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At-Large Municipal Elections Are Discriminatory: A Case Study of Federal Way and Kent, Washington

Mónica Mendoza-Castrejón

I. INTRODUCTION

The Federal Voting Rights Act (VRA), signed into law on August 6, 1965 by President Lyndon Johnson, is a landmark decision in our country that outlaws the discriminatory voting practices that were adopted in many southern states after the Civil War.¹ Section 2 of the VRA prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4(f)(2) of the Act.² At-large elections, a common voting practice on a municipal level, have been seen as discriminatory since the implementation of the VRA.³ At-large elections are when all voters cast their ballots for all candidates in their jurisdiction.⁴ Still, in recent years in the Seattle area, changes from at-large elections to district-based elections, generally show a steady interest in being implemented, city by city.⁵

¹ *Voting Rights Act (1965)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/voting-rights-act> [<https://perma.cc/QSS9-NMDH>].

² *Section 2 of the Voting Rights Act*, U.S. DEP'T OF EDUC., <https://www.justice.gov/crt/section-2-voting-rights-act> [<https://perma.cc/6XWA-4RSQ>]. (minority citizens are from environments in which the dominant language is not English).

³ Barbara L. Berry & Thomas R. Dye, *The Discriminatory Effects of At-Large Elections*, 7 FLA. ST. UNIV. L. REV. 85 (1979).

⁴ *At-Large Voting Frequently Asked Questions*, NAACP LEGAL DEFENSE FUND, <https://www.naacpldf.org/wp-content/uploads/At-Large-Voting-Frequently-Asked-Questions-1.pdf> [<https://perma.cc/H3XK-3KXJ>].

⁵ *District Based Elections and Redistricting*, MUNICIPAL RESEARCH AND SERVICES CENTER OF WA, <https://mrsc.org/explore-topics/governance/elections/district-based-elections-and-redistricting#comparison> (last visited Mar. 4, 2024).

At-large elections have been found to be discriminatory because they have historically prevented voters of color from electing their candidates of choice when white people are not the majority in the jurisdiction.⁶ Recently, the ACLU-WA sued the cities of Yakima and Pasco to adopt a district voting system after the at-large election system in the cities were found to be in violation of the VRA in 2015 and 2016.⁷

In *Montes v. City of Yakima* (hereinafter referred to as “the Yakima case”) two Yakima citizens pled that the City of Yakima’s election system unlawfully diluted the Latine vote and effectively prevented Latine voters from meaningful participation in city council elections.⁸ On August 22, 2014, the Federal District Court granted the plaintiffs’ Motion for Summary Judgment, holding that Yakima City Council’s districting violated Section 2 of the VRA.⁹ As a result of the November 2015 elections being held under the new district-based system, three Latinas were elected to the Yakima City Council;¹⁰ the first time any Latine candidates had been elected to Yakima’s City Council.¹¹ As a result of these successes, the Washington State Voting Rights Act (WVRA) was signed into law in 2018 to ensure that every voter has an equal opportunity to elect the candidate of their choice and that minority representation is in a system of majority rule.¹²

⁶ At-Large, *supra* note 4.

⁷ *City of Pasco Approves Consent Decree in ACLU Voting Rights Lawsuit*, ACLU (Aug. 16, 2016), <https://www.aclu.org/press-releases/city-pasco-approves-consent-decree-aclu-voting-rights-lawsuit> [<https://perma.cc/VA3C-GJW2>].

⁸ *Q & A: Montes Voting Rights Case*, ACLU OF WA, <https://www.aclu-wa.org/q-montes-voting-rights-case> [<https://perma.cc/GDP8-ZPUA>].

⁹ *Id.*

¹⁰ *Latino Voters Make History in Yakima*, ACLU OF WA (Oct. 29, 2015), <https://www.aclu-wa.org/news/latino-voters-make-history-yakima> [<https://perma.cc/682Y-K8PH>].

¹¹ *Q & A: Montes Voting Rights Case*, ACLU OF WA, <https://www.aclu-wa.org/q-montes-voting-rights-case> [<https://perma.cc/GDP8-ZPUA>].

¹² WASH. REV. CODE § 29A.92.030 (2018) (the WVRA was passed to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election).

Despite the passage of the WVRA, the fight for fair representation continues locally in King County. The South King County region in the State of Washington has two of the most ethnically diverse cities in the nation: Kent and Federal Way.¹³ Recently, the Kent Reporter listed Kent as the seventh most diverse city in the nation; similarly, Federal Way was listed as the twelfth most diverse city in the nation.¹⁴ However, the City Council and Mayor in both cities do not proportionately reflect the diversity of their constituents; this will be addressed later in the article.¹⁵

In Kent, a slate of Black and Brown, immigrant candidates ran for different City Council positions in 2019, but were ultimately unsuccessful; one candidate—a Black Republican not associated with the slate—did end up winning the City Council position¹⁶.¹⁷ In 2021, a Black woman ran for Mayor of Kent against a white incumbent, and a Black man ran for City Council against another white incumbent; both of these Black candidates were ultimately unsuccessful.¹⁸ With regard to the 2021 elections, Crystal

¹³ KOMO News Staff, *Local Cities Named Among Most Ethnically Diverse in the Country*, KOMO NEWS (Sept. 7, 2022), <https://komonews.com/news/local/local-cities-named-among-most-ethnically-diverse-in-the-country> [https://perma.cc/2APK-TJJT].

¹⁴ Steve Hunter, *Kent Ranks 7th as Most Ethnically Diverse City in the Nation*, KENT REPORTER (Sept. 16, 2022), <https://www.kentreporter.com/news/kent-ranks-7th-as-most-ethnically-diverse-city-in-the-nation/> [https://perma.cc/F9BR-L3CA]; *QuickFacts Federal Way City, Washington*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/federalwaycitywashington> [https://perma.cc/4QVK-A8A6]; *QuickFacts Kent City, Washington*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/kentcitywashington/RHI725221> [https://perma.cc/VD6U-TLN4].

¹⁵ *City Council*, CITY OF FEDERAL WAY, <https://www.cityoffederalway.com/page/city-council> [https://perma.cc/6NSM-97HD]; *Kent City Council*, KENT, WASHINGTON, <https://www.kentwa.gov/government/kent-city-council> (last visited Dec. 6, 2023) [https://perma.cc/KR73-EACB].

¹⁶ Steve Hunter, *Three Incumbents Winning Kent City Council Races*, KENT REPORTER (Nov. 6, 2019), <https://www.kentreporter.com/news/three-incumbents-winning-kent-city-council-races/> [https://perma.cc/8U2G-NKA5].

¹⁷ *Id.*

¹⁸ Rich Smith, *Races to Watch Outside of Seattle*, THE STRANGER (Nov. 2, 2021), <https://www.thestranger.com/slog/2021/11/02/62482944/races-to-watch-outside-of-seattle> [https://perma.cc/8U2G-NKA5]; King County Election Results (Nov. 2023),

Fincher, a political consultant, commented on Kent’s at-large council election system and how it contributes to the struggle of progressives and candidates of color to gain council positions, saying that “it’s crazy and inequitable that [Kent] doesn’t have a district-based council” when “Kent has 130,000 residents and is the state’s sixth-largest city.”¹⁹ District-based electoral systems are those which divide the jurisdiction into geographical districts.²⁰

Similarly, Federal Way also faced challenges in recent election cycles. In Federal Way, three out of four candidates of color lost to white candidates.²¹ Like Kent, Federal Way has over 100,000 residents and an at-large election system for City Council elections. In both cities, Black and Brown candidates have experienced discrimination amongst voters.²² The makeup of the voters in both cities is largely white homeowners over the age of 55, which has likely led to the low percentages of BIPOC candidates winning.²³

<https://aqua.kingcounty.gov/elections/2021/nov-general/results.pdf>
[<https://perma.cc/Q839-SDT6>].

¹⁹ Andrew Engelson, *Progressives Make Impressive Gains in South King County*, THE STRANGER (Nov. 9, 2021), <https://www.thestranger.com/slog/2021/11/09/62717950/progressives-make-impressive-gains-in-south-king-county> [<https://perma.cc/T38L-DUFD>] (District-based electoral systems are those which divide the jurisdiction into geographic districts).

²⁰ *What’s the Difference Between “At Large” Elections and “District Elections?”*, CITY OF SANTEE, CA, <https://www.cityofsanteeca.gov/home/showpublisheddocument/14274/63653525370420000> [<https://perma.cc/99LD-QQBQ>].

²¹ Olivia Sullivan, *Election Results: 4 Newcomers Leading Federal Way City Council Races*, FEDERAL WAY MIRROR (Nov. 2, 2021), <https://www.federalwaymirror.com/news/election-results-4-newcomers-leading-federal-way-city-council-races/> [<https://perma.cc/6W2K-Y94R>].

²² Telephone Interview with Leandra Craft, former Federal Way City Council Member (Nov. 13, 2022); In-Person Interview with Clifford Cawthon, former candidate for Kent City Council (Nov. 10, 2022).

²³ Perry Bacon Jr., *Opinion, America’s Problem is White People Keep Backing the Republican Party*, THE WASHINGTON POST (Oct. 13, 2022), <https://www.washingtonpost.com/opinions/2022/10/13/america-has-white-voter->

Time and time again, it appears that candidates who are not considered “white” in America or have “foreign sounding names”, lose their elections in Kent and Federal Way, no matter how hard they try.²⁴ Of concern is that Kent and Federal Way are extremely diverse, with a council makeup that does not reflect the demographics of the cities. The fact that Kent and Federal Way are extremely diverse but with City Council makeups that do not reflect their demographics is of concern, and such challenges harken back to the days before the new election systems in Yakima and Pasco.

This article will address why the municipal election system for the cities of Kent and Federal Way are likely in violation of the WVRA and the justifications for why they should change to district-based elections, like in Yakima and Pasco. Part II will explore the history of suppressing voting rights in the United States and, specifically, in Washington State. Part III will present solutions by discussing why district-based elections will end the WVRA violations as well as exploring other potential options such as ranked choice voting among other cities with a population of over 90,000. This article argues that the current at-large City Council election systems in the cities of Kent and Federal Way are discriminatory and need to change to a more proportional City Council election system, such as district-based, to both create a fair democratic process for communities of color and remedy the potential WVRA violations.

