

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SUSAN SOTO PALMER, *et al.*,

Plaintiffs-Appellees,

v.

STEVEN HOBBS, in his official
capacity as the Secretary of State of
Washington, and the STATE OF
WASHINGTON,

Defendants-Appellees,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

*Intervenor-Defendants –
Appellants.*

No. 23-35595

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for Western
Washington, Seattle

**PLAINTIFFS-APPELLEES’
BRIEF IN OPPOSITION TO
INTERVENOR-APPELLANTS’
MOTION TO STAY
INJUNCTION AND LOWER
COURT PROCEEDINGS**

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INTRODUCTION

This Court should deny Intervenor-Appellants’ (“Intervenors”) motion to stay the injunction and remedial proceedings ordered by the district court. Intervenors, three individuals in this case by permissive intervention only, lack standing to appeal and would suffer no harm in the absence of a stay. Moreover, they waited *three months* after the issuance of the judgment below and *two months* after appealing to this Court to request a stay. Despite this inexcusable delay, Intervenors now boldly demand that this Court issue relief by December 22, even though the remedial process in the case has been underway for over a month. The Court lacks jurisdiction to grant a stay, and Intervenors are in any event not entitled to it as shown below.

FACTS

On August 10, 2023, after a year and half of litigation and a four-day trial, the district court found that Washington’s 15th Legislative District (LD15) violated Section 2 of the Voting Rights Act. Int. App. 66.¹ Intervenors filed a Notice of Appeal to this Court on September 8, but Secretary Hobbs and the State of Washington—the defendants below—did not appeal. Int. App. 99. On October 31, Intervenors’ counsel (representing Mr. Garcia), filed a Jurisdictional Statement with the U.S.

¹ Citations to the *Soto Palmer v. Hobbs* district court docket that appear in Intervenor-Appellants’ Appendix, ECF No. 34-2, are cited as “Int. App.” Citations to additional documents included in Plaintiff-Appellees’ Appendix are cited as “Pl. App.”

Supreme Court appealing the dismissal of *Garcia* as moot.² No. 23-467. On November 3, Intervenors filed a petition for writ of certiorari before judgment in this case. No. 23-484. On November 8, *three months* after the district court issued its opinion and two months after their appeal to this Court, Intervenors asked the district court for a stay.

Pursuant to the district court's orders, the remedial process is well underway to ensure that a new map will be in place by March 25, 2024. Int. App. 97; Pl. App. 102. The parties held a meet and confer on remedial matters on November 16, 2023, and submitted proposed maps, expert reports, and special master proposals on December 1; responses are due December 22, and replies January 5.

The district court properly denied Intervenors' stay request on November 27. Int. App. 108. Intervenors waited *another eight days*—until after the first round of remedial briefing in the district court, Pl. App. 1—to ask this Court to grant a stay.

ARGUMENT

Intervenors lack standing to appeal and regardless fail all four stay factors. In evaluating an application for a stay pending appeal, this Court must assess whether (1) Intervenors have made a strong showing of likelihood of success on the merits; (2) Intervenors will be irreparably injured absent a stay; (3) a stay will substantially

² The *Garcia* case involves a claim that LD15 was an unconstitutional racial gerrymander. Intervenors' counsel also represent Mr. Garcia.

injure other parties; and (4) where the public interest lies. *Flores v. Barr*, 977 F.3d 742, 745-46 (9th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). A stay pending appeal is “extraordinary relief” and requires the applicant to satisfy a “heavy burden.” *Winston-Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J. chambers). In deciding whether to stay this matter pending a separate related action, this Court should also balance what best serves “the orderly course of justice.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005). Each factor weighs decisively against granting a stay.

I. Intervenor lack standing to appeal.

Intervenors, individuals with no legally cognizable interest, lack standing to appeal this case, let alone stay the entire remedial phase pending appeal. For this reason alone, Intervenors’ motion fails. For standing, a litigant must demonstrate “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). Appellants seeking to defend on appeal must also meet this Article III requirement. *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (“[S]tanding ‘must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance’”) (internal citation omitted); *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (citing *Wittman v. Personhuballah*, 578 U.S. 539 (2016)); *Diamond v. Charles*, 476 U.S.

54, 56, 68 (1986). This ensures that “the decision to seek review . . . is not to be placed in the hands of ‘concerned bystanders,’ who will use it simply as a ‘vehicle for the vindication of value interests.’” *Diamond*, 476 U.S. at 62 (internal citation omitted).

Intervenors cannot establish standing to defend on appeal. In granting Intervenors only permissive intervention, the district court expressly found that “intervenors lack a significant protectable interest in this litigation.” Pl. App. 120. Two of the three, Ybarra and Campos, *do not even reside or vote in LD15*, and thus have no cognizable interest in the district’s configuration. *United States v. Hays*, 515 U.S. 737, 744-45 (1995) (a voter who “resides in a racially gerrymandered district . . . has been denied equal treatment” but other voters “do[] not suffer those special harms”); *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015); Pl. App. 98-99.

Intervenors Campos and Trevino have asserted an interest “in ensuring that any changes to the boundaries of [their] districts do not violate their rights to ‘the equal protection of the laws’” and “in ensuring that Legislative District 15 and its adjoining districts are drawn in a manner that complies with state and federal law.” Pl. App. 114. But neither have alleged any improper racial classification—nor could they—and a blanket interest in “proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits [the intervenors] than it

does the public at large[,] does not state an Article III case or controversy.” *Lujan*, 504 U.S. at 573-74; *Allen v. Wright*, 468 U.S. 737, 754-55 (1984).

Moreover, the district court has not ordered *Intervenors* “to do or refrain from doing anything.” *Hollingsworth*, 570 U.S. at 705 (holding that non-governmental intervenor-defendants lack standing to appeal); *Republican Nat’l Comm. v. Common Cause of Rhode Island*, 141 S. Ct. 206 (2020) (Mem.) (denying stay of consent decree between state officials and plaintiffs because “no state official has expressed opposition” and intervenor “lack[s] a cognizable interest in the State’s ability to enforce its duly enacted laws”) (internal quotations omitted). Intervenors have no role in enforcing state statutes or implementing any remedial plan.³ Thus, Intervenors’ only interest in reversing the district court order is “to vindicate the [] validity of a generally applicable [Washington] law.” *Hollingsworth*, 570 U.S. at 706. But the Supreme Court has repeatedly held that “such a ‘generalized grievance,’ no matter how sincere, is insufficient to confer standing.” *Id.*

Intervenor Ybarra’s status as a legislator also does not suffice to confer standing. Interests he has asserted in “avoiding delays in the election cycle and in knowing ahead of time which voters will be included in his district,” Pl. App. 116,

³ It is insufficient that Intervenors have an adversarial position despite the State not appealing. “The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III’s requirements.” *Diamond*, 476 U.S. at 62, 68. Indeed, intervenors did not even bother to submit a proposed remedial plan.

are not particularized enough for Article III standing—every party in this litigation (and the public) has an interest in an orderly election—and no legislator is entitled to advance notice of his constituents.⁴ In addition, the district court’s remedial schedule ensures that Rep. Ybarra will know his district’s boundaries before the candidate filing date. Pl. App. 27. Indeed, given the interests he asserts, a *stay* would harm him. Nor does Rep. Ybarra have standing because of any argument that the remedial process *might* make his reelection campaign more difficult or costly. No official is guaranteed reelection (let alone an easy one) nor particular district lines, and to assert standing a litigant “must do more than simply allege a nonobvious harm.” *Bethune-Hill*, 139 S. Ct. at 1951 (citing *Wittman*, 578 U.S. at 543-45). Similarly, individual legislators have “no standing unless their own institutional position” is affected. *Newdow v. United States Cong.*, 313 F.3d 495, 498-99 (9th Cir. 2002). Nothing in this litigation impacts Rep. Ybarra’s institutional position or powers, and he is only one legislator of many, without the ability to assert harm on behalf of others. *Bethune-Hill*, 139 S. Ct. at 1953-54.

Finally, for the reasons stated above, Intervenors have no concrete or imminent interest in an appeal of any remedy either. The district court has not yet

⁴ Below, Intervenors cite *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) to support this point. But that case allowed individual congressmen to *permissively intervene* in district court litigation—it did not hold that an incumbent’s interest in knowing his voters in advance was enough to establish Article III standing, let alone on appeal. *See Johnson*, 902 F.3d at 578-79.

adopted any remedial plan—any allegations that Intervenors may be subject to racial classification or that race predominated are purely speculative. Pl. App. 115 (“[I]t would be premature to litigate a hypothetical constitutional violation...when no such violative conduct has occurred”); *Cooper v. Harris*, 581 U.S. 285, 290 (2017); *Hays*, 515 U.S. at 745 (“[A]bsent specific evidence” showing a voter has been subject to racial classification, the voter “would be asserting only a generalized grievance against governmental conduct of which he or she does not approve” and lack standing). Moreover, nothing about Plaintiffs’ proposed plans suggest that race predominated. To the contrary, Plaintiffs’ mapping expert “did not consider race or racial demographics in drawing the remedial plans.” Pl. App. 14. Thus, Plaintiffs’ plans would not prompt, let alone fail, strict scrutiny. Intervenors cannot seek a stay of a Section 2 liability determination because they anticipate disliking an as-yet-unknown remedial district.

II. Intervenors are unlikely to succeed on the merits.

Even if Intervenors could appeal, they are unlikely to succeed on the merits. Likelihood of success “is the most important” factor for a stay pending appeal. *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 952 (9th Cir. 2020). On appeal, the district court’s legal conclusions are reviewed *de novo* and its factual findings, “including its ultimate finding whether, under the totality of the circumstances, the challenged practice violates §2” will be reviewed for clear error. *Gonzalez v. Arizona*, 677 F.3d

383, 406 (9th Cir. 2012) (en banc); *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986). The district court applied the proper legal standards and did not clearly err in its findings regarding the *Gingles* preconditions and the totality of the circumstances. Intervenor’s claims otherwise fail.

First, the district court did not err in finding that the Yakima Valley region’s Latino population is sufficiently large and geographically compact to constitute a majority in a legislative district. The State’s expert, Dr. Alford, testified that Plaintiffs’ illustrative plans “are ‘among the more compact demonstration districts [he’s] seen’ in thirty years.” Int. App. 75. Intervenor falsely claim that the district court “considered only the compactness of the outer boundaries in Plaintiffs-Appellees’ demonstrative maps, and not the compactness of Hispanic voters within those boundaries,” ECF No. 34-1 at 6. But the district court heard expert and lay witness testimony establishing that “Yakima and Pasco,” two Latino population centers, “are geographically connected by other, smaller, Latino population centers” and that “Latinos in the Yakima Valley region form a community of interest based on more than just race.” Int. App. 75; Pl. App. 38, 46-52.⁵ Moreover, Intervenor’s expert stated at trial that he had no opinion on whether LD15 was compact, Pl. App. 81 and “acknowledged . . . that he does not know anything about the communities

⁵ Intervenor’s compactness argument is incorrect and irrelevant. Plaintiffs demonstrated it is possible to draw a performing majority-Latino district without combining Yakima and Pasco.

in the Yakima Valley region other than what the maps and data show.” Int. App. 76. And contrary to Intervenors’ arguments otherwise, ECF No. 34-1 at 7, Plaintiffs filed *five* proposed maps in their December 1 remedial briefings that perform to elect the Latino candidate of choice. Pl. App. 3, 13. The record evidence contradicts Intervenors’ claims and demonstrates failure on the merits of their appeal.

Second, the district court did not err in finding that voting in the Yakima Valley region is racially polarized. Contrary to Intervenors’ assertions, the district court “conduct[ed] ‘an intensely local appraisal’ of the electoral mechanism at issue, as well as a ‘searching practical evaluation of the past and present reality.’” *Allen v. Milligan*, 599 U.S. 1, 19 (2023) (internal citation omitted). The district court’s findings are consistent with the opinions of all four quantitative experts, including Intervenors’, that “Latino voters overwhelmingly favored the same candidate in the vast majority of the elections studied.” Int. App. 76. For example, Intervenors’ expert found cohesion among Latino voters in LD15 in 10 of the 11 elections he analyzed from 2018-2020. Pl. App. 110, 74-80. Further, the primary drawer of LD15 admitted he would have to “close [his] eyes” not to see the clear pattern of strong Latino support for and white bloc voting against the same candidates while drawing districts in the area. Pl. App. 90, 87-89. Additional qualitative evidence further established Latino cohesion. Pl. App. 37-38.

The same is true for *Gingles* 3. The data and opinions of Intervenors’ and the State’s experts, undisputed by Intervenors, established “that white voters in the Yakima Valley region vote cohesively to block the Latino-preferred candidates in the majority of elections.” Int. App. 77; Pl. App. 38-41. This is particularly true when election contests featured Spanish-surnamed candidates, leading the State’s expert to conclude there is “a real ethnic effect on voting in this area.” Pl. App. 70-71.

Moreover, the district court did not “ignor[e]” the 2022 election of a Latina Republican, Nikki Torres, to LD15. ECF No. 34-1 at 13. Rather, the district court carefully weighed the testimony and analyses regarding that election, including testimony from Drs. Barreto and Collingwood that Latino voting in the election was cohesive at levels consistent with past elections in favor of Lindsey Keesling, the losing candidate, while white voters cohesively preferred Ms. Torres, the winning candidate. Int. App. 77-78; Pl. App. 93-94, 82-84. In addition, LD15’s 2022 election is a “special circumstance” with less probative value as it took place during the pendency of VRA litigation and featured a severely underfunded Latino-preferred candidate nominated as a write-in. Pl. App. 40; *Ruiz v. City of Santa Maria*, 160 F.3d 543, 557-58 (9th Cir. 1998) (elections “not representative of the typical way in which the electoral process functions” are less probative); *Gingles*, 478 U.S. at 75-76.

Third, the district court applied the proper legal standards and did not err in finding that the Yakima Valley region’s Latino voters do not, under the totality of the

circumstances, have an equal opportunity to elect state legislative candidates of their choice. The district court made numerous findings related to the Senate Factors and other relevant regional factors. Int. App. 79-93. Intervenors do not establish that they are likely to show otherwise.

Intervenors contend that “the [district] court found that certain ‘usual burdens of voting’ evidenced an abridgment of the right to vote,” ECF No. 34-1 at 8. Intervenors neglect to elaborate, but presumably take issue with the district court’s findings regarding the “official discrimination that impacted and continues to impact [Latino voters’] rights to participate in the democratic process” as well as “unrebutted evidence of . . . electoral practices that may enhance the opportunity for discrimination against the minority group.” Int. App. 82-83. But a long history of official, voting-related *racial discrimination* including English literacy tests, failure to comply with federal law and provide bilingual election materials, and dilutive at-large election systems are not “a usual burden of voting.” Pl. App. 42-44. Nor are practices such as disparate signature rejection.⁶ Indeed, due to this history, the State even admitted that under the totality of the circumstances, Hispanic voters in LD15

⁶ In fact, disparate signature rejection for Latino voters is so unusual that Yakima and Benton counties agreed to settle claims regarding them and alter their signature verification processes. *Reyes v. Chilton*, 4:21-cv-05075 (E.D. Wash. 2023), ECF Nos. 195, 199.

are less able to participate in the political process and elect candidates of their choice than white voters. Pl. App. 96.

Next, Intervenors misunderstand the proper legal standard in asserting that the district court “failed to identify the required causal nexus . . . brushing aside the evidence that partisanship, not race, drives voting patterns in the Yakima Valley.” ECF No. 34-1 at 8. The Ninth Circuit has rejected similar arguments, *see Old Person v. Cooney*, 230 F.3d 1113, 1128 (9th Cir. 2000), and *Gingles* makes clear that “[i]t is the difference between the choices made by [minorities] and whites—not the reasons for that difference—that results in [minorities] having less opportunity than whites to elect their preferred representatives.” 478 U.S. at 62-63, 74 (plurality); *id.* at 100 (O’Connor, J., concurring). Even so, the district court weighed Intervenors’ scant proof of partisanship as the driving force of Yakima Valley’s voting patterns. Intervenors’ bare assertions, however, simply did not outweigh Plaintiffs’ substantial evidence that Latinos in the region “prefer candidates who are responsive to the needs of the Latino community whereas their white neighbors do not. The fact that the candidates identify with certain partisan labels does not detract from this finding.” Int. App. 96. Moreover, Intervenor Trevino testified that Latino Republican candidates face racist incidents while campaigning for office in the Yakima Valley. Pl. App. 123. Finally, Mr. Garcia testified to racial discrimination he faced from the State Republican Party as a Latino candidate running for Congress in the Yakima

Valley. In Mr. Garcia’s own words, this discrimination “greatly affected th[e] election, the outcome, and suppressed the Latino vote.” Pl. App. 105-106.

Finally, the district court joined many others in finding that a majority-minority CVAP district⁷ can dilute the minority’s voting power where, as here, they still cannot elect candidates of choice.⁸ See, e.g., *Perez v. Abbott*, 253 F. Supp. 3d 864, 880 (W.D. Tex. 2017) (“[T]he existence of a majority HCVAP in a district does not, standing alone, establish that the district provides Latinos an opportunity to elect, nor does it prove non-dilution.”); *Pope v. Cnty. of Albany*, 687 F.3d 565, 575 n.8 (2d Cir. 2012); *Monroe v. City of Woodville*, 881 F.2d 1327, 1333 (5th Cir. 1989); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 933 (8th Cir. 2018). Because the district court applied the proper legal standards and did not clearly err in its factual determinations, this “most important” factor weighs heavily *against* a stay.

III. Intervenors will suffer no harm absent a stay.

Irreparable harm absent a stay is the second of the two “most critical” factors in consideration of a stay pending appeal. *Mi Familia Vota*, 977 F.3d at 952 (citation

⁷ When adopted LD15 was 50.02% Hispanic CVAP. Pl. App. 100.

⁸ Moreover, a minority *candidate*, like Nikki Torres, is not automatically the minority *candidate of choice*. *LULAC v. Perry*, 548 U.S. 399, 438-41 (2006) (redistricting diluted Latino voting strength because Latino voters were near ousting non-Latino-preferred Latino incumbent). Indeed, testimony from Drs. Barreto and Collingwood confirms that she was not. Int. App. 77-78.

omitted). The claimed irreparable harm must be “*likely* to occur;” the mere “possibility of irreparable injury” is insufficient to grant a stay. *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778 (9th Cir. 2018) (internal citations and quotations omitted) (emphasis in original). Intervenors admit the critical role of irreparable harm, ECF No. 34-1 at 5, but their attempts to demonstrate it with unsupported speculation about “racial sorting” fall flat. This failure dooms their stay application. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011).

The remedial process Intervenors seek to stay already illustrates their argument is meritless. Plaintiffs proposed five plans, all created by a mapmaker who “did not consider race or racial demographics in drawing the remedial plans” and who “did not make visible, view, or otherwise consult any racial demographic data while drawing districts.” Pl App. 14, 4. The purported threat that the district court’s order would necessarily result in “racial targets,” ECF No. 34-1 at 10, has not materialized and does not reflect the reality of the ongoing remedial process. Similarly, Intervenors’ assertion that the district court “has ordered that a ‘super’ majority-minority district be drawn,” *id.*, is fabricated and simply incorrect. Indeed, Intervenors can cite to no statement by the district court to support it. Moreover, none of Plaintiffs’ remedial plans contain a “super majority-minority” district.⁹

⁹ Further, a *remedy* for a VRA violation, unlike at the liability stage, does not require a majority-Latino district. Rather, the remedial district must simply provide a fair

Even if the Court were to adopt a remedial plan that considered race, a district is not an unconstitutional racial gerrymander if the VRA requires its race-conscious drawing, as Intervenor's acknowledge. ECF No. 34-1 at 9. To the extent they now argue that any remedial plan ordered to comply with the VRA is a racial gerrymander, such an argument is flatly inconsistent with the Supreme Court's recent precedent. *See Allen*, 599 U.S. at 41. Intervenor's assertion that even where required for VRA compliance, consideration of race nevertheless causes an "irreparable injury" is nonsensical. Intervenor's will not be harmed by a remedial process proceeding according to established precedent that may well result in a district in which they do not even reside. Consideration of race in fashioning a Section 2 remedy does not constitute harm. *Allen*, 599 U.S. at 30. Intervenor's face no harm warranting a stay, let alone irreparable harm.

Finally, Intervenor's dilatory stay request in the district court significantly undermines the urgency of their motion. *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983) (denying "emergency stay" pending appeal filed after "unexplained delay" of 56 days). Rather than moving for a stay when the district court issued its judgment—or in the *three months* that followed—Intervenor's waited until three weeks before remedial plans and briefing were due to demand a stay. Intervenor's

"opportunity" for minority voters to "participate in the political process and . . . elect representatives of their choice." *Milligan*, 599 U.S. at 25; *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009).

offered no explanation for the *90 days* that elapsed between the issuance of the district court opinion and the filing of their stay application, strongly suggesting they face no impending harm. *See Valeo Intell. Prop., Inc. v. Data Depth Corp.*, 368 F. Supp. 2d 1121, 1128 (W.D. Wash. 2005) (noting that a “three-month delay [was] inconsistent with [movant’s] insistence that it faces irreparable harm”). After the district court denied their stay, they waited *another* eight days (and four days after Plaintiffs filed their remedial submission in the district court) before asking this Court to stay the proceedings, again demonstrating the lack of actual imminent harm.

IV. Plaintiffs will suffer irreparable harm if the district court’s injunction and remedial proceedings are stayed.

Plaintiffs will be irreparably harmed and “substantially injure[d]” if the case is stayed. *Nken*, 556 U.S. at 434. It is well established that an infringement of voting rights constitutes irreparable injury. *See, e.g., Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338, 1347-48 (N.D. Ga. 2015); *United States v. City of Cambridge*, 799 F.2d 137, 140 (4th Cir. 1986); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). And there is no “adequate legal remedy” once that right is abridged in an election. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress.”).

This is precisely the irreparable harm that Plaintiffs will suffer if this Court stays any part of this case. All parties, including Intervenors, agreed that “March 25,

2024 is the latest date a finalized legislative district map must be transmitted to counties without significantly disrupting the 2024 election cycle.” Pl. App. 102. If a stay is granted, the appellate briefing schedules in this case and *Garcia* would make it virtually impossible for those matters to be resolved in time for the remedial process to restart, let alone complete, prior to the March 25 deadline. *See, e.g.*, ECF No. 1-1 (this Court setting Dec. 21, 2023, Jan. 22, 2024, and Feb. 12, 2024 deadlines for opening brief, response, and reply).

Intervenors fail to address the harm that Plaintiffs would face if a stay is granted. To say that Plaintiffs “have little prospect of being differently situated without a stay as with one,” ECF No. 34-1 at 17, is nonsensical. Without a stay, Plaintiffs will vote in a lawful district that remedies the dilution of their voting strength proved at trial; with a stay, they will be forced to endure another election under discriminatory maps adjudged by a federal court to violate the law. As the district court noted in denying the stay below, Intervenors “provide no estimate of how long the requested stay would be in place, nor do they acknowledge that failure to create remedial maps in the next few months will, as plaintiffs proved at trial, deprive plaintiffs of their voting rights in the next election cycle” Int. App. 109. This substantial harm to Plaintiffs makes this factor weigh heavily against a stay.

V. A stay harms the orderly administration of justice and public interest.

Intervenors suggest that this case may be “easier to decide at some later date.” ECF No. 34-1 at 15. But this case has already been decided. Intervenors lost. Intervenors also assert that the “likely result” of their last-ditch appeals to the Supreme Court will materially affect the remedial process already underway. *Id.* But delaying the remedial process is neither “prudent” nor “efficient,” and orderly justice is served by denying the stay application.

Intervenors list several cases where district court proceedings were stayed pending action by the Supreme Court to suggest the same would be appropriate here. ECF No. 34-1 at 12 n.3. But in *all of them*, the Supreme Court had already granted review (or heard argument) in the case in question.¹⁰ That is a far cry from the current situation where Intervenors have simply asked the Supreme Court to review this case without any indication that it will oblige. If filing a petition for certiorari were all it took to grind a district court’s remedial proceedings to a halt, opposing parties would always file, stymying efforts to timely implement a remedy.

At minimum, an applicant for a stay pending certiorari must demonstrate “reasonable probability that [the Supreme] Court would eventually grant review and a fair prospect that the Court would reverse.” *Merrill v. Milligan*, 142 S. Ct. 879, 880

¹⁰ Intervenors also cite two instances of stays pending action by circuit courts in circumstances totally different than here, making them similarly unavailing.

(2022) (mem) (Kavanaugh, J., concurring). Intervenors make no such showing, and the Court’s call for responses from Plaintiffs and the State is a routine procedural step that does not indicate otherwise. Moreover, after “declin[ing] to recast” Section 2 jurisprudence in *Allen v. Milligan*, the Supreme Court is unlikely to now upend “nearly forty years” of precedent not even a year later. *Allen*, 599 U.S. at 26.

Intervenors ignore all this, and instead engage in hypotheticals about how a series of unlikely rulings in their appeal of this case or *Garcia* could justify a stay. ECF No. 34-1 at 13-15. Intervenors claim that if the remedial process continues, a later decision by an appellate court *might* affect the new map or new elected officials resulting from a remedy. *Id.* at 16. But Intervenors fail to describe the alternate—more likely—outcome if a stay is granted: affirmance by the appellate courts would come too late to restart the remedial process and provide remedy before the election. While Intervenors “may prefer a particular order of resolution, they do not demonstrate the orderly course of justice would be better served through imposition of a stay.” *Hunichen v. Atonomi LLC*, C19-0615-RAJ-SKV, 2021 WL 9567172, at *2 (W.D. Wash. May 25, 2021).¹¹ This case and *Garcia* are indeed “inextricably

¹¹ The Supreme Court often denies stay requests in similar circumstances. *See, e.g., Graves v. Barnes*, 405 U.S. 1201, 1203-04 (1972) (Powell, J. in chambers) (refusing to stay remedial plan in vote dilution case); *Bethune-Hill*, 139 S. Ct. 914 (declining stay of injunction against state’s plan); *McCrorry v. Harris*, 577 U.S. 1129 (2016) (same); *Wittman*, 578 U.S. at 1125 (same); *LULAC v. Perry*, 567 U.S. 966 (2012) (declining to stay injunction adopting remedial plan in §2 case).

intertwined,” ECF No. 34-1 at 13, but Intervenors have the argument exactly backwards—*Garcia* depends on the outcome in *Soto Palmer*. Intervenors’ counsel admitted as much while litigating both cases. Pl. App. 109 (Intervenors admitting “resolution of the claim in *Garcia necessarily turns on the claims in* [*Soto Palmer*].”

Finally, the public interest would not be served by granting a stay. *Flores*, 977 F.3d at 745 (citing *Nken*, 556 U.S. at 434). Intervenors identify this as a factor to consider, ECF No. 34-1 at 5, but effectively neglect to address it. The interest of the public in having a finalized—and non-discriminatory—legislative district for the 2024 election is significant. When the defendant in the ongoing Louisiana redistricting challenge sought a stay of the remedial process pending appeal, it was denied because the litigation “should be resolved in advance of the 2024 [] elections.” *Robinson v. Ardoin*, No. 23A281, 2023 WL 6886438, at *1 (U.S. Oct. 19, 2023) (Jackson, J., concurring). So too here.

CONCLUSION

For the foregoing reasons, Intervenors’ motion to stay the injunction and lower court proceedings should be denied, and the remedial process should proceed so that a VRA-compliant legislative district can be in place for the 2024 election cycle.

Dated: December 15, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(B) and Circuit Rule 27-1(1)(d) because this motion contains 5018 words spanning 20 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman size 14-point font with Microsoft Word.

Dated: December 15, 2023

/s/Chad W. Dunn
Chad W. Dunn

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/Chad W. Dunn
Chad W. Dunn

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SUSAN SOTO PALMER, *et al.*,

Plaintiffs-Appellees,

v.

STEVEN HOBBS, in his official
capacity as the Secretary of State of
Washington, and the STATE OF
WASHINGTON,

Defendants-Appellees,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

*Intervenor-Defendants –
Appellants.*

No. 23-35595

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for Western
Washington, Seattle

**APPENDIX TO
PLAINTIFFS-APPELLEES’
BRIEF IN OPPOSITION TO
INTERVENOR-APPELLANTS’
MOTION TO STAY
INJUNCTION AND LOWER
COURT PROCEEDINGS**

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The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS, and
ALEX YBARRA,

Intervenor-Defendants.

