a court-ordered remedy after providing notice and working with the jurisdiction for at least 90 days to agree upon a locally tailored remedy. RCW 29A.92.060-70, 110.

The first suit brought under the WVRA is a case study demonstrating both the need for and efficacy of the Act in remedying electoral systems that impair voting rights based on race, color, or language minority status. That first case challenged the at-large electoral system for the Yakima County Board of Commissioners. In Yakima County, Latinos disproportionately bear the effects of past discrimination. For example,

---

ensure the law was properly tailored to local electoral conditions in Washington State. *See* Wash. State Legislature, Bill Information, SB 6002 (2017-18), https://app.leg.wa.gov/billsummary?BillNumber=6002&Year=2017; Wash. State Legislature, Bill Information, HB 1745 (2015-16), https://app.leg.wa.gov/billsummary?BillNumber=1745&Year=2015; Wash. State Legislature, Bill Information, HB 1413 (2013-14), https://apps.leg.wa.gov/billsummary/?BillNumber=1413&Year=2013&Initiative=false.

Yakima County Latinos have both poverty and unemployment rates nearly double those of white residents and 51.6% of the County's Latinos are without a high school diploma or equivalent, compared to just 9.6% of white residents. When the case was filed, Latinos comprised 49.3% of Yakima County's total population, but only a single Latino resident had ever been elected to the County Board. Candidates preferred by Latino voters, including Latino and Hispanic-surnamed candidates affiliated with both the Republican and Democratic parties, persistently failed to win seats or advance from the primary to the general election.

In January 2020, individual voters and amicus OneAmerica sent a letter to the Yakima County Board of Commissioners providing notice under the WVRA that the at-large system of election improperly diluted the votes of Latino voters. In July 2020, after the County failed to take action to collaboratively change the electoral system in the statutorily mandated period, the plaintiffs filed suit under the WVRA. As in Franklin County, the Yakima County Board decided to settle before trial, resulting in a district-based electoral system for the County Board that provides Latino voters with the equal opportunity to elect their candidates of choice. The case is emblematic of the problems faced by race, color, and language minorities across Washington, which drove the legislature to pass the WVRA. It is also

emblematic of the positive impact the WVRA can have when political subdivisions agree to remedy unlawful vote dilution.

B. Mr. Gimenez's appeal should be dismissed because he does not have standing to appeal, or in the alternative, the Court should not reach his constitutional claims.

Respondents are correct that Mr. Gimenez lacks standing to appeal his constitutional claims because he failed to notify the Attorney General under RCW 7.24.110. But Mr. Gimenez also lacks standing to appeal altogether because he is not an aggrieved party under Rule of Appellate Procedure 3.1.[4]

Only an "aggrieved party" may seek this Court's review. RAP 3.1. For a party to be aggrieved, the trial court's decision must "adversely affect that party's property or pecuniary rights, or a personal right, or impose on a party a burden or obligation." *Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 437 P.3d 677 (2019). The party's "interest must be immediate . . . not a remote consequence of the judgment; a future, contingent, or speculative interest is not sufficient." *Terrill v. City of Tacoma*, 195 Wash. 275, 280, 80 P.2d 858 (1938). The interest must also

---

[4] *Amici* have sought to use documents in the appellate record for this argument. However, to fully consider this standing argument, *Amici* recognize that the Court may need to ask the parties to supplement the record under RAP 9.10 and encourage the Court to do so if necessary.

be "substantial"; mere disappointment with the judgment or a desire for a different result is not enough. *State ex. rel. Simeon v. Superior Court for King Cty.*, 20 Wn.2d 88, 90, 145 P.2d 1017 (1944). "[A]ppeals are not allowed for the purpose of settling abstract questions, however interesting or important to the public generally, but only to correct errors injuriously affecting the applicant." *Elterich v. Arndt*, 175 Wash. 562, 563-64, 27 P.2d 1102 (1933).

Mr. Gimenez fails to show the trial court judgment imposed any substantial burdens or obligations on him meriting an appeal. No judgment has been rendered against him. He is not a defendant. Nor does he claim to appeal on behalf of Franklin County or any of the Defendant Commissioners. Defendants, for their part, opted to resolve Respondents' WVRA claims in a court-approved settlement, in which they agreed to conduct all future County Commissioner elections (including general elections) in single-member districts.

