

No. 24-2603

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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BENANCIO GARCIA III,  
Plaintiff-Appellant,

v.

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

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On Appeal from the United States District Court  
for the Western District of Washington  
Case No. 3:22-cv-5152

Hon. Robert S. Lasnik, Hon. David G. Estudillo, Hon. Lawrence J.C. VanDyke

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APPELLANT'S EXCERPTS OF RECORD  
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Jason B. Torchinsky\*  
\**Counsel of Record*  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
2300 N Street, NW, Ste 643  
Washington, DC 20037  
Phone: (202) 737-8808

Phillip M. Gordon  
Caleb Acker  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
15405 John Marshall Highway  
Haymarket, VA 20169  
Phone: (540) 341-8808

*Counsel for Appellant*

Drew C. Ensign  
Dallin B. Holt  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
2575 E Camelback Road, Ste 860  
Phoenix, AZ 85381  
Phone: (540) 341-8808

Andrew R. Stokesbary  
CHALMERS, ADAMS, BACKER & KAUFMAN,  
LLC  
701 Fifth Avenue, Suite 4200  
Seattle, WA 98104  
Phone: (206) 813-9322

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APPELLANT'S EXCERPTS OF RECORD  
VOLUME 1 of 2

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Jason B. Torchinsky\*  
*\*Counsel of Record*  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
2300 N Street, NW, Ste 643  
Washington, DC 20037  
Phone: (202) 737-8808

Phillip M. Gordon  
Caleb Acker  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
15405 John Marshall Highway  
Haymarket, VA 20169  
Phone: (540) 341-8808

*Counsel for Appellant*

Drew C. Ensign  
Dallin B. Holt  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
2575 E Camelback Road, Ste 860  
Phoenix, AZ 85381  
Phone: (540) 341-8808

Andrew R. Stokesbary  
CHALMERS, ADAMS, BACKER & KAUFMAN,  
LLC  
701 Fifth Avenue, Suite 4200  
Seattle, WA 98104  
Phone: (206) 813-9322

# United States District Court

WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendants.

## AMENDED JUDGMENT IN A CIVIL CASE

CASE NUMBER:

3:22-cv-05152-RSL-DGE-LJCV

       **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

  **X**   **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

This action is again before the Court on remand from the United States Supreme Court with instructions to enter a fresh judgment from which an appeal can be taken to the United States Court of Appeals for the Ninth Circuit. The issues were previously considered and a decision was rendered.

THE COURT HAS ORDERED that:

This case is dismissed as moot.

DATED this 25th day of March, 2024.

RAVI SUBRAMANIAN,  
Clerk of the Court

By: /s/ Victoria Ericksen  
Deputy Clerk

# UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendants.

## JUDGMENT IN A CIVIL CASE

CASE NUMBER. 3:22-cv-05152-RSL-

DGE-LJCV

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

## THE COURT HAS ORDERED THAT

This case is dismissed as moot.

Dated September 8, 2023.

Ravi Subramanian

Clerk of Court

s/Michael Williaims

Deputy Clerk



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BENANCIO GARCIA III,

Plaintiff,

v.

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

Defendants.

CASE NO. 3:22-cv-05152-RSL-  
DGE-LJCV

OPINION AND ORDER  
DISMISSING PLAINTIFF'S  
CLAIM AS MOOT

Chief District Judge David G. Estudillo authored the majority opinion, in which District Judge Robert S. Lasnik joined. Circuit Judge Lawrence J.C. VanDyke filed a dissenting opinion.<sup>1</sup>

Plaintiff Benancio Garcia III brings suit arguing that Washington Legislative District 15 (“LD 15”) in the Yakima Valley is an illegal racial gerrymander in violation of the Equal

<sup>1</sup> Because Plaintiff “challeng[ed] the constitutionality of the apportionment” of a “statewide legislative body” under 28 U.S.C. § 2284(a), the Chief Judge of the Ninth Circuit designated a three-judge panel to hear Plaintiff’s constitutional claim. (*See* Dkt. No. 18.)

Protection Clause of the Fourteenth Amendment. The Panel sat for a three-day trial from June 5th to June 7th to hear evidence regarding Plaintiff’s Equal Protection Clause claim.<sup>2</sup> In light of the court’s decision in *Soto Palmer*, the Court DISMISSES Plaintiff’s claim as moot.

