

1 Thomas F. Ahearne, WSBA No. 14844
2 Christopher G. Emch, WSBA No. 26457
3 Foster Pepper PLLC
4 1111 Third Avenue, Suite 3400
5 Seattle, WA 98101
6 Telephone: (206) 447-8934
7 Email: ahearne@foster.com
8 Email: emchc@foster.com

HONORABLE THOMAS O. RICE

7 Andrew Spencer, SBAZ No. 029751
8 FairVote
9 6930 Carroll Avenue, Suite 610
10 Takoma Park, MD 20912
11 Telephone: (301) 270-4616
12 Email: dspencer@fairvote.org

Attorneys for FairVote

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON

15 ROGELIO MONTES and MATEO
16 ARTEAGA,

17 Plaintiffs,

18 v.
19

20 CITY OF YAKIMA; MICAH CAWLEY,
21 in his official capacity as Mayor of
22 Yakima; and MAUREEN ADKISON,
23 SARA BRISTOL, KATHY COFFEY,
24 RICK ENSEY, DAVE Ettl, and BILL
25 LOVER, in their official capacity as
26 members of the Yakima City Council,

Defendants.

No. 12-cv-3108-TOR

FAIRVOTE’S AMICUS CURIAE
BRIEF REGARDING PROPOSED
REMEDIAL PLANS

FAIRVOTE’S AMICUS CURIAE BRIEF REGARDING
PROPOSED REMEDIAL PLANS
Case No. 12-cv-3108-TOR

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

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1 **I. INTRODUCTION**

2 **Winner-take-all district:** Winner-take-all elections allow only one winning
3 group to successfully elect its preferred representative, while all other groups go
4 unrepresented. Any election with one single winner is always winner-take-all.
5 Plaintiffs’ proposed remedial plan would establish 7 such winner-take-all districts,
6 with the top vote getter in each district elected as councilmember for the voters in
7 that district.
8

9
10 **Single vote/multi-winner district:** Defendants’ proposed remedial plan
11 elects 5 councilmembers by district with the above winner-take-all method. But it
12 also elects 2 councilmembers at-large, with both of the top two vote getters in that
13 city-wide election being elected councilmember. This system where each voter
14 has one single vote for a position with two seats, and the top two vote getters are
15 elected to those two seats, is sometimes called the “single vote” method for a
16 multi-winner election. (This single vote method can similarly be used to elect the
17 top three vote getters in a three-seat district, and so on.)
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21 **FairVote:** FairVote respectfully submits this amicus brief to help inform
22 the Court of the benefits of employing a single vote/multi-winner district in this
23 case. FairVote is familiar with the use of the single vote method in at-large
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26

1 elections under the Voting Rights Act,¹ has filed amicus briefs in other cases
2 involving the appropriateness of various voting methods as a remedy under federal
3 and State voting rights acts,² and has published scholarship on such voting methods
4 and voting rights.³ As Sections II and III below explain, FairVote respectfully

6
7 ¹ *FairVote is a 501(c)(3) non-profit organization founded in 1992, whose mission is to*
8 *inform and advocate for fairer political representation through reforms that include election*
9 *methods other than winner-take-all systems. FairVote's experience is that voting methods like*
10 *the single vote method in multi-winner districts, ranked choice voting, cumulative voting, and*
11 *other American forms of non-winner-take-all elections lead to representation in government*
12 *more reflective of the voters' diversity. FairVote therefore encourages public officials, the*
13 *courts, and the public to employ such election methods as an appropriate remedy for election*
14 *systems which violate federal or State voting rights legislation. FairVote has thus continually*
15 *presented decision-makers with information explaining the use of such voting methods as a legal*
16 *and effective remedy for voting rights violations, including in jurisdictions where race is a*
17 *divisive and controlling factor. See generally, FAIRVOTE, <http://www.FairVote.org>.*

18 ² *Federal Voting Rights Act (42 U.S.C. §§ 1973-1973bb-1 (2013)); California Voting Rights*
19 *Act (CAL. ELEC. CODE §§ 14025-32 (2012)). See, e.g., Sanchez v. City of Modesto, 145 Cal. App.*
20 *4th 660 (2006); United States v. Vill. of Port Chester, 704 F.Supp.2d 411 (S.D.N.Y. 2010).*