Case No.: 3:22-cv-05035-RSL

Judge: Robert S. Lasnik

**PLAINTIFFS’ BRIEF IN
SUPPORT OF REMEDIAL
PROPOSALS**

I. INTRODUCTION

On October 4, 2023, this Court ordered the parties to “meet and confer with the goal of reaching a consensus on a legislative district map” that would remedy the dilution of Latino voting strength under Section 2 of the Voting Rights Act (VRA) arising from the configuration of LD 15. Order at 2, Dkt. #230. The parties met on November 16, 2023, but failed to reach a consensus on a remedial map. Plaintiffs now respectfully submit five proposed maps that remedy the VRA violation for Latino voters in the Yakima Valley region and provide all voters in the region equal

1 electoral opportunity. Each proposal is a complete and comprehensive remedy to Plaintiffs’
 2 Section 2 harms that aligns with both traditional redistricting principles and federal law.

3 II. LEGAL STANDARD

4 To remedy the Section 2 violation in the Yakima Valley region, the Court must order the
 5 adoption of a remedial plan in which Latino voters possess “real electoral opportunity.” *See, e.g.,*
 6 *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 428 (2006). The Court should
 7 “exercise its traditional equitable powers to fashion the relief so that it *completely* remedies the
 8 prior dilution of minority voting strength and *fully* provides equal opportunity for minority citizens
 9 to participate and to elect candidates of their choice.” *Ketchum v. Byrne*, 740 F.2d 1398, 1412 (7th
 10 Cir. 1984) (quoting S. Rep. No. 97-417, at 31) (emphasis added); *see also Gomez v. City of*
 11 *Watsonville*, 863 F.2d 1407, 1419 (9th Cir. 1988) (“the district court has broad equitable powers
 12 to fashion relief which will remedy the Section 2 violation completely”); *McGhee v. Granville*
 13 *Cnty., N.C.*, 860 F.2d 110, 118 (4th Cir. 1988) (“If a vote dilution violation is established, the
 14 appropriate remedy is to restructure the districting system to eradicate, to the maximum extent
 15 possible *by that means*, the dilution proximately caused by that system.”) (emphasis in original);
 16 *U.S. v. Dallas Cnty. Comm’n*, 850 F.2d 1433, 1438 (11th Cir. 1988).

17 The Court ought to conduct a fact-based analysis of the district’s demographics, racial
 18 polarization, and past electoral performance to ensure the remedial district configuration will, in
 19 fact, provide the minority community with an equal opportunity to elect candidates of its choice.
 20 See *League of United Latin Am. Citizens*, 548 U.S. at 428–29 (considering whether a district was
 21 “an effective opportunity district” by assessing a district’s Latino citizen voting age population
 22 and past electoral performance); *Milligan v. Merrill*, 582 F. Supp. 3d 924, 936 (N.D. Ala. 2022),
 23 *aff’d sub nom. Allen v. Milligan*, 599 U.S. 1 (2023) (ordering that a remedial plan create “either an
 24
 25
 26

1 additional majority-Black congressional district, or an additional district in which Black voters
2 otherwise have an opportunity to elect a representative of their choice.”). Plaintiffs demonstrated
3 that it is possible to draw a district with over 50% Latino Citizen Voting Age Population (“CVAP”)
4 to prove *liability*, but once a violation has been shown, a remedial map imposed by a Court need
5 not include “majority-minority” districts to achieve Section 2 compliance. Instead, as noted above,
6 the remedial inquiry turns on a functional analysis of a district’s electoral performance for Latino
7 voters, not an arbitrary demographic threshold. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009)
8 (stating that “§ 2 allows States to choose their own method of complying with the Voting Rights
9 Act, and we have said that may include drawing crossover districts”) (internal citations omitted);
10 *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017).

11
12 When adopting a remedial district, this Court must consider traditional redistricting
13 principles as well as the policies underlying the current redistricting plan, but those considerations
14 ultimately must subordinate to compliance with the Constitution and the Voting Rights Act. *See*
15 *Arizona v. Inter Tribal Council of Ariz. Inc.*, 133 S. Ct. 2247, 2256 (2013) (“[Federal legislation]
16 so far as it extends and conflicts with the regulations of the State, necessarily supersedes them.”
17 (citation omitted)); *Large v. Fremont County*, 670 F.3d 1133, 1145 (10th Cir. 2012) (“In remedial
18 situations under Section 2 where state laws are necessarily abrogated, the Supremacy Clause
19 appropriately works to suspend those laws because they are an unavoidable obstacle to the
20 vindication of the federal right.” (emphasis in original)).
21
22

23 **III. PLAINTIFFS’ REMEDIAL PROPOSALS**

24 Plaintiffs present five proposed remedial plans, each of which comply with traditional
25 redistricting principles including population equality, compactness, contiguity, respect for political
26 subdivisions, and preservation of communities of interest. Ex. 1, Oskooii Decl. at 4-11; RCW

1 29A.76.010(4). Each of the remedial proposals was drafted by Plaintiffs’ remedial mapping expert,
2 Dr. Kassra Oskooii, without consideration of the racial or partisan composition of the districts. *Id.*
3 at 4. Each plan would remedy the dilution of Latino voting strength in the Yakima Valley region
4 by creating a district in which Latino voters have an equal opportunity to elect candidates of their
5 choice to the state legislature despite high degrees of racially polarized voting. Ex. 2, Collingwood
6 Decl. at 1. Consistent with the Court’s instruction to “keep[] in mind the social, economic, and
7 historical conditions discussed in the Memorandum of Decision,” Order at 2, Dkt. #230, Plaintiffs’
8 proposed remedial districts are each labeled as LD 14 wherein elections for state senate align with
9 the higher turnout gubernatorial and presidential elections. In doing so, none of Plaintiffs’ proposed
10 plans pair any Senators who would be up for election in the off-year of 2026. Because Latino voter
11 turnout is less depressed in presidential elections than in off-year elections, Mem. of Decision at
12 17, Dkt. #218, the creation of the remedial district as LD 14 will significantly contribute to
13 ensuring the region’s Latinos will have “real electoral opportunity” as required by Section 2.
14 *League of United Latin Am. Citizens*, 548 U.S. at 428.

15
16
17 While any of Plaintiffs’ proposed plans would remedy the VRA violation, Plaintiffs’
18 preference is for the Court to adopt a proposed remedial district configuration which unites
19 populations in Yakima, Pasco, and various smaller population centers bridging them, which “form
20 a community of interest based on more than just race.” Mem. of Decision at 10, Dkt. #218.

21 ***Plaintiffs’ Remedial Proposal 1***

22
23 As Dr. Oskooii explains in his attached declaration, Remedial Proposal 1 contains a
24 configuration of LD 14 that unites the community of interest in the Yakima Valley region,
25 including both the East Yakima and Pasco community centers and smaller communities in the
26 Lower Yakima Valley like Wapato, Toppenish, Sunnyside, and Grandview. Plaintiffs’ Remedial

1 Proposal 1, like all of Plaintiffs' remedial proposals, keeps the Yakama Nation Reservation intact
2 in one legislative district. LD 14 in Plaintiffs' Remedial Proposal 1 also contains some of the
3 Yakama Nation trust lands.

4 Dr. Collingwood separately assessed whether Plaintiffs' Remedial Proposal 1 would
5 perform to allow Latino voters an equal opportunity to elect their candidates of choice. LD 14 in
6 Remedial Proposal 1 has a Latino CVAP of 51.65%. Ex. 2, Collingwood Decl. at 3. Importantly,
7 Remedial Proposal 1 provides Latino voters in the Yakima Valley region with an equal opportunity
8 to elect candidates of choice to the state legislature across a range of electoral conditions. The
9 performance analysis conducted by Dr. Collingwood shows that in nine of the nine elections
10 considered, the Latino-preferred candidate would win in LD14 in Remedial Proposal 1. Ex. 2,
11 Collingwood Decl. at 4.
12

13 ***Plaintiffs' Remedial Proposal 2***

14 LD 14 in Remedial Proposal 2 has an identical configuration to LD 14 in Plaintiffs'
15 Remedial Proposal 1 but offers an alternative configuration of the legislative districts *surrounding*
16 LD 14.
17

18 ***Plaintiffs' Remedial Proposal 3***

19 Plaintiffs' Remedial Proposal 3, like 1 and 2, contains a configuration of LD 14 which joins
20 communities of interest in the Yakima Valley region, including both East Yakima and Pasco
21 community centers as well as communities in the Lower Yakima Valley like Wapato, Toppenish,
22 Sunnyside, and Grandview. Plaintiffs' Remedial Proposal 3 also combines the Yakama Nation
23 Reservation and all of the Yakama Nation trust lands and fishing villages in LD 14.
24

25 Dr. Collingwood separately assessed whether Plaintiffs' Remedial Proposal 3 would
26 perform to allow Latino voters an equal opportunity to elect their candidates of choice. LD 14 in

1 Remedial Proposal 3 has a Latino CVAP of 50.14%. Ex. 2, Collingwood Decl. at 3. Remedial
2 Proposal 3 provides Latino voters in the Yakima Valley region with an equal opportunity to elect
3 candidates of their choice to the state legislature across a range of electoral conditions. The
4 performance analysis conducted by Dr. Collingwood shows that in nine of the nine elections
5 considered, the Latino-preferred candidate would win in LD 14 in Remedial Proposal 3. Ex. 2,
6 Collingwood Decl. at 4.
7

8 ***Plaintiffs' Remedial Proposal 4***

9 LD 14 in Remedial Proposal 4 has an identical configuration to LD 14 in Plaintiffs'
10 Remedial Proposal 3 but offers an alternative configuration of the legislative districts *surrounding*
11 LD 14.

12 ***Plaintiffs' Remedial Proposal 5***

13 Remedial Proposal 5 contains a configuration of LD 14 which does not include Pasco in
14 LD 14. Remedial Proposal 5 includes all of the Yakama Nation Reservation in LD 14 but not the
15 off-reservation trust lands or fishing villages. While Remedial Proposal 5 is not preferred by
16 Plaintiffs, it would nonetheless remedy the Section 2 violation by creating an effective opportunity
17 district for Latino voters, should this Court choose to do so without uniting the full Yakima Valley
18 region community of interest, including both Yakima and Pasco Latinos, in one legislative district.
19

20 Dr. Collingwood separately assessed whether Plaintiffs' Remedial Proposal 5 would
21 perform to allow Latino voters an equal opportunity to elect their candidates of choice. LD 14 in
22 Remedial Proposal 5 has a Latino CVAP of 47%. Ex. 2, Collingwood Decl. at 3. Remedial
23 Proposal 5 provides Latino voters in the Yakima Valley region with an equal opportunity to elect
24 candidates of their choice to the state legislature across a range of electoral conditions. The
25 performance analysis conducted by Dr. Collingwood shows that in nine of the nine elections
26

1 considered, the Latino-preferred candidate would win in LD 14 in Remedial Proposal 5. Ex. 2,
2 Collingwood Decl. at 4.

3 **IV. CONCLUSION**

4 Plaintiffs respectfully urge this Court to adopt one of Plaintiffs’ five proposed remedial
5 plans, which fully and effectively remedy the Section 2 violation in the region, with a preference
6 for Remedial Plans 1-4.
7

8
9 Dated: December 1, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 1st day of December 2023, via the Court’s CM/ECF system.

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EXHIBIT 1

December 1, 2023 Declaration of Dr. Oskooii

Expert Report Submitted on Behalf of Plaintiffs

in *Soto Palmer, et al. v. Hobbs, et al.*

Kassra AR Oskooii, Ph.D.

University of Delaware

December 1, 2023

A. Background and Qualifications

1. I, Kassra AR Oskooii, am over 18 years of age and am competent to testify.
2. I am a tenured, Associate Professor and Provost Teaching Fellow in the department of Political Science and International Relations at the University of Delaware (“UD”), having joined the faculty in 2016 as an Assistant Professor. I am also an affiliated faculty member at UD’s Data Science Institute, Master of Science in Data Science, Center for Political Communication, and Center for the Study of Diversity. My research and teaching focuses on American political behavior, political methodology, political psychology, political representation, voting rights, and redistricting. My research has appeared in numerous leading peer-reviewed, social science journals, including *Sociological Methods and Research*, *Political Behavior*, *Public Opinion Quarterly*, *Political Psychology*, *British Journal of Political Science*, *Electoral Studies*, *Perspectives on Politics*, *Urban Affairs Review*, *State Politics and Policy Quarterly*, and *Journal of Public Policy*.
3. I received my Ph.D. in Political Science, specializing in American politics, minority and race politics, and political methodology, from the University of Washington in Seattle, Washington in 2016. Prior to that, I received my Master’s Degree in Political Science at the University of Washington and received a political methodology field certificate from the Center for Statistics & the Social Sciences in 2013. I received my Bachelor of Arts in Political Science in 2008 at the University of Washington, with minors in Human Rights and Law, Societies, and Justice.
4. Of relevance to this report, I have taught courses at the University of Delaware related to demographic data collection and analysis, evaluation of redistricting plans for compliance with the Voting Rights Act of 1965 (“VRA”), and the drawing of redistricting plans using traditional redistricting criteria. Relatedly, I have been retained as an expert in redistricting and voting rights cases, including *Dickinson Bay Area Branch NAACP v. Galveston County, Texas*, No. 3:22-cv-117-JVB (S.D. Tex. 2023) (deposed and testified), *Baltimore County Branch of the NAACP v. Baltimore County, Maryland*, No. 1:21-cv-03232-LKG (D. Md. 2022), *Common Cause Florida v. Lee*, No. 4:22-cv-00109-AW-MAF (N.D. Fla. 2022), *Common Cause Florida v. Byrd*, No. 4:22-cv-00109-AW-MAF (N.D. Fla. 2022) (deposed), *Reyes v. Chilton*, No. 4:21-cv-05075-MKD (E.D. Wash. 2021) (deposed), *Finn et al. v. Cobb County Board of Elections and Registration*, No. 1:22-cv-02300-ELR (N.D. Ga. 2022), *Caroline County Branch of the NAACP v. Town of Federalsburg*, Civ. Action No. 23-SAG-00484 (D. Md. 2023), and *Coca v. City of Dodge City, et al.*, Case No. 6:22-cv-01274 (D. Kan. 2022) (deposed).
5. As an expert consultant, I have also advised the State of Maryland on its 2021 Congressional and Legislative redistricting plans. I have also examined and redrawn the 2022 school board district boundaries of the Roswell Independent School District in the state of New Mexico. More information about my qualifications and expert witness and consulting background can be found on my Curriculum Vitae, appended to this declaration as **Exhibit A**.

6. I am being compensated by the plaintiffs at a rate of \$350 an hour for my work on this on this matter. My compensation is not in any way contingent on the content of my opinions or the outcome of this matter.

B. Scope of Work

7. I was asked to prepare legislative redistricting plans for the Washington Legislature (i) that respect traditional redistricting criteria and the redistricting criteria set forth in Washington law, and (ii) that include a legislative district numbered 14 (“LD 14”) in the Yakima Valley region uniting communities of interest in the region and remedying the Section 2 violation found by the district court. With respect to the second requirement, I was asked to draw maps that include an LD 14 that, to the extent possible, unifies the population centers from East Yakima to Pasco that form a community of interest, including cities in the Lower Yakima Valley like Wapato, Toppenish, Granger, Sunnyside, Mabton, and Grandview.
8. I prepared four remedial plans that satisfy all of the above requirements (Plaintiffs’ Remedial Maps 1-4). At the request of Counsel for Plaintiffs, I prepared one additional remedial option that respects traditional redistricting criteria and the redistricting criteria set forth in Washington law, and that unites East Yakima with the Lower Yakima Valley cities listed above but does not include Pasco in LD 14 (Plaintiffs’ Remedial Map 5).
9. Attached to this report, I include district shapes for all five remedial maps in GeoJSON format, as well as block assignment files and pdf images of each remedial maps. I also include the remedial maps in an interactive html format that displays important roadways, geographical markers, and voting precinct boundaries. The maps in html format can be downloaded to a computer and opened on any internet browser.

C. Approach

10. I relied on the applicable redistricting criteria to draw the five remedial maps.
11. In drawing districts, I considered the criteria found in Washington Constitution Article 2, Section 43 and in statute at RCW 44.05.090. I drew districts to have a population as nearly equal as is practicable, consistent with the constitutional one-person-one-vote requirement. I drew districts to follow boundaries of political subdivisions and communities of interest. I minimized the number of counties, municipalities, and precincts split into multiple districts. And I endeavored to draw districts with convenient, contiguous, and compact territory, ensuring that areas of each district are connected and can be readily traversed by road.
12. I also considered other traditional redistricting principles in drawing the remedial plans. To the extent practicable, I sought to minimize changes to districts outside the Yakima Valley region. I also avoided pairing incumbents to the extent practicable, based on publicly available data.

13. I did not consider race or racial demographics in drawing the remedial plans. I did not make visible, view, or otherwise consult any racial demographic data while drawing districts. I did not assess the districts for performance to elect minority candidates of choice.
14. I did not consider election results or any partisan performance metrics in drawing the remedial plans, and I did not make visible, view, or otherwise consult any such data while drawing districts.
15. As indicated in further detail below, I conclude that all five remedial maps herein abide by Washington’s redistricting criteria and other traditional redistricting criteria.

D. Plaintiffs’ Remedial Map 1

16. Figure 1 below provides a visual depiction of Plaintiffs’ Remedial Map 1. Remedial Map 1 includes an LD 14 that unites the population centers forming a community of interest between East Yakima and Pasco. The map also keeps the Yakama Nation Reservation whole in LD 14, along with some off-reservation trust lands and fishing villages.

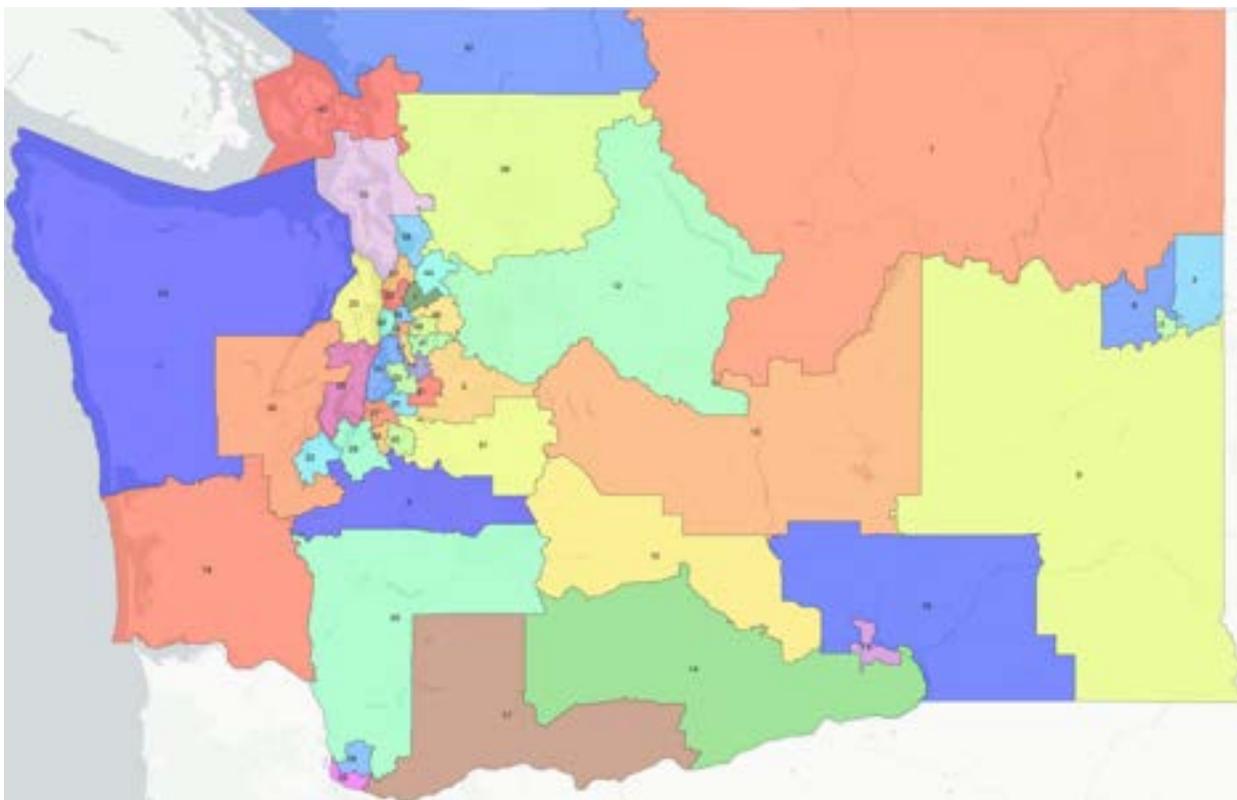


Figure 1: Remedial Map 1

17. **Appendix Table 1**, located at the end of this document provides, for each district in Remedial Map 1, the total population based on Washington’s adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table

1, Remedial Map 1 has a negligible total population deviation¹ of 0.23%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

18. Remedial Map 1's districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 1, which are largely on par with the compactness scores for the Enacted Plan.²
19. Remedial Map 1's districts are comprised of convenient, contiguous territory and are traversable.
20. Remedial Map 1 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 1, including county-district splits and district-county splits.³ Remedial Map 1 performs about the same on county split metrics as compared to the Enacted Plan. With respect to precinct and city splits, I used the updated 2022 precinct boundaries and avoided any precinct or city splits unless such splits were necessary for the purposes of maintaining population equality and/or contiguity (including road connectivity).
21. To the extent practicable after complying with the above criteria, I endeavored to minimize changes to districts outside the Yakima Valley region and avoid pairing incumbents.
22. In summary, Remedial Map 1 is compliant with all relevant redistricting criteria.

E. Plaintiffs' Remedial Map 2

23. Figure 2 below provides a visual depiction of Plaintiffs' Remedial Map 2. Remedial Map 2 contains an LD 14 that is identical to the LD 14 in Remedial Map 1, but offers an alternative configuration of surrounding districts.

¹ Total population deviation for a redistricting plan is calculated by taking the difference between the population deviation in the least and most populous districts.

² Reock score is calculated by taking the ratio of the area of a district to the area of its minimum bounding circle. Polsby-Popper score is calculated by taking the ratio of the area of a district to the area of a circle whose circumference matches the perimeter of the district. Both scores range from 0 to 1. Scores closer to 0 indicate a less compact jurisdiction and scores closer to 1 indicate a more compact jurisdiction.

³ The county-district split metric measures the extent to which the plan splits counties across districts. The district-county split metric measures the extent to which districts are split across counties.

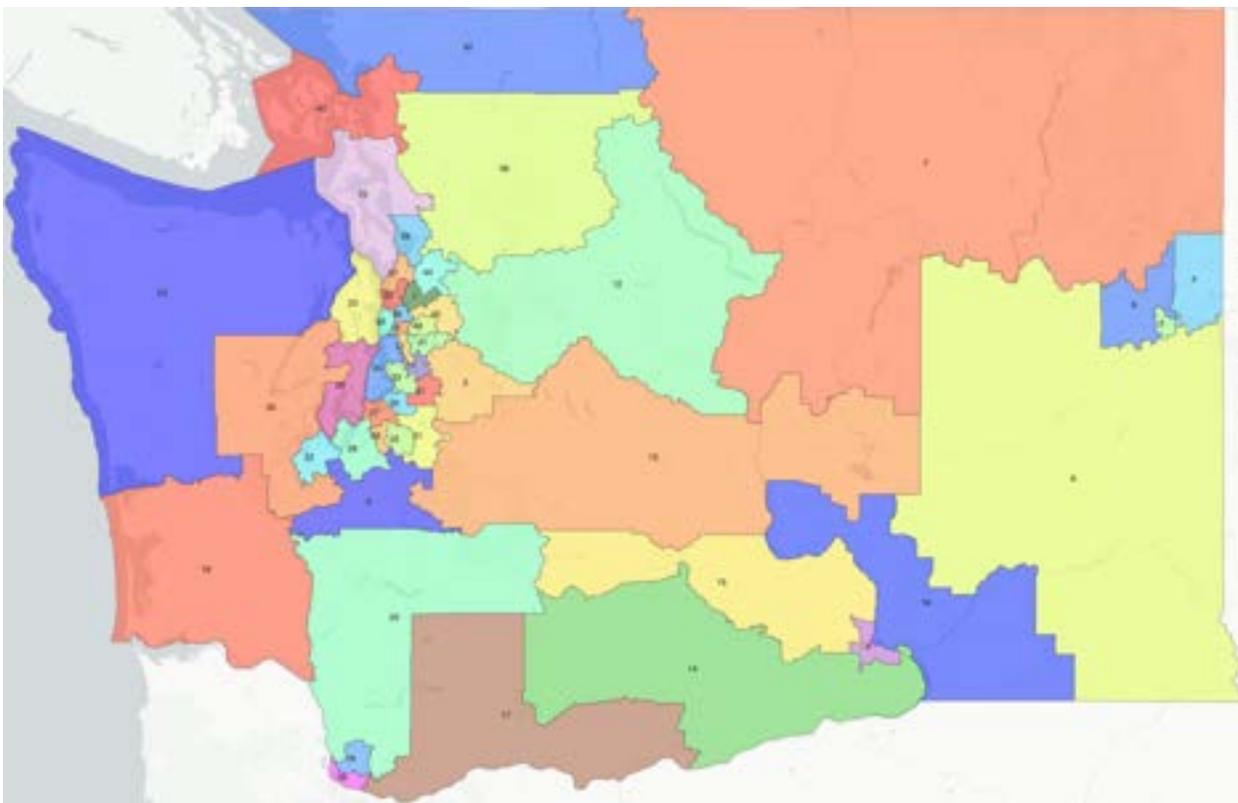


Figure 2: Remedial Map 2

24. **Appendix Table 1** provides, for each district in Remedial Map 2, the total population based on Washington’s adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 2 has a negligible total population deviation of 0.22%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.
25. Remedial Map 2’s districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 2, which are largely on par with the compactness scores for the Enacted Plan
26. Remedial Map 2’s districts are comprised of convenient, contiguous territory and are traversable.
27. Remedial Map 2 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 2, which performs about the same on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).
28. To the extent practicable after complying with the above criteria, I endeavored to minimize changes to districts outside the Yakima Valley region and avoid pairing incumbents.

29. In summary, Remedial Map 2 is compliant with all relevant redistricting criteria.

F. Plaintiffs' Remedial Map 3

30. Figure 3 below provides a visual depiction of Plaintiffs' Remedial Map 3. Remedial Map 3 includes an LD 14 that unites the population centers forming a community of interest between East Yakima to Pasco. In addition to keeping the Yakama Nation Reservation whole in LD 14, Remedial Map 3 also incorporates into LD 14 all of the Yakama Nation's off-reservation trust lands and fishing villages.

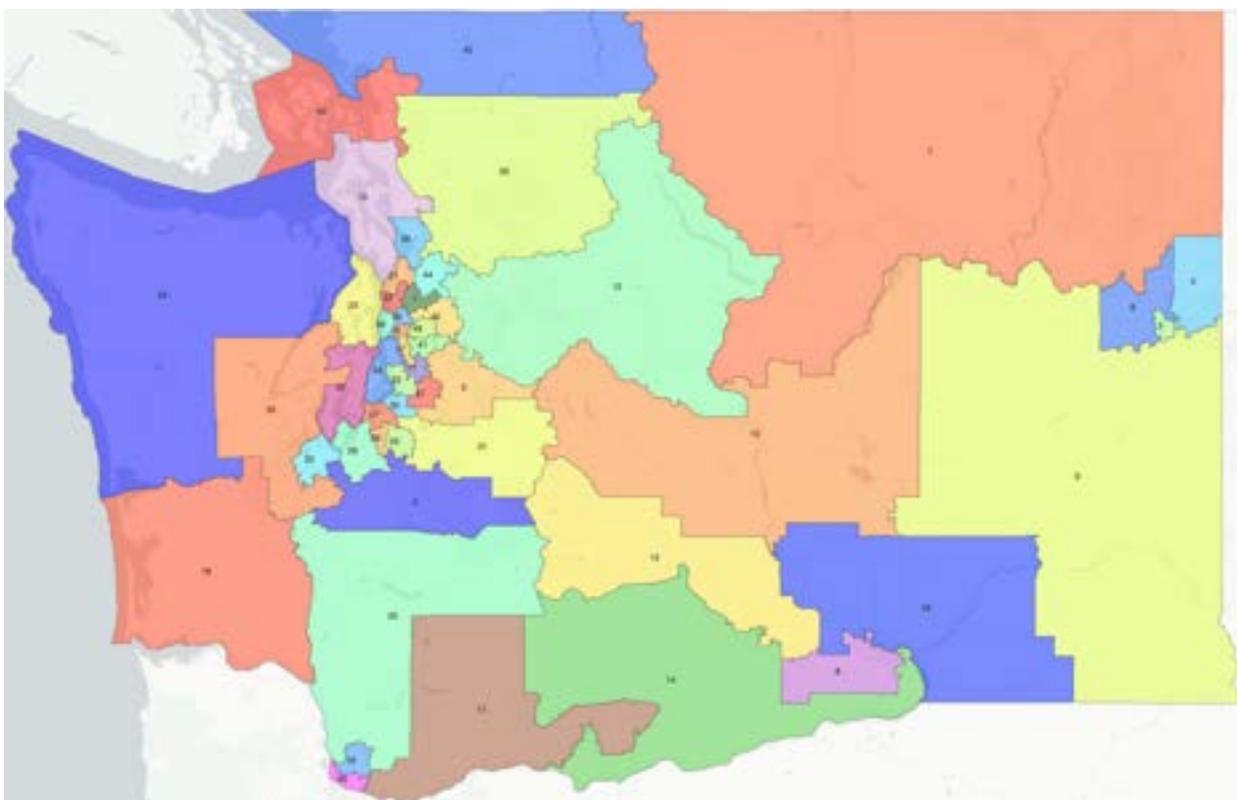


Figure 3: Remedial Map 3

31. **Appendix Table 1** provides, for each district in Remedial Map 3, the total population based on Washington's adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 3 has a negligible total population deviation of 0.24%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

32. Remedial Map 3's districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 3, which are largely on par with the compactness scores for the Enacted Plan.

