

November 4, 2019

Yakima City Council
129 North Second Street
Yakima, WA 98901

Re: Reject Council Initiated Proposed Charter Change – Strong Mayor Will Erode
Equal Opportunity of Protected Class to Choose Government of Their Choice

Dear Yakima City Council Members:

We write to urge the Council to reject the proposed change in City Charter which would erode the equal opportunity of Latinx voters to elect district leaders of their choice, as required by *Montes v. City of Yakima*, who then choose the city executive. The voters may request such a change in governmental structure, but there is no such push from the broader community. In fact, the voters rejected a similar proposal in 2011. While a strong mayor system may work for other communities, given the City's history of voting rights act violations and ongoing issues outlined below which trigger additional factors above and beyond the court findings in *Montes*, Council action at this juncture is likely to trigger new civil rights litigation.

Many, if not all, of the factors recognized in *Montes* continue to burden our city today including: the history of voting-related discrimination; racially polarized voting; and the effects of past discrimination in areas such as education, employment and health which hinder the ability of the Latinx community to effectively participate in the political process. *See Montes*, 40 F.Supp.3d 1377, 1409-13 (2014). Since *Montes* the Washington voting rights act of 2018 was passed, incorporating similar factors to establish voting rights act violations and providing for attorney's fees. RCW § 29A.92.030 & .130.

In addition to the ongoing concerns documented in *Montes*, there are three factors which present serious risk of voting rights act violations stemming from possible Council action on the strong mayor proposal. These are: 1) the use of overt or subtle racial appeals in political campaigns; 2) the extent to which elected officials have been responsive to the particularized needs of the minority group; and 3) the policy underlying the challenged practice or procedure. *See* 40 F.Supp.3d at 1388 (summarizing the "Senate Factors"). While the Court in *Montes* determined there was a violation without relying on evidence of race-based appeals, that evidence is abundant in the current District One campaign. The *Montes* Court did not analyze the second and third factors, which as examined here, present strong additional evidence in support of voting rights act violations.



THE ALLIANCE
for Equal Justice

There is Evidence of Racial Appeals in City Council District One Campaign

This letter does not provide an exhaustive analysis of the racial appeals factor, but even a cursory review of the campaign in District One demonstrate appeals to race that would support voting rights act violations. Mr. Gartrell was engaged in an altercation on election night in November 2018, in which racial slurs were reported. In addition, in a recent social media post, Mr. Gartrell made a veiled reference to his opponent in the District One race and current representative of that district, both Latinas, as “haters and political takers.” Current City Council member Jason White has made explicit appeals to race alleging on social media an “all out race war” and advocating for “a caucasian” to win to destroy “their narrative.” This limited examination demonstrates appeals to race, which could be used to establish this factor in support of voting rights act violations.

Council Has Been Unresponsive to Concerns of Latinx Community

We highlight just two examples of how the Council has been unresponsive to the particularized needs of the Latinx community: 1) rejection of the welcoming city and inclusive policing initiatives; and 2) refusal to stop ICE flights at the Yakima airport.

In early 2017, the City Council voted against a proposed welcoming city on a 4-3 vote with the then three Latina council members in the minority and all four white council members against. The debate related to these issues continued into the summer of 2017 with strong community participation and interest. In an attempt to quell community discussion, the Council voted to end consideration of the issues while Council Member Mendez was absent. As a result of a threatened lawsuit by our firm, the Council took another vote on the issue, but the inclusive policing discussion did not continue, and no legislation ultimately passed. This issue was subsequently addressed by the State legislature with the passing of Keep Washington Working (SB 5497) in May 2019 which prohibits law enforcement from questioning individuals about their immigration status.

Earlier this year in July, there was significant community outrage and pleas to stop the ICE flights which were transferred to Yakima after King County refused to provide services to aid immigration enforcement authorities. The Council voted against the proposal to stop the flights, 4-3, after over an hour of public comment in which the vast majority of those commenting spoke *against* the flights. Council members Funk, Gutierrez and Mendez were in the minority, with the remaining four white council members voting against. This issue has continued to be a focus of the District One campaign.

These two prominent examples of lack of responsiveness to the needs of the Latinx community may be used as evidence to demonstrate voting rights act violations.

Policy Justification for Change is Tenuous and Procedure Deviates from Past Practices

The *Montes* court did not examine this factor, but it would be analyzed in a voting rights act challenge based on a Council initiated change in government. As stated above, there is no community groundswell for this change. The City has not established a committee to review this issue and has not held a public hearing. This lack of process deviates significantly from procedures recommended and followed in the past. When a similar proposal was advanced in 2010-11 the Council gave notice and convened a public hearing about the possibility of changing to a Mayor-Council form of government. In addition, the acting city manager at the time also recommended that a Charter Committee review the proposal and make a recommendation regarding amending the City charter. Here, neither step has been examined, proposed or executed. The Council has not permitted all voices reflective our diverse community to be heard. The lack of justification for the change as well as procedural deviations may be used as evidence to demonstrate voting right act violations.

Considering the unique history of voting discrimination in Yakima and the reasons above, we urge the Council to allow the citizens of Yakima to decide whether a change in the City charter should be submitted to the voters and avoid the polarization and expense of civil rights litigation when our community has so many urgent, unmet needs including affordable housing, basic infrastructure and ensuring access to our representational government free from discrimination.

Respectfully submitted,

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