Mr. Gimenez has made no showing that this court-approved settlement injures any "legally protected interests." *Polygon Nw. Co. v. Am. Nat'l Fire Ins. Co.*, 143 Wn. App. 753, 189 P.3d 777 (2008). Indeed, the only interests he asserts in this case are those he articulated when he first sought intervention. First, he wants Franklin County to retain at-large general elections. Gimenez Decl. ¶ 6. But this is nothing more than a bare

desire for a different result, which cannot justify a third-party appeal. *See Elterich*, 175 Wash. at 564 ("Persons aggrieved . . . are not those who may happen to entertain desires on the subject, but only those who have rights which may be enforced at law[.]").

Second, Mr. Gimenez has expressed a desire to vote in a district that is not "drawn on race-based lines but continues to be drawn on race-neutral criteria." Gimenez Decl. ¶ 5. But he has never explained *how* the trial court's judgment threatens his ability to vote in such a district. No part of the trial court's May 2022 order approving the settlement directed Franklin County to draw "race-based lines" or to disregard "race-neutral criteria." *See* Order. The trial court's order instead endorsed a redistricting plan known as "Option 2," which the Franklin County Commissioners had already approved earlier that year as part of their decennial census redistricting duties. *Id.* at 3-4. The County Commissioners unanimously selected Option 2 from among a series of redistricting plans drawn by an appointed commission, and only after at least three public hearings soliciting community input, vetting by a demographer, and substantial

deliberation on the merits of various plans and how each balanced neutral redistricting criteria.[5]

Critically, Mr. Gimenez never alleged that *his* district in Option 2 is legally infirm or treads on any personal rights. His pleading includes no claim, for example, that he has been placed in an unconstitutionally gerrymandered district. *See* Proposed Answer. Such a claim would require allegations, absent from his pleadings, that race was the predominant factor motivating the drawing of the boundaries of his specific district. *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018) ("[A] plaintiff who alleges that he is the object of a racial gerrymander . . . has standing to assert only that his own district has been so gerrymandered."); *see also Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 262-63 (2015). Indeed, Mr. Gimenez identifies no immediate and substantial legal burden, obligation, or injury to his rights that would make him an aggrieved party eligible for appellate review. His appeal should therefore be dismissed.

---

[5] *See, e.g.*, Franklin County, WA, "12/28/2021 Franklin County WA Commissioners Meeting," YouTube (Dec. 28, 2021), https://www.youtube.com/watch?v=GJ1lkSu7is4; Franklin County, WA, "01/04/2022 Franklin County WA Commissioners Meeting," YouTube (Jan. 4, 2022), https://www.youtube.com/watch?v=_z_BLnk3bIs; Franklin County, WA, "01/11/2022 Franklin County WA Commissioners Meeting," YouTube (Jan. 11, 2022), https://www.youtube.com/watch?v=mp4MXdDFTOM.

The only apparent purpose of Mr. Gimenez's appeal is to push abstract facial and statutory challenges to the WVRA as high up the appellate ladder as possible. But this Court "should not pass on constitutional issues unless absolutely necessary to the determination of the case." *State v. Hall*, 95 Wn.2d 536, 539, 627 P.2d 101 (1981); *see also Sleasman v. City of Lacey*, 159 Wn.2d 639, 647, 151 P.3d 990 (2007) ("When possible, this court resolves disputes without reaching constitutional arguments."). Facial claims especially are disfavored as "[t]hey often rest on speculation and run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 240, 481 P.3d 1060 (2021), *cert. denied*, 142 S. Ct. 1094 (2022).

Even if this Court finds that Mr. Gimenez has standing to appeal, the Court need not and should not decide the facial constitutional questions. This appeal is discretionary. The defendants declined to challenge the facial constitutionality of the Act, instead opting to litigate the merits of a WVRA claim before ultimately settling by unanimous vote of Franklin County's legislative body and with the support of its constituents. The only party raising the question is a lone Franklin County resident who suffers no

discernable injury from the outcome of the lawsuit but nevertheless seeks a declaratory judgment that the WVRA is unconstitutional. Reaching the constitutional questions in this procedural posture "would result in rendering a purely advisory opinion." *De Grief v. City of Seattle*, 50 Wn.2d 1, 14, 297 P.2d 940 (1956).