33. Remedial Map 3’s districts are comprised of convenient, contiguous territory and are traversable.
34. Remedial Map 3 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 3, which performs the same or better on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).
35. To the extent practicable after complying with the above criteria, I endeavored to minimize changes to districts outside the Yakima Valley region and avoid pairing incumbents.
36. In summary, Remedial Map 3 is compliant with all relevant redistricting criteria.

G. Plaintiffs’ Remedial Map 4

37. Figure 4 below provides a visual depiction of Plaintiffs’ Remedial Map 4. Remedial Map 4 includes an LD 14 that is identical to LD 14 in Remedial Map 3, but offers an alternative configuration of surrounding districts.

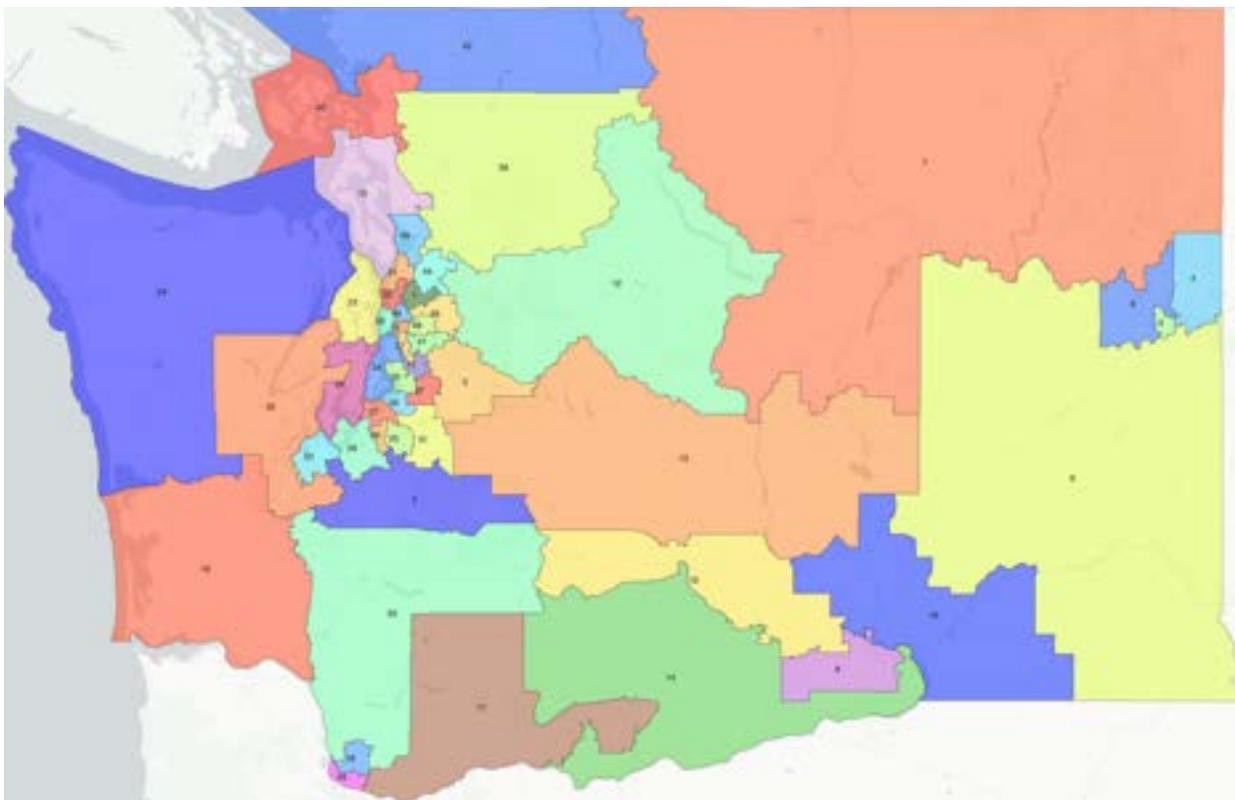


Figure 4: Remedial Map 4

38. **Appendix Table 1** below provides, for each district in Remedial Map 4, the total population based on Washington’s adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 4 has

a negligible total population deviation of 0.24%, which is less than the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.

39. Remedial Map 4's districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** below provides the Reock and Polsby-Popper compactness scores for Remedial Map 4, which are largely on par with the compactness scores for the Enacted Plan.
40. Remedial Map 4's districts are comprised of convenient, contiguous territory and are traversable.
41. Remedial Map 4 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** below provides statistics regarding county splits for Remedial Map 4, which performs about the same on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).
42. To the extent practicable after complying with the above criteria, I endeavored to minimize changes to districts outside the Yakima Valley region and avoid pairing incumbents.
43. In summary, Remedial Map 4 is compliant with all relevant redistricting criteria.

H. Plaintiffs' Remedial Map 5

44. Figure 5 below provides a visual depiction of Plaintiffs' Remedial Map 5. Remedial Map 5 includes an LD 14 that unites the population centers in Yakima County that form a community of interest, including East Yakima and cities in the Lower Yakima Valley like Wapato, Toppenish, Granger, Sunnyside, Mabton, and Grandview. The map also keeps the Yakama Nation Reservation whole in LD 14 and keeps nearly the entire district wholly within Yakima County.

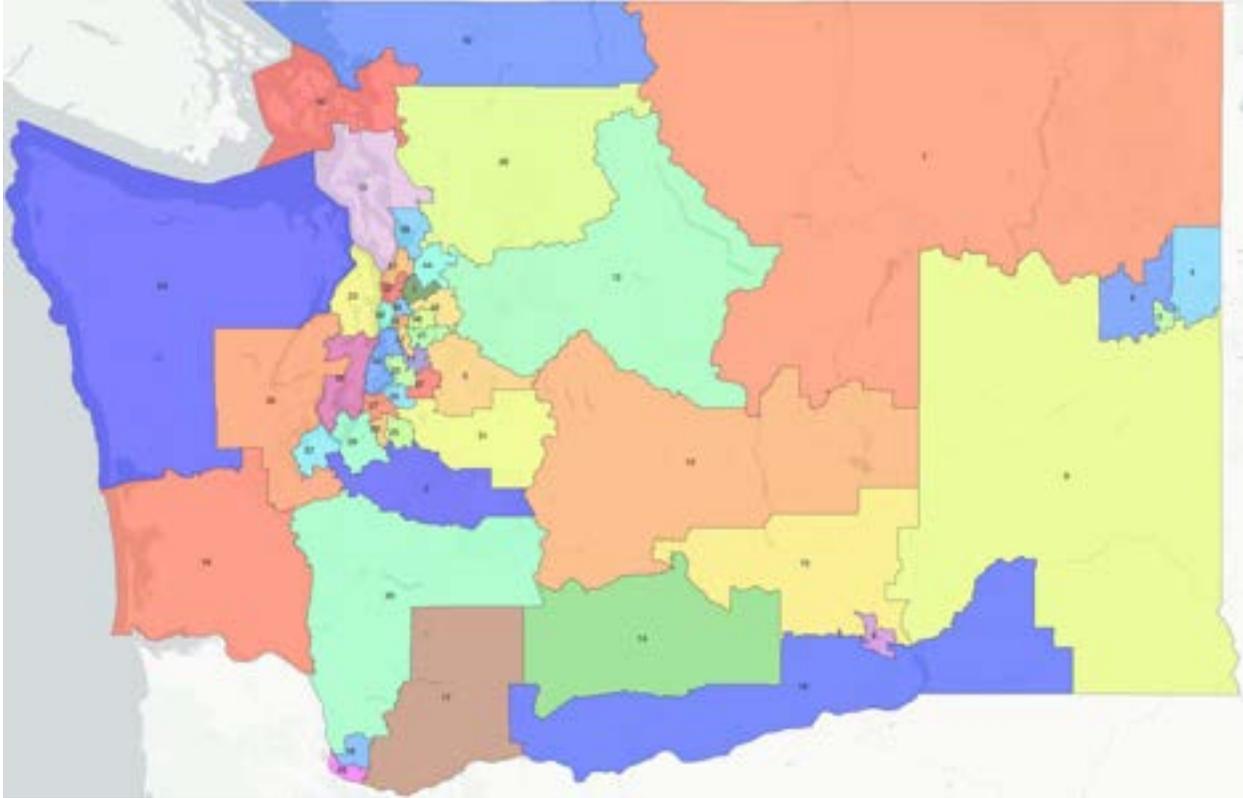


Figure 5: Remedial Map 5

45. **Appendix Table 1** in the Appendix provides, for each district in Remedial Map 5, the total population based on Washington’s adjusted 2020 U.S. Census data and the population deviation from the target population (157,251). According to Table 1, Remedial Map 4 has a negligible total population deviation of 0.25%, which is the same as the Enacted Plan and well below the 10% population deviation threshold for state legislative plans accepted by courts.
46. Remedial Map 5’s districts are reasonably shaped and compact, particularly given the often oddly shaped precinct and municipal boundaries and variable topography in Washington. **Appendix Table 2** provides the Reock and Polsby-Popper compactness scores for Remedial Map 5, which are largely on par with the compactness scores for the Enacted Plan.
47. Remedial Map 5’s districts are comprised of convenient, contiguous territory and are traversable.
48. Remedial Map 5 respects communities of interest and minimizes splitting counties, cities, and precincts. **Appendix Table 3** provides statistics regarding county splits for Remedial Map 5, which performs about the same on metrics of county splits as compared to the Enacted Plan. Cities and precincts were only split when necessary for the purposes of population deviation and/or contiguity (including road connectivity).

49. To the extent practicable after complying with the above criteria, I endeavored to minimize changes to districts outside the Yakima Valley region and avoid pairing incumbents.

50. In summary, Remedial Map 5 is compliant with all relevant redistricting criteria.

I. Conclusion

51. I reserve the right to modify, update, or supplement my report as additional information is made available to me.

52. Pursuant to 28 U.S.C. § 1746, I, Kassra AR Oskooii, declare under penalty of perjury that the foregoing is true and correct.

Executed by:



Dr. Kassra AR Oskooii

Dated: December 1, 2023

Appendix

Table 1 – Population Deviation

District	Enacted Map			Remedial Map 1			Remedial Map 2			Remedial Map 3			Remedial Map 4			Remedial Map 5		
	Total Pop	Deviation	%	Total Pop	Deviation	%	Total Pop	Deviation	%	Total Pop	Deviation	%	Total Pop	Deviation	%	Total Pop	Deviation	%
1	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%	157284	33	0.021%
2	157441	190	0.121%	157371	120	0.076%	157244	-7	-0.004%	157429	178	0.113%	157429	178	0.113%	157441	190	0.121%
3	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%	157244	-7	-0.004%
4	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
5	157289	38	0.024%	157287	36	0.023%	157289	38	0.024%	157237	-14	-0.009%	157289	38	0.024%	157289	38	0.024%
6	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%
7	157250	-1	-0.001%	157248	-3	-0.002%	157250	-1	-0.001%	157313	62	0.039%	157250	-1	-0.001%	157250	-1	-0.001%
8	157266	15	0.010%	157198	-53	-0.034%	157198	-53	-0.034%	157110	-141	-0.090%	157110	-141	-0.090%	157266	15	0.010%
9	157247	-4	-0.003%	157125	-126	-0.080%	157156	-95	-0.060%	157125	-126	-0.080%	157156	-95	-0.060%	157247	-4	-0.003%
10	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
11	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%	157228	-23	-0.015%
12	157247	-4	-0.003%	157175	-76	-0.048%	157247	-4	-0.003%	157096	-155	-0.099%	157247	-4	-0.003%	157247	-4	-0.003%
13	157248	-3	-0.002%	157145	-106	-0.067%	157250	-1	-0.001%	157360	109	0.069%	157312	61	0.039%	157283	32	0.020%
14	157253	2	0.001%	157166	-85	-0.054%	157166	-85	-0.054%	157318	67	0.043%	157318	67	0.043%	157377	126	0.080%
15	157231	-20	-0.013%	157409	158	0.100%	157203	-48	-0.031%	157122	-129	-0.082%	157070	-181	-0.115%	157084	-167	-0.106%
16	157254	3	0.002%	157081	-170	-0.108%	157318	67	0.043%	157270	19	0.012%	157309	58	0.037%	157242	-9	-0.006%
17	157239	-12	-0.008%	157405	154	0.098%	157405	154	0.098%	157346	95	0.060%	157346	95	0.060%	157239	-12	-0.008%
18	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
19	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%	157236	-15	-0.010%
20	157243	-8	-0.005%	157401	150	0.095%	157401	150	0.095%	157353	102	0.065%	157353	102	0.065%	157243	-8	-0.005%
21	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%	157212	-39	-0.025%
22	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%	157257	6	0.004%
23	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%	157258	7	0.004%
24	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%	157233	-18	-0.011%
25	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%
26	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%	157227	-24	-0.015%
27	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%	157239	-12	-0.008%
28	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%	157289	38	0.024%
29	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%	157054	-197	-0.125%
30	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%	157277	26	0.017%
31	157223	-28	-0.018%	157420	169	0.107%	157304	53	0.034%	157352	101	0.064%	157242	-9	-0.006%	157223	-28	-0.018%
32	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%	157211	-40	-0.025%
33	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%	157256	5	0.003%
34	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%
35	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%	157268	17	0.011%
36	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%	157250	-1	-0.001%
37	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%
38	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%	157215	-36	-0.023%
39	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%	157306	55	0.035%
40	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%	157261	10	0.006%
41	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%	157234	-17	-0.011%
42	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%	157263	12	0.008%
43	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%	157247	-4	-0.003%
44	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%	157248	-3	-0.002%
45	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%	157270	19	0.012%
46	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%	157255	4	0.003%
47	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%	157240	-11	-0.007%
48	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%
49	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%	157252	1	0.001%
Total Deviation	-	-	0.25%	-	-	0.23%	-	-	0.22%	-	-	0.24%	-	-	0.24%	-	-	0.25%

Table 2 – Compactness Scores

	Enacted Map	Remedial Map 1	Remedial Map 2	Remedial Map 3	Remedial Map 4	Remedial Map 5
Reock	0.44	0.42	0.42	0.43	0.42	0.43
Polsby-Popper	0.33	0.32	0.31	0.32	0.32	0.32

Table 3 – County Split Metrics

	Enacted Map	Remedial Map 1	Remedial Map 2	Remedial Map 3	Remedial Map 4	Remedial Map 5
Number of Counties Split	18	20	19	20	19	19
County-District Splitting	1.61	1.68	1.64	1.61	1.63	1.62
District-County Splitting	1.25	1.25	1.26	1.24	1.25	1.26

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

CASE NO. 3:22-cv-05035-RSL

ORDER

On August 10, 2023, the Court found that the boundaries of Washington Legislative District 15, in combination with the social, economic, and historical conditions in the Yakima Valley region, results in an inequality in the electoral opportunities enjoyed by white and Latino voters in the area. Judgment was entered in plaintiffs’ favor on their Section 2 Voting Rights Act claim, and the State of Washington was given an opportunity to adopt revised legislative district maps for the Yakima Valley region pursuant to the process set forth in the Washington State Constitution and state statutes. When news reports indicated that the Majority Caucus Leaders of both houses of the Washington State

1 Legislature had declined to reconvene the bipartisan redistricting commission, the State
2 was directed to file a status report notifying the Court of the Legislature’s position. Having
3 reviewed the State’s submission and the responses of plaintiffs and the Minority Caucus
4 Leaders, the Court finds as follows:

6 Given the practical realities of the situation as revealed by the submissions of the
7 interested parties, the Court will not wait until the last minute to begin its own redistricting
8 efforts. If, as the Minority Caucus Leaders hope, the Legislature is able to adopt revised
9 legislative maps for the Yakima Valley region in a timely manner, the Court’s parallel
10 process, set forth below, will have been unnecessary. The likelihood that that will happen
11 has lessened significantly since the Court issued its Memorandum of Decision, however.
12 Establishing earlier deadlines for the presentation of alternative remedial proposals will
13 allow a more deliberate and informed evaluation of those proposals.

16 The parties shall meet and confer with the goal of reaching a consensus on a
17 legislative district map that will provide equal electoral opportunities for both white and
18 Latino voters in the Yakima Valley regions, keeping in mind the social, economic, and
19 historical conditions discussed in the Memorandum of Decision. If the parties are unable to
20 reach agreement, they shall (a) further confer regarding nominees to act as Special Master
21 to assist the Court in the assessment of proposed remedial plans and to make modifications
22 to those plans as necessary and (b) file alternative remedial proposals and nominations on
23 the following schedule:
24
25
26

1 December 1, 2023 -- Deadline for the parties¹ to submit remedial proposals,²
2 supporting memoranda, and exhibits (including expert reports).

3
4 December 1, 2023 – Deadline for the parties to jointly identify three candidates for
5 the Special Master position (including their resumes/CVs, a statement of interest,
6 availability, and capacity) and to provide their respective positions on each candidate.

7 December 22, 2023 – Deadline for the parties to submit memoranda and exhibits
8 (including rebuttal expert reports) in response to the remedial proposals.

9
10 January 5, 2024 – Deadline for the parties to submit memoranda and exhibits
11 (including sur-rebuttal expert reports) in reply.

12
13
14 IT IS SO ORDERED.

15
16 Dated this 4th day of October, 2023.

17
18 
19 Robert S. Lasnik
United States District Judge

20
21
22 _____
23 ¹ No party has identified an individual or entity that has unique information or perspective that could help the Court
beyond the assistance that the parties and their lawyers are able to provide, nor have they shown any other justification
for the allowance of amicus briefs.

24 ² The parties shall discuss the format and functionality of the remedial proposals, but the Court generally favors
25 plaintiffs’ suggestions that the maps include important roadways, important geographical markers, and voting precinct
26 boundaries, that the maps be in a zoomable pdf format, and that the proposals include demographic data (e.g., total
population per district and race by district of total population and citizen voting age population). Contemporaneous
with the filing, all counsel of record shall be provided shapefiles, a comma separated value file, or an equivalent file
that is sufficient to load the proposed plan into commonly available mapping software.

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

Intervenor-Defendants.

Case No.: 3:22-cv-05035-RSL

Judge: Robert S. Lasnik

**PLAINTIFFS' CLOSING
STATEMENT**

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INTRODUCTION

Plaintiffs have met their burden to prove that Washington State Legislative District 15 (“LD 15”) dilutes the voting power of the Latino¹ population in the Yakima Valley region² in violation of the Voting Rights Act (VRA), 52 U.S.C. § 10301. Neither Defendant State of Washington nor Defendant Secretary of State Hobbs disputes this. Dkt # 194 at 1, 7-14; Dkt # 195 at 1. And Intervenor-Defendants’ arguments to the contrary fall flat when compared to the voluminous and largely undisputed evidence presented by Plaintiffs.

Plaintiffs have demonstrated that each of the three *Gingles* preconditions are met in the Yakima Valley region. *First*, Plaintiffs have proven, and there is no genuine dispute, that Latinos are sufficiently numerous and compact to comprise a majority in a Yakima Valley legislative district. *Second*, Plaintiffs have demonstrated through both quantitative and qualitative evidence that Latino voters in the Yakima Valley region are politically cohesive. Every expert opining on the second precondition at trial agreed. *Third*, the testimony, analysis, and opinions of three independent experts prove that white voters in the Yakima Valley region vote as a bloc to usually defeat Latino voters’ candidates of choice. The region’s most populous counties and cities—the counties of Yakima and Franklin and the cities of Yakima and Pasco, all of which are included in

¹ Latino and Hispanic refer to individuals who identify as Hispanic or Latino, as defined by the U.S. Census, and the terms are used interchangeably. Dkt. # 191, Admitted Facts, ¶ 12; Tr. Vol. 2 at 288:8-9. References to white voters herein refer to non-Hispanic white voters.

² For ease of reference, Plaintiffs will used the term “Yakima Valley region” as shorthand for the geographic region of Central/Eastern Washington on and around the Yakima and Columbia Rivers, including parts of Adams, Benton, Franklin, Grant, and Yakima counties. *See* Tr. Vol. 1 at 11-13; Ex. 1 at 6. These counties feature in the versions of LD 14 and 15 considered by the Commission, and in the enacted LD 15. *See* Exs. 475-86, 511-21; Dkt. # 191 at ¶ 45. Plaintiffs have also used the term “Southcentral Washington” to refer to the same general area. *See, e.g.*, Dkt. # 191 at ¶¶ 88-94.

1 LD 15—have changed their systems of elections based on court findings of racially polarized
2 voting or an agreement between the parties and the courts that the factual record could support
3 such findings. There is no question the preconditions are met in the Yakima Valley region.

4 In addition, the totality of the circumstances demonstrates that Latinos lack an equal
5 opportunity to participate in the political process and elect candidates of their choice in LD 15.
6 Even though “[t]here is no requirement that any particular number of factors be proved, or that a
7 majority of them point one way or the other,” *United States v. Marengo Cty. Comm’n*, 731 F.2d
8 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)), Plaintiffs have
9 presented substantial evidence that Senate Factors 1, 2, 3, 5, 6, 7, 8, and 9 *all* indicate that LD 15
10 leaves Latinos less able to elect candidates of their choice.
11

12 In his report and at trial, Plaintiffs’ expert witness Dr. Josué Estrada presented the well-
13 documented history of how Latinos in the Yakima Valley region have continually faced
14 discrimination and resulting adversity, as well as how they have organized and fought back to the
15 best of their ability. This ongoing struggle was reflected in the testimony of Plaintiffs Faviola
16 Lopez and Susan Soto Palmer, Senator Rebecca Saldaña, and Gabriel Portugal. Their testimony
17 showed that while circumstances for Latinos in some parts of the United States may be improving,
18 the “past and present reality” in the Yakima Valley region is that Latinos face significant and
19 enduring barriers to political participation, including racially polarized voting, gaping
20 socioeconomic disparities, an atmosphere of intimidation, outright hostility toward Latino
21 candidates, and a troubling lack of regard by the region’s legislative representatives for issues
22 prioritized by Latinos. *Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023). Lawsuits against cities and
23 counties in the region have made room for progress toward more representative local government
24 in the region. And as Mr. Portugal made clear: “advocacy is what is driving those changes.” Tr.
25
26

1 834:21-835:1. Plaintiffs now again seek redress from the legal system—a system to which Yakima
 2 Valley Latinos have so frequently had no choice but to turn—to advocate for their right under the
 3 VRA to a state legislative district that provides an equal opportunity to elect candidates of their
 4 choice. In doing so, they seek an opportunity to elect responsive representatives to whom they can
 5 turn in the future to advocate for other much-needed progress in their community.

6
 7 Because Plaintiffs have proven that LD 15 has the effect of diluting the voting power of
 8 the region’s Latinos in violation of Section 2, this Court need not reach Plaintiffs’ claim that LD
 9 15 was also unlawfully devised with discriminatory intent. The substantial record evidence of the
 10 2021 Washington Redistricting Commission indicates that the Commission did not possess a
 11 legitimate policy rationale for drawing LD 15 in a manner that prevents Latinos from electing
 12 candidates of their choice. While such evidence of the map-drawers’ intent is not necessary to
 13 prove a Section 2 results claim, *Milligan*, 143 S. Ct. at 1507, it is relevant to the Court’s
 14 consideration of the totality of the circumstances and only adds to the voluminous and largely
 15 undisputed record proving that the State’s current legislative redistricting plan violates Section 2.
 16

17 ARGUMENT

18 **I. The Enacted LD 15 Has the Effect of Unlawfully Diluting the Ability of Latino Voters** 19 **to Elect Their Preferred Candidates.**

20 Plaintiffs have proven every element of a Section 2 claim. First, they have satisfied each
 21 of the *Gingles* preconditions, including that: (1) the Latino population in the Yakima Valley region
 22 is “sufficiently large and geographically compact to constitute a majority in a reasonably
 23 configured district”; (2) Latinos in the Yakima Valley region are “politically cohesive”; and (3)
 24 the white voting majority in the Yakima Valley region votes “sufficiently as a bloc to enable it...to
 25 defeat” Latino-preferred candidates. *Id.* at 1503.
 26

1 In addition, Plaintiffs have proven that, under the totality of the circumstances, “the
2 political process is not ‘equally open’” to Latino voters in the Yakima Valley region. *Id.* The
3 “searching, practical inquiry” required by Section 2 reveals that, although Latinos form a slim
4 majority of voting-age citizens in LD 15, the district as enacted does not provide Latinos “a
5 real...opportunity” to elect their preferred candidates. *Perez v. Abbott*, 253 F. Supp. 3d 864, 879
6 (W.D. Tex. 2017) (citing *LULAC v. Perry*, 548 U.S. 399, 428 (2006)). Given the region’s “past
7 and present reality, political and otherwise,” the enacted LD 15 instead operates to “minimize or
8 cancel out [Latino] voting strength” in the Yakima Valley. *Milligan*, 143 S. Ct. at 1507. The district
9 therefore denies Latinos an equal opportunity “to participate in the political process and to elect
10 representatives of their choice” in violation of Section 2. 52 U.S.C. § 10301.
11

12 **A. The Latino Population in the Yakima Valley Region is Sufficiently Large and**
13 **Geographically Compact to Constitute a Majority in a Reasonably Configured**
14 **District (*Gingles* 1).**

15 There is no reasonable dispute that Latinos are sufficiently numerous and compact to
16 comprise a majority in a Yakima Valley legislative district. As the Supreme Court recently
17 clarified, this precondition simply aids in showing that the minority community has the potential
18 to elect its preferred candidates in some reasonably configured district. *Milligan*, 143 S. Ct. at
19 1503. A district is reasonably configured “if it comports with traditional redistricting criteria, such
20 as being contiguous and reasonably compact.” *Id.* at 1503. To satisfy *Gingles* 1, a plaintiff need
21 only “adduce[] . . . one illustrative map that comport[s]” with this standard. *Id.* at 1512.
22

23 Here, as in *Milligan*, the record includes several alternative district configurations that have
24 a majority-Hispanic citizen voting age population (HCVAP) and that comply with traditional
25
26

1 redistricting criteria while also providing Latino voters an equal opportunity to elect a candidate
2 of choice. Exs. 1 at 21-29; 178 at 37-38; 214 at 18; 515-16.

3 Plaintiffs’ expert Dr. Loren Collingwood presented three demonstration plans that include
4 a majority-HCVAP district in the Yakima Valley region. Tr. 51:3-12, 53:20-22; Ex. 1 at 21-27.
5 Analyzing the plans for adherence to traditional redistricting criteria, Dr. Collingwood found that
6 all three demonstrative maps met the criteria similarly or better than the enacted LD 15. Tr. 51:17-
7 52:19; Ex. 1 at 26 (Table 4). All are within the acceptable population deviation. Tr. 52:20-53:3.
8 They split no more or fewer counties and precincts than the Enacted Plan. Tr. 54:12-24. And the
9 three plans perform similarly or better than LD 15 on measures of compactness, with Polsby-
10 Popper and Reock scores well within the standard for reasonable maps. Tr. 53:23-54:11; Ex. 1 at
11 26. Dr. Collingwood’s performance analysis also showed that the three plans would provide Latino
12 voters a fair opportunity to elect their preferred candidates. Tr. 55:25- 57:2; Ex. 1 at 25 (Figure
13 11). Dr. Collingwood concluded that he “d[id]n’t think anybody could dispute” that the population
14 of Latino voters in the Yakima Valley region is sufficiently large and compact to form a majority
15 in a district. Tr. 54:25-55:4. Dr. Mark Owens, Intervenor-Defendants’ expert, stated that he had no
16 opinion about whether LD 15 was compact. Tr. 599:10-15.

