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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BERTHA ARANDA GLATT,
Plaintiff,
v.
CITY OF PASCO, *et al.*,
Defendants.

Case No. 4:16-CV-05108-LRS

PLAINTIFF'S REPLY TO
DEFENDANTS RESPONSE TO
PLAINTIFFS' PROPOSED
REMEDIAL PLAN

With oral argument:
December 7, 2016 at 1:00 PM

PLS.' REPLY TO DEFS.' RESPONSE TO PLS.'
PROPOSED REMEDIAL PLAN - 4:16-CV-05108-LRS

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I. INTRODUCTION

The City's claim that its insistence on retaining an at-large seat is a lawful resolution to the Section 2 claim is premised on three faulty arguments. First, it asserts that its proposed hybrid plan completely remedies the Section 2 violations, even though the at-large position will continue to dilute the Latino vote for the foreseeable future. Defendants' argument is unsupported by evidence, contradicted by the data Plaintiff's expert provides, and is not in alignment with case law. On top of these deficiencies, the City's proposed at-large seat is a critical swing seat that would remain off-limits to Latinos until at least 2021 even under Defendants' own analysis.

Second, the City contends that Latinos have a better opportunity over time to elect their candidate of choice for the at-large position than they would for Plaintiff's proposed influence district. This argument is also unsupported by the evidence, which instead makes clear that Defendants' plan fails to completely remedy the Section 2 violation. In contrast, Plaintiff's proposed remedy is buttressed by the stipulated existence of racially polarized voting in Pasco's city-wide elections, the nature of campaigning in smaller geographic districts compared to at-large districts, and socio-economic disparities that will make the cost of conducting an at-large campaign prohibitive for many Latino candidates.

1 Finally, the City argues—without any support in the law—that a court
 2 should defer to a jurisdiction’s proposed remedy as long as there is rough
 3 proportionality and a lack of concrete evidence that minority voter suppression was
 4 the plan’s driving motivation. This argument is wholly inconsistent with the very
 5 purpose of the amended Voting Rights Act, 42 U.S.C. § 1973 (“VRA”).¹

7 Plaintiff does not contend that at-large seats are never permissible in Section
 8 2 remedial plans. But here, Pasco is evenly divided between three majority Latino
 9 and three majority White seats; there is racially polarized voting in city-wide
 10 elections; and Plaintiff’s proposed plan would provide Latinos with immediate
 11 influence in a fourth district whereas Defendants’ plan would put an at-large seat
 12 out of the reach of Latinos for the foreseeable future. Under these circumstances,
 13 this Court should reject Defendants’ proposed plan to maintain an at-large seat, and
 14 instead implement Plaintiff’s proposed seven single-member district plan.

17 II. ARGUMENT

18 A. The City’s Proposed Plan Fails to Completely and Fully Remedy the 19 Unlawful Dilution of the Latino Vote

20 Although the City has admitted that racially polarized voting in Pasco has
 21

22 ¹ There is no requirement that a plaintiff prove intentional discrimination to make a
 23 *prima facie* showing of a Section 2 violation. Further, in *Thornburg v. Gingles*, 478
 24 U.S. 30 (1986), it was emphasized that the Act contains no such requirement.

1 resulted in the dilution of the Latino vote, it requests that this Court allow it to
2 retain an at-large position.² Retention of an at-large seat on Pasco's City Council
3 would continue the very dilution of the Latino vote that the City admitted exists
4 and that was the root cause of the Section 2 violation in Pasco.
5

6 As the Partial Consent Decree recognizes, racially polarized bloc voting in
7 Pasco's at-large elections deprived the Latino community of an opportunity to
8 meaningfully participate in the election process and made it impossible for Latinos
9 to elect a candidate of their choice. Dkt. 16 at 8. Simply put, reducing the number
10 of at-large seats from seven to one does not fully eliminate the dilution of the
11 Latino vote—and Plaintiff is entitled to a full remedy under Section 2.
12

13 Because Latinos are effectively barred from meaningful participation in the
14 election of any at-large seat in Pasco, this Court should follow in the footsteps of
15 the many courts before it that have rejected proposed remedial plans where the
16 inclusion of at-large seats does not completely remedy the underlying vote
17

18

² In their response brief, Defendants did not argue for staggered implementation of
19 the new election system. However, it should be noted that staggered
20 implementation would result in the disenfranchisement of a significant number of
21 Pasco voters by effectively barring them from voting in City Council elections for
22 six (6) years. 2d Supp. Cooper Decl. at ¶¶7-12.
23
24

1 dilution. *See, e.g., United States v. Dallas County Comm’n, Dallas County, Ala.*,
2 850 F.2d 1433, 1439-40 (11th Cir. 1988); *Montes v. City of Yakima*, No. 12-cv-
3 3108, 2015 WL 11120965, at *2 (E.D. Wash. Mar. 19, 2015); *Dillard v. Crenshaw*
4 *Cnty., Ala.*, 649 F. Supp. 289, 296 (M.D. Ala. 1986); *Williams v. City of*
5 *Texarkana, Ark.*, 861 F. Supp. 771, 772 (W.D. Ark. 1993); *Chapman v. Meier*, 420
6 U.S. 1, 21 (1975); *United States v. Osceola Cnty., Fla.*, 474 F. Supp. 2d 1254,
7 1256 (M.D. Fla. 2006).
8