## I MOOTNESS

“[T]he judicial power of federal courts is constitutionally restricted to ‘cases’ and ‘controversies.’” *Flast v. Cohen*, 392 U.S. 83, 94 (1968). “There is thus no case or controversy, and a suit becomes moot, when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (cleaned up). Article III’s case-or-controversy requirement prevents federal courts from issuing advisory opinions. *See id.* A party must have “a specific live grievance,” and cannot seek to litigate an “abstract disagreement over the constitutionality” of a law or other government action. *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 479 (1990) (cleaned up).

The Court finds that Plaintiff’s challenge to the constitutionality of LD 15 is moot given the *Soto Palmer* court’s finding that LD 15 violates § 2 of the Voting Rights Act (“VRA”). Plaintiff seeks declaratory relief determining that LD 15 “is an illegal racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment” and an injunction “enjoining Defendant from enforcing or giving any effect to the boundaries of [] [LD 15], including an injunction barring Defendant from conducting any further elections for the

<sup>2</sup> The Panel heard evidence for the *Garcia* case concurrent with evidence presented for parallel litigation in *Soto Palmer v. Hobbs*, No. 3:22-cv-5035-RSL (W.D. Wash.). For purposes of judicial economy, the Court refers the reader to the procedural and factual background in *Soto Palmer*, 2023 WL 5125390, at \*1–3 (W.D. Wash. Aug. 10, 2023) and this Court’s prior order (Dkt. No. 56). The Court presumes reader familiarity with the facts of this case. This order only addresses Plaintiff Benancio Garcia III’s Equal Protection claim.

Legislature based on [] [LD 15].” (Dkt. No. 14 at 18.) Plaintiff further requests the Court order a new legislative map be drawn. (*Id.*)

The *Soto Palmer* court determined that LD 15 violated § 2 of the VRA’s prohibition against discriminatory results. *See Soto Palmer*, 2023 WL 5125390, at \*11. In so deciding, the court found LD 15 to be invalid and ordered that the State’s legislative districts be redrawn. *Id.* at \*13. Since LD 15 has been found to be invalid and will be redrawn (and therefore not used for further elections), the Court cannot provide any more relief to Plaintiff. Plaintiff does not assert that any new district drawn by the Washington State Redistricting Commission (“Commission”) would be a “mere continuation[] of the old, gerrymandered district[.]” *North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018). Plaintiff therefore lacks a specific, live grievance, and his case is moot.

Traditional principles of judicial restraint also counsel against resolving Plaintiff’s Equal Protection Clause claim. “A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.” *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988); *see also Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng’g, P.C.*, 467 U.S. 138, 157 (1984) (“It is a fundamental rule of judicial restraint, however, that this Court will not reach constitutional questions in advance of the necessity of deciding them.”). The court’s decision in *Soto Palmer* makes any decision in the instant case superfluous. A new Commission will draw new legislative districts in the Yakima Valley and, if challenged thereafter, the propriety of the new districts will be decided by analyzing the motivations and decisions of new individuals who

constitute the Commission.<sup>3</sup> The Court cannot and will not presume that the new Commission will be motivated by the same factors that motivated its predecessor. Federal courts are courts of limited jurisdiction, and to unnecessarily decide a constitutional issue where there are alternate grounds available or where there is an absence of a case or controversy is to overstep our “proper, limited role in our Nation’s governance.” *Biden v. Nebraska*, 600 U.S. \_\_\_, 143 S. Ct. 2355, 2384 (2023) (Kagan, J., dissenting).

Our dissenting colleague disagrees that the instant case is moot. In his view, the Commissioners racially gerrymandered the 2021 Washington Redistricting Map in violation of the Equal Protection Clause and therefore “the map was ‘void *ab initio*.’” Additionally, the dissent argues that longstanding principles of judicial restraint and constitutional avoidance are inapplicable here because the decision in *Soto Palmer* does not completely moot the relief sought by Plaintiff. These arguments are unconvincing.

