UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES, et al., Plaintiffs, v. CITY OF YAKIMA, et al., Defendants.	NO: 12-CV-3108-TOR ORDER DENYING RECONSIDERATION

BEFORE THE COURT are FairVote's Motion for Reconsideration (ECF No. 156) and Defendants' Motion for Reconsideration (ECF No. 162). Defendants are represented by Francis S. Floyd. FairVote is represented by Christopher G. Emch and Andrew P. Spencer. This matter was submitted for consideration without oral argument. The Court has reviewed the briefing, the record, and files herein, and is fully informed.

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BACKGROUND

On August 22, 2014, the Court granted Plaintiffs' motion for summary judgment, concluding that the existing electoral system in Yakima violated Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and ordered the parties to jointly file a proposed remedial districting plan. ECF No. 108. The parties did not come to agreement on a districting plan and submitted opposing plans. ECF Nos. 113; 117. FairVote proposed a third remedial plan as amicus curiae. ECF No. 126. On February 17, 2015, the Court issued a Final Injunction evaluating the proposed plans and adopting Plaintiffs' plan as the only plan which effectively remedied the Section 2 violation. ECF No. 143. Defendants and FairVote now request the Court to reconsider the Final Injunction. ECF Nos. 156; 162.

DISCUSSION

Federal Rule of Civil Procedure 59(e) allows a court to consider a motion to alter or amend a judgment filed within twenty-eight days of the entry of judgment. "Amendment or alteration is appropriate under Rule 59(e) if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law." *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001). In such a motion, a district court need not consider legal arguments made for the first time or facts introduced for the first time unless they

were previously unavailable. *Id*. Federal Rule of Civil Procedure 60(b)(6) allows a court to relieve a party from a judgment for "any other reason that justifies relief." Relief under Rule 60(b)(6) requires the movant to show "extraordinary circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

In the Court's November 2, 2012, scheduling order, the Court notified the parties that "Motions to Reconsider are disfavored. Motions must show manifest error in the prior ruling or reveal new facts or legal authority which could not have been brought to the Court's attention earlier. . . . No response to a motion for reconsideration shall be filed unless required by the Court. No motion for reconsideration shall be granted without such a request by the Court." ECF No. 24 at 7–8. For the following reasons, the Court denies the motions to reconsider without requesting a response from Plaintiffs.

Defendants assert first that the Court's Final Injunction was manifestly unjust because it requires three council members to stand for election two years earlier than they would have under the current, unconstitutional electoral system. The Court thoroughly considered the equitable factors in reaching its conclusion. While Defendants may disagree with the Court's evaluation, they have not shown that the Court's conclusion was unjust given the compelling remedial goal of providing a complete remedy to the Section 2 violation before the upcoming

elections.[1] Defendants' propose a new alternative method of implementation to allow three council members who have been elected under a flawed system to retain their seats for two more years. ECF No. 162 at 4–5 (proposing that Mayor Cawley and Council members Ettl and Lover remain through 2017 and that districts 2, 4, and 7 would then be up for election). The Court rejects this proposal because that would effectively bar residents in three newly created districts (districts 2, 4, and 7) from even participating in the electoral process for another two years. That is not an effective remedy to the long standing Section 2 violation here.

Defendants assert second that the Court clearly erred by not *sua sponte* incorporating a primary into Defendants' proposed at-large electoral scheme. ECF No. 162 at 6–8. Defendants contend that this would have created an electoral

[1] The Court notes Defendants' concern that "the available time to introduce Plaintiffs' plan is short." ECF No. 162 at 5. The Court shares this concern and directs Defendants' attention to the Court's order that "Defendants shall take all steps necessary to implement the seven single-member district plan" before the August primaries. ECF No. 34 at 34–35. The Court has issued this Order in an expedited manner to provide the City with the maximum opportunity to prepare for the upcoming elections.