21 ³ *See, e.g., Rob Richie & Andrew Spencer, The Right Choice for Elections: How Choice*
22 *Voting Will End Gerrymandering and Expand Minority Voting Rights, from City Councils to*
23 *Congress*, 47 U. RICH. L. REV. 959, 988–1002 (2013); Jerome Gray, *Winning Fair*
24 *Representation in At Large Elections (1999)*, available at [http://www.fairvote.org/the-voting-](http://www.fairvote.org/the-voting-rights-act-jerome-gray-and-fair-voting-in-alabama)
25 *rights-act-jerome-gray-and-fair-voting-in-alabama* (describing the effect of the single vote
26 *method and cumulative voting in 32 local jurisdictions in Alabama).*

1 submits that a more effective remedy in this case would be to modify defendants'
2 proposal to elect three councilmembers in a single vote/at-large election (instead of
3 only two councilmembers), and elect four councilmembers in winner-take-all,
4 single-winner districts (instead of the 5 proposed by defendants or the 7 proposed
5 by plaintiffs).
6

7 8 **II. SUMMARY OF BRIEF**

9 Drawing on the experiences of other local jurisdictions in our country, this
10 brief highlights some of the benefits of employing the single vote method to elect
11 two or more Yakima City Council members at-large, instead of resorting to the use
12 of single-member districts to elect all seven city council members.
13

14 Employing the single vote method to elect two or more councilmembers
15 provides Latino voters the power to elect a Latino-preferred candidate whenever
16 they surpass the “threshold of exclusion”. While reaching this threshold
17 guarantees the Latino-preferred candidate’s victory in any given election, Latino-
18 preferred candidates are also nearly certain to be elected with a share of votes
19 below that threshold since votes from the majority community are seldom (if ever)
20 evenly divided among the same number of candidates as seats.
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23 This election of a Latino-preferred candidate to an at-large seat would also
24 provide every Latino voter in Yakima a Latino-preferred representative on the City
25
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1 Council, rather than providing a Latino-preferred representative to only those
2 Latino voters who happen to live within the boundary lines drawn for a “majority-
3 minority” or “opportunity” district.
4

5 As plaintiffs noted in their remedial redistricting plan, the “threshold of
6 exclusion” decreases as the number of candidates increases. Administratively, the
7 simplest approach to reduce that threshold of exclusion for all Latino voters in
8 Yakima (as opposed to just those living in a “majority-minority” or “opportunity”
9 district) would therefore be to slightly modify defendants’ proposed plan to
10 provide three at-large seats (in a non-staggered election with the single vote
11 method defendants propose), and provide four winner-take-all districts (with one
12 majority Latino district). Mathematically, doing so guarantees the election of any
13 at-large candidate who receives more than one-fourth of the votes cast, and as a
14 practical matter elects candidates with even lower vote shares since votes are
15 seldom (if ever) divided evenly.
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20 And regardless of the voting method ultimately employed in this case,
21 FairVote also encourages the remedial plan to include voter outreach efforts to
22 ensure that all Yakima voters are aware of the new rules and thus able to
23 knowingly exercise the opportunities which that new remedial plan provides.
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III. DISCUSSION

A. A Single Vote/Multi-Winner/At-Large District Offers An Effective Remedy For City-Wide Minority Voter Dilution

Although single-member districts are often used to remedy voting rights violations, employing the single vote method to elect more than one city councilmember for the same at-large district better promotes meaningful participation by all voters, fair representation in a diverse community, and self-correcting flexibility as the composition of electorates change.⁴

For example, employing the single vote method to elect three councilmembers in an at-large district means the first, second, and third place finishers are all elected to that district’s three city council seats. This method allows politically cohesive minority groups to elect at least the second or third place finisher without requiring the first-place finish needed to win in a one-seat/winner-take-all district.

⁴ More fully, FairVote has advocated three types of election methods as remedies for vote dilution claims under the Voting Rights Act: ranked choice voting, cumulative voting, and the above single vote method. FairVote most strongly recommends ranked choice voting as a general reform and remedy for vote dilution claims under the Voting Rights Act because it provides for fairer representation while simultaneously fostering meaningful competition among diverse candidates and improving the tenor of campaigns. See generally, Andrew Spencer and Rob Richie, *supra*. Since one of the parties in this case has recommended the single vote method, however, FairVote focuses on that method in this case.