17 Expert and lay witness testimony at trial established that the Latino community in the
18 region is geographically concentrated. Gabriel Portugal, the current president of the Tri-Cities
19 League of United Latin American Citizens (LULAC) council, testified that, based on his
20 experience living and working in Yakima, Toppenish, and Pasco, and his knowledge of the
21 communities between them, there are large Latino populations in communities all along the
22 corridor from Yakima to Pasco. Tr. 849:3-16, 831:6-16. He also noted that Latino communities in
23 Yakima and Pasco and the cities between them “have a lot of things in common,” Tr. 831:5-24,
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1 testifying that “all those towns have a lot of working folks that provide labor for the farms and the
2 dairies.” Tr. 849:6-16; *see also* Tr. 661:15-662:3; Ex. 214 at 2-4.

3 The State’s expert, Dr. John Alford, resoundingly agreed with Dr. Collingwood, testifying
4 that “[t]he first *Gingles* prong is met here.” Tr. 852:15, 856:25-857:2; Ex. 601 at 4. Regarding
5 compactness, Dr. Alford testified that Plaintiffs’ demonstrative plans are “among the more
6 compact demonstration districts [he’s] seen” in 30 years. Tr. 857:11-14; *see also* 852:22-853:4.
7 He noted that the Plaintiffs’ demonstration plans lack “tentacles” and “narrow connectors” that
8 “feature very common[ly] in irregular demonstration districts.” *Cf. Milligan*, 143 S. Ct. at 1504.

9
10 The numerous Yakima Valley district configurations considered by the Commission
11 further show it is easy to draw a reasonably configured majority-HCVAP district in the Yakima
12 Valley that allows Latino voters to elect candidates of their choice. *See* Ex. 1 at 28 (Table 5)
13 (analyzing various Commissioner drafts and proposals); Tr. 82:5-24 (testimony of Dr.
14 Collingwood). The enacted LD 15 itself contains a majority-HCVAP district, Dkt. # 191 at ¶ 97,
15 although it does not provide Latino voters with an ability to elect candidates of their choice.

16
17 Among the majority-HCVAP configurations considered by the Commission were also four
18 proposals by Dr. Matthew Barreto. Exs. 178 at 37-38; 214 at 18. Dr. Barreto is one of the nation’s
19 leading experts on Latino voting patterns, and was a longtime professor at the University of
20 Washington familiar with the Yakima Valley region. Tr. 611:6-612:4. He was asked during the
21 redistricting process to assess the need for a majority-Latino district in the Yakima Valley. Tr.
22 620:1-621:1. Dr. Barreto concluded that *Gingles* 1 is met, finding the question “not even close.”
23 Tr. 647:9-16; 623:17-624:4; *see also* 618:16-619:19 (testifying that the *Gingles* preconditions were
24 also met in the Yakima Valley in 2011). Dr. Barreto’s alternative Yakima Valley districts included
25 an option that excluded parts of the Yakama Nation Reservation, Ex. 178 at 18, and three options
26

1 that were wholly inclusive of the Yakama Reservation. Exs. 178 at 18; 214 at 37-38; Tr. 634:24-
2 635:7. While the State’s communities-of-interest goals must ultimately give way to federal VRA
3 compliance, *see Milligan*, 143 S. Ct. at 1505, these maps, along with Plaintiffs’ demonstratives,
4 show that an opportunity district unifying Latino communities in the Yakima Valley region can
5 largely accommodate such goals. Tr. 672:12-19.

6
7 Plaintiffs have more than met their burden to prove Latino voters in the Yakima Valley
8 region are sufficiently large and geographically compact to be the majority in a reasonably
9 configured state legislative district. *Gingles* 1 is satisfied.

10 **B. Latino Voters in the Yakima Valley Region are Politically Cohesive (*Gingles***
11 **2).**

12 *Gingles* 2 is also satisfied. To demonstrate that Latinos are politically cohesive, a plaintiff
13 must show that “a significant number of minority group members usually vote for the same
14 candidates.” *Gingles*, 478 U.S. at 56. This often involves a statistical analysis of election results to
15 determine the degree of racially polarized voting, but can also be supported by other, non-statistical
16 evidence. *See, e.g., Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1117 (E.D. Cal. 2018).

17
18 At trial, every quantitative expert agreed that Latino voters in the Yakima Valley region
19 are politically cohesive. Dr. Collingwood utilized the reliable and widely accepted ecological
20 inference method to estimate the voting preferences of Latino and white voters in 26 separate
21 election contexts across six election cycles, ranging from 2012 to the most recent election in the
22 enacted LD 15 in 2022. Exs. 1 at 7-8; 2 at 1; Tr. 57:18-59:12, 61:6-62:9, 63:16-21; 65:7-66:8. He
23 found that Latinos voted cohesively as a group for the same candidates in all 26 elections he
24 analyzed. Exs. 1 at 14-15; 2 at 1. This pattern held true in partisan and nonpartisan contests; general
25 and primary elections; statewide, state legislative, and local elections; and in races with and
26

1 without Spanish-surname candidates. *Id.* Latinos also voted cohesively in the 2022 Senate election
2 for enacted LD 15, preferring Lindsey Keesling (D) over Nikki Torres (R), a Latina candidate. Tr.
3 77:2-17. Based on these results, Dr. Collingwood opined that there is a “high” level of cohesion
4 among Latino voters in the Yakima Valley, and that Latinos in the region consistently vote as a
5 “strong block[.]” Tr. 66:9-24, 71:21-72:1.

6
7 Replicating Dr. Collingwood’s results, the State’s expert Dr. Alford also concluded that
8 Latinos are politically cohesive in this region, with “strong evidence of different voting patterns
9 by Hispanic and non-Hispanic voters” in both partisan and nonpartisan elections. Ex. 601 at 13-
10 15; *see* Tr. 853:5-14, 855:1-3. Likewise, an analysis conducted by Dr. Owens also showed
11 cohesion among Latino voters in the enacted LD 15 in 10 of the 11 elections he analyzed from
12 2018-2020. Ex. 1001 at 9; Tr. 583:5-588:24, 588:25-589:2. Dr. Barreto’s application of ecological
13 inference led him to the same conclusion, finding the rate of Latino cohesion consistently “around
14 the 70 percent range” in support of Democratic candidates in the 12 partisan elections he analyzed
15 from 2012 to 2020. Tr. 632:10-19; Ex. 214 at 7-15. The statistical evidence overwhelmingly proves
16 that Latinos in the Yakima Valley region are politically cohesive.
17

18 Qualitative evidence in the record confirms the conclusion that Latinos in the Yakima
19 Valley consistently prefer the same candidates. *See Sanchez v. Bond*, 875 F.2d 1488, 1494 (10th
20 Cir. 1989) (“The experiences and observations of individuals involved in the political process are
21 clearly relevant to the question of whether the minority group is politically cohesive.”). The
22 primary drawer of LD 15, Anton Grose, testified he was “certainly aware” of “strong Hispanic
23 support for Democratic candidates and strong white support for Republican candidates” in the
24 Yakima Valley region. Tr. 380:16-23; 393:25-394:1. He testified that he would have had to “close
25
26

1 [his] eyes” not to see the clear pattern of strong cohesive Latino support for Democratic candidates
2 while drawing districts in the Yakima Valley area. Tr. 381:8-15; 375:1-377:8.

3 Mr. Portugal, a longtime community leader in the Pasco area, testified that Latinos in the
4 region tend to prefer Democrats “because they think that they best represent . . . Latino concerns.”
5 Tr. 828:13-15; *see also* 847:22-23. Mr. Portugal also stated that Latinos throughout the region,
6 from Pasco to Yakima, share experiences that likely explain their cohesive political preferences,
7 including shared economic circumstances from providing labor to the region’s agricultural
8 industries (dairies, orchards, and hops), shared religion and places of worship, and shared housing
9 conditions. Tr. 830:11-831:24, 832:11-13, 848:5-7, 849:14-16; *see also* 838:21 (“We’re all sort of
10 in the same boat.”). Plaintiffs’ expert Dr. Josué Estrada also testified that Latinos in Central
11 Washington have shared histories, migration patterns, working conditions, and political
12 movements, which further supports a finding of Latino cohesion in the Yakima Valley region. Ex.
13 4 at 10-21. Plaintiffs have plainly satisfied *Gingles* 2.
14
15

16 **C. White Bloc Voting in the Yakima Valley Region Operates to Defeat Latino-**
17 **Preferred Candidates (*Gingles* 3).**

18 Under *Gingles* 3, the court inquires whether “the white majority votes sufficiently as a bloc
19 to enable it—in the absence of special circumstances...—to defeat the minority’s preferred
20 candidate.” *Gingles*, 478 U.S. at 51. Block voting is demonstrated by statistical analysis of
21 historical election data. *Id.* at 46; *Milligan*, 143 S. Ct. at 1503.³
22
23
24

25 ³ Multiple courts have already recently found that voting in the Yakima Valley region is racially
26 polarized. *See* Dkt. # 191 at ¶¶ 119-122; *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D.
Wash. 2014); *Glatt v. City of Pasco*, No. 4:16-CV-05108-LRS, (E.D. Wash. 2017); *Aguilar v.*
Yakima County, No. 20-2-0018019 (Kittitas Cty. Sup. Ct. July 13, 2020).

1 The evidence proves that white bloc voting in the Yakima Valley region usually results in
 2 the defeat of Latino-preferred candidates for state legislative and other offices. Using multiple
 3 statistical methods to validate his results, Dr. Collingwood found that the Yakima Valley region
 4 features a “very sustained pattern of polarized voting” between Latino and white voters. Tr. 68:11-
 5 69:3. In 24 of 26 elections he analyzed, Dr. Collingwood found levels of racially polarized voting
 6 between Latino and white voters “at the 70- to 80-percent level, on either side of the racial or
 7 ethnic divide” and that white voters bloc voted to defeat the Latino-preferred candidates. Tr. 66:15-
 8 16; Ex. 1 at 1, 17; Ex. 2 at 1. Indeed, white voters defeated the Latino-preferred candidate in every
 9 state legislative contest, every local contest, and every statewide partisan contest Dr. Collingwood
 10 analyzed. Ex. 1 at 7-8; Ex. 2. The Latino-preferred candidate also “lost every single time” in the
 11 state legislative and local contests Dr. Collingwood analyzed that featured a Spanish-surnamed
 12 candidate. Tr. 72:6-16; Ex. 1 at 19 (Table 3). Dr. Alford’s analysis confirms these results, finding
 13 that white voters cohesively vote to block Latino-preferred candidates in partisan contests (which
 14 is the type of contest held for LD 15). Tr. 853:15-20, 867:20-23. He also found that “white
 15 opposition to Latino-preferred candidates was...elevated when the Latino-preferred candidate was
 16 Hispanic” indicating “a real ethnic effect on voting in this area.” Tr. 853:21-854:15.⁴

19 Dr. Collingwood also conducted a performance analysis of ten recent statewide elections,
 20 to examine whether Latino-preferred candidates would lose in LD 15, as compared to Plaintiffs’
 21 demonstrative plans. Ex. 1 at 18-25; Tr. 72:17-73:13. His analysis showed that Latino-preferred
 22

23 ⁴ This evidence refutes Intervenor-Defendants’ claim that divergent candidate preferences between
 24 Latino and white voters are due to partisanship rather than race. In any event, it is irrelevant as a
 25 matter of law *why* Latinos prefer different candidates than white voters; all that matters for
 26 purposes of *Gingles* 2 and 3 is that they vote for different candidates. *See Gingles*, 478 U.S. at 51,
 62-63, 74 (plurality); *id.* at 100 (O’Connor, J., concurring); *Gomez v. City of Watsonville*, 863 F.2d
 1407, 1416 (9th Cir. 1988); *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 935 (4th Cir. 1987).

1 candidates would lose in seven out of ten elections (70%) in Enacted LD 15 due to white bloc
2 voting. *Id.* In the Plaintiffs’ three demonstrative plans, however, the converse is true: Latino-
3 preferred candidates would win in nine or ten out of ten elections analyzed. *Id.* This was, for Dr.
4 Collingwood, “strong evidence of white bloc voting” in satisfaction of *Gingles* 3. Ex. 1 at 25.

5
6 Intervenor claim that the election of Latina candidate Nikki Torres to LD 15 means voting
7 is no longer racially polarized in the Yakima Valley region. This is wrong. Dr. Collingwood found
8 that voting in the Torres-Keesling contest *was* in fact racially polarized, at levels consistent with
9 his findings of racially polarized voting in past elections. Tr. 76:10-20; Ex. 2. Relying on multiple
10 reliable statistical methods that account for actual voter turnout in the 2022 election, *see* Ex. 2 at
11 6, Dr. Collingwood testified that Latinos voted cohesively not for Sen. Torres but for Ms. Keesling,
12 the *losing* candidate in that race, while white voters cohesively preferred the winner. Tr. 76:21-
13 78:22. Dr. Barreto’s analysis led him to the same conclusion. Tr. 639:24-641:2; Ex. 417.

14
15 The Torres-Keesling race confirms the pattern of outcomes in the region’s state legislative
16 races: Latino-preferred candidates lose, while white-preferred candidates win. And even if this
17 were not the case, the 2022 election in LD 15 is subject to the “special circumstances” doctrine,
18 under which courts discount the probative value of elections that take place during the pendency
19 of VRA litigation. *Gingles*, 478 U.S. at 76 (finding such elections can “work[] a one-time
20 advantage . . . in the form of unusual organized political support by white leaders”). The trial record
21 also shows that the 2022 election in LD15 was exceptionally one-sided: Ms. Keesling, a write-in
22 candidate in the primary, spent only \$4,000 in the general election, less than 5 percent of what Sen.
23 Torres, who ran unopposed in the primary election, spent on her campaign. Tr. 604:6-605:13
24 (testimony of Dr. Owens), 641:8-642:2 (testimony of Dr. Barreto); Dkt. # 191-8 (Dep. of Adam
25 Hall) at 247:23-248:13, 249:6-250:3; 255:15-256:25.
26

1 The Court should not afford any weight to Dr. Owens’s testimony regarding RPV. Dr.
2 Owens did not actually assess RPV in this case, but rather only analyzed Latino vote cohesion
3 using ecological regression, a decades old methodology that no other expert saw fit to rely upon
4 alone. Indeed, he has never in his career used ecological inference. Tr. 577:21-25. In his report, he
5 examined only the level of Latino support for candidates in a limited set of races from 2018 to
6 2020 using a method of ecological regression that is outdated and less sensitive to the behavior of
7 actual voters than the ecological inference and BISG methods used by Drs. Collingwood and
8 Barreto. Tr. 78:23-80:8 (Dr. Collingwood explaining shortcomings of Dr. Owens’s analysis),
9 535:13-21, 595:1-3, 642:10-646:7 (Dr. Barreto explaining BISG). He did no analysis of white
10 voting patterns, and for this reason offered no opinion as to *Gingles* 3 at his deposition. At trial,
11 Dr. Owens tried to reverse course by opining that *Gingles* 3 was not met based *solely* on his cursory
12 analysis of the November 2022 LD 15 election, a single race marked by special circumstances. Tr.
13 579:10-13. At the same time, he admitted he had no reason to doubt that white voters overwhelm
14 the preferences of Hispanic voters. Tr. 601:4-11. Dr. Owens also displayed a remarkable lack of
15 care in understanding Washington’s basic voting rules and electoral context. Tr. 566:25-570:14.
16 Compared to the clear and robust findings of RPV and white bloc voting by Drs. Collingwood,
17 Barreto, and Alford—who bring decades of experience in making such assessments—Dr. Owens’s
18 limited analysis and unsupported opinions merit far less weight, if any. Exs. 531, 601; Tr. 609:19-
19 616:2 (testimony of Dr. Barreto).

20 The trial record proves that white voters in the Yakima Valley vote as a bloc to usually
21 defeat the candidate of choice of Latino voters. Plaintiffs have therefore satisfied all three *Gingles*
22 preconditions.
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1 **D. Under the Totality of the Circumstances, LD 15 Results in Less Opportunity**
2 **for Latinos in the Yakima Valley Region to Elect Candidates of Their Choice.**

3 Through the record and trial testimony of both experts and lay witnesses, Plaintiffs have
4 demonstrated that, under the totality of the circumstances, Latino voters have less opportunity than
5 other members of the electorate to participate in the political process and to elect representatives
6 of choice in LD 15. To this end, Senate Factors 1, 2, 3, 5, 6, 7, 8, and 9 all weigh in favor of the
7 Plaintiffs.

8 Much of the evidence regarding the Senate Factors was presented by Dr. Josué Estrada,
9 who was qualified by the court and is extremely familiar with the Yakima Valley area. No party
10 presented any controverting expert analysis on any of the Senate Factors considered by Dr.
11 Estrada. Furthermore, Defendant State of Washington admitted it has “no basis to dispute that the
12 evidence at trial [would] demonstrate . . . that, under the totality of the circumstances, Hispanic
13 voters in LD 15 are less able to participate in the political process and elect candidates of their
14 choice than white voters.” Dkt. # 194 at 13-14.

15 **1. Senate Factor 1: History of Official Voting-Related Discrimination**

16 Plaintiffs have shown that there is a long history of official voting-related discrimination
17 against Latinos in Washington State and in the Yakima Valley region, including English literacy
18 tests, failure to provide bilingual election materials, and at-large systems of election. These forms
19 of discrimination have a current and lasting impact on Latino voters in the region, who have
20 repeatedly had to rely on litigation and legal assistance to vindicate their fundamental right to vote.
21 *See, e.g.*, Tr. 131:3-17 (testimony of Dr. Estrada regarding a 1960s lawsuit challenging the use of
22 English literacy tests); Tr. 292:6-23 (testimony of Susan Soto Palmer regarding her 2021 challenge
23 to the at-large system of election for Yakima County Commissioners in *Aguilar v. Yakima County*);
24
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1 Tr. 836:16-837:19 (testimony of Gabriel Portugal regarding his role as a plaintiff in two cases
2 challenging the at-large system of election for Franklin County Commissioners); Tr. 133:3-15
3 (testimony of Dr. Estrada regarding a 2004 Department of Justice lawsuit challenging Yakima
4 County’s failure to comply with Section 203’s requirement that the County provide bilingual
5 ballots and assistance).

6 First, Dr. Estrada found that English literacy tests were unequally and unfairly administered
7 to Latinos in the Yakima Valley region with the effect of disenfranchising Latino voters, including
8 after the passage of the Voting Rights Act of 1965. Tr. 130:13-131:22; Ex. 4 at 22-31. Yakima
9 County continued to use literacy tests until the extension of the VRA in 1970. Tr. 131:18-22; Ex.
10 4 at 31.

11 Voting discrimination in the region did not stop in the 1970s. Local jurisdictions in the
12 Yakima Valley region, including both Yakima and Franklin County, have historically failed to
13 provide bilingual information and election materials to the detriment of Latino voters. Tr. 132:22-
14 133:15; Ex. 4 at 39-43. The result has been that, even when there have been policy changes which
15 theoretically ought to increase access to the ballot for the region’s Latinos, Yakima Valley region
16 voters whose primary language is Spanish have often failed to benefit. Ex. 4 at 39-40.

17 After being “designated by the Director of the Census as a jurisdiction subject to the
18 requirement of Section 203 for persons of Spanish heritage” in 1976, Yakima County provided
19 bilingual ballots until 1982. *Id.* at 40. However, Yakima County then ceased providing those
20 materials for twenty years, until 2002, when the Department of Justice intervened and mandated
21 their provision. *Id.* at 40-41. In 2004, the Department of Justice sued Yakima County for failing to
22 adequately provide bilingual voting materials and election assistance in violation of Section 203
23 of the VRA; the lawsuit was settled when the County, while not admitting liability, agreed to
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25
26

1 undertake several steps to ensure compliance with Section 203. *Id.* at 41-42; Tr. 133:11-15.
2 Similarly, Mr. Portugal testified that “[i]t was not easy” to get to the point where bilingual ballots
3 were provided to Franklin County residents, citing how it was necessary to seek the assistance of
4 an attorney after Franklin County Commissioners rejected requests to provide election materials
5 in Spanish as well as English. Tr. 839:16-840:7.

6
7 Second, at-large systems of election have historically and through the present day worked
8 systematically and effectively to dilute the voting power of Yakima Valley Latinos. Both Drs.
9 Josué Estrada and Matthew Barreto testified at trial regarding the dilutive effect of at-large
10 elections in the region. Tr. 131:23-132:21 (testimony of Dr. Estrada); 621:8-20 (testimony of Dr.
11 Barreto). Dr. Barreto testified that at-large systems of election “are diluted” and make it harder for
12 minorities to gain representation. Tr. 621:8-20. The racially discriminatory effect of these systems
13 of election is evidenced by multiple court cases challenging at-large elections in the region at both
14 the city and county level under the federal and Washington Voting Rights Acts. *See* Tr. 131:23-
15 132:21 (testimony of Dr. Estrada); Ex. 4 at 31-39. In each of the cases, either the court found that
16 the jurisdiction’s at-large system of election diluted Latino voting power, *see Montes v. City of*
17 *Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014), or the parties and court agreed that the record
18 supported such a finding, *see Glatt v. City of Pasco*, No. 4:16-CV-05108 (E.D. Wash. Jan. 27,
19 2020); *Aguilar et al. v. Yakima County et al.*, No. 20-2-0018019 (Kittitas Cty. Sup. Ct. July 13,
20 2020); *Portugal et al. v. Franklin County et al.*, No. 21-2-50210-11 (Franklin Cty. Sup. Ct. May
21 5, 2021).
22

23
24 This evidence establishes a clear history of official voting-related discrimination in the
25 Yakima Valley region, including a history of using dilutive at-large systems of election. This factor
26 accordingly weighs in favor of the Plaintiffs.

1 **2. Senate Factor 2: Racially Polarized Voting**

2 As discussed in Part I.B-C, elections in the Yakima Valley region feature high levels of
3 racially polarized voting. This factor weighs heavily in Plaintiffs’ favor.

4 **3. Senate Factor 3: Voting Practices or Procedures That Tend to**
5 **Enhance the Opportunity for Discrimination**

6 Plaintiffs have established that holding elections in off-years, electing representatives at-
7 large in multimember districts, and signature matching are voting procedures which tend to
8 enhance the opportunity for discrimination against Latino voters in the Yakima Valley region.

9 First, the placement of LD 15’s senate election in non-presidential (off) election years
10 disproportionately impacts Latino voters. Drs. Collingwood and Estrada both found that Latino
11 voters in the region, whose turnout is already lower than other voters in presidential-year elections,
12 have even lower voter turnout in off-year elections, which exacerbates the disadvantage of their
13 depressed voting registration. *See* Tr. 73:14-75:25 (testimony of Dr. Collingwood) (“In midterm
14 election years, white voters have a turnout gap advantage. In presidential, that gap starts to narrow.
15 And so that could be potentially conclusive for who wins an election. It could potentially explain
16 why, even though you have a 50.02 or a 50.04 Latino district, the Latino-preferred candidate is
17 still losing.”); 134:12-135:4 (testimony of Dr. Estrada) (“[I]n elections where...the Latino turnout
18 is already low...compounded with low voter registration rates...this just adds to that effect of
19 lower voter turnout.”); Ex. 1 at 29-32; Ex. 4 at 43-45. At trial, Dr. Barreto also testified about the
20 turnout discrepancies for Latino voters between presidential and non-presidential election years.
21 Tr. 670:18-671:7.

22 In addition, the State’s system of electing two state house representatives at-large in a
23 multimember district also tends to enhance LD 15’s dilutive effect on Latino voting power. As Dr.
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25
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1 Barreto indicated, this nested multimember house district system is both unusual and makes it
2 “more difficult to gain representation.” Tr. 62:2-20 (testifying that it would be “better to have two
3 subdistricts”). The Supreme Court “has long recognized that multimember and at-large voting
4 schemes may ‘operate to minimize or cancel out the voting strength of racial [minorities in] the
5 voting population.’” *Gingles*, 478 U.S. at 47 (internal citations omitted).

6
7 Finally, Latino voters in Washington disproportionately have their ballots rejected for
8 signature mismatch compared to other voters, with Spanish-surnamed voters in Franklin and
9 Yakima counties respectively 3.9 and 7.5 times more likely than other voters to have their ballot
10 rejected. Ex. 4 at 45-46; Tr. 135:5-12 (testimony of Dr. Estrada). While Defendants Secretary of
11 State Hobbs and State of Washington questioned Dr. Estrada about the source reporting this
12 disparity, neither Defendants nor Intervenor-Defendants questioned the validity of the disparate
13 signature rejection rates presented in Dr. Estrada’s report and testimony. Tr. 150:17-152:5, 155:6-
14 24. These disparities indicate that signature matching tends to enhance the opportunity for
15 discrimination against Latinos in the region. To the extent the Court declines to reach the issue or
16 decides that disparate signature rejection is not a voting practice or procedure that tends to enhance
17 the opportunity of discrimination, the totality of the evidence would still lead Dr. Estrada to the
18 conclusion that there is a lack of equal opportunity for Latino voters. Tr. 152:12-25.

20 **4. Senate Factor 5: Extent to Which Latinos Bear the Effects of** 21 **Discrimination**

22 Plaintiffs have shown through historical and present-day evidence that Latinos in the
23 Yakima Valley region continue to bear the effects of discrimination and are at a disadvantage
24 relative to white residents in areas that impact voting, including education, housing, socioeconomic
25 status and employment, health, and criminal justice. Ex. 4 at 46-63; Tr. 135:13-141:5. Dr. Estrada
26

1 presented un rebutted findings of discrimination against Latinos in these areas. Additionally, lay
2 witnesses testified, and the record supports, that lower Latino voter turnout and registration rates
3 in the region stem directly from language access issues, discouragement from persistent defeats
4 due to white bloc voting, fear of retribution from employers, and voter suppression.

5
6 *i. Education*

7 Washington and the Yakima Valley region have a history of segregation and discrimination
8 in the education system, as demonstrated by Dr. Estrada’s archival research. Tr. 136:1-137:4; Ex.
9 4 at 47-50. The impact of the history of discrimination in the education system continues into the
10 present day. Dr. Estrada testified that Spanish-speaking parents in Washington continue to have
11 difficulties receiving bilingual services and communicating with teachers and administrators about
12 their children’s educations. Tr. 137:5-14; Ex. 4 at 49-50. Further, there remain undeniable
13 disparities between Latino and white residents’ rates of high school graduation and attainment of
14 bachelor’s or higher degrees in Adams, Benton, Franklin, Grant, and Yakima Counties. Ex. 4 at
15 50-51; Tr. 137:15-25. While the degree of the disparities varies by county, in *every* instance
16 Latinos have lower rates of high school graduation and lower rates of graduate degree attainment
17 than their white counterparts. *Id.* This evidence demonstrates that Latinos continue to bear the
18 effects of discrimination in education.
19

20 *ii. Housing, Socioeconomic Status, and Employment*

21
22 Latinos in the region also bear the effects of discrimination in housing. Despite years of
23 reliance on Latino farmworkers, housing for those workers in the Yakima Valley region is poor in
24 both quantity and quality, with white residents frequently resisting the building of adequate
25 housing. Ex. 4 at 51-54; Tr. 138:1-21. Dr. Estrada’s report and testimony included evidence
26 regarding the poor housing conditions for Latino farmworkers gathered by the Washington State

1 Human Rights Commission in 2007 which resulted in the Commission announcing that it was
2 “increasingly concerned about race and national origin discrimination against farmworkers in the
3 area of housing.” Ex. 4 at 53; Tr. 138:11-21. Dr. Estrada also presented evidence that Latinos
4 across the entire region have significantly lower homeownership rates than white residents, for
5 example with only 12.2% of Latino residents in Benton County owning their homes compared
6 with 87.1% of white residents.⁵ Ex. 4 at 55-56; Tr. 138:22-139:9. Dr. Estrada traced these
7 particular disparities not just to past and present discrimination against Latino farmworkers, but
8 also to the region’s history of racially restrictive covenants. Tr. 139:4-9; Ex. 4 at 16. Dr. Estrada
9 also demonstrated that Latinos in the five-county area have disproportionately low household
10 incomes, Ex. 4 at 56-57; high poverty levels, *id.*; and high unemployment rates, *id.* at 57-58, when
11 compared to white residents. *See also* Tr. 139:10-21.
12

13 *iii. Health*

14
15 Latinos in the Yakima Valley region continue to bear the effects of discrimination in health.
16 Latinos are uninsured at significantly higher rates than white residents and local healthcare
17 providers catering to the Latino community, such as the Yakima Valley Farm Workers Clinic,
18 report that Latinos tend to seek emergency rather than preventative healthcare. Tr. 139:22-140:13;
19 Ex. 4 at 58-59. Latinos were also disproportionately impacted by the COVID-19 pandemic with
20 Washington’s Latinos making up only 13% of the state’s population at the time, but almost half of
21 the state’s COVID-19 cases. Tr. 140:14-18; Ex. 4 at 59. This disproportionate impact was in part
22

23 ⁵ Out of the counties considered, Benton County has the starkest disparity between Latino and
24 white homeownership. This contrasts with its high school graduation rates which, while still
25 presenting a significant disparity between Latino and white residents, were the least stark of the
26 counties considered. The disparity need not be the same in each county and in every area of life
for the overarching conclusion to remain that Latino residents in the region all bear the effects of
discrimination in ways that their white counterparts do not.