II. HISTORY OF VOTING RIGHTS IN THE UNITED STATES

Voting rights have been one of the greatest civil rights issues of our time. Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. Throughout American history, many civil

problem/ [<https://perma.cc/DAZ7-RS89>] (BIPOC stands for Black, Indigenous, and People of Color).

²⁴ Glenn Kessler, *Did Racially Motivated Voter Suppression Thwart Stacey Abrams?*, *The Washington Post* (Oct. 30, 2019), <https://www.washingtonpost.com/politics/2019/10/30/did-racially-motivated-voter-suppression-thwart-stacey-abrams/> [<https://perma.cc/F3ED-RYPV>].

rights activists—such as Ida B. Wells, Fannie Lou Hamer, Martin Luther King Jr, Frederick Douglass, and Willie Velásquez—have fought for the right to vote.²⁵ The passage of the Voting Rights Act (VRA) in 1965 represents one of the most critical developments in United States history. The VRA fundamentally expanded Black political rights and helped to overturn decades of restrictive policies that kept Black people away from the ballot box, which brought the United States one step closer to becoming an inclusive democracy.²⁶

A variety of fights for equal rights related to voting have been ongoing since the eighteenth century, but especially since the implementation of the VRA in the late twentieth century.²⁷ All socio-politically disadvantaged groups have had suffrage movements throughout history, but the blockage of Black people from voting are of particular note and must be at the center of the discussion.²⁸ The VRA significantly bolstered Black political participation in the South.²⁹ In Mississippi alone, the number of Black people registered to vote dramatically increased from 28,000 to approximately 280,000 following the VRA’s passage.³⁰ In addition to the increase of voting numbers, the number of Black elected officials in the South more than doubled from 72 to 159 after the passage of the VRA.³¹

²⁵ Dr. Keisha N. Blain, *Icons of Voting Rights: FPC Briefing*, U.S. DEP’T OF STATE (Dec. 1, 2021), <https://www.state.gov/icons-of-voting-rights> [<https://perma.cc/HMQ3-C4TU>]; Patricia Guadalupe, *How Willie Velásquez Organized for Latino Voting Rights*, HISTORY (Aug. 17, 2023), <https://www.history.com/news/willie-velasquez-latino-voting-rights> [<https://perma.cc/5LDG-LA5R>].

²⁶ *Id.*

²⁷ *Voting Rights Act: Major Dates in History*, ACLU, <https://www.aclu.org/voting-rights-act-major-dates-history> (last visited Mar. 4, 2024) [<https://perma.cc/R7P4-PH2R>].

²⁸ *Id.*

²⁹ *Id.*

³⁰ Keisha N. Blain, *Fannie Lou Hamer’s Dauntless Fight for Black Americans’ Right to Vote*, SMITHSONIAN MAGAZINE (Aug. 20, 2020), <https://www.smithsonianmag.com/history/fannie-lou-hamers-dauntless-fight-for-black-americans-right-vote-180975610/> (last visited Mar. 4, 2024) [<https://perma.cc/82TN-QHDT>].

³¹ Berry & Dye, *supra* note 3.

However, since its passage in 1965, the VRA has been under attack not only in the South, but also in the Southwest—an area with a large number of Latines—and all over the country, including Washington State.³²

A. At-Large Elections have Historically Disadvantaged BIPOC Communities

One less discussed, yet equally important, note is how at-large elections on a local level can significantly disadvantage BIPOC communities. Since the 1970s, it has been observed that in an at-large electoral system, candidates that are beneficial to or favored by communities of color, particularly Black people, often lose.³³ Because it is necessary in at-large elections to appeal to a larger electorate, such elections require greater financial resources and more widespread media exposure.³⁴ A study from the 1970s showed that Black representation is significantly greater in cities with district-based elections than in cities with at-large elections.³⁵ Black people living in cities with at-large elections have half the chance of electing a member of their own race compared to those in district-based elections.³⁶ Through a variety of studies, it is shown that at-large elections are an influential variable in the disparity of Black representation.³⁷ There is a significant relationship between at-large elections and Black underrepresentation. Ultimately, at-large elections are the major cause of Black underrepresentation on city councils.³⁸

³² *Congressional Hispanic Caucus Hosts Voting Rights Policy Roundtable*, CONGRESSIONAL HISPANIC CAUCUS (Sept. 20, 2022), <https://chc.house.gov/media-center/press-releases/congressional-hispanic-caucus-hosts-voting-rights-policy-roundtable> [<https://perma.cc/PB7U-5UWD>].

³³ Berry & Dye, *supra* note 3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Berry & Dye, *supra* note 3.

³⁸ *Id.*

Additionally, the problem with at-large municipal elections is that all top officials in city government are elected largely by the same political coalition.³⁹ The strongest combination of groups and interests that get a candidate to a majority is likely to be sought by all candidates running for city office, which leads to all candidates running as Mayors competing for support from the same politically-influential groups and interests.⁴⁰ At-large elections are also expensive for candidates. In the City of Seattle, for example, a City Council candidate typically must raise up to \$250,000 to finance a serious campaign, which increases the influence of wealthy economic interests on candidates, rather than allowing candidates to be community-centered.⁴¹

B. Voting Rights Cases and Wins in Washington State

Washington State has a robust history of social justice wins when it comes to voting rights cases, such as ex-felons being granted the right to vote in 2010.⁴² This does not just apply to lawsuits or legal cases, though, but also policy wins in the legislature as well. In 2011, the Redistricting Commission in Washington was urged to create a majority-minority district for the legislature in Eastern Washington.⁴³ In 2015, the case *Montes v. City of Yakima* was won.⁴⁴ In 2018, the WVRA was passed.⁴⁵ A subsequent 2.0

³⁹ Paul Guppy, *Overview of Seattle Charter Amendment 19: To Provide for District Elections to City Council Positions*, WASHINGTON POLICY CENTER (Sept. 20, 2013), <https://www.washingtonpolicy.org/publications/detail/overview-of-seattle-charter-amendment-19-to-provide-for-district-elections-to-city-council-positions> [https://perma.cc/RLS5-86DV].

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Farrakhan v. Gregoire*, ACLU of WA (Jun. 10, 2010), <https://www.aclu-wa.org/cases/farrakhan-v-gregoire-0>

⁴³ *Redistricting Commission Urged to Create Majority-Minority District for State Legislature*, ACLU OF WA (Jun. 6, 2011), <https://www.aclu-wa.org/news/redistricting-commission-urged-create-majority-minority-district-state-legislature>

⁴⁴ *Latino Voters Make History in Yakima*, *supra* note 10.

version of the WVRA was passed.⁴⁶ The foundation that *Montes v. City of Yakima* and the WVRA created has led to even more recent wins; notably, in 2023, the Washington Supreme Court rejected a challenge to the constitutionality of the WVRA.⁴⁷ The case, *Portugal v. Franklin County*, upholds a settlement reached between Latine voters and Franklin County to create single-member district systems in place of at-large systems.⁴⁸

C. *Montes v. City of Yakima*

At-large elections on a municipal level, all throughout the country, have been found to disadvantage Latine communities in particular.⁴⁹ In 2012, the Latine population in Yakima realized that they were unable to re-elect Sonia Rodriguez-True after she was appointed to City Council then lost in a subsequent election.⁵⁰ Despite being highly qualified, Rodriguez-True lost to a white man who had less education and work experience than she did.⁵¹ It was later shown that there was a great disparity with resource allocation in the city of Yakima, with different neighborhoods being segregated in terms of resources, such as closed pools in the East Side of the city, which consisted of the majority of the Latine population.⁵² After Rodriguez-True lost, a group of community members attempted to change their city's

⁴⁵ Lilly Fowler, *WA to Protect Against Voting Discrimination with New Law*, Crosscut (Mar. 6, 2018), <https://crosscut.com/2018/03/washington-voting-rights-act-legislature-discrimination-law-jay-inslee> [https://perma.cc/96MM-TGLL].

⁴⁶ Mai Hoang, *WA passed a 'Voting Rights Act 2.0' bill. Here's what's in it* (May 4, 2023), <https://crosscut.com/politics/2023/05/wa-passed-voting-rights-act-20-bill-heres-whats-it> [https://perma.cc/8BXE-JEUN].

⁴⁷ *State Supreme Court Upholds Washington State's Voting Rights Act*, BRENNAN CENTER REACTS (Jun. 15, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/state-supreme-court-upholds-washington-states-voting-rights-act-brennan> [https://perma.cc/7ZJQ-WUY9].

⁴⁸ *Id.*

⁴⁹ Susan Welch, *The Impact of At-Large Elections on the Representation of Blacks and Hispanics*, 52 J. OF POL. 1050 (1990).

⁵⁰ Telephone Interview with La Rond Baker, Legal Dir., ACLU (Nov. 11, 2022).

⁵¹ *Id.*

⁵² *Id.*

electoral system through a ballot initiative that would change the election system in Yakima from at-large to districts.⁵³ When that initiative failed, the ACLU of Washington filed a lawsuit, *Montes v. City of Yakima*, on behalf of Yakima residents, Mateo Arteaga, and Rogelio Montes.⁵⁴

To determine that there was a federal VRA violation in *Montes v. City of Yakima*, the *Gingles* and “Senate” factors had to be proven.⁵⁵ *Thornburg v. Gingles* identifies three preconditions to determine a federal VRA violation: 1) a minority group be “sufficiently large and geographically compact” to form a majority of voters in a single-member district; 2) the minority group is “politically cohesive;” and 3) the “majority votes sufficiently as a bloc to enable it... usually to defeat the minority’s preferred candidate.”⁵⁶

The seven “Senate” factors needed to prove a federal VRA violation are: 1) the history of voting-related discrimination in the jurisdiction; 2) the extent to which voting in the elections of the jurisdiction is racially polarized; 3) the extent to which the jurisdiction has used voting practices or procedures that enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; 4) the exclusion of members of the minority group from candidate slating processes; 5) the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; 6) the use of overt or subtle racial appeals in political campaigns; and 7) the extent to which members of the minority group have been elected to public office in the jurisdiction.⁵⁷

⁵³ *Id.*

⁵⁴ *Latino Voters Make History in Yakima*, *supra* note 10.

⁵⁵ Fowler, *supra* note 45.

⁵⁶ *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

⁵⁷ S.Rep. No. 97-417, 97th Cong., 2d Sess. (1982), pages 28-29.