1 Political scientists refer to the proportion of the vote needed to guarantee a
 2 seat in such a multi-winner district as the “threshold of exclusion”, which is
 3 represented by the following mathematical formula: one divided by the sum of one
 4 plus the number of seats to be filled, plus one vote. Or simply:

$$5 \text{ Threshold of Exclusion} = \frac{1}{(Seats + 1)} + 1 \text{ Vote}$$

6
 7
 8 Steven J. Mulroy, *The Way Out: A Legal Standard for Imposing Alternative*
 9
 10 *Electoral Systems as Voting Rights Remedies*, 33 HARV. C.R.-C.L. L. REV. 333,
 11 340–41 (1998).

12 This threshold of exclusion formula shows that a candidate in a single-seat
 13 district needs one vote more than half the votes cast to be guaranteed a win; a
 14 candidate in a two-seat race needs one vote more than a third of the votes cast to be
 15 guaranteed a win; a candidate in a three-seat race needs one vote more than a
 16 fourth of the votes cast to be guaranteed a win; and so on.

17
 18 Note too that the threshold of exclusion is the proportion that guarantees a
 19 win. It is not the minimum number of votes required to win, because candidates
 20 can (and do) win with less than that threshold since the electorate seldom (if ever)
 21 splits its votes evenly among all candidates. Applying the single vote method to a
 22 3-seat at-large district accordingly offers a practical and effective city-wide remedy
 23 for minority vote dilution by allowing politically cohesive minority groups to elect
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1 at least the second or third place finisher to the city-wide at-large district without
2 requiring the first-place finish needed to win in a one-seat/winner-take-all district.

3
4 **B. The Single Vote Method Can Serve As An Effective Remedy In Yakima**

5 The Voting Rights Act does not require the use of single-member districts
6 alone as the remedy for its violation. E.g., *United States v. Euclid City School Bd.*,
7 632 F.Supp.2d 740, 751–52 (N.D. Ohio 2009) (adopting the defendants’ proposed
8 at-large single vote plan over the plaintiffs’ proposed single-member district plan).
9 Rather, the inquiry must look to the facts specific to each individual case. See
10 *Harper v. City of Chicago Heights*, 223 F.3d 593 (7th Cir. 2000), 600 (“at-large
11 procedures that are discriminatory in the context of one election scheme are not
12 necessarily discriminatory under another election scheme.”). And whether the
13 single vote method for at-large seats is sufficiently remedial in this case turns on
14 whether the threshold of exclusion is low enough to provide Latino-preferred
15 candidates the opportunity to be elected. *Euclid City School Bd.*, 632 F.Supp.2d at
16 761–62.

17 Under the defendants’ proposed at-large district with two seats, the threshold
18 of exclusion is not too high for a Latino-preferred candidate to win one of the seats
19 in that city-wide at-large district.
20

1 Although plaintiffs note the operation of the threshold of exclusion,⁵ their
2 characterization would benefit from some additional detail: It is true that Latino
3 voters would need to exceed the threshold of exclusion to guarantee they could
4 elect a candidate. But candidates are elected with less than the threshold of
5 exclusion under fairly ordinary circumstances. The Latino-preferred candidate
6 does not need to reach the threshold of exclusion to be elected if a majority-
7 favored candidate receives more than the threshold number of votes, or if majority-
8 favored candidates outnumber the seats available (and each of them attract at least
9 some votes). Needing to surpass that threshold to win is only necessary if 100% of
10 the majority group coordinates to perfectly split their support evenly among the
11 necessary number of majority-group candidates.

12 For example, suppose four candidates run for two at-large seats: two
13 competitive majority-preferred candidates, one less competitive majority-preferred
14 candidate, and one Latino-preferred candidate. If 75% of voters vote for one of the
15 three majority-preferred candidates and split their votes 50% for one, 20% for the
16 second, and 5% for the third, the Latino-preferred candidate would come in second
17 (and thus be elected to one of the at-large district's two seats) with just 21% of the
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25 ⁵ *Plaintiffs' Motion for Entry of Proposed Remedial Plan and Final Injunction at 9, No. 12-*
26 *CV-3108 (Oct. 3, 2014) ("Plaintiffs' Brief").*

1 vote. That election would also result in more than 70% of the voters being
2 represented by a candidate for whom they voted. (50% + 21% is more than 70%.)
3