1 because agricultural employers, who have predominantly Latino employees, resisted on-site
2 testing when it was offered or recommended by health officers; this refusal ultimately led to
3 COVID-19 outbreaks in agricultural warehouses and protests by Latino agricultural workers. Tr.
4 140:19-141:5; Ex. 4 at 59-60. The impact of the COVID-19 pandemic, along with persistent
5 inequalities in healthcare access, demonstrate that Latinos in the region continue to bear the effects
6 of discrimination on their health.

7
8 *iv. Criminal Justice*

9 Latinos in the region also bear the effects of discrimination, past and present, in the criminal
10 justice system. Washington’s Latinos are incarcerated at higher rates compared to their share of
11 the population including in Adams, Franklin, Grant, and Yakima counties. Ex. 4 at 60-61. The
12 higher rates of incarceration are consistent with findings that Latinos “are more likely to receive a
13 standard sentence than any of the five sentencing alternatives” and are “more likely to be subject
14 to high discretion searches.” *Id.* at 61. Latinos are also significantly more likely than white
15 residents to be killed by law enforcement—e.g., 1.9 times more likely in Franklin County and 2.5
16 times more likely in Yakima County. Ex. 4 at 62; Tr. 141:6-142:3. The 2015 killing of Antonio
17 Zambrano-Montes by Pasco police is one high-profile example of such incidents. Ex. 4 at 61; *see*
18 Ex. 4 at 62; Tr. 824:9-24 (Mr. Portugal testifying that the police chief refused to begin an inquest
19 into the killing despite calls for an investigation). This evidence demonstrates that the region’s
20 Latino population continues to bear the effects of discrimination in criminal justice.
21

22
23 *v. Voter Participation*

24 Latino voters have depressed levels of voter registration and turnout in the Yakima Valley
25 region. Ex. 1 at 29-32; Ex. 4 at 43-45. Despite Intervenor-Defendants’ arguments to the contrary,
26 Plaintiffs need not establish causation under Senate Factor 5. *See, e.g., Luna*, 291 F. Supp. 3d at

1 1137 (citing *LULAC, Council No. 4434 v. Clements*, 986 F.2d 728, 750 (5th Cir. 1993))
2 (“Under this [] factor, plaintiffs must demonstrate both depressed political participation and
3 socioeconomic inequality, but need not prove any causal nexus between the two.”).

4 Plaintiffs have nonetheless presented substantial evidence that the lower levels of voter
5 registration and turnout are not merely the result of a lack of political interest or effort. Indeed,
6 witnesses at trial testified to participating in efforts to increase political awareness and participation
7 in the region’s Latino community. *See, e.g.*, Tr. 824:25-825:9, 836:8-15 (testimony of Gabriel
8 Portugal regarding LULAC’s efforts to educate the Latino community on candidates and initiatives
9 as well as their civil rights); 288:15-289:6 (testimony of Susan Soto Palmer regarding her
10 involvement in community organizations including “to promote voters’ rights and get voters
11 registered”). The trial and written record reflect the reality that Latinos voters continue to face
12 barriers to political participation not experienced by their white counterparts.
13

14 Sen. Saldaña and Mr. Portugal testified that language access continues to create a barrier
15 to political participation by Latinos. Tr. 182:8-16 (testimony of Rebecca Saldaña) (“these are
16 barriers that make it harder for Latino voters to be able to believe that their vote counts, have access
17 to vote, and let alone, to be able to have someone that fully represents their interests, their
18 perspectives, their experiences”); Tr. 840:18-841:14 (testimony of Gabriel Portugal) (“Latinos that
19 lack the language, lack the knowledge, and again have the extra fear of, maybe I should not be
20 involved in this. So, yeah, they shy away.”).
21

22 Ms. Soto Palmer, Ms. Lopez, and Sen. Saldaña testified that depressed voter turnout among
23 the Latino community is also in part because discouragement from persistent experiences of
24 discrimination and the inability to fairly elect candidates that represent their needs. *See, e.g.*, Tr.
25 296:2-8 (testimony of Susan Soto Palmer that, through her experiences campaigning in the region,
26

1 she “learned that the Latino Hispanic community has felt that there has not been a person that they
2 align with, to represent them on the ballot, for such a long time, that they just end up throwing
3 away their ballots.”); Tr. 26:6-25 (testimony of Faviola Lopez); Tr. 181:9-22 (testimony of
4 Rebecca Saldaña) (“If you don’t feel like you can even have a say about sidewalks, it creates a
5 barrier for you to actually believe that your vote would matter, even if you could vote.”).

6
7 Plaintiff Soto Palmer, Sen. Rebecca Saldaña, and Mr. Portugal testified that Latinos in the
8 region fear retribution from their employers if they were to vote for their preferred candidates and
9 against the candidates preferred by their employers. Tr. 296:9-17, 307:12-18 (testimony of Susan
10 Soto Palmer that “[she] also learned, from several households, that for the Latino and Hispanic
11 communities, that there are some that feel that . . . their jobs would be in jeopardy, if they voted
12 for a Latino-preferred candidate. They would lose benefits. A lot of the Latino Hispanic families
13 work in the same industries together. And some of them told [her] that they felt that they would
14 lose their jobs, and their family might also lose their jobs, so they don't vote.”); 199:5-14
15 (testimony of Rebecca Saldaña that “I’ve gone to labor camps. I just went to meet with asparagus
16 workers, right after session . . . They fear. They live in fear. And they want a job. They want to be
17 able to have any income they can. And they are not going to risk that, if they don't think that -- if
18 they do do something and speak out, that there's going to be someone to have their back.”); 835:11-
19 19 (testimony of Gabriel Portugal that “sometimes they have fear, because they work at an area
20 where they’re not supposed to be talking about politics, especially about some – either political
21 party. And they know that their job may be in jeopardy if they get too vocal, or start talking about,
22 you know, political issues or candidates. So Latinos tend to shy away, in sort of like a self-
23 preservation.”).

1 Latino voters have also experienced recent voter suppression in the region. Benancio
2 Garcia, the plaintiff in the *Garcia* case, was a candidate in the 2022 primary race for Washington’s
3 Fourth congressional district. Dkt. # 191-7 (Dep. of Benancio Garcia) at 67:1-9. Mr. Garcia was
4 the only Latino candidate in that race. *Id.* at 68:3-18. Mr. Garcia testified that the Washington State
5 Republican Party suppressed the Latino vote in that election. He testified that he had recorded a
6 message, in both English and Spanish, designed to “help us get our vote out” for a phonebank
7 targeting “every registered 4th District Latino Republican.” *Id.* at 75:2-79:7; 90:12-91:13. The
8 state Republican Party, however, discarded Mr. Garcia's targeted messages and instead used
9 English-only general messages from the party. *Id.* Mr. Garcia also testified that the state
10 Republican Party had specific funding to hire organizers to register Latino voters in the Yakima
11 Valley, including the Cities of Yakima and Wenatchee, but declined to do so. *Id.* Based on this
12 personal experience, Mr. Garcia concluded that the Party’s actions “greatly affected th[e] election,
13 the outcome, and suppressed the Latino vote.” *Id.*

16 The evidence at trial establishing the ongoing effects of voting discrimination, language
17 access issues, voter discouragement after persistent defeats, fear of retribution from employers,
18 and voter suppression together show the political process is not equally open to Latino voters in
19 the Yakima Valley region. With ample evidence that Latinos in the region bear the effects of
20 discrimination in education, housing, employment and socioeconomic status, health, and criminal
21 justice, and that Latinos have resulting lower rates of voter registration and turnout, Senate Factor
22 5 weighs heavily in Plaintiffs’ favor.

1 **5. Senate Factor 6: Use of Overt or Subtle Racial Appeals in Political**
2 **Campaigns**

3 Candidates and elected officials in LD 15 have made both overt and subtle racial appeals
4 during campaigns and while in office. Dr. Estrada presented numerous examples of such appeals,
5 including an instance in which Sen. Jim Honeyford (LD 15), referred to racial minorities as
6 “colored” and “coloreds,” remarking that “the poor people are most likely to commit crimes, and,
7 uh, colored [sic] most likely to be poor” during a legislative hearing. Ex. 4 at 67-68; Tr. 143:18-
8 144:5. Dr. Estrada also provided multiple instances of Franklin and Yakima County officials
9 running for election posting content using the offensive terms “illegal” and “illegals” and
10 promoting disproven allegations that non-citizens are voting in elections. Ex. 4 at 63-66 (providing
11 examples of racial appeals at the county level); Tr. 143:3-17.

12 Latino candidates in the region have also experienced racial animosity while campaigning.
13 *See* Ex. 4 at 66-67. For example, Ms. Soto Palmer testified about the racial animosity that she
14 experienced while campaigning for Gabriel Muñoz, a Latino candidate for LD 15’s Senate seat.
15 Tr. 292:25-294:4. Ms. Soto Palmer then faced challenges when she herself ran in 2016 for state
16 representative in LD 14 and in 2018 for the Yakima County Commission. Ms. Soto Palmer testified
17 that she “went door-to-door canvassing,” “did phone banking” as well as “voicemail and text
18 messages,” “attended parades and went to some events.” Tr. 294:22-295:1. However, “[b]ecause
19 of the prior experiences, it was hard for [her] to campaign in areas that were predominantly white,
20 because [she] feared for [her] safety.” Tr. 295:2-7. Ms. Soto Palmer lost both of her elections to
21 her white opponents. Tr. 295:8-12; 295:21-296:1.

22 Additionally, Intervenor-Defendant Jose Trevino, the Republican Mayor of Granger—a
23 city in the Lower Yakima Valley with an 88.4% Latino population—attributed his loss in the 2015
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1 Granger mayoral race to a rumor spread during the campaign that he “was going to fire all the
2 white people in the city” and attributed his loss in multiple other races, including for Yakima
3 County Commission, to negative coverage in the Yakima Herald-Republic, saying that he was the
4 “only [candidate] they picked on” because “it was easier to pick on the Republican Mexican than
5 anyone else.” Ex. 140 at 72:22-73:12, 86:1-12, 87:3-88:21, 88:16-21, 100:7-101:4.

6
7 Candidates and elected officials in the Yakima Valley region use overt and subtle racial
8 appeals in campaigns and while in office. This factor weighs heavily in Plaintiffs’ favor.

9 **6. Senate Factor 7: Extent to Which Latino Candidates Have Been**
10 **Elected to Public Office in the Jurisdiction**

11 Plaintiffs have demonstrated that, despite many Latino candidates running for state
12 legislative and county-level office in the Yakima Valley region and throughout Central
13 Washington, these Latino candidates have consistently not been elected. Tr. 144:15-146:5; Ex. 4
14 at 69-71.

15 In the history of the state, just three Latinos, “a very, very small number, compared to the
16 population,” have been elected to any of the twelve state legislative seats across LDs 13, 14, 15,
17 and 16. Tr. 144:19-145:12; Ex. 4 at 69-70. In 1994, Mary Skinner was elected as Senator for LD
18 14, which at the time included parts of the state not at issue here. Dkt. # 191 ¶ 111; Ex. 4 at 69.
19 Since Senator Skinner left office, numerous Latino candidates like Ms. Soto Palmer in 2016 and
20 Noah Ramirez in 2018 have run for the seat but lost to white opponents. Ex. 4 at 69; Tr. 294:11-
21 295:12 (testimony of Susan Soto Palmer). The second Latino candidate to have been elected in the
22 region is Representative Alejandro “Alex” Ybarra, who was appointed to represent LD 13 in 2018.
23 Ex. 4 at 69-70; Dkt. # 191-15 (Dep. of Alex Ybarra) at 55:2-16. Representative Ybarra testified
24 that he benefitted from his appointment when he ran for reelection because “[m]ore people knew
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26

1 [his] name,” an advantage which he admitted “helps all incumbents.” Dkt. # 191-15 at 55:17-56:2.
2 Other Latino candidates have recently lost their bids for election in LD 13. Ex. 1 at 7.

3 The third and final Latino candidate to have been elected to state legislative office in the
4 region is Nikki Torres, whose election to LD 15’s senate seat came amidst “special circumstances”
5 following the filing of this lawsuit and who was not the Latino-preferred candidate. *See supra* Part
6 I.C. No other Latino candidates have ever been elected to state legislative office in LD 15 despite
7 multiple attempts, including state senate bids by Gabriel Muñoz in 2014, Dkt. # 191 ¶ 102, and
8 Evangelina Aguilar in 2018, *id.* ¶ 105, as well as state house bids by Pablo Gonzalez in 2012, *id.*
9 ¶ 101, and Teodora Martinez Chavez in 2014, *id.* ¶ 103.

11 Latino candidates have experienced a similar lack of success in elections for county office.
12 Latinos in Yakima County make up 51% of the population, but just one Latino candidate, who left
13 office in 2006, has ever been elected to the Board of County Commissioners. *See* Ex. 4 at 69. In
14 Franklin County, where Latinos make up 54.1% of the population, not a single Latino has ever
15 been elected to the County Board of Commissioners. *Id.* at 70.

17 Intervenor-Defendants suggest Dr. Estrada should have included city-level races in his
18 assessment of this factor. That makes little sense. As Dr. Estrada stated, “it made more sense to
19 compare the geographies of the legislative districts to the county districts, rather than look at those
20 smaller communities” where there are “large, significant sizeable Latino majorities.” Tr. 145:25-
21 146:5, 165:19-166:3, 167:1-6. Furthermore, the existence of politically cohesive Latinos at the
22 local level in the Yakima Valley region—including those in the very communities that were
23 cracked to dilute Latino voting strength in the current LD 15—are the reason why it is possible to
24 draw a performing, majority-Latino state legislative district.
25
26

1 With only two Latinos ever elected to state legislative office from the region absent special
2 circumstances and a dearth of Latinos elected to county positions in the region, this factor weighs
3 in favor of the Plaintiffs.

4 **7. Senate Factor 8: Lack of Responsiveness of Elected Officials to the**
5 **Needs of the Latino Community**

6 Plaintiffs have presented substantial evidence that the state legislators representing the
7 Yakima Valley region have been unresponsive to the needs of the Latino community.

8 Dr. Estrada analyzed recent responsiveness based on a comparison of the legislative
9 priorities of Washington’s Latino Civic Alliance for the 2022 Latino Legislative Day to the voting
10 records of state legislators from the region. Tr. 146:6-147:8; Ex. 4 at 71-77. Dr. Estrada found that
11 the region’s legislators tend to vote against the bills supported by the Latino community. *Id.* For
12 example, the Senators from LDs 14, 15, and 16 uniformly opposed SB 5597, an update to the
13 Washington Voting Rights Act (WVRA), which, in addition to being a bill promoted by the Latino
14 Civic Alliance, had the backing of 93 organizations across 20 counties including Latino groups
15 like Casa Latina, the Commission on Hispanic Affairs, El Centro de la Raza, Radio KDNA, and
16 the Tri-Cities LULAC. Ex. 4 at 74-75; Tr. 146:23-147:8.

17
18
19 The testimony of lay witnesses corroborated Dr. Estrada’s findings. For example, Mr.
20 Portugal, one of the founders of the Latino Civic Alliance, testified that based on his experience
21 with the Latino Civic Alliance and the Washington Commission on Hispanic Affairs, “the pattern
22 that [they] hear from all the eastern side – Wenatchee, Yakima, Othello, Moses Lake, Pasco,
23 Sunnyside, Granger, all the way to Yakima, and even Ellensburg” was “the concern that the
24 legislators do not listen to the Latino concerns.” Tr. 822:24-823:1, 826:6-20. Plaintiffs Lopez and
25 Soto Palmer both testified to the frustrating lack of responsiveness from legislators in response to
26

1 advocacy for issues important to Latinos. *See, e.g.*, Tr. 35:24-36:3, 24:13-25:5 (testimony of
2 Faviola Lopez that “I think if you look at our representatives, they don’t look like or reflect the
3 community that they serve. And they voted against a lot of, not only issues, but resources that
4 would help our community as well.”); 290:6-8, 291:3-23 (testimony of Susan Soto Palmer).

5 For example, both Ms. Lopez and Ms. Soto Palmer advocated for the initial passage of the
6 WVRA in 2018 but failed to get support for the bill from their representatives. Sen. Rebecca
7 Saldaña, who was the prime sponsor of the WVRA, testified that the legislation was aimed at
8 ending electoral discrimination, including the protection of Latino voting rights. Tr. 182:17-184:3.
9 Both Plaintiffs testified that they had each met with Sen. Curtis King to advocate for the passage
10 of the Act, highlighting the importance of the bill to their Latino communities. Tr. 290:6-291:2
11 (testimony of Susan Soto Palmer); 25:8-22, 27:5-22 (testimony of Faviola Lopez). Neither felt that
12 Senator King was responsive to their advocacy, with Ms. Lopez saying, “we felt like they weren’t
13 really listening to our stories,” Tr. 27:17-22, and Ms. Soto Palmer describing him as “dismissive”
14 of her concerns and unsupportive of the bill despite admittedly not having read it, Tr. 290:16-24.
15 Senator King ultimately voted against the WVRA, *id.*, as did *all* the representatives from the
16 region.⁶

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18
19 Sen. Saldaña testified that in her interactions with Eastern Washington’s farmworkers and
20 residents from the Yakima Valley region as a state legislator, she observed that former LD 15
21 Senator Jim Honeyford’s representation was “very different from what [she] was hearing from
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23
24 ⁶ Wash. State Legislature, SB 6002 (2018), [https://app.leg.wa.gov/billsummary/
25 ?billNumber=6002&year=2018](https://app.leg.wa.gov/billsummary/?billNumber=6002&year=2018) (showing nay roll call votes of Sens. Warnick (LD 13), King (LD
26 Johnson (LD 14), McCabe (LD 14), Chandler (LD 15), Taylor (LD 15), Jenkin (LD 16), and
Nealey (LD 16)).

1 residents of that area, of what they needed and wanted, and how he was voting at the time.” Tr.
2 175:3-6, 174:4-176:19. She testified that Latino residents from the Yakima Valley region seek her
3 out over their own representatives; when she asks if these individuals have tried reaching out to
4 their own representatives, she hears that “[e]ither they don’t feel comfortable or they tried and they
5 don’t feel like they got it.” Tr. 176:5-7; *see also* 201:13-17 (testifying that she “find[s] it very
6 frustrating that [she], who ha[s] no direct connection with the Yakima Valley, [is] often the only
7 person that’s advocating for policies that support and benefit the people of the Yakima Valley”).
8 Mr. Portugal also testified overhearing then-Senator Honeyford call a prominent Latino
9 farmworker organizer a “son of a bitch.” Tr. 828:17-829:23. He testified that “Senator Honeyford
10 is not friendly to a lot of our farmworkers.” *Id.*

12 Finally, the 2021 Redistricting Commission itself was unresponsive to the advocacy of the
13 Latino community for a district that respects Latino communities of interest and that would provide
14 an equal opportunity to elect their candidates of choice. Tr. 29:22-35:19 (testimony of Faviola
15 Lopez) (“We were requesting for the Latinx population in Yakima’s voting power, not to be broken
16 up, like it has been in the past.”); Tr. 296:19-297:19 (testimony of Susan Soto Palmer); Tr. 186:13-
17 187:4 (testimony of Rebecca Saldaña). The 2021 advocacy for a Yakima Valley district in which
18 Latinos could elect their candidates of choice was a continuation of advocacy that began last
19 decade. Dr. Matthew Barreto testified that “there [was] no question” the conditions were in place
20 then to draw such a district, but he found “there wasn’t the political appetite in 2011, to draw that
21 legislative district.” Tr. 618:25-619:19. This factor weighs in favor of the Plaintiffs.
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1 **8. Senate Factor 9: Tenuousness of the Policy Underlying the Current**
2 **Composition of LD 15**

3 The last factor—whether the justifications for the legislative districts in the Yakima Valley
4 region are “tenuous,” *Gingles*, 478 U.S. at 45—also weighs in Plaintiffs’ favor. Evidence of a
5 tenuous rationale for a district’s composition “may . . . indicate that [the district] produces a
6 discriminatory result.” *Luna*, 291 F. Supp. 3d at 1141 (citing *LULAC, Council No. 4434 v.*
7 *Clements*, 986 F.2d 728, 753 (5th Cir. 1992)). At the same time, “[t]he existence of a legitimate
8 policy rationale . . . does not preclude a finding of vote dilution,” especially where, as here, the
9 weight of the evidence shows the district results in less opportunity for a minority group. *Id.*

10 As an initial matter, the State agrees that LD 15 violates Section 2’s prohibition on
11 discriminatory results and has offered no compelling reason why the district’s current
12 discriminatory composition should be maintained. Dkt. # 194 at 10-17. Dr. Collingwood’s analysis
13 of various demonstration plans shows it was possible for the Commission to draw a district in the
14 Yakima Valley region that affords Latinos equal opportunity to elect candidates of their choice
15 while satisfying traditional redistricting criteria. Ex. 1 at 21-29. The Commission considered many
16 district configurations in the Yakima Valley region during the redistricting process that would have
17 met its goals while ensuring Latino electoral opportunity. *See id.* at 28-29; *infra* Part I.A.

18 To the extent any party would defend the current composition of LD 15 by claiming it is
19 necessary to respect the Yakama Nation community of interest, that argument fails. The
20 Commissioners considered or proposed map iterations that would have performed to elect Latino
21 candidates of choice while keeping in one district the entirety of the Yakama Nation Reservation
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1 where tribal communities live, and in some cases, much of the off-reservation trust lands.⁷ *See*,
2 *e.g.*, Ex. 1 at 28; Exs. 150 at 16, 156, 514 (Walkinshaw 9.21 Proposal); Exs. 197-98, 515-16
3 (Walkinshaw & Sims 10.25 Proposals); Ex. 518 (Walkinshaw 11.13 Proposal); *see also* Ex. 1 at
4 28. No Commissioner or staff testified that the Nation’s interests could not be accommodated while
5 respecting the repeated public testimony from Latinos in the Yakima Valley asking to keep their
6 community whole. *See* Exs. 94, 97, 189, 252, 342 (public comments); *supra* Part I.D.7. Even if
7 the Commission’s goals with respect to the Yakama Nation were difficult to reconcile fully with a
8 Section 2-compliant map, those goals must cede to federal law. *See Milligan*, 143 S. Ct. at 1505
9 (considering competing maps where “there would be a split community of interest in both”).
10

11 The State has also contended that Commissioners drew LD 15 the way they did in order to
12 comply with Section 2. Dkt. # 194 at 18. The record belies this assertion, and even if were true,
13 mere intent to comply with the VRA is not a valid justification for maintaining a legislative
14 redistricting plan that has the effect of denying Latinos a fair opportunity to elect their preferred
15 candidates. *Milligan*, 143 S. Ct. at 1507 (“[Section] 2 turns on the presence of discriminatory
16 effects, not discriminatory intent.”). Commissioners Sims and Walkinshaw, for their part,
17 understood that Section 2 required them to draw a district in the Yakima Valley that performed to
18 elect Latino voters’ candidates of choice. Tr. 237:28-238:3 (testimony of April Sims testifying as
19 to the this “clear directive”), 315:4-10 (testimony of Brady Walkinshaw); Exs. 179, 183, 200, 195.
20 The Commission, however, did not adopt any of their legislative district proposals that would have
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24 ⁷ Unlike the Yakama Reservation, the off-reservation trust lands are unpopulated. *Compare*
25 Yakama Nation Reservation, Census Reporter (2021), <https://censusreporter.org/profiles/25200US4690R-yakama-nation-reservation/> with Yakama Nation Off-Reservation Trust Land,
26 Census Reporter (2021), <https://censusreporter.org/profiles/25400US4690T-yakama-nation-off-reservation-trust-land/>.

1 afforded Latino voters an equal opportunity to elect. In fact, the Commission never really adopted
2 a legislative map at all, missing their November 15 deadline to do so. Tr. 222:24-223:11 (testimony
3 of April Sims), 321:1-22 (testimony of Brady Walkinshaw), 742:15-25 (testimony of Paul Graves);
4 Ex. 530 at 5 (OPMA Consent Decree).

5 The district that ultimately came to be LD 15 was conceived and drawn by Commissioner
6 Graves and his staffer, Anton Grose. Exs. 240-243, 517 (Graves Nov. 7 proposal); Ex. 521
7 (Enacted Plan). Commissioner Graves was wholly unconcerned with complying with Section 2's
8 clear directive to draw a Latino opportunity district in the Yakima Valley region. According to
9 contemporaneous notes and chat messages sent by one of Commissioner Walkinshaw's staffers,
10 Ali O'Neil, during and shortly after a November 15 meeting between Commissioners Graves and
11 Walkinshaw, Commissioner Graves insisted that LD 15 perform to elect Republicans rather than
12 Latino voters' candidates of choice. Ex. 388 at 5 (O'Neil Timeline of Redistricting Commission
13 Events); Exs. 352, 346 (chat messages); Tr. 785:21-786:6, 791:17-793:21, 793:22-794:15
14 (testimony of Ali O'Neil); *see also* 790:23-791:3 ("we knew, and heard, that the Republican
15 commissioners did not want to draw a district that was Democratic performing, and, therefore,
16 allowing Latino voters to elect a candidate of their choice").

17 Working at Commissioner Graves's direction, Mr. Grose drew various iterations of LD 15
18 in Dave's Redistricting App (DRA), which enabled him to see in real time how changes to the
19 district would impact the Latino share of eligible voters and the district's likelihood of electing
20 Latino-preferred candidates, which he understood to be Democratic candidates. Tr. 369:1-4,
21 380:13-23, 384:4-21, 391:16-19 (testimony of Anton Grose). In each iteration of the map from
22 November 7 to the Enacted Plan, Mr. Grose shifted precincts in and out of LD 15 in a way that
23 consistently chipped away at the district's HCVAP and reduced the district's likelihood of
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1 performing to elect Latino candidates of choice. Tr.396:9-397:21 (testimony at Anton Grose); Ex.
2 487 (identifying changes between iterations); Ex. 1 at 28. This systematic and intentional
3 weakening of Latino electoral performance in LD 15 in the final days of the Commission’s
4 redistricting process flatly contradicts any claim that the district was drawn to comply with Section
5 2.⁸ In short, the policies motivating the configuration of LD 15 as enacted are tenuous.

6 **9. Proportionality**

7
8 Proportionality is not a required showing under Section 2, which contains “a robust
9 disclaimer” against such a showing. *Milligan*, 143 S. Ct. at 1500. However, it can be relevant to
10 consider “whether the number of districts in which the minority group forms an effective majority
11 is roughly proportional to its share of the population in the relevant area.” *LULAC v. Perry*, 548
12 U.S. 399, 426 (2006). Here, Latinos are 8.7% of the state’s CVAP according to the latest ACS 1-
13 year estimates, but Latinos form an *effective* majority of voters in *none* of the legislative districts
14 and a bare majority in only one district, or 2% of the 49 districts. Ex. 521; U.S. Census Bureau,
15 Citizen Voting Age Population by Selected Characteristics, <http://bitly.ws/Gj3A>. Thus, the number
16 of districts in which Latinos form a majority of voters is less than their share of eligible voters.
17 This lack of proportionality is indicative of Latino voters’ reduced opportunity to participate in the
18 political process. *See Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).⁹

19
20
21 ⁸ As Plaintiffs state at the outset, *supra* p. 3, the Court need not decide Plaintiffs’ discriminatory
22 intent claim because LD 15, under the totality of the circumstances, has the effect of diluting Latino
23 voting power. However, Plaintiffs note that similar evidence of a map-drawer’s tinkering to reduce
24 Latino electoral opportunity in a district led a three-judge district court to conclude that the Texas
25 legislature intentionally discriminated against minorities in violation of Section 2. *See Perez v.*
Abbott, 253 F. Supp. 864, 954 (W.D. Tex. 2017).