The suit alleged that Yakima's election system consistently allowed the majority population to defeat the candidates preferred by Latine voters and deprived Latines of an equal opportunity to elect representatives of their choice.⁵⁸ After two years, and with over thirty witnesses testifying, the Court found in August of 2014 that the system diluted the Latine vote and that "City Council elections [were] not 'equally open to participation' by members of the Latine minority."⁵⁹ In February of 2015, the Court issued an order requiring Yakima to implement a plan submitted by the ACLU for seven single-member districts for city council elections.⁶⁰ As a result, three Latinas were elected to city council (as previously mentioned), in a city which consists of 45.8% Latines.⁶¹

D. Eastern Washington Elections and Cases

Following the City of Yakima, on August 4, 2016, the ACLU-WA filed a lawsuit in the U.S. District Court for Eastern Washington on behalf of Bertha Araanda Glatt, a Pasco resident since the age of four, challenging Pasco's at-large election system for violating the VRA.⁶² The lawsuit stated that the at-large election system violated Section 2 of the VRA because it impermissibly diluted the Latine vote, deprived Latine voters of an equal opportunity to elect representatives of their choice, and did not allow the city's Latine residents to participate equally in the political process.⁶³ Like Yakima, Pasco also has a very high Latine population, comprising 54% of the city's total population.⁶⁴ Due to racially polarized bloc voting, no Latine

⁵⁸ See *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014).

⁵⁹ *Latino Voters Make History*, *supra* note 10.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *City of Pasco Approves Consent Decree in ACLU Voting Rights Lawsuit*, ACLU OF WA (Aug. 16, 2016), <https://www.aclu.org/press-releases/city-pasco-approves-consent-decree-aclu-voting-rights-lawsuit> [<https://perma.cc/P8FQ-3SZQ>].

⁶³ *Id.*

⁶⁴ *QuickFacts Pasco City, Washington*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/pascocitywashington/PST045223>.

candidate has ever won a contested election for a seat on the City Council despite Latine candidates running for City Council positions in nearly every election cycle since 1990.⁶⁵

Even more recently, in 2022, three Latine voters and the League of United Latino America Citizens (LULAC), represented by the UCLA Voting Rights Project (VRP), succeeded in demonstrating that Franklin County in Eastern Washington was in violation of the WVRA.⁶⁶ Like Pasco and Yakima, prior to their respective lawsuits, Latine voters have never elected a candidate of their choice to the Franklin County Commission under the at-large system.⁶⁷ Under the settlement, Franklin County Commissioner elections will be required to use single-member (district-based) districts starting in 2024.⁶⁸

E. South King County Elections

Like in Eastern Washington, South King County has historically had its own lack of representation among its municipal governments.⁶⁹ Of particular note are the cities of Kent and Federal Way; both cities have rapidly expanding populations, are minority-majority cities, have at-large election systems, and have a population which has surpassed 100,000 within the last ten years.⁷⁰ Currently, the population of Kent is 41.5% white

⁶⁵ *Id.*

⁶⁶ *Historic Washington Voting Rights Settlement in Favor of Latino Voters in Franklin County, Washington*, UCLA LATINO POLICY & POLITICS INSTITUTE (May 12, 2022), <https://latino.ucla.edu/press/historic-washington-voting-rights-settlement-in-favor-of-latino-voters-in-franklin-county-washington/> [<https://perma.cc/44L9-X6Q8>].

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See *QuickFacts Kent City*, *supra* note 14; see also *QuickFacts Federal Way City*, *supra* note 14; see also Kent City Council, KENT WASHINGTON <https://www.kentwa.gov/government/kent-city-council> (last visited Mar. 4, 2024) [<https://perma.cc/RM96-XY9W>]; Chapter 2.08 City Council, FEDERAL WAY WASHINGTON, <https://www.codepublishing.com/WA/FederalWay/html/FederalWay02/FederalWay0208.html> (last visited Mar. 4, 2024) [<https://perma.cc/9S8C-8LSE>].

⁷⁰ *Id.*

(non-Hispanic), 21.6% Asian, 11.7% Black/African American, 16% Latine, 2.15% Native Hawaiian and Pacific Islander, and 6.42% multi-racial.⁷¹ In Federal Way, the population is 43.1% white, 15.2% Black/African American, 13.9% Asian, 17.5% Latine, 6.93% multi-racial, and 2.31% Native Hawaiian and Pacific Islander.⁷² In Kent, the Mayor is white, and the City Council is composed of four white members, one Asian member, and three Black members, however that wasn't always the case. In Federal Way, the Mayor is white, five councilmembers are white, one is Asian, and two are Black.⁷³ In order to be proportional to the racial demographics of their populations, either two councilmembers or one councilmember and the Mayor would have to be of a different racial group than white.

In Kent, Black and Brown candidates experience the same challenge they have faced since the 1970s; no matter how many times they run, they lose to white opponents, especially white incumbents.⁷⁴ Despite being one of the largest cities in the State of Washington, Kent City Council elections appear to have always been at-large.⁷⁵ The history of at-large election systems being discriminatory will be addressed later on in this article. Despite the city's increasing diversity, the Mayor and City Council have enacted policies with a lack of oversight, such as a Nazi supporter being employed by the police.⁷⁶ Another consequence is the increase of policing without regard for the concerns of community members, particularly young people

⁷¹ *QuickFacts Kent City*, *supra* note 14.

⁷² *QuickFacts Federal Way City*, *supra* note 14.

⁷³ FEDERAL WAY CITY COUNCIL, <https://www.federalwaywa.gov/city-council> (last visited Mar. 4, 2024) [<https://perma.cc/C2Y4-M6ZP>].

⁷⁴ Mónica Mendoza-Castrejón, *For every vote to count, Kent needs district-based elections*, KENT REPORTER (Feb. 8, 2023), <https://www.kentreporter.com/opinion/for-every-vote-to-count-kent-needs-district-based-elections-guest-column/>.

⁷⁵ *QuickFacts Kent City*, *supra* note 14.

⁷⁶ Livia Albeck-Ripka, *Officer Who Displayed Nazi Insignia Will Receive \$1.5 Million to Resign*, N.Y. TIMES (Jun. 14, 2022), <https://www.nytimes.com/2022/06/14/us/kent-washington-police-chief-nazi-insignia.html> [<https://perma.cc/D5VN-HMG4>].

of color.⁷⁷ However, it is important to note that the racial makeup of the council in Kent has changed and is now more proportional to the population of the city.⁷⁸ Yet, what is concerning are the voters who have elected most of the BIPOC councilmembers are not as diverse as them. I will be addressing this concern later on in this article.

In Federal Way, similar issues arise when it comes to elections; at-large elections have continued, even as the city's diversity has increased.⁷⁹ Many times, the argument of political opponents taking on incumbents has been that they lose because of a lack of financial resources, rather than because of other factors such as race. However, this argument is countered by the fact that, in Federal Way, incumbent Leandra Craft, a Filipina, lost in 2021 to challenger Jack Walsh, a white man.⁸⁰ Craft was not only the incumbent, but she raised more money and had more institutional support.⁸¹ The difference was that Craft was a person of color and likely not the preferred candidate for older, white voters in Federal Way. The discrepancies in who shows up to vote will be addressed later in the article.

⁷⁷ Steve Hunter, *ForFortyTwo Group Says Kent Mayoral Directive Ignores BIPOC Community*, KENT REPORTER (Oct. 12, 2022), <https://www.kentreporter.com/news/forfortytwo-group-says-kent-mayoral-directive-ignores-bipoc-community/> [<https://perma.cc/RJ8A-RDAM>].

⁷⁸ *QuickFacts Kent City*, *supra* note 14.

⁷⁹ *QuickFacts Kent City*, *supra* note 14.

⁸⁰ Sullivan, *supra* note 21.

⁸¹ Public Disclosure Commission, *Leandra Craft – 2021 Report*, PDC: POLITICAL DISCLOSURE DATA, <https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/candidates/93242> [<https://perma.cc/3MF5-PFVF>]; Public Disclosure Commission, *Jack Walsh – 2021 Report*, PDC: POLITICAL DISCLOSURE DATA, <https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/candidates/385413> [<https://perma.cc/B58X-HXXA>]; King County, *City of Federal Way Council Position No. 5 Candidates*, <https://info.kingcounty.gov/kcelections/Vote/contests/candidates.aspx?cid=66593&candidateid=1592895&lang=en-US&pamphletson=true> [<https://perma.cc/3ZW2-RE62>].

III. CHANGING THE CITIES OF KENT AND FEDERAL WAY, WA TO DISTRICT-BASED ELECTIONS

This section will address how the electoral systems in Kent and Federal Way need to change to district-based elections. This change can be implemented in the following ways: 1) mobilizing the political will of the people; 2) enforcing the change through legal measures; or 3) recognizing the political barriers and collectively agreeing upon the district-based solution.

A. *Mobilizing the Political Will of the People*

To convert Kent and Federal Way to district-based elections, there must first be a greater “political will” among lawmakers. Political will is a reflection of lawmakers’ presumed centrality in achieving policy change.⁸² Political will is the extent of committed support among key decision makers for a particular policy solution to a particular problem, often cited when people are in a position of power to block or derail reform.⁸³ The current election systems in both Kent and Federal Way are at-large electoral systems, where, as previously discussed, all voters cast their ballots for all candidates in the jurisdiction.⁸⁴ Given their historical opposition to progressive changes, the City Councils in both cities would likely present pushback to a new system and ask questions as to how such a system would

⁸² Lori Ann Post et al., *Defining Political Will*, POLIT. & POL’Y, (Aug. 25, 2010), <https://onlinelibrary.wiley.com/doi/10.1111/j.1747-1346.2010.00253.x> [<https://perma.cc/M7FL-JDJH>].

⁸³ David Roberts, *What is “Political Will,” Anyway? Scholars Take a Whack at Defining it*, VOX NEWS (Dec. 24, 2017), <https://www.vox.com/2016/2/17/11030876/political-will-definition> [<https://perma.cc/P5UU-7URF>].