4 In the above example, the Latino-preferred candidate wins the second
5 at-large seat even when Latino voters are less than 21% of the at-large electorate if
6 just some non-Latino voters “cross over” to vote for the Latino-preferred
7 candidate. And in Yakima, the amount of such “crossover” voting from white
8 voters in prior elections confirm that Latino-preferred candidates can readily come
9 in second place in a city-wide election – and thus be elected to one of two at-large
10 seats under the single vote system.
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13 Yakima’s past primary elections illustrate how the single vote method works
14 – for those primary elections were effectively a single vote system that determined
15 the first and second place finisher for placement on the November general election
16 ballot. And the second-place finisher in Yakima’s single vote primary elections
17 has had vote shares as low as **28.62%**,⁶ **25.71%**,⁷ and **21.44%**.⁸
18
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21 ⁶ *YAKIMA COUNTY CANVASSING BOARD, PRIMARY 2007 AMENDED CANVASS REPORT (2007)*,
22 available at <http://www.yakimacounty.us/vote/English>Returns/2007Primaryresults.pdf> (Susan
23 Whitman, 2007 District 4 primary)

24 ⁷ *YAKIMA COUNTY CANVASSING BOARD, CUMULATIVE REPORT (2011)*, available at
25 <http://www.yakimacounty.us/vote/English>Returns/2011PrimaryResults.pdf> (Rich Marcley, 2011
26 District 2 primary)

1 Indeed, in both of the Yakima elections that this Court cited as examples of
2 polarized voting, the Latino candidate of choice who lost the winner-take-all
3 general election had in fact “won” one of two positions determined by the primary
4 election. Sonia Rodriguez and Benjamin A. Soria both finished second place in
5 their respective 2009 primaries – and thus “won” one of the two spots on the
6 general election ballot with 38.15% of the primary election vote (Rodriguez) and
7 31.82% (Soria).⁹ It is therefore inaccurate to portray the use of the single vote
8 method to determine the first and second place finishers to take the two seats in a
9 2-seat at-large district as “an experiment in minority vote dilution.” Plaintiffs’
10 Brief at 11.
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14 FairVote notes that the single vote method for a city-wide at-large district
15 would provide an even more consistently effective vote dilution remedy in Yakima
16 if defendants’ proposal was modified to provide for three at-large seats in a
17 non-staggered election employing the single vote method, and four seats in
18 separate winner-take-all districts (with one majority Latino district).
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22 ⁸ *YAKIMA COUNTY CANVASSING BOARD, CUMULATIVE REPORT (2013)*, available at
23 <http://www.yakimacounty.us/vote/English>Returns/Primary2013.pdf> (Charles Noel, 2013 at-
24 large position 5 primary)

25 ⁹ *Montes et al. v. City of Yakima et al.*, No. 12-CV-3108 at 36-37 (E.D. Wash. Aug. 22,
26 2014).

1 As plaintiffs note, the threshold of exclusion lowers as more seats are elected
 2 at-large on the same ballot. Under defendant’s proposed remedial plan, only two
 3 of the seven seats are elected at-large, which produces the following threshold of
 4 exclusion: one vote more than a third of the votes cast. If three seats were elected
 5 at-large instead, then the threshold of exclusion would be only one vote more than
 6 a quarter of the votes cast.¹⁰
 7
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9 The Hispanic/Latino share of registered voters in 2013 was 19.9%, and it has
 10 steadily risen by about 1% every year. See the following table, generated using
 11 data from L2 VoterMapping technology (<http://www.votermapping.com/>):
 12

Election	Hispanic/Latino	
	Absolute Total	Share of Electorate
2013 General	7172	19.9%
2013 Primary	6955	19.6%
2011 General	5565	17.5%
2011 Primary	5448	17.3%
2009 General	4566	15.9%
2009 Primary	4514	15.8%

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 20 This established trend, coupled with the previously-discussed rate of “crossover”
 21 voting in past Yakima elections and the mathematical fact that the Latino vote
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23
 24 ¹⁰ *If four seats were elected at-large, the threshold would only be one vote more than*
 25 *one-fifth of the votes cast – though as the number of winner-take-all district seats goes down, it*
 26 *may become more difficult to draw a cohesive winner-take-all district that is majority Latino.*