26 ⁹ Intervenors claim that Latinos are somehow disproportionately represented in Washington
because the share of Democrats in the Legislature exceeds Latinos’ share of the eligible voting
population. Dkt. # 197 at 21-22. This makes no sense. Nor is it the relevant benchmark under

1 **E. LD 15 Results in Less Opportunity for Latinos to Elect Candidates of Their**
2 **Choice Under the Totality of the Circumstances Despite Its Bare Majority-**
3 **Hispanic Citizen Voting Age Population.**

4 Although Latinos form a slim majority of voting-age citizens in LD 15, the district as
5 enacted nevertheless fails to afford Latinos equal opportunity to elect candidates of their choice in
6 violation of Section 2.

7 In *LULAC v. Perry*, the Supreme Court recognized that it is “possible for a citizen voting-
8 age majority to lack real electoral opportunity.” *LULAC v. Perry*, 548 U.S. 399, 428 (2006). Lower
9 courts have accordingly recognized that “the majority-minority status of a district does not
10 preclude a § 2 claim” because such a district can nevertheless deny minority voters equal
11 opportunity to elect candidates of choice under the totality of the circumstances. *Perez v. Abbott*,
12 253 F. Supp. 3d 864, 880 (W.D. Tex. 2017) (holding that a 58.5% HCVAP district was “not in
13 fact a Latino opportunity district”); *see also Moore v. Leflore Cnty. Bd. Of Election Comm’rs*, 502
14 F.2d 621, 624 (5th Cir. 1974) (affirming rejection of a plan in which all five districts were bare
15 majority-African American and a “history of fear and civil rights repression resulted in minimal
16 political activity for African Americans”). As the three-judge district court in *Perez* explained,
17 “demographics alone do not demonstrate opportunity; the degree of racially polarized voting and
18 turnout will affect whether a HCVAP-majority district provides opportunity, such that a searching,
19 practical inquiry is required.” *Perez* at 253 F. Supp. 3d at 880. Such an inquiry also includes a
20 district’s “performance on exogenous election indices.” *Id.* at 887.

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25 *LULAC v. Perry*, 548 U.S. at 436, which “compares the percentage of total districts that are Latino
26 opportunity districts with the Latino share of the citizen voting-age population.” The Enacted Plan
 contains no majority-HCVAP district in which Latinos have an opportunity to elect candidates of
 their choice, and thus contains no Latino opportunity districts.

1 As the totality of the evidence has shown, voting in the Yakima Valley region is highly
2 racially polarized. *Supra* Part I.B-C. The testimony of multiple experts and fact witnesses also
3 demonstrates that Latinos lag far behind in turnout, owing to the region’s long history of voter
4 suppression, extreme socio-economic disparities that bear on the ability to participate, and
5 continuing hostility and intimidation in Latino workplaces that chill their political activity. *Supra*
6 Part I.D.4.v. The Commission’s fracturing of Latino communities in the Lower Yakima Valley
7 and exclusion from LD 15 of cities in which Latinos are politically active, such as Wapato and
8 Toppenish, also “has the foreseeable effect of depressing Latino turnout.” *See Perez*, 253 F. Supp.
9 at 887 (finding fracturing of a county in which Latinos were politically active and cohesive
10 “magnif[ied]” turnout gap); *see* Ex. 1 at 31-32; Tr. 83:4-8 (testimony of Dr. Collingwood); 378:11-
11 25 (testimony of Anton Grose). Dr. Collingwood’s uncontested performance analysis confirms
12 that Latinos lack any “realistic chance” to elect a preferred candidate in the district. Tr. 97:8-18,
13 98:5-13; *supra* Part I.C. Given this “past and present reality,” *Milligan*, 143 S. Ct. at 1503, the bare
14 HCVAP majority in LD 15 as currently configured fails to afford Latino voters equal opportunity
15 to elect candidates of their choice.
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18 In sum, Plaintiffs have proven that LD 15, under the totality of the circumstances, denies
19 Latino voters an equal opportunity to elect candidates of their choice in violation of Section 2.
20

21 **II. Proposed Remedial Process**

22 The districts in the Yakima Valley region must be redrawn to afford Latino voters an equal
23 opportunity to elect candidates of their choice. In shaping a remedial map under Section 2, a court
24 should “exercise its traditional equitable powers to fashion the relief so that it *completely* remedies
25 the prior dilution of minority voting strength and *fully* provides equal opportunity for minority
26 citizens to participate and to elect candidates of their choice.” *Ketchum v. Byrne*, 740 F.2d 1398,

1 1412 (7th Cir. 1984) (quoting S. Rep. No. 97-417, at 31) (emphasis added); *see also U.S. v. Dallas*
2 *Cnty. Comm'n*, 850 F.2d 1433, 1438 (11th Cir. 1988); *McDaniels v. Mehfoud*, 702 F. Supp. 588,
3 596 (E.D. Va. 1988). An appropriate remedy “restructure[s] the districting system to eradicate, to
4 the maximum extent possible *by that means*, the dilution proximately caused by that system.”
5 *McGhee v. Granville Cnty., N.C.*, 860 F.2d 110, 118 (4th Cir. 1988) (emphasis in original). While
6 the legislature has the first opportunity to propose such a remedy, if it fails to respond, or responds
7 with a proposal that fails to fully remedy the violation, the district court should “exercise its
8 discretion in fashioning a ‘near optimal’ plan.” *Id.* at 115.

10 In this case, the remedial process must proceed swiftly to ensure ample time for the
11 Secretary of State to administer the new map and adequately educate the public about new district
12 boundaries. *See* Dkt. # 191 ¶ 124. As such, Plaintiffs propose that the Court order that the State’s
13 “political apparatus” shall have 30 days to submit a proposed remedial legislative district map,
14 along with any briefing and supporting expert materials. Dkt. # 68 at 3 (Order of Joinder). The
15 remaining parties should be permitted 20 days thereafter to file responsive briefing, any alternative
16 proposals, and supporting expert materials. Reply briefs should be filed no later than 10 days after
17 the responses. If the Court sees fit, a remedial hearing may be held to present arguments and any
18 necessary expert testimony regarding the proposed remedial maps. Should the State fail to propose
19 a remedy that fully affords equal opportunity for Latino citizens to participate and to elect
20 candidates of their choice, Plaintiffs propose that the Court select from among the parties’
21 alternative remedial submissions.
22
23

24 CONCLUSION

25 Latino voters in the Yakima Valley have been denied their most fundamental and
26 foundational right to an undiluted vote for decades. Plaintiffs have established that the current LD

1 15 dilutes the voting strength of Latino voters in the area, denying them the opportunity to
2 participate in the political process and have a say in the matters that impact their daily lives. The
3 evidence at trial overwhelmingly established the continuing and cumulative impact that decades
4 of discrimination and vote dilution have had on the Latino population. This Court should find that
5 LD 15 as enacted violates Section 2 of the Voting Rights Act and should be redrawn to remedy
6 that violation.
7

8
9 Dated: July 12, 2023

10 By: /s/ Edwardo Morfin

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CERTIFICATE OF SERVICE

I certify that all counsel of record were served a copy of the foregoing this 12th day of July, 2023 via the Court's CM/ECF system.

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1 about in this case, are more compact and contiguous than most
2 of the demonstration districts you've seen in the VRA cases
3 you've done?

4 A Yes. Certainly more than most demonstration districts.

5 Q For the *Gingles* second and third factors, did you
6 replicate Dr. Collingwood's ecological inference analysis?

7 A I replicated, in the sense of running the same analysis,
8 with the same data, and then I did what I would consider a
9 different form of replication, using an alternative set of
10 voter data, reproduced those results again.

11 Q And based on that analysis, did you find that Hispanic
12 voters have voted cohesively in the Yakima area?

13 A Yes. In these elections, you see moderate cohesion in the
14 70 to 80 percent range.

15 Q On *Gingles* 3, did you find the white voters vote
16 cohesively to block Latino-preferred candidates, at least in
17 the -- at least in partisan elections?

18 A Yes. In partisan elections, again, moderately cohesive,
19 around 80 percent level, Anglo voters vote Republican, which
20 are not the candidates preferred by Hispanic voters.

21 Q And did you find that white opposition to Latino-preferred
22 candidates was actually elevated when the Latino-preferred
23 candidate was Hispanic?

24 A Yes. So I think it's important to look at the role of a
25 candidate's party. I think it's also important to look at

1 the role of a candidate's race or ethnicity. Here, there is
2 a significant effect for both.

3 Q And why does that matter to you?

4 A Where the pattern of voting difference can be -- cannot be
5 demonstrated to be anything beyond partisanship, my own view
6 is that's important information for the court to take into
7 account. I think, for example, with regard to totality of
8 the circumstance, that that's a very important issue. So I
9 think that's a useful analysis here. There is a significant
10 increase in the cohesion of Hispanic voters, when the
11 Democratic candidate is Hispanic; there's a significant drop
12 in the willingness to cross over among Anglo voters, when the
13 Democratic candidate is Hispanic. That's an unusual pattern,
14 in my experience, and shows that there is a real ethnic
15 effect on voting in this area.

16 Q Now, Dr. Alford, we've been talking about partisan
17 elections. In nonpartisan elections, did you find the same
18 pattern of racially polarized voting held true?

19 A No.

20 Q What did you find?

21 A With regard to *Gingles* 2, Hispanic voters -- it's a
22 limited set of --

23 Q Two elections?

24 A Four elections.

25 Q My apologies. Four elections.

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1 of your analysis any differently or any less?

2 A No. I did not down-weight any one in the report.

3 Q Now, let's look at Table 1 in your report. So this will
4 be Exhibit 1001. And Table 1 is on Page 9.

5 And would it be fair to say -- we looked at these
6 earlier, with intervenor's counsel. But this is, these are
7 your point estimates for Hispanic voting for Democratic
8 candidates in select elections, right?

9 A Yes.

10 Q Now, let's start with the 2020, insurance commissioner
11 election. In enacted LD 15, Latinos voted at 79 percent for
12 Kreidler, right?

13 THE COURT: Kreidler.

14 A Yes. The estimate is there, with the margin of error
15 showing 75.7 to 82.3.

16 Q Now, with that margin of error, you would say that Latinos
17 voted cohesively for Kreidler in the 2020 insurance
18 commissioner election, right?

19 A Yes.

20 Q Would you also say that Latinos, in the previous LD 15,
21 also voted cohesively for Kreidler, in that same contest?

22 A Yes. The margin is a little higher.

23 Q Now, in enacted LD 14, did Latinos vote cohesively for
24 Kreidler, as shown in Table 21?

25 A Yes.

1 MR. HERRERA: And don't worry, Your Honor, I'm not
2 going to go through all of these.

3 THE COURT: No. But pronounce poor Mike Kreidler's
4 name right.

5 MR. HERRERA: You have two Texans here.

6 THE COURT: Dr. Owens may not realize the great faux
7 pas he made, leaving out Grant County. Judge Estudillo,
8 before he became a federal judge, was a Grant County Superior
9 Court Judge. So do not forget that county.

10 JUDGE ESTUDILLO: I picked up on that. As soon as
11 you said I missed one, I knew which one.

12 THE COURT: And I said: Grant County, where the hell
13 is that?

14 Q Now, in enacted LD 14, did Latinos vote cohesively for
15 Kreidler in 2020, as shown in Table 1?

16 A In 13?

17 Q In enacted LD 14.

18 A In 14. Yes, they did.

19 Q And same thing for previous LD 14.

20 A That's correct.

21 Q Okay. Now, to save everyone time from going through all
22 of these, and you can take a second to examine these, but
23 looking at the versions of LD 15 and the versions of LD 14,
24 can you -- how can you not say that Latinos vote cohesively
25 in the Yakima Valley, when Latinos vote cohesively in nine

1 out of 11 elections?

2 A One, in particular, when I made that -- in writing it, is
3 calling to the votes that you see for SD 13, one as previous
4 and enacted, and also calling into the votes there with the
5 lieutenant governor. I think in this case it's a range, the
6 context of the election between the Superintendent of Public
7 Instruction, like you said, nine out of ten, but the two
8 alternatives, as well as a different -- it shows me that the
9 Hispanics are not holding the same partisan preference,
10 across all of these geographic areas. There is variation
11 that the model is showing when we look at it
12 district-by-district.

13 Q Now, you said that Latinos are not holding the same
14 partisan preference. Are they voting cohesively, though?

15 A In some parts of the district, yes. In some parts of the
16 Yakima Valley, that's true.

17 Q So basically the parts of the Yakima Valley that don't
18 include Lincoln and Kittitas County, right?

19 A Yes, as we talked about before.

20 Q And most of Grant County, right?

21 A Um-hum. Yes. And so I can take that -- we include that
22 because of Grant County.

23 Q Okay. You keep bringing up the partisan caveat, I think.
24 And so now I kind of want to walk through some of these,
25 again. So in the 2020 Commissioner of Public Lands, would

1 you say that Latinos voted cohesively for Franz in the
2 enacted LD 15?

3 A Yes.

4 Q Latinos also voted cohesively for Franz, in that same
5 contest, in the previous LD 15, right?

6 A Yes.

7 Q Okay. Now, for State Auditor 2020, would you say that
8 Latinos voted cohesively for McCarthy in enacted LD 15,
9 previous LD 15, enacted LD 14 and previous LD 14?

10 A They did.

11 Q And on the State Treasurer 2020 race, would you say
12 Latinos voted cohesively for Pellicciotti in enacted LD 15,
13 previous LD 15, enacted LD 14, and previous LD 14?

14 A Yes.

15 Q Now, on to State Attorney General 2020. Would you say
16 Latinos voted cohesively for Mr. Hughes' boss, Mr. Ferguson,
17 in enacted LD 15, previous LD 15, enacted LD 14, Land
18 previous LD 14?

19 A Yes. The main reason why, is these margins of error all
20 overlap up and down the ballot, in each of their groups.

21 Q So there for Ferguson, on the four sections I just
22 mentioned, those are all cohesive, right?

23 A Yes, they're higher and higher.

24 Q Now, on to Secretary of State 2020 race. Would you say
25 that Latinos cohesively voted for Tarleton in enacted LD 15,

1 previous LD 15, enacted LD 14, and previous LD 14?

2 A In this case, largely, yes.

3 Q Is that, "yes"?

4 A Correct.

5 Q And for governor 2020, would you say that Latinos voted
6 cohesively for Governor Inslee in enacted LD 15, previous
7 LD 15, enacted LD 14 and previous LD 14?

8 A Yes. Just all the numbers, again, overlapping with the
9 previous elections.

10 Q And now on to the President 2020 race. Would you say that
11 Latinos voted cohesively for President Biden in enacted
12 LD 15, previous LD 15, enacted LD 14 and previous LD 14?

13 A Correct.

14 Q And now on to the 2018 U.S. Senate race, would you say
15 that Latinos voted cohesively for Cantwell in enacted LD 15,
16 previous LD 15, enacted LD 14 and previous LD 14?

17 A Yes, I still do. And the only variation that you continue
18 to see there is just the Senate support is -- again, it's a
19 little bit smaller, but continues to be overlapping margins
20 of error. And that means to me it's not statistically
21 different.

22 Q When you say "overlapping," overlapping with what?

23 A The highest area of this margin of error, and the lowest
24 of the others.

25 Q Right. But what other margin does that -- are you saying

1 it overlaps with the previous, the other elections we looked
2 at?

3 A Yes. I'm trying to read that. In this case, each column,
4 top down, and as well when we think about how much it changed
5 from the past, I'm reading them rows, left to right.

6 Q So that's pretty good, right? That seems cohesive to me.

7 A It's consistent, yes.

8 Q But are Latinos cohesive?

9 A Yes. I think that's also -- I know we were talking about
10 consistent, but what I said this morning, when we have a
11 white Democrat running against a white Republican, Latino
12 voters have shown that they're cohesive behind the Democratic
13 candidate.

14 Q There's one more on this list we didn't go over. There's
15 a couple we didn't go over. But there's one on this list
16 that I skipped. So you don't think that Latinos cohesively
17 voted for Reykdal, 2020, Superintendent of Public Instruction
18 contest, right?

19 A I don't think that the Hispanic voters were cohesive
20 behind the Democratic candidate.

21 Q However, Latinos voted cohesively for Reykdal's opponent,
22 right?

23 A Yes. In this case, you see 65 percent. So that's less
24 cohesion, but we could say moderately cohesive.

25 Q So in ten out of the eleven elections you analyzed,

1 Latinos voted cohesively in LD 14 and LD 15?

2 A Yes.

3 Q But for that election for Reykdal's opponent, you don't
4 count that toward cohesive Latino voting in your analysis,
5 right?

6 A No. Because right now, what we're talking about here is
7 -- the title of the table is voting, yeah, for the Democratic
8 candidate. And it also deviates from the pattern.

9 Q Okay. Do you agree that your Latino-vote-cohesion results
10 are substantially similar to those found by Dr. Collingwood?

11 A Yes. I think in some cases, they are quite similar. They
12 have overlapping margins of error.

13 Q Now, in your deposition in December, you told me that you
14 did not do a study of Dr. Collingwood's full analysis, right?

15 A Correct.

16 Q Okay. You also told me, in your deposition, that you did
17 not intend to conduct a study of Collingwood's report, and
18 that such a request had not been made yet, right?

19 A Can you be more clear about what the study would be?

20 Yeah, I mean, additional study. I think still generally I
21 would say it's okay, but if there's a particular specific
22 spot.

23 Q I think I just -- well, can we go to Page 106 of the
24 deposition?

25 And do you see on, starting on line 10, I said, "Okay.

1 MR. HERRERA: I pass the witness.

2 THE COURT: Thank you. All right. Attorney General
3 Erica Franklin.

4 CROSS EXAMINATION

5 BY MS. FRANKLIN:

6 Q Good afternoon, Dr. Owens. My name is Erica Franklin, and
7 I represent the State of Washington in both matters. And I
8 believe I met you virtually during your deposition.

9 A Good to see you again.

10 Q Good to see you, too.

11 Dr. Owens, is it your opinion that LD 15, as enacted,
12 is non-compact?

13 A As a district? I think I did not identify an opinion
14 about that. I think it's that the Hispanic communities
15 within LD 15 are not compact.

16 Q In reaching that conclusion, did you compare the shape of
17 enacted LD 15 to the shape of other comparable districts in
18 the state?

19 A No, I didn't make those comparisons. Again, not about the
20 district.

21 Q In your deposition, you said that you believed that vote
22 dilution, under Section 2 of the VRA, only occurs when voters
23 select candidates on the basis of the candidate's race or
24 ethnicity. Is that still your understanding?

25 A I think that's one of the ways that we're able to look at

1 to present Dr. Barreto as an expert. This document is not
2 something that was contained in any kind of signed expert
3 report, and doesn't appear to be essentially agreed to by the
4 parties. And I'm wondering if the court is even going to
5 allow him to testify to this.

6 THE COURT: Do you have any reason to doubt its
7 accuracy?

8 MR. TORCHINSKY: We didn't have a chance to get it
9 and analyze it, Your Honor.

10 MR. DUNN: It was produced in January.

11 THE COURT: Have you had it since January?

12 MR. TORCHINSKY: I don't believe it was produced to
13 us, Your Honor. I believe it might have been produced to the
14 state.

15 THE COURT: Well, as I indicated with Mr. Herrera's
16 objections, we want to hear as much as we can to make this
17 decision. And rather than use a procedural rule to stop the
18 flow of the facts, I'm going to allow everything in, and we
19 can argue about it later. If we find that it was a violation
20 of the discovery rules, we can just not consider it, which we
21 do all the time. But while the expert witness is here, I
22 want to hear from him as much as we can. So go ahead,
23 counsel.

24 Q What is shown in Exhibit 417?

25 A This is something I was specifically asked for, in the

1 subpoena. There was a line specifically asking me to produce
2 any analysis of the Nikki Torres race. And this is what I
3 had done. I had given an interview November 13th of 2022, to
4 the Yakima Herald, in which I discussed these exact results.
5 And I presume that's why they asked me for a copy of it.

6 So this is the ecological inference analysis, using our
7 eiCompare software package. You can see there are two types
8 of ecological inference done here, they're indicated by the
9 green dot and the purple dot. At the very bottom there's a
10 legend. One says "iterative EI," one "says RxC." So these
11 are the exact plots that come out of Dr. Collingwood and I's
12 eiCompare package.

13 At the top of the screen it's showing how Latino voters
14 voted in this election. And the red line, in the middle, is
15 50 percent. What it shows is that for both types of
16 ecological inference models, the iterative, or the RxC,
17 Keesling was the preferred candidate, between 60 and
18 65 percent, and Torres was not the preferred candidate,
19 receiving between 35 and 40 percent.

20 The bottom part of the chart shows non-Latino voters.
21 Everyone else in the district. And it shows that
22 overwhelmingly Torres was the preferred candidate of
23 non-Latino voters, garnering around 80 percent; and Keesling
24 garnering only around 20 percent. So this is evidence, as I
25 spoke with the reporter, that Keesling was the

1 Hispanic-preferred candidate, not Torres. And Torres was the
2 white-preferred candidate in that particular election.

3 Q Now, you recall in your past work, and as a professor,
4 that the Voting Rights Act, the *Gingles* test, talks about
5 special circumstances in some elections, in the *Gingles* 2
6 and 3. Do you know what I'm talking about?

7 A Yes.

8 Q Do you view this election as being one of those special
9 circumstances?

10 A Well, there are some special circumstances surrounding
11 this election. Even those circumstances notwithstanding,
12 Torres is not the Hispanic-preferred candidate. But
13 typically, in a competitive environment, we would have
14 expected to see probably a well-known or well-financed
15 Hispanic Democrat and Hispanic Republican running. We often
16 see that in places like California and Texas, where there are
17 real opportunity districts. We didn't see that. We saw a
18 relatively unknown, less-funded Democrat enter.

19 We also saw no candidates enter in the state house
20 legislative districts. They were completely unchallenged,
21 which is typically emblematic of non-competitive seats.

22 Q In other words, people don't run for something they know
23 they can't win?

24 A Correct. These politicians do a lot of analysis before
25 they decide to jump into a race. And oftentimes when you see

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN SOTO PALMER, et al.,) C22-5035-RSL

Plaintiffs,)

v.) Seattle, WA

STEVEN HOBBS, in his) June 5, 2023

official capacity as)
Secretary of State of) 8:30 a.m.

Washington, et al.,) TRIAL - Day 2

Defendants,)

and)

JOSE TREVINO, et al.,)

Intervenor-Defendants,)

BENANCIO GARCIA III,) C22-5152-RSL-DGE-
LJCV

Plaintiff,)

v.)

STEVEN HOBBS, in his)
official capacity as)
Secretary of State of)
Washington, et al.,)

Defendants.)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT S. LASNIK
HONORABLE DAVID G. ESTUDILLO
UNITED STATES DISTRICT JUDGES
WESTERN DISTRICT OF WASHINGTON
HONORABLE LAWRENCE J.C. VANDYKE
UNITED STATES NINTH CIRCUIT JUDGE

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1 Q And then there's also, depending on what demographic data
2 or what political data you have showing, the map will then
3 show for you, those results, and the sort of -- this is the
4 political data showing up now. This is the 2020 President
5 result, by precinct. Do you see that?

6 A I do.

7 Q And it will show, in gradations of blue and red, the
8 election results within a particular precinct, right?

9 A Correct.

10 Q And then by the same token, if you select -- you can
11 select, for the minority population, and it will show you the
12 -- by shades of sort of white to darker black, the minority
13 population locations within the county. Do you recall that?

14 A Correct.

15 Q And both the political data and racial shading data are
16 tools that you used during the process of drawing the maps?

17 A I think by the time we were actually at the process of
18 putting final maps together, we had pretty well-known, pretty
19 specific territories, dare I say, the precincts in the state,
20 I pretty well know almost all of them. So at that point in
21 time, we had a pretty good idea where the populations were.
22 So the shading not so much, or even the political data, for
23 that matter.

24 But at that point in time, through getting familiar with
25 the map, itself, these tools were used, correct.

1 Q So -- and that was -- so earlier in the process from, say,
2 August to November, earlier in that timeframe, you would have
3 been using the shading tools to sort of acquaint yourself
4 with where the minority population lived, and how that
5 corresponded with political results?

6 A Not so much how it corresponded, but just where the
7 density was. And, again, not just limited to -- today we're
8 talking about the 14th and 15th, but there were 47 other
9 districts that we were also concerned about. So it was a
10 tool that we could use in all parts of the state.

11 Q And so you're not just limited to having the shading
12 shown, right? Dave's actually will show you on the
13 right-hand column, as you hover over a precinct, what the
14 total population is; depending on which, VAP or CVAP you've
15 selected, it will list that as well for that precinct, and at
16 the same time it will show you the political results in a
17 given precinct; is that right?

18 A Correct.

19 Q So right now I have the mouse over Precinct 126. You see
20 that at the upper right-hand corner under "precinct details"?

21 A I do.

22 Q And we see there that the Hispanic CVAP is 65.6 percent of
23 that precinct. And the Democratic candidate received
24 78 percent of the vote for President. Does that look right
25 to you?

1 A That's correct.

2 Q And so as you were drawing the map and selecting precincts
3 to include within a district, or even just as if you were
4 sort of familiarizing yourself with the map, before you
5 started drawing, this was the type of information that you
6 were seeing, right?

7 A Correct. Whether it was Dave's or Autobound, both in this
8 regard, similar.

9 Q And so I've just pulled into -- we just went over a
10 substantial majority Hispanic CVAP precinct, right?

11 A Correct.

12 Q By contrast, we can look north of Yakima here, I'm
13 hovering over, I'll select it, so you can see it there,
14 that's Precinct 4603, with a white CVAP of 87.9 percent, and
15 a Republican performance or Republican vote total of
16 68.9 percent, right?

17 A That is correct.

18 Q Okay. And so I gather, given the amount of time that you
19 spent in Dave's, to the point where you said you didn't even
20 really need to have the data showing, towards the end of it,
21 you just knew, right, as you look at these communities, and
22 as you were looking at them and drawing them into districts,
23 this pattern of -- and I've just selected Wapato, for example
24 -- this pattern of the substantially majority Hispanic
25 communities, voting in near equal numbers to their population

1 it, we wanted to clearly find a compromise with our
2 counterparts, on precisely what would make sense. It's
3 candidly a difficult area of the world to map, for many
4 reasons, with several different communities of interest. As
5 I mentioned, Yakima Nation there. So certainly race, and I'm
6 sure the political leanings played a role. But it wasn't the
7 sort of consideration of the final version of the 15th.

8 Q And I guess my question is a little simpler than that.
9 You would have had to have sort of closed your eyes to what
10 you're seeing on the map, to not come away from this program
11 knowing that the Latino voters in the area were strongly
12 supporting the Democratic candidates, and the white voters
13 were strongly supporting the Republican candidates. That's a
14 fair assessment, right?

15 A Generally speaking, yes.

16 Q I gather when Dr. Barreto then came forward with his
17 analysis, you were not surprised to learn that his conclusion
18 was that the Latino voters were strongly supporting the
19 Democratic candidates in the Yakima Valley, and the white
20 voters were strongly supporting the Republican candidates?

21 A Historically speaking, yes.

22 Q Now, throughout the negotiations --

23 JUDGE VANDYKE: Why do you say "historically
24 speaking"? Why do you qualify it like that?

25 THE WITNESS: Well, there was a recent election in

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN SOTO PALMER, et al.,)	C22-5035-RSL
)	
Plaintiffs,)	
)	
v.)	Seattle, WA
)	
STEVEN HOBBS, in his)	June 2, 2023
official capacity as)	
Secretary of State of)	9:00 a.m.
Washington, et al.,)	
)	TRIAL - Day 1
Defendants,)	
)	
and)	
)	
JOSE TREVINO, et al.,)	
)	
Intervenor-Defendants,)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF WASHINGTON

APPEARANCES:

For the Plaintiff	Benjamin Phillips
Soto Palmer:	Mark Gaber
	Simone Leeper
	Aseem Mulji
	Campaign Legal Center
	1101 14th Street NW
	Suite 400
	Washington, DC 20005

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1 Q Following your initial report, did an election occur in
2 Legislative District 15?