⁸⁴ See e.g., NAACP Legal Defense and Educational Fund, *At-Large Voting Frequently Asked Questions*, <https://www.naacpldf.org/wp-content/uploads/At-Large-Voting-Frequently-Asked-Questions-1.pdf> [<https://perma.cc/4VGS-3UHA>]; Steve Hunter, *Kent City Council Won’t Defund Police Department*, (Sept. 24, 2020), <https://www.kentreporter.com/news/kent-city-council-wont-defund-police-department/> [<https://perma.cc/AP7C-8YC5>].

work.⁸⁵ These questions could lead to continuous delays which would ultimately halt change. These questions are an example of the city council's resistance to change, pushing forth other issues which would not be considered progressive, from housing, to policing, and so forth.⁸⁶

Because there is likely no political will among the current councilmembers, there would have to be a drastic upsurge, ballot initiative, or lawsuit to enforce the change to a districts-based system. According to social-movement theory, it is vital for activists to marshal support to continue developing social movements.⁸⁷ In Kent and Federal Way, the existing activist groups do not focus on political change within electoral structures.⁸⁸ For a ballot initiative, there would need to be massive mobilization and community organization, which involves mobilizing activist groups, civilians, and other interested parties. Though not impossible, the lack of prior engagement with social change for many years in both cities suggests that other methods may be required.

⁸⁵ Telephone Interviews with current and former councilmembers with author (Dec. 2022).

⁸⁶ Farah Jadran, *Kent City Council Votes Unanimously to Pass Public Camping Ban*, KING 5 (Oct. 18, 2022), https://www.king5.com/article/news/local/kent/kent-city-council-camping-ban/281-4d71cf1a-1bbc-4f00-ab67-7209acf156a9?fbclid=IwAR3TsNrbpV89aIBJUFvIkaOQ5_FhezdcYWXWUyrfIKu3V6QGkCdug1Y9rs [<https://perma.cc/XY2P-VRQG>]; Steve Hunter, *Kent Mayor Seeks Property Tax Hike to Hire More Police Officers*, KENT REPORTER (Mar. 6, 2020), <https://www.kentreporter.com/news/kent-mayor-seeks-property-tax-hike-to-hire-more-police/> [<https://perma.cc/W3F6-VYAP>]; Bob Roegner, *Police Accountability Lacking in Federal Way*, FEDERAL WAY MIRROR (Jun. 20, 2020), <https://www.federalwaymirror.com/opinion/police-accountability-lacking-in-federal-way-roegner/> [<https://perma.cc/J34P-T8LY>].

⁸⁷ Andrea L. Dennis, *Black Contemporary Social Movements, Resource Mobilization, and Black Musical Activism*, 79 LAW & CONTEMP. PROBS. 29, 51 (2016), <https://scholarship.law.duke.edu/lcp/vol79/iss3/3>. [<https://perma.cc/F8EL-YS5Q>].

⁸⁸ Steve Hunter, *Group Demands City Leaders to Defund Kent Police*, KENT REPORTER (Aug. 19, 2020), <https://www.kentreporter.com/news/group-demands-city-leaders-to-defund-kent-police-photos/> [<https://perma.cc/N7ND-ZL22>].

The reality of emerging communities like Kent and Federal Way is that they are diverse but economically and culturally segregated.⁸⁹ In Kent, three distinct neighborhoods exist: East Hill, West Hill, and Valley.⁹⁰ Similarly, Federal Way's neighborhoods—Mirror Lake, Kitts Corner, Lakota, Buenna, and Adelaide—have a distinct character, but also different socioeconomic and ethnic backgrounds.⁹¹ Mobilizing communities to vote is one method by which these municipalities could vote; however, this approach/option would be difficult because of historical voter trends.⁹² These realities also lead to challenges in mobilizing a political will of the people, not just lawmakers.⁹³ As a result, the change of the election system will likely be implemented by way of suing the cities, as the ACLU-WA did in both Yakima and Pasco.⁹⁴

B. Enforcing the Change Through Legal Measures – Social and Political Background

According to a published report from Campaign Legal Center (CLC), in order to determine if there is a violation under the WVRA, the *Gingles* factors must be met (these factors must also be met in a VRA violation).⁹⁵ Like Yakima, cities such as Kent and Federal Way would have to conduct data analysis to determine if racial polarization exists in their neighborhoods as well as if there is compact enough geography to draw a

⁸⁹ NAACP Legal Defense and Educational Fund, *supra* note 84.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *QuickFacts Kent City*, *supra* note 14; *QuickFacts Federal Way City*, *supra* note 14.

⁹³ *Id.*

⁹⁴ ACLU of WA, *Lawsuit Seeks Meaningful Vote for Latinos in Pasco*, ACLU (Aug. 4, 2016), <https://www.aclu-wa.org/news/lawsuit-seeks-meaningful-vote-latinos-pasco-city-council-elections> [<https://perma.cc/Q5G4-RVEM>]; ACLU of WA, *Ruling Will Provide Meaningful Voice for Latinos in Yakima City Council Elections*, ACLU (Aug. 25, 2014), <https://www.aclu.org/press-releases/federal-court-rules-yakimas-voting-system-violates-voting-rights-act> [<https://perma.cc/XM8S-UDLZ>].

⁹⁵ CLC Advancing Democracy Through Law, *Designing State Voting Rights Report* (2018), https://campaignlegal.org/sites/default/files/2020-07/DesigningStateVotingRights_Report%20FINAL.pdf.

majority-minority district.⁹⁶ Given the unique histories of these two cities and how diverse their neighborhoods are, pulling data according to historical voting patterns from the different city council candidates as well as other races would be key in determining if the *Gingles* factors are met.⁹⁷

Although the Yakima litigation required a single community of color to be large enough to be the majority in a single member district, a legal challenge may be brought without this being necessary.⁹⁸ According to the Legal Director of the ACLU-WA, La Rond Baker, it may be possible to challenge an election system to protect the voting rights of multiple communities of color in the same jurisdiction given the passage of the WVRA.⁹⁹ Per the violations of the WVRA:

“The fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation... The equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts.”¹⁰⁰

Apart from the *Gingles* factors, Baker believes challenging cities of potential violations may also be less challenging now with the passage of the WVRA, since cities no longer need to prove the Senate Factors.¹⁰¹ What is important is the language used, that the “candidate of choice” from communities of color must be represented. A WVRA violation occurs when “members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of members of that protected class or classes.”¹⁰² Baker

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Interview with La Rond Baker, *supra* note 50.

⁹⁹ *Id.*

¹⁰⁰ WASH. REV. CODE § 29A.92.030 (2018).

¹⁰¹ Interview with La Rond Baker, *supra* note 50.

¹⁰² WASH. REV. CODE § 29A.92.030, *supra* note 100.

mentioned that this occurred in the city of Pasco, where a council member, who was Latino but was not the candidate of choice from the Latine community, was used as evidence to prove a violation of the WVRA.¹⁰³ Therefore, it is possible that a WVRA violation can occur if the voters of color did not choose the council members of color, but white voters did.

C. Current State of the Movement Towards District-Based Elections in WA

Crystal Fincher, the aforementioned political consultant based in Kent, has observed that it is more challenging for candidates of color to break into elected office than the white-majority population.¹⁰⁴ Given a general acknowledgement and awareness of these representational shortcomings, some cities in King County, such as Seattle, have moved from at-large elections to district-based elections in the last decade.¹⁰⁵ For a city the size of Kent, with over 130,000 residents having all councilmembers be elected at-large is challenging enough. For example, a candidate must knock on over 70,000 households in Kent in the at-large election system, which is very challenging.¹⁰⁶

The City of Seattle formed a redistricting commission when the change from at-large to districts occurred.¹⁰⁷ Whether through initiative or lawsuit, the cities of Kent and Federal Way would likely have to form redistricting commissions, like in Seattle, or would need a community development committee to form the basis for new districts.¹⁰⁸ However, unlike Seattle,

¹⁰³ Interview with La Rond Baker, *supra* note 50.

¹⁰⁴ Telephone Interview with Crystal Fincher, Founder and Principal, FINCHER CONSULTING (Nov. 17, 2022).

¹⁰⁵ *Seattle Redistricting Commission*, CITY OF SEATTLE, <https://www.seattle.gov/redistricting> [https://perma.cc/BMA8-24N4].

¹⁰⁶ Mónica Mendoza-Castrejón and Dennis Higgins, *It's time to change Kent's City Council elections to districts*, KENT REPORTER (Oct. 3, 2023), <https://www.kentreporter.com/letters/its-time-to-change-kents-city-council-elections-to-districts-guest-column/> [https://perma.cc/EN5V-2LW4].

¹⁰⁷ CLC, *supra* note 95.

¹⁰⁸ *Id.*

Kent and Federal Way are both code cities. Redistricting is the process of redrawing districts for each government body that uses district elections.¹⁰⁹ A Redistricting Commission is generally in charge of drawing new maps for City Council districts to ensure each district has about the same number of people, amongst other requirements.¹¹⁰ If a redistricting commission is not implemented in both cities, it would be possible to use committees that are already in place, such as the city of Kent's Cultural and Communities Board or Federal Way's Diversity Committee. The city of Kent's Cultural and Communities Board has its own diversity task force, which could convene and hold the discussions of redistricting needed to implement the changes proposed by the board and or commission.¹¹¹ Similarly, the Diversity Committee in Federal Way would partake in the same responsibilities as the Cultural and Communities Board in Kent.¹¹² These committees are best suited to carry out the implementation of the results of the commission, as they deal with issues from BIPOC communities that align with the concerns set out in the 2018 (and now 2022) WVRA. Since this would be a city effort on both fronts, using committees in this way would take both staff hours and fiscal resources. Because of the potential costs associated with these efforts, Kent and Federal Way officials would likely push back given the fiscally conservative nature of their council makeup.¹¹³

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Cultural Communities Board, CITY OF KENT*, <https://www.kentwa.gov/government/boards-commissions/cultural-communities-board> [<https://perma.cc/98FU-FC7E>].

¹¹² *Diversity Committee, CITY OF FEDERAL WAY*, <https://www.cityoffederalway.com/content/diversity-commission> [<https://perma.cc/GL27-RD5Z>].

¹¹³ *Study.com, Fiscally Conservative vs. Socially Conservative*, <https://study.com/academy/lesson/social-conservatism-vs-fiscal-conservatism.html> (A fiscal conservative is one who seeks to reduce government spending and minimize government debt) [<https://perma.cc/R4UJ-QSR7>].