1 share does not actually need to exceed the threshold of exclusion for a Latino-
2 preferred candidate to be elected, indicate that with three seats elected at-large by
3 the single vote method, a Latino-preferred candidate could be reliably elected to at
4 least one of those three at-large seats in upcoming elections.
5

6 As noted earlier, FairVote also recommends that, as part of any effective
7 remedy, Yakima should conduct a voter education campaign to educate voters
8 about the new voting plan – for remedies can best achieve their full potential if
9 voters and candidates are aware of the change and the potential it creates for fairer
10 representation. See *Vill. of Port Chester*, 704 F.Supp.2d at 451. Latino turnout has
11 been disproportionately low in Yakima city elections, making public awareness of
12 the election date important.¹¹ This is especially true where vote dilution is due in
13 part to historical discrimination in education and socio-economic factors (*id.*) – a
14 point plaintiffs themselves raise. Combined with voter education in both English
15 and Spanish, FairVote respectfully submits that employing the single vote method
16 for a three-seat at-large district would best address and remedy vote dilution in
17 Yakima.
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24 ¹¹ *One alternative that would likely enhance equitable turnout would be to hold the municipal*
25 *election on even-numbered years to consolidate it with state and federal general elections.*
26 *Although this would be a novel practice in Washington, it is common elsewhere (California).*

1 **C. The Single Vote Method Serves Latino Voting Rights Better than**
2 **Single Member Districts Alone**

3 In addition to effectively remedying racial minority vote dilution, fairer
4 representation voting methods like the previously discussed single vote method
5 carry a number of other benefits. Because single member districts are winner-take-
6 all, large numbers of voters remain unrepresented when those voters do not
7 compose the majority in that district.
8

9 For example, if Yakima were to adopt a seven-district plan and Latino voters
10 elected their preferred candidates in two districts, all Latino voters in the other five
11 districts would still be unable to elect a candidate of choice in the event of ongoing
12 racially polarized voting. On the other hand, if two or three at-large seats are
13 elected in a single vote system, the entire Latino population in Yakima would be
14 empowered to elect a preferred candidate. All Latinos in Yakima – not just those
15 living in a “majority-minority” or “opportunity” district – would thus have a direct
16 connection to a representative that they voted for and that they could approach
17 regarding their own constituency services.
18

19 Fair representation voting methods such as employing the above single vote
20 system to elect more than one seat in an at-large district also avoid the shortcoming
21 of mere “virtual representation”. Instead of grouping voters by district and then
22 having each of the seven councilmembers represent the majority group in his or her
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1 particular district, methods like the single vote method suggested by FairVote here
2 would establish three at-large council members who represent the groups of voters
3 city-wide that provided them their first, second, or third place finish. This allows
4 voters city-wide to “self-district” into politically cohesive groups to elect a
5 representative for themselves by delivering to their preferred candidate either a
6 first, second, or third place finish in the election. Establishing four winner-take-all
7 districts would continue to ensure that geographically local concerns are addressed
8 (and at least one such district should be majority-Latino) – but there are also
9 city-wide public issues and concerns that go beyond an individual winner-take-all
10 district’s boundaries. Moreover, voters within any particular winner-take-all
11 district who are not in that particular district’s majority are provided a better voice
12 for representation if they are allowed to join with like minded voters in other parts
13 of the city to provide a first, second, or third place finish to the candidate of their
14 choice in a 3-seat at-large district.
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20 Plaintiffs note that the use of the single vote method does “not address the
21 barriers Latinos face running for at-large positions in terms of money and
22 resources.” Plaintiffs’ Brief at 10. Although at-large campaigns would be
23 citywide under the single vote method, candidates in an at-large district with more
24 than one seat compete for a smaller share of votes than the majority share required
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26

1 in a one-seat/winner-take-all district. That is because the threshold of exclusion is
2 only one more vote than a third in a two-seat race, and only one vote more than a
3 quarter in a three-seat race. That enables candidates to win election by focusing on
4 smaller communities within the larger city. Fair representation systems like the
5 single vote method have therefore consistently elected the preferred candidates of
6 racial minorities when their participation rates approach the threshold of exclusion
7 – including elections in which those racial minority candidates were heavily
8 outspent.¹²