9
10 Further, Defendants contend—without evidence—that Latinos will be the
11 majority of registered voters by 2021 and will then be able to elect or influence the
12 election of a candidate for the remaining at-large seat. Dkt. 25 at 23. This argument
13 rests on a thin reed: Defendants’ demographer’s opinion that Latinos currently are
14 44% of registered voters. *Id.*
15

16 That opinion is built upon sand. First, Defendants have failed to provide any
17 of the registered voter data on which they purport to rely. *See id.* at 15, n.18, Dkt.
18 30 at 5, n.3. Instead, the City has repeatedly promised the Court that such data is
19 forthcoming and that its expert is still formalizing his analysis. *Id.* Under well-
20 established Ninth Circuit precedent, the City’s failure to provide data-driven or
21 demographic evidence in support of its proposed plan cannot be remedied by
22 introducing evidence in a reply brief. *See Tovar v. U.S. Postal Serv.*, 3 F.3d 1271,
23 1273 n.3 (9th Cir. 1993) (striking evidence presented for the first time in reply).
24

1 Second, the demographic assertions regarding Latino Citizen Voting Age
2 Population (“LCVAP”) and registered voter trends on which the City so heavily
3 relies are highly suspect. *Compare* Dkt. 30 at 10, with 2d Supp. Cooper Decl. at
4 ¶¶13-16. *See generally* Dkt. 28. Further, in his Supplemental Declaration,
5 Plaintiff’s expert, William Cooper, addresses the many shortcoming of
6 Defendants’ demographer’s assertions regarding population trends in Pasco
7 including that: (1) Defendants’ reliance on 1-year American Community Survey
8 (“ACS”) estimates for LCVAP is problematic because (unlike 5-year estimates) 1-
9 year estimates have large margins of error when used in smaller jurisdictions like
10 Pasco; (2) Defendants overinflate the Latino registered voter population; and (3)
11 Defendants’ assertions regarding future population trends are predicated on
12 statistics from the Pasco School District, which is not coextensive with the City of
13 Pasco’s boundaries. *See generally* Dkt. 28.

17 Finally, even if the City’s demographic assertions regarding LCVAP and
18 Latino registered voter populations could be taken as true, the at-large seat would
19 be wholly out of reach to the Latino population at least until 2021—five years from
20 now. *See* Dkt. 25 at 2 (“[A]s Latinos inevitably grow to a citywide majority of
21 eligible voters, the at-large seat will provide Latinos across the City with an
22 opportunity to elect their candidate of choice.”); *id.* at 23.
23
24

1 The problems with the City's proposed at-large seat are compounded by one
2 additional, crucial fact: in both proposed plans, Pasco is evenly split between three
3 majority-Latino and three majority-White districts. The at-large seat Defendants
4 propose would not only result in the continued dilution of the Latino vote (for the
5 reasons listed above) but would also deprive Latinos of a meaningful opportunity
6 for the foreseeable future to elect a candidate to the critical swing seat. In matters
7 on which the Latino and White populations have different perspectives, the
8 deciding vote would belong to the at-large seat even though, due to racially
9 polarized voting and the vast geographic terrain covered in at-large elections,
10 Latinos will be foreclosed from that position for many years to come. The at-large
11 seat thus not only fails to remedy the vote dilution, it perpetuates it.

12 The end result, as Plaintiff's expert explains, is that the City's new at-large
13 position will operate just like its old at-large positions, which is to say it will
14 exclude Latinos from being able to fully participate in the political process in
15 Pasco. Dkt. 24 at ¶¶58-63. In fact, Defendants seem to admit that their proposed
16 plan does not fully remedy the vote dilution and bars Latinos from full
17 participation in the electoral process. *See* Dkt. 25 at 2, 23. Even so, Defendants still
18 ask this Court to overlook the continued dilution of the Latino vote because, by
19 their count, it would only persist for at least another five (5) years. This denial of
20 relief is clear evidence that Defendants' proposed plan does not fully and
21
22
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24

1 completely remedy the vote dilution and it stands in marked contrast to Plaintiff's
 2 proposed plan, provides for immediate removal of the dilutive effect of at-large
 3 voting in Pasco. Because Defendants' proposed plan does not provide a full and
 4 complete remedy of the Section 2 violation this Court owes it no deference.
 5

6 *Buchanan v. City of Jackson, Tenn.*, 683 F. Supp. 1537, 1541 (W.D. Tenn. 1988).

7 *See also* Dkt. 27 at 2-5.