Redistricting is usually determined based on census data, which is gathered every ten years.¹¹⁴ In Washington, the redistricting commission holds public meetings in addition to incorporating data, which helps the commission, future constituents, and others involved in local government to better understand how district boundaries may divide communities.¹¹⁵ After the commission submits a plan, the legislature has thirty days during either a regular or special session to amend the commission's plan.¹¹⁶ If the legislature amends the commission's plan, the legislature's amendment is approved.¹¹⁷ After the state process is complete, a city process is made. On the city level, there are similarities with the process.¹¹⁸

Fincher believes that, regardless of whether a lawsuit or an initiative occurs to change the electoral system to a district-based system, there needs to be comprehensive data pulled to create accurate districts, based on the census, in Kent and Federal Way.¹¹⁹ Unlike Yakima and Pasco, Kent and Federal Way are very diverse cities with many racial and ethnic neighborhoods, so there is not a clear "Latine neighborhood", "Black neighborhood," etc.¹²⁰ However, there are distinctions between white and non-white neighborhoods, as well as neighborhoods with higher incomes and lower incomes.¹²¹ Although there are no clear neighborhoods divided up by racial or ethnic group, with the proper data, it is not impossible to

¹¹⁴ WA State Redistricting Commission, *About Redistricting*, <https://www.redistricting.wa.gov/about> [<https://perma.cc/9ETY-P6WF>].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Charter Amendment 19*, CITY OF SEATTLE (Dec. 4, 2013), http://clerk.seattle.gov/~CFs/CF_313380.pdf [<https://perma.cc/DMG4-GAXT>].

¹¹⁹ Interview with Crystal Fincher, *supra* note 104.

¹²⁰ Andrew Hong, *What Data Says About Possible Democracy Reform in Kent*, WASH. CMTY. ALL. (Apr. 14, 2023) https://wacommunityalliance.org/what-data-says-about-possible-democracy-forms-in-kent/?fbclid=IwAR30aYGJ5324prp2WalxuqenHdlimLtRgYbB3roDPPnDjEWAAD6ADFEus_I [<https://perma.cc/AJ3S-L6ZF>].

¹²¹ *Id.*

create districts.¹²² If an initiative were to occur, there is a good chance that voters would vote for it, as political initiatives tend to be more popular among voters than candidate campaigns in places like South King County.¹²³ By having five districts with a councilmember each, and two at-large, like the City of Seattle, it may be easier to explain to the voters because most cities that have adopted district-based systems have a combination of districts and at-large systems.

D. Violations of WVRA and Examples

Melissa Rubio is the current Political Director of OneAmerica Votes, a Washington State organization that promotes democracy and builds power in immigrant and refugee communities through advocacy, civic engagement, and leadership development.¹²⁴ Rubio believes that at-large elections can be detrimental to Latine candidates.¹²⁵ OneAmerica Votes worked on the initiative that changed Yakima to districts back in 2014, and has been involved in a recent push to change Yakima County's Board of Commissioners election system to district-based system through both the primary and general election.¹²⁶ Rubio identified that a challenge with South King County cities, such as Kent and Federal Way, in changing to districts are that neighborhood differences by racial groups are not as stark as they are in Yakima.¹²⁷ In Yakima, classifying neighborhoods as a white

¹²² Interview with Crystal Fincher, *supra* note 104.

¹²³ National Employment Law Project, *Seatac 4,700 Airport Workers Win Their Fight for \$15*, (Aug. 20, 2015), NELP, <https://www.nelp.org/news-releases/seatac-4700-airport-workers-win-their-fight-for-15/> [<https://perma.cc/29XA-TLSC>].

¹²⁴ One America Votes, *Staff and Board*, ONEAMERICA, <https://oavotes.org/who-we-are/staff/> [<https://perma.cc/T8KE-8RU3>].

¹²⁵ Telephone Interview with Melissa Rubio, Political Director, One America Votes (Dec. 9, 2022).

¹²⁶ One America, *Victory: Yakima County Latino Leaders Achieve Historic Settlement with Board of Commissioners*, ONEAMERICA (Aug. 31, 2021), <https://weareoneamerica.org/2021/08/victory-yakima-county-latino-leaders-achieve-historic-settlement-with-board-of-commissioners/> [<https://perma.cc/W9DR-L7A8>].

¹²⁷ Interview with Melissa Rubio, *supra* note 125.

neighborhood versus a Latine neighborhood is something that can be readily done, whereas in South King County, this classification is not as easily done due to the neighborhoods being more or less white versus non-white neighborhoods.¹²⁸ Even though diversity is increasing, with a trend of more Black and Brown people moving to South King County in the last eight years or so, the lack of political representation remains.¹²⁹ In fact, data shows that, as housing prices and rent costs increase, more people are moving to places further away from Seattle, like South King County.¹³⁰ Rubio agrees that the urgency felt in Yakima is as much in King County.¹³¹

E. Impact on Qualified Candidates of Color in Kent

Cliff Cawthon, a candidate for Kent City Council in 2021, wanted to change the City of Kent's election system from at-large to district-based elections.¹³² He ran against the incumbent, Toni Troutner.¹³³ Mr. Cawthon, a professor of political science at Bellevue College and a Black millennial who holds bold, progressive views, was thirty-three years old at the time of running.¹³⁴ He had a strong field program—phone and door-to-door contact with voters to convince them to support a candidate, volunteer, and show up to vote on or before Election Day—for his campaign, which normally results in a win for municipal elections.¹³⁵ In a time when campaigns can

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Melissa Hellman, *Seattle Residents are Flocking to South King County During COVID Pandemic*, SEATTLE TIMES (Apr. 28, 2021), <https://www.seattletimes.com/seattle-news/housebound-seattle-residents-move-to-south-king-county-for-more-room-during-the-pandemic/> [<https://perma.cc/4BEX-8DHF>].

¹³¹ Interview with Melissa Rubio, *supra* note 125.

¹³² Interview with Cliff Cawthon, Former Candidate for Kent City Council, in Kent, WA. (Oct. 23, 2022).

¹³³ King County Candidates 2021 General Election, *Kent City Council Pos. No. 4*, <https://info.kingcounty.gov/kcelections/Vote/contests/candidates.aspx?cid=66609&candidatedid=1592914&lang=en-US&pamphletson=true> [<https://perma.cc/9TGW-E6FR>].

¹³⁴ *Id.*

¹³⁵ Ben McGuire, Policy Analysis, *Scaling the Field Program in Modern Political Campaigns*, HARV. KENNEDY SCH. (2019),

leverage technological tools and the Internet to influence voters on a massive scale, the field program of a political campaign can feel antiquated, but it can have a very real impact in swinging public opinion or turnout.¹³⁶ In fact, a strong field program was a main part of how former President Obama won his presidential campaign in 2008.¹³⁷

Although Cawthon had dozens of volunteers making daily voter contact through door-to-door contact and phone-banking, he believes that his efforts were diluted because of the at-large election system in Kent.¹³⁸ His field program was lauded as superior to his opponent, incumbent Toni Troutner.¹³⁹ Although he ultimately received 43% of the vote, which is unprecedented for a progressive Black candidate in Kent, he strongly believes that a change to district-based elections would have skewed his results.¹⁴⁰ In speaking with Mr. Cawthon, he believes that he would have been able to better concentrate resources in just one district.¹⁴¹ Cawthon states that if he could have focused on the needs of the particular neighborhoods and communities, he would have been able to balance the political priorities better than running.¹⁴²

Cawthon was not the first progressive, BIPOC candidate to run and lose in Kent. In 2019, candidates Hira Singh Bhullar, Mizan Rahman, and Awale Farah ran for Kent City Council positions.¹⁴³ Hira Singh Bhullar ran

https://www.hks.harvard.edu/sites/default/files/degree%20programs/MPP/files/Scaling%20the%20Field%20Organization%20in%20Modern%20Political%20Campaigns_Final.pdf (a field program was lauded for handing two elections to President Obama) [https://perma.cc/TU57-9ETN].

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Interview with Cliff Cawthon, *supra* note 132 (phone-banking is the practice of assembling a group of volunteers, to call voters as part of a political campaign).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*; see also King County Nov. 02, 2021 Election Results, KING COUNTY ELECTIONS, (Nov. 22, 2021), <https://aqua.kingcounty.gov/elections/2021/nov-general/results.pdf> (last visited Nov. 15, 2023) [https://perma.cc/EC5G-79KH].

¹⁴² Interview with Cliff Cawthon, *supra* note 132.

¹⁴³ Hunter, *supra* note 16.

against Les Thomas and received 47.61% of the vote while Thomas received 52.1%.¹⁴⁴ Mizan Rahman ran against Bill Boyce and received 34.09% of the vote while Boyce received 65.64%.¹⁴⁵ Awale Farah ran against Zandria Michaud and received 42.36% of the vote while Michaud received 58.08%.¹⁴⁶ Unlike Bhullar and Rahman, who ran against incumbents, Farah ran against a political newcomer.¹⁴⁷ Although all three of these BIPOC candidates ran strong campaigns with high fundraising numbers, voter contact, and endorsements (aspects which would normally contribute to a win in a political election, especially a municipal election), these candidates were ultimately not elected.¹⁴⁸

Cawthon claims that in a district-based system: “councilmembers would immediately be accountable to those voters, rather than the whole city.”¹⁴⁹ Each neighborhood has different needs and concerns, even within one city.¹⁵⁰ Cawthon believes that he would have won his election if it had been district-based, because he was able to get the majority in his precinct and surrounding areas.¹⁵¹ In a regular district-based election, if the precincts had been combined into a district, it would have likely resulted in a win for Cawthon.¹⁵² His opponent won in other precincts and neighborhoods, which ultimately led to a win.¹⁵³

Cawthon emphasizes that if he had run in a district-based election, he also would have been able to spend more time with those voters, win them

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*; McGuire, *supra* note 135.