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12 Further, the inclusion of single vote at-large seats will incentivize Latino-
13 preferred candidates to activate Latino voters, who currently vote at lower rates
14 than white voters – thus increasing representation and empowering voters
15 throughout Yakima. See *Vill. of Port Chester*, 704 F. Supp. 2d at 453; see also
16 Briffault, *Lani Guinier and the Dilemmas of Democracy*, 95 COLUM. L. REV. 418,
17 424 (1995) (“The [Voting Rights] Act was intended to initiate a process of political
18 mobilization [and] grass roots organization.”). This will be especially true if this
19 Court requires Yakima to engage in a voter education campaign as part of the
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23 ¹² See, e.g., *Steven Hill & Rob Richie*, *New Means for Political Empowerment in the Asian*
24 *Pacific American Community*, 11 *HARV. J. ASIAN AM. POL’Y REV.* 335, 340 (2000–2001) (citing
25 *the election of Bobby Agee in Chilton County, Alabama despite being outspent 20-1 by the*
26 *highest-spending candidate*).

1 remedial plan in this case. The more Latino voters participate, the more reliably
2 they will elect their preferred candidates, as their share of registered and active
3 voters approaches their share of eligible voters.
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5 Finally, fair voting methods such as single vote/multi-winner districts are
6 wholly race neutral. As such, they completely avoid concerns of “racial
7 gerrymandering” and “balkanization” noted in the *Shaw* line of cases.¹³ In fact,
8 there is compelling evidence that such fair representation voting fosters the
9 construction of cross-racial coalitions among both voters and legislators. See,
10 Steven J. Mulroy, *Alternative Ways Out: A Remedial Map for the Use of*
11 *Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L. REV.
12 1867, 1903 (1999); Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting*
13 *in the United States*, 1995 U. CHI. LEGAL F. 241, 297 (1995).
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17 **D. Fair Representation Voting Has Served As An Effective Section 2**
18 **Remedy In Other Jurisdictions**

19 About 100 jurisdictions in the United States elect officers using either
20 ranked choice voting, cumulative voting, or the above single vote method.
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24 ¹³ See *Miller v. Johnson*, 515 U.S. 900, 920 (1995); *Vill. Of Port Chester*, 704 F. Supp. 2d at
25 453 (finding that cumulative voting avoids the constitutional concerns with racial
26 gerrymandering).

1 The term “limited voting” generally refers to the election of officers at-large
2 or in multi-seat districts in which voters are “limited” by having fewer votes than
3 the number of seats to be elected. And some variant of limited voting is used in
4 dozens of U.S. cities, including most municipal offices in Connecticut (including
5 the Hartford city council) and many local offices in Pennsylvania (including the at-
6 large positions on the Philadelphia city council). These fair representation voting
7 methods, including the single vote method, accordingly have a strong backing in
8 academic literature surrounding the Voting Rights Act. See generally Lani
9 Guinier, *supra*; Pildes & Donoghue, *supra*.

13 Almost all adoptions of such fair representation systems have followed
14 actual or threatened litigation under the Voting Rights Act. See Engstrom,
15 *Cumulative and Limited Voting: Minority Electoral Opportunities and More*, 30
16 ST. LOUIS U. PUB. L. REV. 97, 98 (2010). And they have been approved by courts
17 even in situations where the method employed is not provided for in state law.
18 *Vill. of Port Chester*, 704 F. Supp. 2d at 449.

21 These fair representation voting methods, moreover, have proven highly
22 effective as remedies for Voting Rights Act cases. Many jurisdictions with
23 minority populations that had gone unrepresented under winner-take-all/at-large
24 systems elected representatives preferred by those minority populations for the first
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1 time once such fair representation voting methods were instituted instead. See,
2 e.g., Engstrom, *supra*, at 125 (first Latino representative); Robert R. Brischetto &
3 Richard L. Engstrom, *Cumulative Voting and Latino Representation: Exit Surveys*
4 *in Fifteen Texas Communities*, 78 SOC. SCI. Q. 973, 975 (1997) (first Latino and
5 Native American representatives); Pildes & Donoghue, *supra*, at 272–73 (first
6 black representative).¹⁴ In short, fair representation methods like the single vote
7 method discussed in this brief are giving minority groups across our country a
8 voice and stake in their local government that they have never before enjoyed.
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12 Plaintiffs’ characterization of defendants’ proposed plan as replacing “the
13 City’s current hybrid at-large system with a new hybrid at-large system”
14 (Plaintiffs’ Brief at 4) ignores the critical distinction between (a) electing a single
15 at-large seat under a winner-take-all system, and (b) electing more than one
16 at-large seat simultaneously under a single vote system – for a single vote /multi-
17 winner district provides minorities the power to achieve adequate representation.
18 See *Chapman v. Meier*, 420 U.S. 1, 16 n.10 (1975) (“criticism of multi-member
19 districts is rooted in their winner-take-all aspects”) (quoting *Whitcomb v. Chavis*,