3 A Yes.

4 Q And did you analyze the November 2022 Senate general
5 election in Legislative District 15?

6 A Yes.

7 Q Was that analysis in a supplemental report you produced in
8 this case?

9 A Yes.

10 Q And your supplemental report has been marked and admitted
11 as Plaintiffs' Exhibit 2, and you have a copy in that binder
12 in front of you. At a high level, what did you examine in
13 your supplemental report?

14 A I looked at the Legislative District 15 election, between
15 Democrat Keesling and Republican Torres, using the same
16 methodology that I had used in my other analysis. And the
17 results show that racially polarized voting is still
18 happening in that election. And the numbers are consistent,
19 generally -- broadly consistent with the findings that I've
20 found previously.

21 Q And are the results of your ecological inference analysis,
22 reported on Figure 1, on Page 4 of Exhibit 2?

23 A Yes.

24 Q And did you include confidence intervals for your
25 estimates in your report, as well?

1 A You can see the confidence intervals on the figure.

2 Q Were you able to conclude whether Latino voters had a
3 preferred candidate in the Legislative District 15 Senate
4 election in 2022?

5 A Yes.

6 Q And who was the Latino-preferred candidate in that
7 election?

8 A The Democrat, Keesling.

9 Q Was it your observation, as a political scientist, that
10 abortion was a driving issue in the 2022 election, across the
11 country, following the Supreme Court decision in Dobbs?

12 A I mean, overall, certainly there was a lot of attention on
13 abortion.

14 Q You nevertheless found that Latino voters in Legislative
15 District 15 voted cohesively in the 2022 election, right?

16 A Yes. You can see the results for yourself. They're
17 backing Keesling, or however you pronounce that.

18 Q Let's pull up Figure 2, on Page 5 of Exhibit 2. Can you
19 describe what Figure 2 shows?

20 A This is what's known as a bipartite scatterplot. It's kind
21 of the old-school way of doing racially polarized voting. So
22 these are precincts. I believe Dr. Alford did some of this
23 in his report, where you plot, basically -- let's take, for
24 example, for the court, the top left figure. And what we're
25 looking at is a trend line. You can see that red line;

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Hon. Robert S. Lasnik

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, and
the STATE OF WASHINGTON,

Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS,
and State Representative, ALEX YBARRA,

Intervenor-Defendants.

Case No. 3:22-cv-05035-RSL

JOINT PRETRIAL STATEMENT
AND [PROPOSED] ORDER

I. JURISDICTION

1. The Court has federal jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331; 1343(a)(3) and (4); 1357, 42 U.S.C. § 1983, and 52 U.S.C. § 10301. The Court has jurisdiction to grant relief pursuant to 28 U.S.C. §§ 2201 and 2202; the Declaratory Judgments Act, and Federal Rules of Civil Procedure 57 and 65.

2. The Court has jurisdiction over Plaintiffs’ claim for costs and attorneys’ fees under Federal Rule of Civil Procedure 54, 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e).

II. CLAIMS AND DEFENSES

Plaintiffs will pursue the following claims at trial:

1. Race and language minority discrimination with discriminatory results in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

1 3. Race and language minority discrimination with discriminatory intent in violation
2 of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

3 4. Based on the conclusions of the State of Washington’s expert, the other record
4 evidence, and factual findings in relevant VRA cases, the State cannot and does not intend to
5 dispute at trial that *Soto Palmer* Plaintiffs have satisfied the three *Gingles* preconditions for
6 pursuing a claim under section 2 of the VRA based on discriminatory results. Based on the same
7 evidence, the State cannot and does not intend to dispute that the totality of the evidence test
8 likewise favors the *Soto Palmer* Plaintiffs’ claim based on discriminatory results.

9 5. The State disputes, however, that the Redistricting Commission intentionally
10 discriminated against Hispanic voters, and intends to present evidence to the contrary, if necessary.

11 6. The State does not intend to assert any affirmative defenses or counterclaims.

12 7. Secretary Hobbs does not intend to pursue any affirmative defenses at trial.

13 8. *Soto Palmer* Plaintiffs contend Intervenor-Defendants waived defenses Nos. 7 and
14 8 below by failing to raise them as affirmative defenses in their Answer.

15 **Intervenor-Defendants will raise the following defenses at trial:**

16 1. *Thornburg v. Gingles*, 478 U.S. 30 (1986), lists three preconditions (“*Gingles*
17 preconditions”) necessary to prove a claim under Section 2 of the Voting Rights Act, 52 U.S.C. §
18 10301, and Plaintiff cannot establish any of those three preconditions. Specifically, Plaintiff cannot
19 prove the following:

- 20 a. That a minority group is sufficiently large and geographically compact to
21 constitute a majority in a reasonably configured Legislative District 15 (“LD”
22 15”);
- 23 b. That the same minority group is politically cohesive; and
- 24

1 c. That LD 15’s white majority votes sufficiently as a bloc to usually defeat the
2 minority’s preferred candidate.

3 2. Plaintiffs cannot prove by a totality of circumstances—using the Senate Report
4 Factors, *Gingles*, 478 U.S. at 35–37—that the proposed map has a discriminatory impact.

5 3. “[Section] 2 of the Voting Rights Act of 1965 does not apply to redistricting.”
6 *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018) (Thomas, J. concurring).

7 4. Plaintiffs have no lawful remedy. Specifically, Plaintiffs seek a remedy that violates
8 the Fourteenth Amendment to the U.S. Constitution by requiring a map drawn on the basis of race.

9 5. Plaintiffs are unable to establish the elements required for injunctive relief.

10 6. Plaintiffs seek inappropriate relief, including relief that is not within Intervenor or
11 any of the present Defendants’ authority to accomplish.

12 7. Section 2 of the Voting Rights Act does not protect political parties or correlations
13 between race and politics, and is only available to protect against the specified government actions
14 “on account of race.”

15 8. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, does not establish a private
16 right of action.

17 III. ADMITTED FACTS

18 The following facts are admitted by the parties:

19 Party Information

20 1. Plaintiff Susan Soto Palmer is registered to vote at 1214 Voelker Avenue, Yakima,
21 WA 98902, which is located in Legislative District 15 in the Enacted Plan.

22 2. Plaintiff Soto Palmer identifies her ethnicity as Hispanic Latino.

1 3. Plaintiff Alberto Isaac Macias is registered to vote at 1517 Cherry Avenue, Yakima,
2 WA 98902.

3 4. Plaintiff Macias resides in LD 14 in the Enacted Plan, and voted in that district in
4 the 2022 elections.

5 5. Plaintiff Macias identifies his ethnicity as Latino Hispanic.

6 6. Plaintiff Faviola Lopez is registered to vote at 3291 Kays Road, Wapato, WA
7 98951, which is located in LD 14 in the Enacted Plan.

8 7. Plaintiff Lopez identifies her ethnicity as Latina.

9 8. Plaintiff Caty Padilla is registered to vote at 1401 Hammond Lane, Toppenish, WA
10 98948, which is located in LD 14 in the Enacted Plan.

11 9. Plaintiff Padilla identifies her ethnicity as Latina.

12 10. Plaintiff Heliadora Morfin is registered to vote at 1115 W. Irving Street, Pasco, WA
13 99301, which is located in LD 15 in the Enacted Plan.

14 11. When asked, Plaintiff Morfin identified her ethnicity as Mexican and her race as
15 other.

16 12. The U.S. Census Bureau defines Hispanic or Latino as a “person of Cuban,
17 Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless
18 of race.”

19 13. Intervenor-Defendant Alex Ybarra lives in Quincy, Washington, in LD13 in the
20 Enacted Plan.

21 14. Intervenor Defendant Ybarra is a State Representative for the State of Washington,
22 a United States citizen, over the age of eighteen, and a registered voter in the State of Washington.

23

24

1 15. Intervenor-Defendant Ismael Campos is a United States citizen, over the age of
2 eighteen, and a registered voter in the State of Washington.

3 16. Intervenor-Defendant Campos resides in Kennewick, Washington, in LD 8 in the
4 Enacted Plan.

5 17. Intervenor-Defendant Jose Trevino resides in Granger, Washington, in LD 15 in
6 the Enacted Plan.

7 18. Intervenor-Defendant Trevino is the current Mayor of Granger, Washington, a
8 United States citizen, over the age of eighteen, and a registered voter in the State of Washington.

9 19. Intervenor Defendant Trevino identifies his ethnicity as Hispanic.

10 **Demographics of Washington**

11 20. According to the 2020 Census, over one million people in Washington identify as
12 Hispanic or Latino.

13 21. Washington received P.L. 94-171 data on August 12, 2021.

14 22. According to P.L. 94-171 data, Washington State’s population grew by 980,741
15 residents from 2010 to 2020, a growth rate of 14.5%.

16 23. According to the 2020 Census data, Washington has the eleventh-largest population
17 of people identified as Hispanic or Latino among the fifty states.

18 24. According to the 2020 Census, the combined population of people who identify as
19 Hispanic or Latino in Yakima, Franklin, and Benton counties was 231,833.

20 25. According to 2010 and 2020 Census data, the Latino or Hispanic identified
21 population in Washington grew by 303,423 between 2010 and 2020 for a growth rate of
22 approximately 40.1%, compared to a growth rate of approximately 11.3% for non-
23 Hispanic/Latinos.

1 84. When HCR 4407 was brought up for a vote in the Washington State Senate, the
2 Senate Majority Leader, the first senator to speak about the measure, began his speech by stating
3 that “I want to start by talking about what this resolution is not. It is not an approval of the
4 redistricting map and the redistricting plans; it’s not an endorsement of that plan. The Legislature
5 does not have the power to approve or endorse the redistricting plan that the Redistricting
6 Commission approved. What we do have the power to do is to make minor changes. And that
7 brings us to what this resolution does. This resolution makes over 70 small changes to the
8 redistricting plan. They’re minor, mostly technical changes. Almost all of them were
9 recommended by the county auditors, who are the local elections officials. And they help to make
10 the maps work better.”

11 85. LD 15 in the Enacted Plan has a Hispanic or Latino CVAP of 50.02% and a white
12 CVAP of 44.9% according to 2019 5-Year ACS estimates. LD 15 in the Enacted Plan has a
13 Hispanic or Latino CVAP of 51.5% and a white CVAP of 43.2% according to 2020 5-year ACS
14 estimates.

15 **Map Proposals**

16 86. The Census Bureau publicly released the 2020 5-Year ACS estimates in March
17 2022.

18 87. None of the four legislative maps proposed by the Commissioners on September
19 21, 2021 included a district with majority-Hispanic or Latino CVAP.

20 88. Plaintiffs use the term “southcentral Washington” to refer to the area encompassed
21 in Yakima, Adams, Benton, Grant, and Franklin Counties.

22 89. The southcentral Washington (as defined by Plaintiffs) district with the highest
23 Hispanic or Latino CVAP percentage in Commissioner Graves’s September 21, 2021 proposal,
24

1 2014). The court reviewed evidence regarding the three *Gingles* factors and concluded that each
2 was satisfied with respect to Latino voters in the City of Yakima. *Id.* At 1390-1407. The Court
3 also found that the totality of the circumstances demonstrated that the City’s electoral process was
4 not equally open to participation by Latino voters after analyzing the Senate Factors. *Id.* At 1408-
5 1414.

6 121. In *Glatt v. City of Pasco*, a challenge to Pasco’s at-large voting system, the court
7 entered a consent decree in which the parties stipulated to each *Gingles* factor as well as a finding
8 that the totality of the circumstances shows an exclusion of Latinos from meaningfully
9 participating in the political process. *See* Partial Consent Decree, *Glatt v. City of Pasco*, No. 4:16-
10 CV-05108-LRS, ECF No. 16 ¶¶ 15-22 (E.D. Wash. Sep. 2, 2016); *see also* Mem. Op. and Order,
11 *Glatt v. City of Pasco*, No. 4:16-CV-05108-LRS, ECF No. 40 at 29 (E.D. Wash. Jan. 27, 2017).

12 122. In *Aguilar v. Yakima County*, No. 20-2-0018019 (Kittitas Cnty. Super. Ct.), a
13 challenge against the at-large voting system used in Yakima County, the parties entered and the
14 court approved a settlement agreement finding that the conditions for a violation of the Washington
15 Voting Rights Act, including a showing of racially polarized voting, had been met in Yakima
16 County.

17 **2024 Elections**

18 123. Under recently enacted legislation, statutory deadlines for the 2024 election cycle
19 include RCW 29A.16.040, which will require precinct boundaries be drawn no later than 7 days
20 before the first day for candidates to file for the primary election, and RCW 29A.24.050, which
21 sets the first Monday in May as the first day for candidates to declare their candidacy.

Deposition of Benancio Garcia III

Garcia III v. Hobbs, et ano. / Palmer v. Hobbs, et al.

February 3, 2023



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BENANCIO GARCIA III,)
)
 Plaintiff,)
)
 v.) No. 3:22-cv-5152-RSL
)
 STEVEN HOBBS, in his official)
 capacity as Secretary of State)
 of Washington, and STATE OF)
 WASHINGTON,)
)
 Defendants.)

and)
)
 SUSAN SOTO PALMER, et al.,)
)
 Plaintiffs,)
)
 v.) No. 3:22-cv-5035
)
 SECRETARY OF STATE STEVEN)
 HOBBS, in his official)
 capacity as Secretary of State)
 of Washington, et al.)
)
 Defendants.)

VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION OF
BENANCIO GARCIA III

Tacoma, Washington

(All participants appeared via videoconference.)

DATE TAKEN: FEBRUARY 3, 2023

REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

1 BY MR. GABER:
 2 **Q. And is that the case in the Pasco area as well?**
 3 A. Tri-Cities tends to do better, but I can't say
 4 that that is, because I wouldn't know, but I can say in
 5 Yakima, Lower Valley, free school lunch, you know. You
 6 can see a lot of that and that purpose, but I can't say
 7 I would -- I could say, you know, Tri-Cities itself.
 8 **Q. Okay. But the -- the Yakima and the Lower**
 9 **Valley, the Latino communities would share that in**
 10 **common?**
 11 A. Yeah, most would have that in common in that
 12 demographic area.
 13 **Q. And you were speaking in particular about how**
 14 **you would be the only candidate in your primary race who**
 15 **would be able to represent the Latino people.**
 16 **Was it your impression that the candidates you**
 17 **were running against were not really campaigning for**
 18 **Latino votes in the primary?**
 19 A. No. What I'm trying to say is that I want more
 20 participation, and it's time for -- to try to get
 21 everybody registered, which is, you know, a large Latino
 22 population. You know, you want to see Latino
 23 representation in leadership positions, but you want to
 24 make sure that you do it through a fair process under
 25 our constitution.

1 A. Yeah, in the 4th District.
 2 **Q. Now, I read a newspaper article about a**
 3 **controversy surrounding telephone messages that**
 4 **supporters of yours wanted to be put out by the State**
 5 **Republican Party, and there was an article where you**
 6 **were criticizing the party for its actions there.**
 7 **Do you recall that?**
 8 A. That's correct. Absolutely. That's correct.
 9 **Q. And one of the things that you alleged was that**
 10 **the State Republican Party was trying to suppress Latino**
 11 **voters in the primary.**
 12 **Do you recall that?**
 13 A. Absolutely. That is correct.
 14 **Q. Can you just talk a little bit, explain that --**
 15 **that event and -- and what --**
 16 A. I will. First of all, I was one of five
 17 Latinos in the nation to get supported out of Latino
 18 StrikeForce out of Texas. Now, the RNC was involved to
 19 help use the -- the phone bank system of the Republican
 20 Party.
 21 Now, we created our message, both in Spanish
 22 and English, and we had approval to do this. And so for
 23 every registered 4th District Latino Republican, we put
 24 on that phone bank.
 25 Now, this phone bank system was to help us to

1 So you're representing everyone. I want to
 2 make that clear. You're representing everyone, and --
 3 and you're doing what's in the best interest of your
 4 district, you know, or 4th Congressional District, I
 5 should say. So you're representing everybody.
 6 What I want to see is more inclusion across the
 7 board, you know, and that's why, when I went out there
 8 to try to register voters, I didn't care who you are. I
 9 want you to register, please. It's that important.
 10 **Q. I agree with that. I get that.**
 11 **Is it your impression that, in particular,**
 12 **there's lower voter registration among Latino voters in**
 13 **Yakima County than is the case with the proportion of**
 14 **white voters who are registered to vote?**
 15 A. It's been proven in the past, and you can look
 16 at some of the news articles that Yakima Herald has put
 17 out, that, you know, even though there's a large
 18 representation in the Latino population, that when it
 19 comes time to vote, unfortunately, there hasn't been
 20 large numbers in being able to vote for whatever
 21 candidate.
 22 **Q. Right. So that's lower voter turnout among**
 23 **Latino voters in Yakima area, as well as lower voter --**
 24 A. Lower turnout in overall aspects.
 25 **Q. Okay.**

1 get our vote out. And so the message was changed,
 2 re- -- an RNC member who worked with the Washington
 3 State Republican Party, with Caleb, who's the chairman
 4 of the Washington State Republican Party and his
 5 staffing, we had to get approval to use that, and we
 6 finally did.
 7 It was greatly delayed, for about three months.
 8 Not only was it delayed, but when we got the messaging
 9 out there for the voicemail, we had done over 10,000
 10 plus phone calls.
 11 And they switched the voicemail message. And
 12 so it looked like Washington State Republican Party, a
 13 general message, instead of saying, vote for Benancio
 14 Garcia, 4th Congressional District candidate, and here's
 15 the reason why.
 16 Now, the only reason we found out about that
 17 was because an RNC member quit. Gave me a phone call,
 18 said, Ben, I quit because the Washington Republican
 19 Party switched your voicemail. That is suppressing the
 20 Latino vote.
 21 Then there is the second aspect of things,
 22 number two. They had funds -- Washington State
 23 Republican Party had funds to hire two supervisors, one
 24 in Yakima and one in Wenatchee, to register Republican
 25 Latinos. They hired nobody.

1 Me being the only Latino representative, it
 2 would have favored. Dan Newhouse would no longer be
 3 your congressional victor. It probably would have been
 4 Culp. But they greatly affected this election, the
 5 outcome, and suppressed the Latino vote.
 6 **Q. And was it your sense that that was sort of a**
 7 **coordinated effort in the State Republican Party, to**
 8 **suppress the Latino vote in the area?**
 9 A. What I will say is this: They say it was a
 10 mistake. There's no mistakes in a congressional race
 11 like this. We have a third party out of Texas that told
 12 them there was no misunderstanding to -- and --
 13 misunderstanding about this.
 14 As a matter of fact, you know, you probably
 15 didn't see this, since you did your research on me. Did
 16 you see the fact that I saved somebody's life in a --
 17 **Q. I did --**
 18 A. -- mass shooting? You know?
 19 **Q. I did see that, and that was extraordinarily**
 20 **impressive.**
 21 A. You know, I thank God that I was there at the
 22 right place, right time. My -- my thing is like it was.
 23 I didn't change. I believe in seeing all people's
 24 rights. I believe strongly in the civil rights.
 25 That's why I was Ebony Senate rep in college.

1 And I feel -- and it doesn't matter which party it is,
 2 I will do the right thing. For our voice not to be
 3 heard and what I feel is suppression, we can disagree
 4 upon this, and I welcome a lawsuit, you know.
 5 We did not get fair representation in this 4th
 6 Congressional District race. And it's not on the
 7 candidate. This was done -- they can say, well, Ben,
 8 you know you need to pay for that.
 9 At no point in time, especially since I was
 10 supported by a third party who is well connected to the
 11 RNC, was that ever brought up. Why didn't you ask me,
 12 we can't do this, instead of having my volunteers phone
 13 bank, and instead of having my voice message out, it was
 14 for the Washington State Republican Party. Not
 15 acceptable.
 16 **Q. And is it the case that you didn't find out**
 17 **about this until after this had -- the decision had been**
 18 **made not to use your message?**
 19 A. It was before. It was before the decision. I
 20 found out during the campaign process, but, you know,
 21 those are -- are strong challenges when you've already
 22 committed so many hours and so much in volunteers to
 23 have to overcome. You can't take that time back.
 24 **Q. Right.**
 25 A. The impact has already been done.

1 **Q. You said the RNC member told you he was**
 2 **quitting because of this; is that right?**
 3 A. That's my understanding.
 4 **Q. And that was because of the suppression of the**
 5 **Latino vote in your race?**
 6 A. Because of what happened in my race, yes,
 7 that's correct.
 8 **Q. Has anything been done to rectify the situation**
 9 **with the State Republican Party?**
 10 A. What I -- what I do want to do is go ahead,
 11 after I'm completely settled in in my home and -- and
 12 take care of other personal matters, I will go ahead and
 13 then write a letter to the RNC, write a letter to the
 14 state chairman, and write a letter to the 4th District
 15 chairmen, chairpersons, and let them know about what has
 16 occurred, what has happened.
 17 This isn't just my word. You know, to be
 18 supported, one in five in the nation, Latinos, that's a
 19 privilege, and to know that the phone bank system does
 20 work because they have a history of getting winning
 21 candidates.
 22 So I will be putting that out there, and I will
 23 leave it in the hands of the Republican Party on what
 24 they want to do, but I will certainly entertain the fact
 25 that I may take legal aspects on this in some manner

1 because what occurred is not acceptable. And I am a
 2 fighter, you know. And if it's wrong, I will fight it.
 3 **Q. Did you hear from Latino voters who were upset**
 4 **that this had happened in your race?**
 5 A. A lot of people were upset. I gave a speech
 6 about it in Ellensburg -- not Ellensburg. I gave a
 7 speech about it -- oh, gosh, what district? I gave a
 8 speech about it, and some of the candidates had
 9 questions, you know, like what are you talking about
 10 exactly here? You know.
 11 And this, like I said, was later on toward --
 12 you know, toward the end, where, you know, you had to
 13 make it clear how the facts have occurred. And the
 14 people were upset, you know.
 15 And what was wonderful is, you know, to see
 16 some of the candidates say, what exactly are we talking
 17 about here, whether it was Culp's people or whether it
 18 was Sessler's people, you know, or it was people in
 19 general that were there asking questions, you know, "Are
 20 you saying this happened?"
 21 I go, "Absolutely, and this is why."
 22 And it's just not my word. You don't give us
 23 access to your phone bank system -- because they, like
 24 the Democrat Party can go ahead and say, hey, let me
 25 see -- look at your -- look at your phone system, you

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, et al.,

Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS,
and State Representative ALEX YBARRA,

Intervenor-Defendants.

Case No.: 3:22-cv-5035-RSL

**INTERVENOR-DEFENDANTS’
OPPOSITION TO PLAINTIFFS’
MOTION TO BIFURCATE AND
TRANSFER, STRIKE, AND/OR DISMISS
INTERVENORS’ CROSSCLAIM¹**

INTRODUCTION

Plaintiffs take issue with a Crossclaim that does not concern them and then wrongly accuse Intervenor of bad faith with their misguided bifurcation arguments.

Plaintiffs take Intervenor-Defendants’ (“Intervenor”) original statement that Intervenor did not plan to raise any new claims “today,” meaning March 29, as evidence of Intervenor’s bad faith in bringing the Crossclaim. (Dkt. # 105 at 1; *see* Dkt. # 57 at 11–12.) That sentiment was

¹ Intervenor styles this brief as “Opposition” to Plaintiffs’ Motion—instead of a response or reply—because the procedural posture of this issue is unclear at the moment. Intervenor filed their Amended Answer and Crossclaim in accordance with the Court’s Scheduling Order, but mentioned therein that—should the Court deem it necessary for Intervenor to file leave to amend—the pleading be treated as a motion for leave to amend. (Dkt. # 103 at n.1.) It is unclear how the Court is treating the Amended Answer and Crossclaim, and, consequently, it is unclear whether Intervenor is responding to Plaintiffs’ Motion or replying to Plaintiffs’ Response to Intervenor’s Motion for Leave.

1 expressed in good faith then, and, in similar good faith, Intervenor now recognize that things have
 2 changed. Discovery has since shown that Legislative District 15 (“LD 15”) was an unconstitutional
 3 racial gerrymander as various deponents, both Commission members and their staff, made it clear
 4 that LD 15 was drawn with a +50% Hispanic/Latino CVAP as a target. Intervenor now (1) assert
 5 their Crossclaim against Defendants State of Washington and Secretary Hobbs; (2) demand a
 6 three-judge panel for Intervenor’s constitutional claim; (3) seek to keep all discovery together for
 7 judicial efficiency (which Intervenor and the State have already been doing up to this point in the
 8 *Palmer* litigation); and (4) represent that plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D.
 9 Wash.), will dismiss that action should Intervenor’s Crossclaim go forward.²

10 Plaintiffs present this Court with a strawman version of Intervenor’s Amended Answer and
 11 Crossclaim. The Motion to Bifurcate and Transfer, Strike, and/or Dismiss (“Motion”) Intervenor’s
 12 Crossclaim is a hyperbolic misrepresentation of the Intervenor’s position and is presented without
 13 the standing necessary to request much of the relief it seeks. For example, Plaintiffs wrongly state
 14 that, “at the eleventh hour, two of the three Intervenor-Defendants . . . no longer seek to defend the
 15 [redistricting] plan and have instead amended their Answer to file a crossclaim challenging LD
 16 15’s legality.” (Dkt. # 105 at 2.) This oversimplistic explanation misrepresents Intervenor’s
 17 position.

18 Intervenor *do* seek to defend the plan against claims that it violated the Voting Rights Act
 19 (“VRA”) or that a VRA district is even required in the Yakima Valley. (Dkt. # 103 at 31–32)
 20 (providing affirmative defenses to Plaintiffs’ claims that the redistricting plan violates the VRA.)
 21 But—as discovery has made clear—the Commission pursued a racial target for LD 15. (Dkt. # 103
 22 at 48–51.) Intervenor Ybarra and Trevino, therefore, seek to challenge the constitutionality of the
 23 plan on the grounds that it is a racial gerrymander in violation of the Fourteenth Amendment, and
 24 Intervenor do so by crossclaiming two parties that are already defendants in this case. Simply put,
 25 Intervenor are *defending* the plan against Plaintiffs’ *statutory* challenge but *attacking* the plan on
 26

27 ² Lead counsel for Intervenor-Defendants is also lead counsel for Plaintiffs in the *Garcia* matter.

1 constitutional grounds—*i.e.*, a VRA district is *not* required in the Yakima Valley, however, a new
 2 map does need to be redrawn to include a race-neutral LD 15.

3 The distinction between the constitutional and statutory claims is also pertinent to
 4 Intervenor’s demand for a three-judge court. Intervenor makes this demand only for the
 5 constitutional claim, to which they are entitled as a matter of right. *See* 28 U.S.C. § 2284.
 6 Intervenor does not demand a three-judge court to hear Plaintiff’s statutory claims; although, should
 7 the Court send all the claims to a three-judge court as a matter of judicial efficiency³, Intervenor
 8 would welcome the decision. That said, Intervenor partially agrees with Plaintiff that the claims
 9 may be bifurcated, but only for trial purposes. The result is that this Court would hear Plaintiff’s
 10 VRA claims, and the three-judge court, which would include this Court as one of its members,
 11 would hear Intervenor’s Fourteenth Amendment claim—but that discovery, primarily depositions,
 12 would be done together. This process would be made easier by keeping the Intervenor and Cross-
 13 Plaintiff the same.

14 A bifurcation of discovery, however, does not make sense. Maintaining a consolidated
 15 discovery for the statutory and constitutional claims—both of which involve the State of
 16 Washington and Secretary Hobbs—will make discovery easier, more efficient, and less expensive.
 17 It will also not affect Plaintiff because they are not Cross-Defendants. Indeed, it will require no
 18 alteration of the Court’s current Scheduling Order. Plaintiff also acknowledge that “the racial
 19 gerrymandering claim necessarily depends upon the resolution of Plaintiff’s VRA claim.” (Dkt. #
 20 105 at 2.) It is nonsensical to maintain two separate cases—this case and *Garcia*—when resolution
 21 of the claim in *Garcia* necessarily turns on the claims in this case.⁴

22 Intervenor oppose Plaintiff’s request to transfer Intervenor’s Crossclaim to *Garcia*. First,
 23 Plaintiff lack standing to make this request because they are not Cross-Defendants. The
 24

25 ³ Assuming the three-judge court would include this Court, in the interest of judicial efficiency, the three-judge panel
 26 could hear the case as a whole, as both claims will largely consist of the same evidence, and then separate opinions
 could be issued for the statutory and constitutional claims, respectively.