Deciding these questions when raised solely on intervention may also undermine one of the core legislative aims of the WVRA. In addition to prohibiting vote dilution and providing voters with a state law cause of action to remedy it, the WVRA grants political subdivisions the authority to *voluntarily* remedy a potential violation of the WVRA. RCW 29A.92.040. The Act also requires voters in a political subdivision who identify a potential violation to send pre-suit notice letter and collaborate in good faith with the jurisdiction to determine a locally tailored remedy *before* filing a lawsuit. RCW 29A.92.060, 070. The purpose of these provisions is to encourage local governments to work "in collaboration with affected community members" to ensure that "minority groups have an equal opportunity to elect candidates of their choice." RCW 29A.92.005. This collaborative statutory framework and incentives for settlement are undermined if collaboration can be so easily thwarted by intervening facial challenges.

Amici are mindful that the parties in this case have asked the Court to take up Mr. Gimenez's appeal, including his federal constitutional claims. These claims plainly lack merit under longstanding equal protection doctrine. *See infra* Part IV.C. Nonetheless, *Amici* urge this Court to exercise its usual judicial restraint by declining to reach Mr. Gimenez's facial constitutional questions in this discretionary appeal, given also the "evolving legal landscape at the national level." *Woods*, 197 Wn.2d at 253 (Yu, J., concurring).

In sum, Mr. Gimenez is not an aggrieved party eligible for appellate review and his appeal should be dismissed. If Mr. Gimenez's appeal is not dismissed in its entirety, the Court should only decide questions of statutory interpretation and not reach the constitutional issues.

C. The WVRA does not violate the Equal Protection Clause of the U.S. Constitution.

Appellant's facial challenge to the WVRA under the Equal Protection Clause of the U.S. Constitution fails because the WVRA is a race-neutral antidiscrimination law to which strict scrutiny does not apply and because the Act provides for race-neutral remedies to electoral discrimination.

1. The WVRA is a race-neutral antidiscrimination law.

The WVRA is a race-neutral antidiscrimination statute and therefore does not trigger strict scrutiny. Like the federal Voting Rights Act, the

WVRA seeks to remedy election systems "that impair[] the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice as a result of the dilution . . . of the rights of voters," consistent with the mandates of the state and federal constitutions. RCW 29A.92.020; *see also* RCW 29A.92.005. In other words, when a local election system denies *any* racial group an *equal* opportunity to elect their preferred candidates, the WVRA is available to remedy the disparity.

Because the WVRA's guarantee of equal opportunity extends to voters of *any* race, the law does not distribute benefits or burdens based on race and thus does not trigger strict scrutiny. *See Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 547 (3d Cir. 2011) ("A racial classification occurs only when an action 'distributes burdens or benefits on the basis of' race.") (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007)). State and federal courts have applied this reasoning to uphold the California Voting Rights Act ("CVRA") against a similar equal protection challenge. *See Higginson v. Becerra*, 786 Fed. Appx. 705, 706-07 (9th Cir. 2019); *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 681, 51 Cal.Rptr.3d 821 (Cal. Ct. App. 2006) (finding the CVRA race-neutral because it "confers on members of *any* racial group a cause of action to seek redress for a race-based harm") (emphasis added).

States have wide authority to adopt measures designed "to eliminate racial disparities through race-neutral means." *Higginson*, 786 Fed. Appx. at 707 (quoting *Tex. Dep't of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015)), *cert. denied*, 140 S. Ct. 2807 (2020)); *see also Smith v. Robbins*, 528 U.S. 259, 273 (2000) ("[O]ur established practice, rooted in federalism, [is to] allow[] the States wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult problems of policy."). Many states and Washington have enacted laws barring racial discrimination in a wide variety of contexts, including employment, housing, and public accommodations. *See, e.g*, *Anderson v. Pantages Theatre Co.*, 114 Wash. 24, 27-28, 194 P. 813 (1921) (finding civil remedy for racial discrimination in public accommodations under state antidiscrimination statute); *Blackburn v. State*, 186 Wn.2d 250, 257, 375 P.3d 1076 (2016) (applying Washington Law Against Discrimination to workplace racial discrimination). The WVRA offers similar protections in the voting context.

The fact that the WVRA—and virtually every other antidiscrimination statute—must consider race to *identify* racial discrimination does not subject the law to strict scrutiny under the Equal Protection Clause. *See Inclusive Communities Project, Inc.*, 576 U.S. at 545

("[R]ace may be considered in certain circumstances and in a proper fashion."). For this reason, the WVRA's requirement to demonstrate racially polarized voting does not change the fact that the law is facially race-neutral. The existence of racially polarized voting is a descriptive phenomenon, one that the Legislature has determined is indicative of racially discriminatory vote dilution. Indeed, in *Sanchez* and *Higginson*, the state and federal appeals courts both declined to apply strict scrutiny to the CVRA despite reading that law to impose liability for vote dilution whenever it is shown that racially polarized exists in a jurisdiction that maintains an at-large election system. *See Sanchez*, 145 Cal. App. 4th at 666 (noting that the CVRA is race neutral because it "gives a cause of action to any racial or ethnic group that can establish that its members' votes are diluted through the combination of racially polarized voting and an at-large election system"); *Higginson*, 786 Fed. Appx. at 706 (adopting the *Sanchez* reasoning). In sum, the WVRA is race-neutral and strict scrutiny does not apply.