system that conforms to Washington law. FairVote joins this argument in regard to its own proposed at-large electoral system. ECF No. 156 at 4–5. Neither party presented this argument in their proposed remedy or in their responses to Plaintiffs' contention that a primary is required by Washington law. The Court will not consider arguments presented for the first time in a motion to reconsider. *Zimmerman*, 255 F.3d at 740. Moreover, including a city-wide primary for Defendants' proposed two-seat at-large district would result in a virtually identical electoral system to the current system which the Court concluded unconstitutionally diluted the Latino vote. *See* ECF No. 108. As such, it would not be an effective remedy to the Section 2 violation, but would simply perpetuate the dilution of the Latino vote.

Third, Defendants and FairVote contend the Court did not properly apply the threshold of exclusion to their proposed at-large electoral systems. ECF Nos. 156 at 5–7; 162 at 8–10. They argue that the Court did not factor in how cross-over voting would reduce the Latino vote required to elect Latino-preferred candidates. In reaching its conclusions in the Final Injunction, the Court considered, but rejected, this argument. In this litigation, the parties have presented evidence that cross-over voting has occurred in Yakima, but the estimated percentage of cross-over voting varies greatly. Defendants and FairVote failed to marshal sufficiently consistent and persuasive evidence to show that cross-over voting is so prevalent in

Yakima that it will necessarily afford Latinos a genuine opportunity to elect a candidate. Isolated results from two at-large elections in which a Latino candidate came in second place are too uncertain for the Court's remedy to be premised upon them. The plans presented by Defendants and FairVote *require* a substantial amount of cross-over voting in order to be effective remedies to the Section 2 violation.[2] The record does not clearly establish such cross-over voting occurs on a regular basis at a sufficiently high rate. The Court concluded that the rates were too variable to be the deciding factor in determining an effective remedy. The parties have not shown the Court clearly erred in reaching this conclusion.

Finally, FairVote contends that the Court clearly erred in concluding that FairVote's proposed plan was not an effective remedy because the district map provided to represent that plan did not include a majority Latino CVAP district. ECF No. 156 at 8–9. FairVote argues that it "unequivocally proposed that one of the single-seat districts be 'majority-Latino.'" *Id.* at 8. FairVote also argues that it was the City, not FairVote, who drew the map submitted to the Court, and that a majority Latino CVAP district could be drawn. *Id.* at 8–9. However, no such map was submitted to the Court in the substantial amount of briefing related to the proposed plans. The Court will not consider new evidence of a potential district

[2] This holds especially true for Defendants' proposed two-seat at-large system.

that could have, but was not presented prior to the Final Injunction—a motion to reconsider is not an opportunity to submit potential remedial maps. *See Zimmerman*, 255 F.3d at 740 ("[A] party that fails to introduce facts in a motion or opposition cannot introduce them later in a motion to amend by claiming that they constitute 'newly discovered evidence' unless they were previously unavailable."). Moreover, providing a majority Latino CVAP district would fix only one of the problems the Court identified with FairVote's proposed plan. Without also addressing the other problems, a proposed plan with a majority Latino CVAP district would still not be a complete remedy for the Section 2 violation.

Defendants and FairVote have not established that the Court committed clear error in the Final Injunction. They have also not established extraordinary circumstances warranting relief from the Final Injunction and Judgment.

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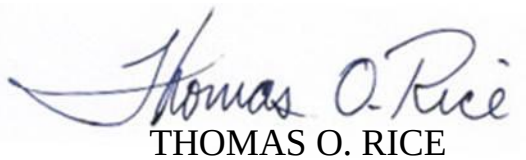
ACCORDINGLY, IT IS HEREBY ORDERED:

1. FairVote's Motion for Reconsideration (ECF No. 156) is **DENIED**.
2. Defendants' Motion for Reconsideration (ECF No. 162) is **DENIED**.
3. The hearing set for April 16, 2015 without oral argument is **vacated** as moot.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

DATED March 19, 2015.



THOMAS O. RICE
United States District Judge