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23 ¹⁴ *In another instance, for example, African Americans in a jurisdiction where they were*
24 *11.3% of the population elected their representative of choice in the very first use of the system*
25 *in 1988, and that candidate has continued to win ever since, consistently earning strong support*
26 *among African American voters. See Pildes & Donoghue, supra, at 262.*

1 403 U.S. 124, 158–59 (1971)). Fittingly, the cases plaintiffs cite concerned
2 at-large seats elected on a winner-take-all basis. Plaintiffs’ Brief at 6.

3
4 Indeed, courts routinely uphold systems that include at-large elections with
5 fair representation voting (rather than winner-take-all voting) as a remedy for vote
6 dilution claims.¹⁵ Such fair representation voting at-large also satisfies the “one
7 person, one vote” requirement more precisely than voting strictly by winner-take-
8 all district boundary lines – especially as demographics shift over time. *Id.* at 939
9 (cumulative voting “achieves precise population equality” because it uses only one
10 district in which all voters have the exact same number of votes); *McCoy v.*
11 *Chicago Heights*, 6 F.Supp.2d 973, 984 (N.D. Ill. 1998) *rev’d sub nom. on other*
12 *grounds by Harper v. City of Chicago Heights*, 223 F.3d 593 (7th Cir. 2000);
13 *Cane v. Worcester Cnty.*, 847 F.Supp. 369, 374 n.8 (D. Md. 1994), *rev’d on other*
14 *grounds*, 35 F.3d 921 (4th Cir. 1994); see also Lani Guinier, *(E)Racing*
15 *Democracy*, 108 HARV. L. REV. 109, 135–36 (describing how cumulative voting

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20 ¹⁵ See, e.g., *Vill. of Port Chester*, 704 F.Supp.2d 448-49 (adopting cumulative voting in at-
21 large districts); *Dillard v. Chilton County Bd. of Educ.*, 699 F. Supp. 870, 876 (M.D. Ala. 1988)
22 (upholding cumulative voting in at-large districts); *Banks v. Peoria*, No. 87-2371 (C.D. Ill. 1987)
23 (approving cumulative voting in at-large districts). At least one court even imposed the use of
24 cumulative voting (similar to the single vote method) for at-large elections after a finding of
25 Section 2 liability when the defendant jurisdiction did not propose any remedy itself. *Cottier v.*
26 *Martin*, 475 F. Supp. 2d 932, 932 (D.S.D. 2007).

1 satisfies one person, one vote).¹⁶ It has also been approved by courts even when in
2 tension with state law. *Vill. of Port Chester*, 704 F.Supp.2d at 449; *Voinovich v.*
3 *Quilter*, 507 U.S. 146, 157 (1999) (state redistricting law superseded after finding
4 Voting Rights Act violation); *Cleveland Cnty. Ass'n for Gov't by the People v.*
5 *Cleveland Cnty. Bd. Of Comm'rs*, 142 F.3d 468, 476 (D.C. Cir. 1998) (federal
6 Supremacy Clause allows Voting Rights Act remedies to supersede state law).
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9 IV. CONCLUSION

10 For the foregoing reasons, this Court should give deference to Yakima's
11 preference for a non-winner-take-all, fair representation system with more than one
12 seat elected at-large. A remedial map with at least three at-large seats elected by
13 the single vote method, however, would be a more effective remedy to the
14 city-wide vote dilution in this case. Moreover, any remedy should be accompanied
15 by a city-backed plan of voter outreach. FairVote respectfully submits that its
16 proposed modification of the defendants' remedial plan would be the most
17 appropriate remedy in this case.
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22 ¹⁶ Both *Chicago Heights* and *Worcester Cnty* were reversed because the defendant
23 jurisdiction proposed the use of districts, and courts defer to a defendant jurisdictions choice of
24 legally acceptable remedy. *Worcester Cnty*, 35 F.3d at 928–29; *Chicago Heights*, 223 F.3d at
25 602. In this case, defendants have proposed the use of the single vote method, and so that
26 deference militates in favor of upholding its use.