2. The WVRA provides for race-neutral remedies to electoral discrimination.

By its terms, the WVRA allows jurisdictions and courts to choose from a wide range of remedies beyond district-based elections, including race-blind electoral systems like ranked-choice voting and cumulative

voting. Appellant's insistence that any remedy to racial discrimination under the WVRA itself creates discrimination is wrong. *See* Appellant Br. at 47. Courts, upon finding a violation, may order any "appropriate remedies including, but not limited to, the imposition of a district-based election system." RCW 29A.92.110 (emphasis added). The explicit inclusion of other remedies not only suggests the WVRA is valid as applied to Franklin County, but also underscores the facial validity of the Act as a whole. The flexibility and discretion afforded by the WVRA's remedy provisions precludes any conclusion that race will inevitably and unconstitutionally predominate in every application of the Act. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). It does so in at least three ways.

First, it is illogical that a statute that contemplates race-blind remedies like ranked-choice voting and cumulative voting can be found unconstitutional on the grounds that it requires racial predominance. As the Supreme Court has acknowledged, the adoption of a "system using transferable votes" (such as county-wide ranked-choice voting) can "produce proportional results without requiring the division of the electorate into racially segregated districts." *Holder v. Hall*, 512 U.S. 874, 909-10 (1994) (Thomas, J., concurring in the judgment).

Second, nowhere in its guidance to courts does the WVRA mandate that race predominate in the fashioning of a remedy. *See Sanchez*, 145 Cal.

App. 4th at 688 (upholding facial validity of the CVRA because it does not mandate unconstitutional remedies). Rather, the statute simply instructs courts to order "appropriate remedies" (district-based or not) that are "tailor[ed]" to the specific circumstances of the violation. RCW 29A.92.110(1), (3).

Third, when the court orders a district-based remedy that could be susceptible to racial predominance, the WVRA affords flexibility to fashion remedies within constitutional boundaries. The court can order the affected jurisdiction to set district boundaries or appoint an individual or panel to draw the lines, subject to traditional redistricting principles. RCW 29A.92.110(1). The WVRA sets no racial numerical targets for remedial districts and permits remedial districts in which members of a protected class are "not a numerical majority" so long as the remedy provides the protected class an equal opportunity to elect candidates of their choice. RCW 29A.92.110(2). As such, remedies under the WVRA include not just majority-minority districts, but also election systems with coalition, crossover, or influence districts. RCW 29A.92.005, 110(2).

Given these features of its remedial system, the WVRA cannot be read to require the drawing of districts in a manner that "subordinate[s]" traditional redistricting principles to "racial considerations." *Cooper v. Harris*, 137 S. Ct. 1455, 1463-64 (2017). Even if some jurisdictions could

conceivably engage in race-based districting to remedy a violation of the WVRA, and even if some future applications of the Act might conceivably constitute a racial gerrymander, Appellant's claim that every future application of the WVRA to remedy an actual or potential violation will not survive constitutional scrutiny has no basis. His facial challenge to the WVRA must fail.

D. Respondents are members of a protected class under the WVRA and thus have standing to sue.

By its terms, the WVRA protects and confers standing on Plaintiffs. Despite Appellant's attempt to conjure nonexistent ambiguities, the WVRA makes clear, by way of explicit reference to its federal counterpart, that Latinos and Spanish speakers are protected classes under the Act.