8 **B. Plaintiff's Proposed Plan Effectively Remedies the Section 2 Violation**

9 The City doubts whether Plaintiff's proposed District 5 will provide the
 10 City's Latino community with a "reasonable opportunity to elect its preferred
 11 candidate," claiming the LCVAP for District 5 is marginally lower than the
 12 citywide LCVAP. Dkt. 30 at 4. Defendants' doubt arises from their assertion that
 13 "the City's at-large position is much more Hispanic-influenced than the Plaintiff's
 14 next closest district" because Plaintiff's proposed District 5 is 28.98% LCVAP
 15 whereas "according to the 2015 1-year American Community Survey ("ACS"), the
 16 citywide LCVAP is 38.5%[.]" Dkt. 30 at 10.
 17
 18

19 However, Defendants are comparing apples and oranges. The LCVAP
 20 statistic that Defendants use for Plaintiff's proposed District 5 is from the 5-year
 21 ACS estimates, which is the statistic that should be used when attempting to
 22 determine LCVAP. But when Defendants proffer an LCVAP for the City of Pasco,
 23 they rely upon 1-year ACS estimates. Because these two sets of population
 24

1 estimates are very different, Defendants' argument that Plaintiff's proposed
2 District 5 has a significantly lower LCVAP than the citywide LCVAP is both
3 flawed and inappropriate. 2d Supp. Cooper Decl. at ¶¶13-14. In fact, when using
4 the same population estimates, Plaintiff's proposed District 5 and the City of Pasco
5 currently have comparable LCVAPs. *Id.* at ¶16. Further, historical trends indicate
6 that Plaintiff's District 5 is likely to maintain or exceed the citywide LCVAP over
7 the next decade and will remain a viable influence district. Dkt. 24 at ¶47.

8
9
10 **C. Plaintiff's Remedial Plan Completely Remedies the Vote Dilution Now**

11 Plaintiff's proposed seven single-member district plan affords a full remedy
12 to the Section 2 violation because it allows both Whites and Latinos to have a
13 meaningful opportunity to influence the election of the seat on the Council that is
14 neither a majority Latino nor White district. There are a number of reasons Latinos
15 have an opportunity to influence or win elections in Plaintiff's proposed District 5
16 but not in an at-large election.

17
18 First, a district is a limited geographic region that allows district residents a
19 better opportunity to get to know candidates than in a citywide election. Dkt. 24 at
20 ¶60. Second, members of a more limited geographic region are more likely to find
21 common ground across race precisely because they share common interests driven
22 by geography: their children attend the same schools and play in the same parks,
23 they use the same libraries and roads, and they walk under the same streetlights.
24

1 Third, smaller geographic areas mean lower campaign costs and allow candidates
 2 to focus campaign efforts on a particular community. Dkt. 24 at ¶¶60-62. Fourth,
 3 the cost of campaigning citywide can be a substantial barrier for Latino candidates
 4 given the marked socio-economic differences between the Latino and the White
 5 communities in Pasco.³ Finally, district based elections are known to benefit
 6 communities that have been excluded from electoral politics because of vote
 7 dilution. *Dallas County Comm'n*, 850 F.2d at 1439-40. Plaintiff's proposed District
 8 5 provides Latino voters with a meaningful opportunity to elect a candidate of their
 9 choice, allowing them to convey their messages to a distinct and accessible voting
 10 base. Dkt. 24 at ¶¶60-62.

13 In sum, the one difference in the Defendants' and Plaintiff's competing
 14 plans makes all the difference: Plaintiff's influence district provides a meaningful
 15 opportunity for a Latino to win election *now* and in the future. Defendants' at-large
 16 seat does not. And what makes this distinction critical is that this seventh seat on
 17 the Council will often be the decisive vote in matters where the Latino and White
 18 population disagree. Plaintiff's position is not that at-large districts are never
 19 permissible in Section 2 remedial plans. But on the facts of this case, the City's
 20 inclusion of an at-large swing seat must be rejected.

23 ³ Latino citizens of Pasco earn approximately half as much as their non-Latino
 24 White neighbors. Dkt. 24 at 65.

D. Intent Is not the Test for a Lawful Remedy

The City persists in arguing that including one at-large seat in its remedial plan is acceptable so long as it is not included “to diffuse minority voting strength.” But as Plaintiff demonstrated in her Response Brief, the two cases Pasco cites for this proposition do not support it. Dkt. 27 at 13-16. Moreover, Pasco fails to provide any actual evidence that the listed “policy objectives” for including an at-large position, Dkt. 30 at 7-8, were in fact the basis for the City’s hybrid plan.

But even if the City could establish that its intent was pure, the issue of intent is irrelevant. *See Thornburg*, 478 U.S. at 43-44 (affirming that intent is not required to sustain a Section 2 claim). It would stand Section 2 on its head to require that a defendant’s proposed remedial plan be accepted, even if it failed to end discriminatory effects, absent a finding that the plan was infected by overt discriminatory intent. To ensure that appropriate remedies are implemented, the judiciary must adopt plans that fully and completely end the discriminatory effects of vote dilution, regardless of the presence or absence of discriminatory intent.

III. CONCLUSION

For the foregoing reasons Plaintiff respectfully requests that the Court reject Defendants’ proposed remedy and adopt Plaintiff’s proposed remedial plan.

DATED this 15th day of November, 2016.

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****Admission to E.D. Wash. Pending**

Attorneys for Plaintiff, Bertha Aranda Glatt

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2016, I caused the foregoing document to be:

☒ electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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