First, the view that LD 15 was void *ab initio* presupposes that Plaintiff established an Equal Protection violation. To the contrary, a full analysis of the record presented does not yield such a result. The Court declines to issue an advisory opinion on the validity of Plaintiff’s Equal Protection claim, however. Rather, it is sufficient to note only that we disagree with the dissent’s summary and interpretation of the facts surrounding the creation of LD 15. Importantly, the Commissioners’ testimony on the specific issue of whether race predominated in the formation of LD 15 is absent from the dissent’s summary of the facts, and the Court encourages readers to

<sup>3</sup> In the event that the Commission fails to draw a new map by the deadline set by the *Soto Palmer* court, the parties will submit proposed maps to the *Soto Palmer* court and the court will adopt and enforce a new redistricting plan. *See Soto Palmer*, 2023 WL 5125390, at \*13.



examine the Commissioners' testimony in full.<sup>4</sup> This testimony weighs heavily against finding that race predominated in the drawing of LD 15 and against finding an Equal Protection violation.<sup>5</sup>

<sup>4</sup> Commissioner April Sims, for example, specifically disclaimed that race was the most important factor. (See Dkt. No. 73 at 77.) As she testified, "I would not agree that [race] [] was the most important factor. But that it was a factor." (*Id.*) Commissioner Brady Walkinshaw similarly noted that the Commissioners discussed a number of factors, including race, but "none of those [factors] were predominant." (*Id.* at 124.) He further emphasized the impact that the Commissioners' desire to unify the Yakama Nation into one legislative district had on the map (*see id.*), a factor that all Commissioners attested was important but is conspicuously absent from our colleague's analysis. Commissioner Joe Fain testified that his overriding interest in drawing maps for LD 15 was to ensure "competitiveness." (See Dkt. No. 74 at 48, 58.) He also testified that he believed Commissioner Walkinshaw would have voted for a map in LD 15 that would not have had a majority Latino Citizen Voting Age Population ("CVAP"). (*Id.* at 51.) Finally, Commissioner Paul Graves testified that "race and the partisan breakdown of the district were" tied in his mind as the most important factors. (Dkt. No. 75 at 85.)

<sup>5</sup> The dissent's "ab initio" argument leads to the surprising assertion that the *Soto Palmer* court should have declined to issue an opinion in that case. *Soto Palmer* was the first-filed challenge to the redistricting map, and it presented a clearly justiciable case and controversy. Federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them," *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 817 (1976), and our dissenting colleague makes no effort to show that one of the "exceptional" circumstances that could justify a district court's refusal to exercise or postponement of the exercise of its jurisdiction existed, *Id.* at 813 and 817. Although the intervenors in *Soto Palmer* twice requested that the case be stayed, they did so on the ground that judicial efficiency would be served by waiting for the Supreme Court's decision in *Allen v. Milligan*, 599 U.S. \_\_\_, 143 S. Ct. 1487 (2023). At no point prior to the dissemination of the dissent did anyone suggest that a decision in *Soto Palmer* would be advisory or otherwise improper.

More importantly, the suggestion that the VRA claim should have been stayed or held in abeyance while the Equal Protection claim was resolved is not supported by case law or legal analysis. The dissent does not discuss whether a stay of *Soto Palmer* would have been appropriate pending the resolution of *Garcia* under the rubric established in *Landis v. N. Am. Co.*, 299 U.S. 248, 254-56 (1936), nor does it cite any cases in which a decision on a VRA claim was postponed because of a related Equal Protection challenge. *Milligan* itself presented just such a confluence of claims, and the Supreme Court addressed the appropriateness of injunctive relief on the VRA claim without considering, much less prioritizing, the pending Equal Protection challenge. *See also League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 410 (2006) (resolving VRA claims without reaching the companion Equal Protection claim); *Singleton v. Allen*, 2:21-cv-1291-AMM-SM-TFM, Dkt. # 272 at 7-8, 194-95 (N.D. Ala. Sept. 5, 2023) (resolving VRA claims and reserving ruling on Equal Protection claims in light of the fundamental and longstanding principles of judicial restraint and constitutional avoidance).