¹⁴⁸ *Id.*

¹⁴⁹ Interview with Cliff Cawthon, *supra* note 132.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*; see also *November 2021 General Election Night Precinct Results*, KING COUNTY ELECTIONS (Nov. 2021), <https://data.kingcounty.gov/Voting-Elections/November-2021-General-Election-Night-Precinct-Resu/f3wq-btki/data#revert> [https://perma.cc/9AHY-486V].

over, and rebuke misinformation.¹⁵⁴ For example, Cawthon's opponent, the incumbent Councilmember Toni Troutner, sent a mailer to the voters of Kent that was misrepresentative of Cawthon's views and platform.¹⁵⁵ Troutner's flyer took advantage of both the backlash to the Black Lives Matter Movement that fearmongered crime as well as people's implicit biases when it came to candidates of color.¹⁵⁶ If Cawthon had had more time to focus on his district, he would have been able to counter the created narrative by Troutner.¹⁵⁷

Additionally, the data showed that Cawthon won areas of higher residential density, including places with more renters, diversity, and younger homeowners.¹⁵⁸ These are traditional Democratic-leaning statistics that any progressive candidate may depend on for turnout.¹⁵⁹ However, due to the at-large system in place, the vote came down to those that lived away from Cawthon's neighborhood rather than those that lived near Cawthon's would-be district, which diluted the supportive votes he could have had.¹⁶⁰

Even before 2019, Kent had a history of non-white candidates losing their campaigns, likely due to the at-large election system. For example in 2011, community leader Gwen Allen-Carston, a Black woman, ran for City Council.¹⁶¹ She lost the primary election, which disallowed her to go on to

¹⁵⁴ Interview with Cliff Cawthon, *supra* note 132.

¹⁵⁵ Cliff Cawthon, *Facebook Post of Mailer*, FACEBOOK (Oct. 16, 2021), <https://www.facebook.com/carl.c.solidarite/posts/pfbid023wx72bvdWzAjEEEnv86HS3Nd x6MQRG5WMe992XSbJrcWUFBrR5JesHFS5zrh3wJBI> [<https://perma.cc/SL8S-Q96V>].

¹⁵⁶ Interview with Cliff Cawthon, *supra* note 132.

¹⁵⁷ Interview with Cliff Cawthon *supra* note 132.

¹⁵⁸ *Id.*

¹⁵⁹ Emily Badger, *Renters Are Mad. Presidential Candidates Have Noticed*, NY TIMES (Apr. 23, 2019), <https://www.nytimes.com/2019/04/23/upshot/2020-democrats-court-renters.html>.

¹⁶⁰ *Id.*

¹⁶¹ Laura Pierce, *Kent Businesswoman Allen-Carston Announces Intent to Run for City Council*, KENT REPORTER (Feb. 21, 2021), <https://www.kentreporter.com/news/kent-businesswoman-allen-carston-announces-intent-to-run-for-city-council/> [<https://perma.cc/DP5X-53SR>].

the general election.¹⁶² Bill Boyce—another Black candidate that was more popular with older, white voters—made it past the primary and onto the general election, which he then won.¹⁶³ In 2015, Allen-Carston ran again, losing to Les Thomas.¹⁶⁴ In 2017, Black community leader Tye Whitfield ran against Toni Troutner for Kent City Council.¹⁶⁵ While she did make it to the general election, she only received 36.62% of the vote, compared to Troutner’s 63.16%.¹⁶⁶

Like Kent, Federal Way also has a history of non-white candidates likely losing their campaigns due to the at-large system. For example in 2019, Jamila Taylor, a Black attorney and recognized community leader, ran against Mark Koppang, a white man.¹⁶⁷ Taylor lost to Koppang, receiving only 48.41% of the vote, compared to his 51.29%.¹⁶⁸ In 2021, Renae Seam

¹⁶² *King County Aug. 16, 2011 Election Results*, at 5, KING COUNTY ELECTIONS, (Aug. 16, 2011), <https://kingcounty.gov/~media/depts/elections/results/2011/201108.ashx?la=en> [<https://perma.cc/EZ5C-8VBW>].

¹⁶³ *Id.*

¹⁶⁴ Steve Hunter, *Allen to Challenge Thomas for Kent City Council Seat as Write-in Candidate*, KENT REPORTER (Aug. 11, 2015), <https://www.kentreporter.com/news/allen-to-challenge-thomas-for-kent-city-council-seat-as-write-in-candidate/> (last visited Nov. 15, 2023) [<https://perma.cc/DA7L-8A9T>]; *King County Nov. 3 2015 Election Results*, at 28, KING COUNTY ELECTIONS (Nov. 24, 2015), <https://kingcounty.gov/~media/depts/elections/results/2015/201511/results.ashx?la=en> [<https://perma.cc/98FX-KJST>].

¹⁶⁵ Steve Hunter, *Whitfield to Run for Kent City Council*, KENT REPORTER (Feb. 2, 2017), <https://www.kentreporter.com/news/whitfield-to-run-for-kent-city-council/> [<https://perma.cc/A6H5-CPNU>].

¹⁶⁶ *King County Nov. 7 2017 Election Results*, at 15, KING COUNTY ELECTIONS, (Nov. 27, 2017), <https://aqua.kingcounty.gov/elections/2017/nov-general/results/results.pdf> [<https://perma.cc/5CCH-HWAB>].

¹⁶⁷ King County, *General Election 2019 City of Federal Way Council Position No. 5 Candidates*, KING COUNTY ELECTIONS, <https://info.kingcounty.gov/kcelections/Vote/contests/candidates.aspx?cid=6589&candidatid=6389&lang=en-US&pamphletson=true> [<https://perma.cc/5577-4KWW>].

¹⁶⁸ *King County Nov. 05, 2019 Election Results*, *supra* note 167.

ran for city council against Jack Dovey, a white man.¹⁶⁹ Seam lost to Dovey, receiving 48.07% of the vote compared to his 51.78%.¹⁷⁰ In the next section, the data on at-large elections compared to district-based elections will be further explored.

F. Data Results on At-large Elections v. District Based Elections

Kamau Chege is the Executive Director of the Washington Community Alliance, an coalition of over seventy organizations across Washington State working in communities of color to close the representation gap in elected offices and make systemic changes.¹⁷¹ Chege provided analysis that showed that Cawthon won precincts in areas that could equate to districts.¹⁷² Andrew Hong, the Data Research Analyst for the same organization,¹⁷³ provided maps that suggested districts in Kent by renter or homeowner affiliation, race, and income; both his five-district and seven-district maps comply with state and federal legal redistricting requirements, including VRA protections for minority communities.¹⁷⁴

The data compiled by Hong is clear: single-member districts would allow for more proportional representation in Kent’s City Council.¹⁷⁵ In many of the proposed districts, under a seven-district system, BIPOC candidates in

¹⁶⁹ Mirror Staff, *Q&A Federal Way City Council Position 6 candidates*, FEDERAL WAY MIRROR (Oct. 9, 2021), <https://www.federalwaymirror.com/news/qa-federal-way-city-council-position-6-candidates/> [<https://perma.cc/BQ49-KX8N>].

¹⁷⁰ 2021 KING COUNTY ELECTION RESULTS, <https://aqua.kingcounty.gov/elections/2021/nov-general/results.pdf> [<https://perma.cc/ZB96-GZUR>].

¹⁷¹ *Who We Are*, WASHINGTON COMMUNITY ALLIANCE (2023), <https://wacommunityalliance.org/who-we-are/> [<https://perma.cc/YF63-NKKP>].

¹⁷² Data from Kamau Chege, Executive Director of Washington Community Alliance, (confidential information shown to author).

¹⁷³ *Id.*

¹⁷⁴ Andrew Hong, *What Data Says About Possible Democracy Reform in Kent*, WASHINGTON COMMUNITY ALLIANCE (Apr. 14, 2023), <https://wacommunityalliance.org/what-data-says-about-possible-democracy-forms-in-kent/> [<https://perma.cc/N9W9-D22M>].

¹⁷⁵ *Id.*

Kent would have won districts or been closer to winning but either lost votes or votes were skewed because of “District Five,” the whitest area of the city and the location with the fewest renters.¹⁷⁶ District Five is composed of the precincts that are whiter and more affiliated with the Republican party.¹⁷⁷ Even in a five-district map, BIPOC candidates still would have fared better.¹⁷⁸ A great example is Hira Singh Bhullar, who ran in 2019 against the white incumbent, Les Thomas, who was favored by white conservative voters.¹⁷⁹ In a seven-district system, Mr. Singh Bhullar would have won one or two districts, and, in a five-district system, potentially two districts.¹⁸⁰ Similarly, Cliff Cawthon, the earlier mentioned candidate, would have likely won one district in a seven-district system.¹⁸¹ Overall, under a district-based system, progressive candidates supported by communities of color would fare better than they do under an at-large election system.¹⁸²

In viewing precinct data from previous candidates who ran and lost in Kent, the result was likely because those older, whiter precincts, like District Five, turned out in higher numbers in comparison to other precincts and districts.¹⁸³ In the 2021 City Council Position Four race (Cliff Cawthon versus Toni Troutner), as shown in data pulled together by Hong, there were 3,981 votes cast in District Five compared to 3,387 in the next closest district, District Seven.¹⁸⁴ Through the 19,326 votes cast across Kent, 20.6% of the votes came from District Five despite only comprising 14.3% of the population, and only 10.3% of the votes came from District Two,

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

which is heavily-working class and comprised of BIPOC.¹⁸⁵ Thus, it is evident that District Five does disproportionately wield influence in current at-large Kent City Council elections.¹⁸⁶ The data lines up with anecdotes heard among progressive-leaning BIPOC candidates in Kent, where if you are not the “favorite of the country club, you’re not likely to win.”¹⁸⁷ The Meridian Valley Country Club is an exclusive golf clubhouse located in Kent, and those residing near the club are older and whiter,¹⁸⁸ which is consistent with the fact that country clubs were founded by upper-class elites between 1880 and 1930.¹⁸⁹ The Meridian Valley Country Club in Kent was opened not too long after, on July 1, 1967.¹⁹⁰ It is concerning to think that a club that has existed since 1967 holds so much sway in Kent’s local elections, but it is not shocking; if you add up the numbers in the precincts, it makes sense why the makeup of the elections are the way that they are.¹⁹¹

G. Impact on Qualified Candidates of Color in Federal Way

Another candidate who was likely defeated as a result of at-large elections was Leandra Craft. Craft is a Filipina attorney and former Federal Way City Council member who was first appointed but then lost in her re-election by around 109 votes.¹⁹² Craft’s story resembles that of Sonia

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Interview with Cliff Cawthon, *supra* note 132.

¹⁸⁸ MERIDIAN VALLEY COUNTRY CLUB, <https://meridianvalleycc.com/> [<https://perma.cc/WCL3-QL8R>].

¹⁸⁹ Jennifer Jolly Ryan, *Chipping Away at Discrimination at the Country Club*, 25 PEPP. L. REV. 495, 485 (1997–1998), <https://heinonline.org/HOL/P?h=hein.journals/pepplr25&i=505> [<https://perma.cc/G9ZJ-R878>].