"If a statute is clear on its face, its meaning is to be derived from the plain language of the statute alone." *State v. Watson*, 146 Wn.2d 947, 954-55, 51 P.3d 66 (2002). The WVRA expressly defines "protected class" to mean "a class of voters who are members of a race, color, or language minority group, *as this class is referenced and defined in the federal Voting Rights Act, 52 U.S.C. 10301 et seq.*" RCW 29A.92.010(5) (emphasis added). Where, as here, "a state statute is taken substantially verbatim from a federal statute, it carries the same construction as the federal law and the same interpretation as federal case law." *Anfinson v. FedEx Ground*

Package Sys., Inc., 174 Wn.2d 851, 868, 281 P.3d 289 (2012). This Court should therefore reject Appellant's attempt to insert ambiguity into an otherwise clear statute. Specifically, Appellant's attempt to obscure the statute by "pars[ing] three different ways" the definition of "protected class," Appellant Br. at 9, and to confine meaning of "minority group" as relative to the population of the challenged jurisdiction are meaningless distractions from the plain language of the statute which tracks the federal Voting Rights Act.

Accordingly, the term "protected class" in the WVRA refers to any class of voters that is protected by and entitled to sue under the federal Voting Rights Act, as defined in that Act and interpreted by federal courts. The federal VRA prohibits members of a "protected class" from facing discrimination in voting "on account of race or color" or because a voter is "a member of a language minority group." 52 U.S.C. § 10301, 10303. The Supreme Court has definitively stated that the prohibition against discrimination "on account of race or color" protects racial and language minorities, which includes Latinos and Spanish speakers. *See Thornburg v. Gingles*, 478 U.S. 30, 43 (1986) (Section 2 of the Voting Rights Act "prohibits all States and political subdivisions from imposing any voting qualifications or prerequisites to voting . . . which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected

class of racial and language minorities."); *see also, e.g., LULAC v. Perry*, 548 U.S. 399, 442 (2006) (ruling that a redistricting plan denied Latino voters equal opportunity elect candidates of their choice in violation of the federal Voting Rights Act); *Luna v. County of Kern*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018) (finding that the redistricting plan for a County Board of Supervisors impermissibly diluted the Latino vote in violation of the Voting Rights Act); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014) (finding that the at-large system of election for Yakima City Council unlawfully diluted Latino votes under the Voting Rights Act).

Ultimately, Appellant's claustrophobic reading of the language betrays Appellant's misunderstanding of "protected class." There can be no good faith doubt that the WVRA intends to protect Latino and Spanish speaking voters who are undeniably included in the "protected class" of voters clearly defined in federal law.

V. CONCLUSION

For the foregoing reasons, *Amici* request that this Court dismiss Appellant's appeal because he is not an aggrieved party eligible for appellate review. In the alternative, *Amici* urge the Court to reject Appellant's facial challenge to the WVRA's constitutionality and decide

only the questions of statutory interpretation, including that Respondents are covered by the WVRA as members of a protected class.

RESPECTFULLY SUBMITTED this 27th day of March 2023.

s/ Tiffany Cartwright
Tiffany Cartwright, WSBA #43564
MacDONALD HOAGUE & BAYLESS
705 2nd Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604
tiffanyc@mhb.com

ATTORNEY FOR AMICI CURIAE ONEAMERICA & CAMPAIGN LEGAL CENTER

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 27th day of March 2023, I electronically filed the foregoing with the Clerk of Court using the Washington State Appellate Courts' Portal.

I certify that all participants in the case are registered Washington State Appellate Courts' Portal users, and that service will be accomplished by the Washington State Appellate Courts Portal system.

__/s/ *Chris Bascom*__
Legal Assistant

MACDONALD HOAGUE & BAYLESS

March 27, 2023 - 2:27 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,999-2
Appellate Court Case Title:	Gabriel Portugal et al. v. Franklin County et al.
Superior Court Case Number:	21-2-50210-4

The following documents have been uploaded:

- 1009992_Briefs_20230327142443SC811268_7508.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was CLC OneAmerica Portugal Amicus.pdf
- 1009992_Motion_20230327142443SC811268_3038.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was CLC OneAmerica Portugal Motion for Leave to File Amicus.pdf

A copy of the uploaded files will be sent to:

- ADaylong@floyd-ringer.com
- APearce@floyd-ringer.com
- Bernadette@uclavrp.org
- Chad@uclavrp.org
- Eddie@MorfinLawFirm.com
- Sonni@uclavrp.org
- amuul@floyd-ringer.com
- ecampbell@floyd-ringer.com
- eddie4um509@yahoo.com
- ffloyd@floyd-ringer.com
- joel@ard.law
- sklotz@floyd-ringer.com

Comments:

Sender Name: Tiffany Cartwright - Email: tiffanyc@mhb.com
Address:
705 2ND AVE STE 1500
SEATTLE, WA, 98104-1745
Phone: 206-622-1604

Note: The Filing Id is 20230327142443SC811268