27 ⁴ That said, the Supreme Court has never affirmatively held that compliance with the Voting Rights Act is sufficient
 to meet strict scrutiny, only that it is “assumed” to do so. *Wis. Legislature v. Wis. Elections Comm’n*, 142 S. Ct. 1245,
 1248 (oer curiam) (“We have assumed that complying with the VRA is a compelling interest.”).

Table 1: Ecological Regression Estimates of the Percent of Hispanic Voters Voting Democratic under the Enacted and Previous Senate maps
(Confidence Interval in Parentheses to indicate Margin of Error)

Year	Office	Candidate Race/Ethnicity	Democratic Candidate	Enacted SD-15	Previous SD-15	Enacted SD-14	Previous SD-14	Enacted SD-13	Previous SD-13
2020	Insurance Commissioner	W – A	Kreidler	79% (75.7, 82.3)	82% (79.2, 83.8)	86% (83.7, 88.3)	86% (80.1, 86.3)	50% (46.6, 52.9)	59% (56.0, 61.8)
2020	Commissioner of Public Lands	W – W	Franz	75% (71.4, 78.9)	78% (75.3, 80.6)	84% (81.5, 86.7)	81% (78.5, 84.4)	44% (40.0, 47.1)	53% (50.0, 56.4)
2020	Superintendent of Public Instruction	W – H	Reykdal	35% (33.5, 36.6)	33% (32.0, 34.5)	37% (35.9, 38.9)	42% (40.6, 44.1)	30% (28.1, 31.5)	33% (31.3, 34.5)
2020	State Auditor	W – W	McCarthy	75% (71.7, 79.0)	78% (75.4, 80.5)	84% (82.9, 87.0)	82% (81.9, 87.0)	46% (42.1, 49.1)	55% (52.1, 58.5)
2020	Treasurer	W – W	Pellicciotti	73% (69.1, 76.5)	76% (73.2, 78.4)	83% (80.7, 85.8)	80% (77.5, 83.4)	43% (39.9, 46.9)	53% (49.7, 56.0)
2020	Attorney General	W – W	Ferguson	76% (71.8, 79.3)	79% (76.0, 81.3)	85% (82.6, 87.8)	83% (79.7, 85.7)	45% (41.8, 49.1)	55% (52.1, 58.7)
2020	Secretary of State	W - W	Tarleton	69% (65.8, 73.0)	72% (69.5, 74.8)	80% (77.2, 82.2)	76% (73.1, 79.0)	42% (39.0, 45.4)	52% (48.7, 54.5)
2020	Lt. Governor**	W – W	Heck / Liias	49% (47.0, 51.3)	47% (45.9, 48.7)	45% (43.2, 46.4)	45% (42.9, 46.7)	52% (49.2, 53.9)	53% (50.2, 55.0)
2020	Governor	W – W	Inslee	74% (70.0, 77.4)	76% (73.4, 79.0)	82% (79.5, 84.8)	79% (76.0, 82.1)	39% (35.1, 42.2)	50% (46.4, 52.9)
2020	U.S. President	W/B – W/W	Biden	76% (72.3, 80.0)	79% (76.8, 82.1)	86% (83.4, 88.6)	83% (80.1, 86.2)	44% (40.5, 48.1)	54% (50.5, 57.4)
2018	U.S. Senate	W – W	Cantwell	73% (69.7, 76.4)	75% (72.9, 77.7)	81% (78.6, 83.3)	74% (71.7, 77.2)	37% (34.0, 40.4)	44% (41.5, 47.0)

** Two Democratic candidates were on the November general election ballot. W indicates the candidate was non-Hispanic White. B indicates the President's running mate was Black. H indicates the candidate was Hispanic. A indicates the candidate was Asian. *Note:* The first letter represents the Democratic nominee or a candidate who preferred the Democratic party.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,
Plaintiffs,
v.
STEVEN HOBBS, *et al.*,
Defendants.

Cause No. C22-5035RSL

ORDER GRANTING MOTION TO
INTERVENE

This matter comes before the Court on a “Motion to Intervene” filed by Jose Trevino (a resident of Granger, Washington), Ismael Campos (a resident of Kennewick, Washington), and Alex Ybarra (a State Representative and resident of Quincy, Washington). Dkt. # 57. Plaintiffs filed this lawsuit to challenge the redistricting plan for Washington’s state legislative districts, alleging that the Washington State Redistricting Commission (“the Commission”) intentionally configured District 15 in a way that cracks apart politically cohesive Latino/Hispanic¹ populations and placed the district on a non-presidential election year cycle in order to dilute Latino voters’ ability to elect candidates of their choice. Plaintiffs assert a claim under Section 2

¹ The Complaint and this Order use the terms “Hispanic” and “Latino” interchangeably to refer to individuals who self-identify as Hispanic or Latino and to persons of Hispanic Origin as defined by the United States Census Bureau and United States Office of Management and Budget.

1 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10301(a), and request that the Court enjoin
2 defendants from utilizing the existing legislative map and order the implementation and use of a
3 valid state legislative plan that does not dilute, cancel out, or minimize the voting strength of
4 Latino voters in the Yakima Valley.

5 Plaintiffs named as defendants Steven Hobbs (Washington’s Secretary of State), Laurie
6 Jinkins (the Speaker of the Washington State House of Representatives), and Andy Billig (the
7 Majority Leader of the Washington State Senate). The claims against Representative Jinkins and
8 Senator Billig were dismissed on the ground that plaintiffs failed to plausibly allege an
9 entitlement to relief from either of them. Dkt. # 66 at 4-5. Secretary Hobbs does not have an
10 interest in defending the existing districting plan and has taken no position regarding the merits
11 of plaintiffs’ Section 2 claim. The intervenors assert that they are registered voters who intend to
12 vote in future elections and that they have a stake in this litigation. Mr. Trevino falls within
13 District 15 as drawn by the Commission, Mr. Campos falls within District 8 and could find
14 himself in District 15 if new boundaries are drawn, and Representative Ybarra represents
15 District 13, the boundaries of which may shift if plaintiffs’ prevail in this case.

16 **A. Intervention as of Right**

17 Rule 24 of the Federal Rules of Civil Procedure establishes the circumstances in which
18 intervention as a matter of right is appropriate:

19 (a) Intervention of Right. On timely motion, the court must permit anyone to
20 intervene who:

21 (1) is given an unconditional right to intervene by a federal statute; or

1 (2) claims an interest relating to the property or transaction that is the subject of
2 the action, and is so situated that disposing of the action may as a practical matter
3 impair or impede the movant’s ability to protect its interest, unless existing parties
adequately represent that interest.

4 The Ninth Circuit has distilled four elements from Rule 24(a): intervention of right applies when
5 an applicant “(i) timely moves to intervene; (ii) has a significantly protectable interest related to
6 the subject of the action; (iii) may have that interest impaired by the disposition of the action;
7 and (iv) will not be adequately represented by existing parties.” *Oakland Bulk & Oversized*
8 *Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020) (citation omitted).

9 Plaintiffs argue that intervenors cannot satisfy the first, second, or fourth criteria. “While an
10 applicant seeking to intervene has the burden to show that these four elements are met, the
11 requirements are broadly interpreted in favor of intervention.” *Citizens for Balanced Use v.*
12 *Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (citation omitted).

13 (1) Timeliness

14 Intervenors’ motion to intervene was timely filed. The motion was filed a week after it
15 became apparent that none of the named defendants were interested in defending the existing
16 redistricting map, and it had had no adverse impact on the resolution of the then-pending motion
17 for preliminary injunction.

18 (2) Significant Protectable Interest

19 A proposed intervenor “has a significant protectable interest in an action if (1) it asserts
20 an interest that is protected under some law, and (2) there is a relationship between its legally
21

1 protected interest and the plaintiff's claims." *Kalbers v. United States Dep't of Justice*, 22 F.4th
2 816, 827 (9th Cir. 2021) (citation omitted). "The interest test is not a clear-cut or bright-line rule,
3 because no specific legal or equitable interest need be established. . . . Instead, the 'interest' test
4 directs courts to make a practical, threshold inquiry and is primarily a practical guide to
5 disposing of lawsuits by involving as many apparently concerned persons as is compatible with
6 efficiency and due process." *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir.
7 2002) (internal quotation marks, citations, and alterations omitted). "The relationship
8 requirement is met if the resolution of the plaintiff's claims actually will affect the applicant."
9 *Id.*

10 Intervenor Trevino and Campos claim "an interest in ensuring that any changes to the
11 boundaries of [their] districts do not violate their rights to 'the equal protection of the laws'
12 under the Fourteenth Amendment" Dkt. # 57 at 6. Representative Ybarra claims "a
13 heightened interest in not only the orderly administration of elections, but also in knowing
14 which voters will be included in his district." *Id.* All three intervenors claim an interest in the
15 boundaries of the legislative districts in which they find themselves and "in ensuring that
16 Legislative District 15 and its adjoining districts are drawn in a manner that complies with state
17 and federal law." *Id.* at 6-7.

18 As an initial matter, under Washington law, intervenors have no right or protectable
19 interest in any particular redistricting plan or boundary lines. The legislative district map must
20 be redrawn after each decennial census: change is part of the process. Intervenor, in keeping
21

1 with all other registered voters in the State of Washington, may file a petition with the state
2 Supreme Court to challenge a redistricting plan (RCW 44.05.130), but they have no role to play
3 in the redistricting process. Nor is there any indication that a general preference for a particular
4 boundary or configuration is a legally cognizable interest.

5 Intervenors do not allege that their right to vote or to be on the ballot will be impacted by
6 this litigation. Nor have they identified any direct and concrete injury that has befallen or is
7 likely to befall them if plaintiffs' Section 2 claim is successful. Rather, they broadly allege that
8 they have an interest in ensuring that any plan that comes out of this litigation complies with the
9 Equal Protection Clause, state law, and federal law. But a generic interest in the government's
10 "proper application of the Constitution and laws, and seeking relief that no more directly and
11 tangibly benefits [the intervenors] than it does the public at large[,] does not state an Article III
12 case or controversy" (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992)), and it would
13 be premature to litigate a hypothetical constitutional violation (*i.e.*, being subjected to a racial
14 gerrymander through a remedial map established in this action) when no such violative conduct
15 has occurred. With the possible exception of Representative Ybarra (discussed below),
16 intervenors have not identified a significant protectable interest for purposes of intervention
17 under Rule 24(a).

18 **(3) Adequacy of Representation**

19 In addition to the uncognizable interest in legislative district boundaries and the generic
20 interest in ensuring that any new redistricting map complies with the law, Representative Ybarra
21

1 claims an interest in avoiding delays in the election cycle and in knowing ahead of time which
2 voters will be included in his district. The Court assumes, for purposes of this motion, that these
3 interests are significant enough to give Representative Ybarra standing to pursue relief in this
4 litigation. He cannot, however, show that the existing parties will not adequately represent these
5 interests.

6 “The most important factor to determine whether a proposed intervenor is adequately
7 represented by a present party to the action is how the intervenor’s interest compares with the
8 interests of existing parties. . . . Where the party and the proposed intervenor share the same
9 ultimate objective, a presumption of adequacy of representation applies, and the intervenor can
10 rebut that presumption only with a compelling showing to the contrary. . . .” *Perry v.*
11 *Proposition 8 Off. Proponents*, 587 F.3d 947, 950-51 (9th Cir. 2009) (internal quotation marks,
12 citations, and alterations omitted). The arguably protectable interests asserted by Representative
13 Ybarra were ably and successfully urged by Secretary Hobbs in opposition to plaintiffs’ motion
14 for a preliminary injunction. Concerns regarding delays in the election cycle that might arise if
15 district boundaries were redrawn this spring and the disruption to candidates who were
16 considering a run for office were identified by Secretary Hobbs and played a part in the Court’s
17 decision.

18 Because Representative Ybarra’s arguably protectable interests are essentially identical to
19 the arguments that were actually asserted by Secretary Hobbs, Representative Ybarra may defeat
20 the presumption (and evidence) of adequate representation only by making a compelling
21

1 showing that Secretary Hobbs will abandon or fail to adequately make these arguments in the
 2 future. *See Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (assessing the proposed
 3 intervenor’s efforts to rebut the presumption in terms of three factors: “(1) whether the interest
 4 of a present party is such that it will undoubtedly make all of a proposed intervenor’s arguments;
 5 (2) whether the present party is capable and willing to make such arguments; and (3) whether a
 6 proposed intervenor would offer any necessary elements to the proceeding that other parties
 7 would neglect”). Representative Ybarra has not attempted to show that Secretary Hobbs will fail
 8 to pursue arguments regarding election schedules and the need for certainty as this case
 9 progresses. The intervenors have therefore failed to show that the protectable interests they have
 10 identified will not be adequately represented in this litigation.²

11 **B. Permissive Intervention**

12 Pursuant to Rule 24(b), “[o]n timely motion, the court may permit anyone to intervene
 13 who . . . has a claim or defense that shares with the main action a common question of law or
 14 fact. . . . In exercising its discretion, the court must consider whether the intervention will
 15 unduly delay or prejudice the adjudication of the original parties’ rights.” In the Ninth Circuit,
 16 “a court may grant permissive intervention where the applicant for intervention shows

17
 18 ² Representative Ybarra also argues that he will be able to add to the litigation by providing a
 19 “valuable perspective on the close interaction between race and partisanship” in opposition to plaintiffs
 20 Section 2 claim, and that none of the existing parties is prepared to make such arguments. Dkt. # 57 at 9.
 21 That a proposed intervenor has testimony or other evidence that is relevant to a claim or defense does
 22 not mean that they have a significant protectable interest for purposes of Rule 24(a), however. It is only
 23 protectable interests that must be adequately represented in the litigation when considering intervention
 as a matter of right.

1 (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim
 2 or defense, and the main action, have a question of law or a question of fact in common.” *City of*
 3 *Los Angeles*, 288 F.3d at 403 (citation omitted). If the initial conditions for permissive
 4 intervention are met, the court is then required to consider other factors in making its
 5 discretionary decision on whether to allow permissive intervention.

6 These relevant factors include the nature and extent of the intervenors’ interest,
 7 their standing to raise relevant legal issues, the legal position they seek to advance,
 8 and its probable relation to the merits of the case. The court may also consider
 9 whether changes have occurred in the litigation so that intervention that was once
 10 denied should be reexamined, whether the intervenors’ interests are adequately
 11 represented by other parties, whether intervention will prolong or unduly delay the
 12 litigation, and whether parties seeking intervention will significantly contribute to
 13 full development of the underlying factual issues in the suit and to the just and
 14 equitable adjudication of the legal questions presented.

15 *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (internal footnotes
 16 omitted). Plaintiffs argue that intervenors’ motion is untimely, intervention would risk undue
 17 delay and would unfairly prejudice plaintiffs, and intervenors’ chosen counsel is likely to be a
 18 witness in this matter and has already filed a lawsuit challenging Legislative District 15 that is
 19 inconsistent with his representation here. Plaintiffs request that, if intervenors are permitted to
 20 participate in this litigation at all, it should be in the role of *amicus curiae*, not as parties.

21 (1) Timeliness

22 For the reasons stated above, intervenors’ motion to intervene was timely filed.

23 //

1 **(2) Undue Delay and Unfair Prejudice**

2 Plaintiffs argue that the resolution of their Section 2 claim will be unduly delayed and
 3 they will be unfairly prejudiced if they are forced to expend resources responding to intervenors’
 4 arguments. Plaintiffs acknowledge, however, that intervenors – unlike the defendants they chose
 5 to name – intend to oppose plaintiffs’ request for relief under Section 2. It is unclear how forcing
 6 a litigant to prove its claims through the adversarial process could be considered unfairly
 7 prejudicial or how the resulting delay could be characterized as undue. “That [intervenors] might
 8 raise new, legitimate arguments is a reason to grant intervention, not deny it. *W. Watersheds*
 9 *Project v. Haaland*, 22 F.4th 828, 839 (9th Cir. 2022). The presence of an opposing party is the
 10 standard in federal practice: intervenors’ insertion into that role would restore the normal
 11 adversarial nature of litigation rather than create undue delay or unfair prejudice. To the extent
 12 plaintiffs’ opposition to intervention is based on their assessment that intervenors’ arguments are
 13 meritless or irrelevant, the Court declines to prejudge the merits of intervenors’ defenses in the
 14 context of this procedural motion.

15 **(3) Complications Arising From Counsel’s Participation**

16 Plaintiffs do not cite, and the Court is unaware of, any authority supporting the denial of a
 17 motion to intervene because of objections to the intervenors’ counsel. At present, the Court does
 18 not perceive an insurmountable conflict between the claims set forth in *Garcia v. Hobbs*, C22-
 19 5152RSL, and intervenors’ opposition to plaintiffs’ Section 2 claim. If it turns out that counsel’s
 20 representation gives rise to a conflict under the Rules of Professional Conduct or if he is a
 21

1 percipient witness from whom discovery is necessary, those issues can be heard and determined
2 through motions practice as the case proceeds.

3 **(4) Other Relevant Factors**

4 After considering the various factors set forth in *Spangler*, 552 F.3d at 1329, the Court
5 finds that, although intervenors lack a significant protectable interest in this litigation, the legal
6 positions they seek to advance in opposition to plaintiffs' Section 2 claim are relevant and, in the
7 absence of other truly adverse parties, are likely to significantly contribute to the full
8 development of the record and to the just and equitable adjudication of the legal questions
9 presented.

10
11 For all of the foregoing reasons, the motion to intervene (Dkt. # 57) is GRANTED.
12 Intervenor shall file their proposed answer (Dkt. # 57-1) within seven days of the date of this
13 Order. The case management deadlines established at Dkt. # 46 remain unchanged.

14
15 Dated this 6th day of May, 2022.

16 
17 Robert S. Lasnik
18 United States District Judge
19
20
21

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

SUSAN SOTO PALMER, ALBERTO MACIAS, BRENDA RODRIGUEZ GARCIA, FABIOLA LOPEZ, CATY PADILLA, EVANGELINA AGUILAR, LIZETTE PARRA, HELIODORA MORFIN, and SOUTHCENTRAL COALITION OF PEOPLE OF COLOR FOR REDISTRICTING

Plaintiffs,

v.

Secretary of State STEVEN HOBBS, in his official capacity as Secretary of State of Washington; LAURIE JINKINS, in her official capacity as Speaker of the Washington State House of Representatives; and ANDY BILLIG, in his official capacity as Majority Leader of the Washington State Senate

Defendants.

Case No. 3:22-cv-5035-RSL

EXHIBIT 30: DEPOSITION OF JOSE TREVINO, JULY 16, 2021

Judge: Robert S. Lasnik

Date Action filed: January 19, 2022

Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

Aguilar, et al.
v.
Yakima County, et al.

* * * * *

Remote Deposition of
Jose A. Trevino
July 16, 2021

* * * * *

Reported by:
LAKESIDE REPORTING
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SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

EVANGELINA AGUILAR, SUSAN SOTO)	
PALMER, ROGELIO MONTES, CANDY)	
GUTIERREZ and OneAMERICA, a)	
Washington nonprofit corporation,)	
)	
Plaintiffs,)	
)	
v.)	No. 20-2-00180-19
)	
YAKIMA COUNTY, a Washington)	
municipal entity; AMANDA MCKINNEY,)	
LADON LINDE, RON ANDERSON, in)	
their official capacities as)	
members of the Yakima County)	
Board of Commissioners,)	
)	
Defendants.)	

REMOTE DEPOSITION UPON ORAL EXAMINATION OF

JOSÉ A. TREVINO

Friday, July 16, 2021
12:01 p.m. to 3:48 p.m.

REPORTED BY: LAKESIDE REPORTING
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A P P E A R A N C E S

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LEGAL TEAM ALSO PRESENT:

MOLLY DANAHY
CHRIS LAMAR
ASEEM MULJI
GRACE THOMAS
EMILY VILLARREAL

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* * * * *

EXAMINATION INDEX

JOSÉ A. TREVINO	PAGE
By Ms. Harless	4

* * * * *

1 A No.

2 Q At the time you were appointed to be mayor of
3 Granger in 2016, was the Granger city council majority
4 Latino?

5 A Yes.

6 Q Why did you apply to fill the vacant mayor position?

7 A I didn't. I was appointed.

8 Q Okay. Why were you interested in being the mayor of
9 Granger when you were appointed in 2016?

10 A I think what it was was that I had ran for mayor,
11 and I was not elected. It was the -- It was another
12 person, and that person quit. And so the council felt
13 that since I was the one that ran --

14 And I guess I shouldn't say that because it's all
15 assumption on my part, but I'm going to assume that they
16 felt, "Well, he ran for it, so obviously he would take it.
17 So let's nominate him." And that's just all assumption on
18 my part.

19 Q In what year did you run as mayor and not get
20 elected --

21 A 2015.

22 Q -- to that position?

23 A 2015.

24 Q And do you remember -- Well, I guess it would have
25 been the incumbent, but do you remember who ran against

1 you in the 2015 mayoral race?

2 A Well, there was actually four of us. There was me,
3 the mayor then, his son-in-law -- the mayor's son-in-law,
4 and then another. He was an unknown, but he's a professor
5 at a college.

6 Q Do you remember any of those candidates' names?

7 A So the mayor at the time was Gary Anderson. His
8 son-in-law who was on the city council was Bill Sharp.
9 And then the professor was -- I always forget his first
10 name, but his last name was Wheaton -- Charles Wheaton.

11 Q Why do you think you lost that election?

12 A Because it's a small community, and people like to
13 spread a lot of rumors and lies; and the rumors were that
14 I was going to fire all the white people in the city.

15 Q So there was a rumor circulating that you were going
16 to fire all the white city employees working for the City
17 of Granger?

18 A Yes, that was one of them.

19 Q What were some of the others?

20 A That I didn't know about budgets. That everything
21 was going to stay normal. Nothing was going to change.
22 That's kind of it.

23 Q Do you know who started the rumor about you firing
24 all the white people in the City of Granger?

25 A No. No. It's laughable, though.

1 A I said yes.

2 Q And if we look at the vote totals you received 2,849
3 votes; correct?

4 A That's correct.

5 Q And of the five candidates that are listed in the
6 2014 Yakima County clerk primary race, you received the
7 lowest number of votes; correct?

8 A That's correct.

9 Q In the 2014 race you did not advance from the
10 primary election to the general election; right?

11 A That's correct.

12 Q Janelle Riddle and Sarah Matheny had the top two
13 vote totals and advanced to the general election; correct?

14 A That's correct.

15 Q Is Janelle Riddle white?

16 A I'm assuming she is.

17 Q Is Sarah Matheny white?

18 A I'm going to assume that she is.

19 Q Has Yakima County ever elected a Latino person as
20 county clerk?

21 A I don't know.

22 Q Why do you think you had the lowest total number of
23 votes in the 2014 primary for the Yakima County clerk
24 position?

25 A Probably because it was a dirty campaign, and one of

1 the candidates brought up my 2005 incident and false
2 allegation. And then the Yakima Herald decided to do
3 negative campaigning against me, so that's why I lost.

4 Q What do you mean when you said the Yakima Herald
5 decided to do negative campaigning against you?

6 A They decided that I was the only one of those
7 candidates that had a history that was worthwhile of their
8 time, I guess, and so they decided to run articles about
9 it; and they didn't run anything on anybody else.

10 Q And you were the only Latino candidate in that race;
11 correct?

12 A That's correct.

13 Q What were the articles that the Yakima Herald ran
14 about?

15 A It was about the domestic violence false allegation.

16 Q Do you think your Hispanic surname made it harder
17 for you to get elected in that election?

18 A No. I think the Yakima Herald and their reporting
19 made it harder.

20 Q You also mentioned that someone -- There was dirty
21 campaigning, and one of the candidates brought up the
22 2005 incident?

23 A Yes.

24 Q Which candidate was that?

25 A I filed a complaint with the PDC on Sarah Matheny.

1 Q Why do you think you received the lowest number of
2 votes in the District 3 primary race in 2018?

3 A Because the Yakima Herald-Republic decided to do hit
4 pieces on me again.

5 Q What are you referring to when you say the Yakima
6 Herald-Republic did hit pieces on you again?

7 A Again, talking about the 2005 false domestic
8 violence allegation, and not clarifying anything, just
9 putting it out there. You know, as human beings when you
10 don't have answers, you fill it in with what you want, and
11 unfortunately that's what was given to the voters that
12 read that paper.

13 Q And the general election for the Yakima County board
14 is conducted at large; correct?

15 A For District 3?

16 Q The general election for any seat on the Yakima
17 County board.

18 A Oh, yes. Yes, I'm sorry. Yes, you're correct.

19 Q And all the voters in the entire county select the
20 winner for a district seat; correct?

21 A That's correct.

22 Q And you've never run in a general election for a
23 seat on the Yakima County board; correct?

24 A That's correct.

25 Q And you've also never run in a general election for

1 any countywide seat; correct?

2 A That's correct.

3 Q In 2020 you announced that you were going to seek to
4 fill the vacant seat on the Yakima County board left after
5 the death of Norm Childress; correct?

6 A Yes.

7 Q And Norm Childress was the commissioner for
8 District 3 of the Yakima County board?

9 A That's right.

10 Q Why did you decide to seek appointment to the vacant
11 Yakima County board District 3 seat?

12 A I wanted to test the waters, to see what my chances
13 were with the Yakima Herald. And they started in again,
14 and they were going to do the same thing.

15 And beings that the 2018 election had some folks in
16 there that had some background that should have been out
17 there as well, and they refused to do that and only did it
18 to me, that's what I was testing -- and it's exactly what
19 they were going to do.

20 Q Who were the other candidates in 2018 that you think
21 the Yakima Herald should have reported about?

22 A Well, I'm not going to say no names. All I'm going
23 to say is that we met with the Yakima Herald several times
24 to let them know if you're going to put something out
25 about what happened in 2005, then you need to put -- clear

1 the record and put the entire story, that it was
2 dismissed. It was false.

3 I went back through all of the testing for police
4 officer, which is 95 percent more-- Let me put it this
5 way. The background that a police officer has to go
6 through is a lot more than people in 95 percent of jobs in
7 this -- in the States; okay? It's grueling. It's
8 intense. I went through it again, and I passed; and I
9 became a police officer again.

10 But the Yakima Herald decided that's not what we
11 want. We want only the bad things for them, so that's
12 what we're going to put up. And so they said that they
13 were going to do stories on other candidates who had cost
14 this county tens of thousand of dollars in lawsuits, and
15 they never did it. They never once said anything.

16 The only one they picked on -- and this is just my
17 personal opinion, nobody else's -- is it was easier to
18 pick on the Republican Mexican than anybody else.

19 Q Why do you -- Why is that your opinion?

20 A Because that's what the Herald has done to me every
21 time.

22 Q Why do you think the Yakima Herald thinks it's
23 easier to pick on the Mexican Republican candidate?

24 A Well, because I'm Republican, and because, you know,
25 they can go back to the story anytime they want and keep

1 you're not going to get elected. That's just the way it
2 is.

3 It has nothing to do with skin color or ethnicity or
4 any of that. It has to do with your policies and what you
5 stand for. That's what people look at. I just -- That's
6 my opinion.

7 Q You're a Republican; correct?

8 A That's right.

9 Q And you're also --

10 A Conservative and Republican.

11 Q And you're also Latino?

12 A That's right.

13 Q And you've never been elected in a countywide
14 election; correct?

15 A Right.

16 MS. WARD: Objection to the form of the
17 question.

18 Q (By Ms. Harless) Why do you think that is?

19 A I've said that like three or four times, the Yakima
20 Herald.

21 Q So you think that the only reason you've never been
22 elected to a countywide office is the Yakima Herald-
23 Republic?

24 A That's right.

25 Q And because the Yakima Herald-Republic targets you

1 as a Mexican Republican candidate?

2 MS. WARD: Objection to the form of the
3 question.

4 A That's right.

5 Q (By Ms. Harless) Okay. I'd like to ask you a few
6 questions about Granger now. So Granger is located in the
7 Lower Yakima Valley; correct?

8 A That's right.

9 Q And earlier you mentioned that the Lower Yakima
10 Valley is predominantly Latino; correct?

11 A Yes.

12 Q What is the total population of Granger?

13 A It's between 42 and 43 hundred.

14 Q What is the source data for that number?

15 A Census. Actually, I take that -- Well, it is
16 through the state.

17 Q From the state of Washington?

18 A Yes.

19 Q Which state department?

20 A I don't remember. They send that to us once in a
21 while. I just got it the other day, but I can't remember.

22 Q Would you describe Granger as a small city?

23 A Yes, we're small.

24 Q And what percentage of Granger's total population is
25 Latino?