1 RESPECTFULLY SUBMITTED this 20th day of October, 2014

2
3 *s/Christopher G. Emch*
4 Thomas F. Ahearne, WSBA No. 14844
5 Christopher G. Emch, WSBA No. 26457
6 Foster Pepper PLLC
7 1111 Third Avenue, Suite 3400
8 Seattle, WA 98101
9 Telephone: (206) 447-8934
10 Email: ahearne@foster.com
11 Email: emchc@foster.com

12 *s/Andrew Spencer*
13 Andrew Spencer,
14 (*pro hac vice will be filed promptly*)
15 FairVote
16 6930 Carroll Avenue, Suite 610
17 Takoma Park, MD 20912
18 Telephone: (301) 270-4616
19 Email: dspencer@fairvote.org

20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

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

Sarah Dunne
La Rond Baker
ACLU OF WASHINGTON
FOUNDATION
901 Fifth Avenue, Suite 630
Seattle, WA 98164
(206) 624-2184
dunne@aclu-wa.org
lbaker@aclu-wa.org

*Counsel for
Plaintiffs*

- VIA EMAIL
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA CM/ECF SYSTEM

Joaquin Avila
THE LAW FIRM OF JOAQUIN
AVILA
P.O. Box 33687
Seattle, WA 98133
(206) 724-3731
jgavotingrights@gmail.com

*Counsel for
Plaintiff
Rogelio
Montes*

Pro Hac Vice

- VIA EMAIL
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA CM/ECF SYSTEM

Laughlin McDonald
ACLU FOUNDATION, INC.
VOTING RIGHTS PROJECT
230 Peachtree Street, Suite 1440
Atlanta, GA 30303-1227
(404) 523-2721
lmcdonald@aclu.org

*Counsel for
Plaintiff
Mateo
Arteaga*

Pro Hac Vice

- VIA EMAIL
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA CM/ECF SYSTEM

1 Kevin J. Hamilton
2 William B. (Ben) Stafford
3 Abha Khanna
4 PERKINS COIE LLP
5 1201 Third Avenue, Suite 4900
6 Seattle, WA 98101-3099
7 (206) 359-8000
8 khamilton@perkinscoie.com
9 wstafford@perkinscoie.com
10 akhanna@perkinscoie.com

*Counsel for
Plaintiffs*

- VIA EMAIL
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA CM/ECF SYSTEM

8 Francis S. Floyd
9 John Safarli
10 FLOYD PFLUEGER &
11 RINGER, P.S.
12 200 W. Thomas Street, Suite 500
13 Seattle, WA 98119
14 (206) 441-4455
15 ffloyd@floyd-ringer.com
16 jsafarli@floyd-ringer.com

*Counsel for
Defendants*

- VIA EMAIL
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA CM/ECF SYSTEM

15 Pamela Jean DeRusha
16 U.S. ATTORNEY'S OFFICE
17 920 W. Riverside, Ste. 300
18 P.O. Box 1494
19 Spokane, WA 99210-1494
20 (509) 353-2767
21 USAWAE.PDeRushaECF@usdoj.gov

*Interested
Party*

- VIA EMAIL
- VIA FACSIMILE
- VIA MESSENGER
- VIA U.S. MAIL
- VIA CM/ECF SYSTEM

22 DATED: October 20, 2014

s/Christopher G. Emch

Thomas F. Ahearne, WSBA No. 14844
Christopher G. Emch, WSBA No. 26457
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Telephone: (206) 447-8934
Email: ahearne@foster.com
Email: emchc@foster.com

FAIRVOTE'S AMICUS CURIAE BRIEF REGARDING
PROPOSED REMEDIAL PLANS – 23
Case No. 12-cv-3108-TOR

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

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4
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7
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9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

s/Andrew Spencer

Andrew Spencer,
(pro hac vice will be filed promptly)
FairVote
6930 Carroll Avenue, Suite 610
Takoma Park, MD 20912
Telephone: (301) 270-4616
Email: dspencer@fairvote.org