¹⁹⁰ MERIDIAN VALLEY COUNTRY CLUB, <https://meridianvalleycc.com/> [<https://perma.cc/WCL3-QL8R>].

¹⁹¹ Hong, *supra* note 174.

¹⁹² Telephone Interview with Leandra Craft, Former Councilmember in Federal Way (Nov. 13, 2022).

Rodriguez-True, who was appointed as the first Latina on the Yakima City Council but ultimately lost her re-election campaign to a white man.¹⁹³ Craft was the first Asian American woman to serve on the Federal Way City Council, and the second youngest to serve on council.¹⁹⁴ While on the Council, she noticed that there was an “old guard” dynamic, with resistance to progressive change.¹⁹⁵

During her campaign, Craft enacted tactics such as a robust field and fundraising plan which would normally ensure a win on a municipal campaign.¹⁹⁶ Despite being well-qualified, Craft’s opponent and those associated with her opponent launched ads attacking her credibility and qualifications.¹⁹⁷ Although Craft had worked with law enforcement as a prosecutor, her opponent sent a mailer to voters claiming that Craft was against working with police because she believed in reforms and was a part of the Social Justice Equity Committee at the Prosecutor’s Office.¹⁹⁸

Craft believes that district-based elections would have contributed to a win in her campaign¹⁹⁹ because she lost time traveling throughout her city that could have been used to phone-bank or knock on doors.²⁰⁰ During her campaign, Craft knocked on targeted doors and was able to speak with constituents who held differing views but ultimately had a positive response to her conversation with them.²⁰¹ Craft believes that, with the current composition of the Council, an initiative brought forth to change the election system to district-based would not pass given that, per their voting records, the Council is more conservative in enacting these types of

¹⁹³ Sullivan, *supra* note 21.

¹⁹⁴ Telephone Interview with Leandra Craft, *supra* note at 192.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

governmental changes.²⁰² Passing an initiative such as this would be unusual to them.²⁰³ Craft also believes that “there are clear class differences between neighborhoods in Federal Way, which likely coincide with racial demographics, and therefore it would not be challenging to create districts.”²⁰⁴

H. Voting Trends

Older, white voters throughout the country tend to lean Republican.²⁰⁵ Per ballot return statistics from 2021, the majority of voters in both Federal Way and Kent were over 55 years old.²⁰⁶ The political discourse all throughout the country, King County or elsewhere, seems to downplay the whiteness of the Republican coalition as it stands today.²⁰⁷ For example, in 2015 and 2016, journalists and political commentators alike constantly used terms such as “Middle America” and “the working class” to describe Trump’s supporters.²⁰⁸ Similar to Kent and Federal Way, an example of racial voting dynamics was in Georgia, where white voters overwhelmingly voted for Brian Kemp instead of Stacey Abrams for Governor.²⁰⁹ Whether Democrat or Republican, racially motivated voter suppression was a huge reason why Abrams lost.²¹⁰

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Trends in Party Affiliation Among Demographic Groups*, PEW RSCH. CTR. (Mar. 20, 2018), <https://www.pewresearch.org/politics/2018/03/20/1-trends-in-party-affiliation-among-demographic-groups/> [https://perma.cc/73UE-D4S8].

²⁰⁶ King County. Elections, *2021 Ballot Return Statistics – November General Election*, <https://kingcounty.gov/depts/elections/results/ballot-return-statistics/2021/202111.aspx> [https://perma.cc/MKB2-ZMQA].

²⁰⁷ Kessler, *supra* note 24.

²⁰⁸ *Id.*

²⁰⁹ Perry Bacon Jr, *America’s problem is White people keep backing the Republican Party*, THE WASHINGTON POST (Oct. 13, 2022), <https://www.washingtonpost.com/opinions/2022/10/13/america-has-white-voter-problem/> [https://perma.cc/478H-ZQ3D].

²¹⁰ Kessler, *supra* note 24.

On a local level, it would certainly appear that there is a strong link between the preferred candidates of older white voters and winning in at-large elections.²¹¹ This is likely the reason why previous Federal Way City Council incumbent, Greg Baruso,²¹² lost to conservative candidate Erica Norton, and why Mizan Rahman lost to conservative incumbent Bill Boyce in Kent.²¹³ In fact, data indicates that many of the same precincts that belong to the older, whiter voters that contributed to Cawthon's loss were the same ones that Hira Singh Bhullar, Awale Farah, and Mizan Rahman lost in.²¹⁴ As shown through data compiled by Hong, this was a reality; in District Five the votes went to the more conservative candidate.²¹⁵ As data shows, it is important to recognize that barriers like voting disparities exist to change the City Council elections from at-large to district-based.

I. Recognizing the Political Barriers and Mutually Agreeing Upon the District-Based Solution

There is discourse among voting rights scholars and activists that district-based solutions are not the key to ensuring that there is more representation in local elections, but rather that proportional ranked-choice voting is the answer.²¹⁶ In a ranked-choice voting system, voters rank all the candidates

²¹¹ *The Bias of At-Large Elections: How It Works*, NONPROFITVOTE BLOG (Aug. 16, 2017), <https://www.nonprofitvote.org/the-bias-of-at-large-elections-how-it-works/> [https://perma.cc/H7D5-VPJB].

²¹² Mirror Staff, *QA: Federal Way City Council Position 2 Candidates*, FEDERAL WAY MIRROR (Sept. 25, 2021, 8:05AM), <https://www.federalwaymirror.com/news/qa-federal-way-city-council-position-2-candidates/> [https://perma.cc/BL9V-8Y5].

²¹³ *Q&A with Kent City Council Candidates Boyce, Rahman*, KENT REPORTER (Oct. 24, 2019, 11:23AM), <https://www.kentreporter.com/news/qa-with-kent-city-council-candidates-boyce-rahman/> [https://perma.cc/Q4NK-29FY].

²¹⁴ *2015 General - Election Results by Precinct*, KING COUNTY. OPEN DATA, https://data.kingcounty.gov/widgets/kncv-f6kh?mobile_redirect=true [https://perma.cc/Z4V3-AYJH].

²¹⁵ Hong, *supra* note 174.

²¹⁶ Drew Desilver et al., *More U.S. Locations Experimenting with Alternative Voting Systems*, PEW RSCH. CTR. (Jun. 29, 2021), <https://www.pewresearch.org/short-reads/2021/06/29/more-u-s-locations-experimenting-with-alternative-voting-systems/> [https://perma.cc/47CU-MFKV].

for a given office by their preference, so it would be a first choice, second choice, etc.²¹⁷ However, there is insufficient scholarship on the benefits of ranked-choice voting in diverse cities with populations over 100,000. Other diverse cities do not use ranked-choice voting, such as the top fifteen most diverse cities in the country.²¹⁸

For example, in Hong's data, proportional ranked-choice voting would have yielded better results for progressive candidates with support from BIPOC communities in Kent.²¹⁹ As the data shows, single-member districts cannot draw as many distinctive "progressive" and "conservative" districts as proportional ranked-choice voting can because, in a city like Kent, voters are not segregated together but are instead scattered throughout the city.²²⁰ In Kent, Cliff Cawthon would have received 43% of the vote in the 2021 City Council Position Four contest and would have likely won one out of the seven districts.²²¹ In a proportional ranked-choice voting system, however, he would have likely won three out of seven districts.²²² Under the at-large system, though, Cawthon earned zero out of seven districts despite earning a substantial 43% of the votes.²²³

Proportional ranked-choice voting in cities without districts would be inefficient and less organized because districts allow people to mobilize more on the ground as well as allow candidates to be differentiated, as opposed to ranked-choice voting with at-large elections.²²⁴ Because of how difficult it is for BIPOC candidates to run successful campaigns without much media attention or a strong financial infrastructure, as has been

²¹⁷ NCSL Nat'l Conf. of State Legis., *Ranked-Choice Voting* (Jun. 11, 2022), <https://www.ncsl.org/research/elections-and-campaigns/ranked-choice-voting636934215.aspx> [<https://perma.cc/U4TB-PTVQ>].

²¹⁸ See Drew Desilver et al., *supra* note 216; see also *Id.*

²¹⁹ Hong, *supra* note 174.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ Interview with Cliff Cawthon, *supra* note 132.

shown, ranked-choice voting would more strongly reinforce the more well-known candidate.²²⁵ Hong also points out that single member districts, rather than proportional ranked-choice voting, would increase the opportunity for working-class candidates to run and win, the chances of field-based candidates to win, and politically feasible to pass, due to voter familiarity.²²⁶

Further, for the November 2022 election, the city of Seattle had a ranked-choice voting initiative on the ballot.²²⁷ The initiative did end up passing the election.²²⁸ Proponents have argued that this change will lead to a more representative election, more than the district-based elections have.²²⁹ However, it is important to note that districts have helped the representation of the City Council makeup, even better than they did before districts were implemented, as shown in the *Montes v. Yakima* case.

Another counter argument to district-based elections is that the issue is more that BIPOC communities do not vote in large numbers to begin with, rather than how the election system is set up.²³⁰ This argument would be incorrect, however, because BIPOC communities—particularly Black people—statistically vote more than white people except in off-year elections where it is the other way around, and white voters vote more than

²²⁵ *Id.*

²²⁶ Hong, *supra* note 174.

²²⁷ Sarah Grace Taylor, *Seattle Voters to Consider ‘Approval Voting’ Vs. ‘Ranked Choice’ Voting: Here’s the Difference*, SEATTLE TIMES (Oct. 13, 2022), [<https://perma.cc/E27A-CU3N>].

²²⁸ Donna Gordon Blankinship, *Seattle Narrowly Approves Ranked-Choice Voting* (Nov. 23, 2022), [<https://crosscut.com/politics/2022/11/seattle-narrowly-approves-ranked-choice-voting>] [<https://perma.cc/Z4JH-HMM6>].

²²⁹ Hong, *supra* note 174.

²³⁰ Sarina Vij, *Why Minority Voters Have a Lower Voter Turnout: An Analysis of Current Restrictions*, AMERICAN BAR ASSOCIATION (Jun. 25, 2020), [https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/why-minority-voters-have-a-lower-voter-turnout/] [<https://perma.cc/5XAH-B4BX>].

BIPOC voters.²³¹ In district elections, what is shown in Yakima and Seattle is that more diverse candidates are able to win;²³² more women, more people of color, even more politically-radical candidates can win. Although this does not guarantee that they will win, their chances of being elected certainly increase.

Seattle City councilmember Kshama Sawant is an example of a campaign which was likely successful because of district-based elections.²³³ Councilmember Sawant is an Indian-American woman and Socialist who prevailed in what was her first election against Richard Conlin, a wealthy, white, male, real estate developer²³⁴ who had been on the council for sixteen years.²³⁵ Sawant's campaign ran in Seattle's first district-based election, but her election would not have been possible if it were at-large because of the more conservative, white neighborhoods like Wallingford, Ballard, and Magnolia.²³⁶ Her district, the third district, is mostly Capitol Hill and the Central Area, which is full of young, progressive voters.²³⁷ The

²³¹ Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, BRENNAN CTR. FOR JUST. (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election> (excluding the 2020 election) [<https://perma.cc/T5RL-7DNH>].

²³² Jessica Troustine & Melody E. Valdin, *The Context Matters: The Effects of Single-Member versus At-Large Districts on City Council Diversity*, 52 AM. J. POL. SCI. 554 (2008).

²³³ Amy Radil et al., *Seattle Elects Sawant as First Socialist*, KUOW, (Nov. 15, 2023, 5:06 PM), <https://www.kuow.org/stories/richard-conlin-concedes-seattle-elects-sawant-first-socialist-councilmember/> [<https://perma.cc/6BZT-X479>].

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Gene Balk, *Where does your Seattle neighborhood fall in this 'diversity index'? Check the map*, SEATTLE TIMES, (Oct. 11, 2021, 6:00AM), <https://www.seattletimes.com/seattle-news/data/where-does-your-seattle-neighborhood-fall-in-this-diversity-index-check-the-map/> [<https://perma.cc/Q8B8-V9F3>].

²³⁷ Gene Balk, *Do you live in Seattle's most liberal or conservative neighborhood? Check our map*, SEATTLE TIMES, (Jan. 6, 2017, 6:00AM), <https://www.seattletimes.com/seattle-news/data/fyi-guy-almost-everywhere-in-seattle-is-left-of-center/> [<https://perma.cc/VL3M-RT5F>].

demographics likely contributed to her win, in addition to her populous message which aligned with her constituents at the time.

Depending on the city, there are other considerations to keep in mind when changing to districts; in the city of Burien, another South King County city, former city councilmember Austin Bell was initially in favor of district-based elections, but ultimately decided against pushing for the change because he found that it was very difficult to find individuals to run in separate districts.²³⁸ However, Bell notes that district-based elections could push political parties and community groups, which are typically in charge of searching for candidates, to diversify and find qualified candidates.²³⁹ Bell believes in cities like Kent and Federal Way, district-based elections make more sense than in smaller cities like Burien.²⁴⁰ Smaller cities such as Burien consist of a population of less than 100,000, which would create the issue of finding qualified, appropriate candidates for what would be those districts.²⁴¹ Bell notes that a combination of at-large and district-based elections may be the most balanced solution for representation, as several councilmembers can represent the interests of a whole city, whereas several others would represent the interests of parts of the city.²⁴² Ultimately, what will ensure a fair City Council makeup is how a district is drawn by the redistricting process, as referenced earlier.

Changing to district-based elections would benefit communities of color. Dulce Gutierrez was one of the three Latinas elected to Yakima City Council after the city changed their elections to district-based when *Montes v. Yakima* was decided.²⁴³ While she was on the City Council, she could

²³⁸ Telephone Interview with Austin Bell, Former Councilmember for Burien City Council (Nov. 9, 2022).

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Montes v. Yakima*, 40 F. Supp.3d 1377 (E.D. Wash. 2014); Venice Buhain, *Yakima Elects First Latina City Council Members After Voting Rights Case*, SEATTLE GLOBALIST (Nov. 4, 2015), <https://seattleglobalist.com/2015/11/04/yakima-elects-first>

successfully advocate for translation services for public council hearings and at public safety meetings, thus supporting the requests brought forth by Latine residents—the predominant group in Yakima District One.²⁴⁴ She stated that the changes she advocated for would not have been possible when her community did not have access to elected office and political power.²⁴⁵

Senator Rebecca Saldaña, State Senator for the 37th Legislative District in WA and champion of the 2018 WVRA, is also in favor of changing to district-based elections on a local level.²⁴⁶ As she stated, “the State of Washington... saw a dramatic change in representation in cities like Yakima and Pasco after they implemented district-based elections.²⁴⁷ Washington needs a voting rights act so that every local jurisdiction has the opportunity to do this, and so that impacted communities can truly have a voice that counts.”²⁴⁸ Part of the challenge to prove a WVRA violation in cities like Kent and Federal Way, unlike in Yakima and Pasco, is that the neighborhoods of Kent and Federal Way are not as clearly defined by race.²⁴⁹ However, Sen. Saldaña notes that the WVRA was crafted so that community members would be better equipped to make a case that a change needs to occur in their city when a violation occurs.²⁵⁰

latina-city-council-members-after-voting-rights-case/43367 [https://perma.cc/KGJ9-BA3Y].

²⁴⁴ Mike Faulk, *Four years after historic wins for Latino politicians, the Yakima City Council is getting less diverse*, CROSSCUT (Oct. 22, 2019), <https://crosscut.com/2019/10/four-years-after-historic-wins-latino-politicians-yakima-city-council-getting-less-diverse> [https://perma.cc/5FNH-WX95].

²⁴⁵ *Id.*

²⁴⁶ Telephone Interview with Rebecca Saldaña, State Senator for 37th Legislative District (Nov. 9, 2022).

²⁴⁷ *Id.*

²⁴⁸ Westc, *Senate Passes the Washington Voting Rights Act with Bipartisan Support*, CANDIDATE (Jan. 19, 2018), <https://senatedemocrats.wa.gov/alpha/2018/01/19/senate-passes-the-washington-voting-rights-act-with-bipartisan-support/> [https://perma.cc/XH9L-DFQ6].

²⁴⁹ *WVRA*, *supra* note 12.

²⁵⁰ *Id.*

IV. AT-LARGE ELECTIONS IN KENT AND FEDERAL WAY, WA MAY NOT BE A WVRA VIOLATION

One possible critique to changing the elections in the cities of Kent and Federal Way to district-based is that these cities are different than Yakima; they are not as clearly racially segregated, and therefore it would be difficult to prove a WVRA violation. However, in Kent, even though clear neighborhood segregation is not there (for example, there is not a clear “Latine neighborhood,” or “Black neighborhood.”), there does exist an area in which the whitest part of the city wields a historically-disproportionate influence on City Council elections.²⁵¹ Additionally, as housing prices and rent costs increase throughout King County and neighboring areas, more BIPOC and low-income communities are likely to continue moving to cities such as Kent and Federal Way.²⁵² As the data shows, these communities would likely not reside in “District Five.”²⁵³

Such a critique also ignores the reality that status quo at-large elections have wielded the same type of candidate in Kent for years, like former four-term councilmember Les Thomas.²⁵⁴ Hira Singh Bhullar, who challenged Thomas in 2019, would have won in a district-based system.²⁵⁵ Also, to be clear, this article is not arguing that the cities of Kent and Federal Way are potentially in violation of the VRA. Rather, this paper argues that these two cities are potentially in violation of WVRA. It’s important to note that one can violate a state voting rights act without violating the federal VRA; for example, Virginia’s Voting Rights Act criminalizes voter intimidation, while New York’s provides expanded services to limited English speakers,

²⁵¹ Hong, *supra* note 174.

²⁵² Melissa Hellman, *Seattle Residents are Flocking to South King County During COVID Pandemic*, SEATTLE TIMES (Apr. 28, 2021), <https://www.seattletimes.com/seattle-news/housebound-seattle-residents-move-to-south-king-county-for-more-room-during-the-pandemic/> [<https://perma.cc/C5NA-NRZG>].

²⁵³ See Hong, *supra* note 174.

²⁵⁴ *Kent City Councilmember Les Thomas*, KENT WASHINGTON [<https://perma.cc/YE8R-FCDF>].

²⁵⁵ *Id.*

and Washington’s Voting Rights Act update includes a “democracy canon.”²⁵⁶

As shown in violations of the WVRA, “[t]he fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation...”²⁵⁷ As the data has shown in Kent, if the only white-majority part of the city has historically wielded a disproportionate influence on City Council elections, in addition to the other factors mentioned earlier that BIPOC candidates have faced during their election, then it can be potentially considered a WVRA violation. Therefore, the data should be looked at closely to show that at-large elections have been hindering BIPOC candidates.

V. CONCLUSION

Late Supreme Court Justice Ruth Bader Ginsburg once said that at-large elections create barriers to voting.²⁵⁸ This sentiment is clear when viewing what occurred in the cities of Yakima and Pasco before they changed to district-based elections for City Council positions. South King County is a tale of two cities that echoes the struggles of BIPOC candidates who have tried running again and again without success. No matter how hard the candidates campaign—trying traditional and non-traditional tactics that would typically guarantee a win—it seems as though standing for platforms in their campaigns that communities of color and low-income voters can feel advocated for, does not ensure a successful outcome.

²⁵⁶ Mai Hoang, *WA passed a ‘Voting Rights Act 2.0’ bill. Here’s what’s in it*, CROSSCUT (May 4, 2023), <https://crosscut.com/politics/2023/05/wa-passed-voting-rights-act-20-bill-heres-whats-it> [<https://perma.cc/5RBN-TR5W>].

²⁵⁷ WASH. REV. CODE § 29A.92.030 (2018).

²⁵⁸ Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, NY TIMES (Jun. 25, 2013), <https://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html> [<https://perma.cc/E94T-EQXE>].

As shown, the cities of Kent and Federal Way need to change their at-large election systems to district-based elections. Doing so will ensure fair representation for BIPOC communities. As they currently stand, the at-large election systems in both cities are likely in violation of the WVRA. Because there is likely to be a lack of political will amongst the councilmembers, an initiative from voters or a lawsuit from a civil rights organization will need to occur. These struggles shadow what occurred in both Yakima and Pasco, and even in Seattle before the passage of Charter Amendment 19. The results are evident; no matter how qualified the candidate is, or any other aspects that would ensure a win, BIPOC candidates overwhelmingly do not win their elections in either city.