It is also erroneous to argue that “resolving *Soto Palmer* in the *Soto Palmer* plaintiffs’ favor does not moot *Garcia*.” As noted, LD 15 will be redrawn and will not be used in its current form for any future election. The *Soto Palmer* court has therefore granted Plaintiff complete relief for purposes of our mootness analysis. *See New York State Rifle & Pistol Ass’n, Inc. v. City of New York, New York*, 140 S. Ct. 1525, 1526 (2020) (vacating judgment as moot where New York City amended its laws to grant “the precise relief that petitioners requested in the prayer for relief in their complaint” notwithstanding requests for declaratory and injunctive relief from future constitutional violations).<sup>6</sup>

Our colleague argues that this case is not moot because Plaintiff may obtain partial injunctive and declaratory relief. Specifically, the Court could declare that LD 15 was an illegal racial gerrymander and enjoin the state from “performing an illegal racial gerrymander when it redraws the map.” This type of relief is insufficient to avoid a finding of mootness. It goes without saying that a federal court may only direct parties to undertake activities that comply with the Constitution, and the *Soto Palmer* court’s directive to the State to redraw LD 15 properly presumes that the State will comply with the Constitution when it does so lest the future district be challenged once again. *Cf. Holloway v. City of Virginia Beach*, 42 F.4th 266, 275 (4th

<sup>6</sup> The dissent attempts to distinguish *New York State Rifle & Pistol Ass’n*, but the petitioners in that case argued, like our colleague, that an intervening change to New York City’s firearms laws did not moot their request for declaratory and injunctive relief because of the continued possibility of future harm from New York City’s unconstitutional firearms licensing scheme. *See* Petitioners’ Response to Respondents’ Suggestion of Mootness at 15–17, *New York State Rifle & Pistol Ass’n*, 140 S. Ct. 1525 (No. 18-280). As the petitioners noted in their brief, “nothing in the City’s revised rule precludes the previous version of the rule, which governed for nearly two decades, from having continuing adverse effects.” *Id.* at 16. The petitioners specifically sought a declaration from the Supreme Court that “that the City’s longstanding restrictive [firearms] licensing scheme is incompatible with the Second Amendment” and that any attempt to impose a licensing scheme was “null and void ab initio.” *Id.* The Supreme Court, however, rejected the petitioners’ argument and held that the case was moot notwithstanding the continued possibility of constitutional harm from the newly revised rule.

Cir. 2022) (rejecting argument that VRA case was not moot and Plaintiffs were entitled to court order “directing implementation of a new system that ‘compl[ies] with Section 2’” of the VRA in light of changes to state law that provided otherwise complete relief).

The dissent asserts that “the order in *Soto Palmer* ensures that [Garcia] will not receive what he argues is a constitutionally valid legislative map” because his “claimed injury is not merely capable of repetition; it almost is certain to repeat itself.” In the dissent’s opinion, Garcia will most certainly suffer injury because *Soto Palmer* “ordered that the State engage in *even more* racial gerrymandering” than that claimed by Garcia in this case. But this claimed injury from a future legislative district is speculative because compliance with § 2 of the VRA, as ordered in *Soto Palmer*, would not result in a violation of the Equal Protection Clause. *See Cooper v. Harris*, 581 U.S. 285, 306 (2017) (“States enjoy leeway to take race-based actions reasonably judged necessary under a proper interpretation of the VRA.”); *see also Milligan*, 143 S. Ct. at 1516–17 (“[F]or the last four decades, this Court and the lower federal courts have repeatedly applied the effects test of § 2 as interpreted in *Gingles* and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate § 2.”).

As the dissent concedes, “the Supreme Court has given States ‘leeway’ to draw lines on the basis of race in redistricting when States have good reasons, based in the evidence, to believe the racial gerrymander necessary under the VRA.” The *Soto Palmer* court detailed in depth why a VRA compliant district is required for the Yakima Valley. *See, e.g.*, 2023 WL 5125390, at \*5–6, 11 (finding that the three *Gingles* factors were met and that the State had “impair[ed] the ability of Latino voters in [] [the Yakima Valley] to elect their candidate of choice on an equal basis with other voters”). The dissent would find that the prior Commissioners failed to judge a

VRA district necessary, and therefore any racial prioritization that the Commissioners engaged in would not survive strict scrutiny. But this determination is necessarily fact-specific and only applicable to the actions of the prior Commission. By the dissent’s own admission, so long as the State judges the use of race necessary to comply with the VRA it is not unlawful for the State to create a district with a higher Latino CVAP.

The dissent also argues the case is not moot because Plaintiff may want to appeal this case to the Supreme Court. Whether Plaintiff may desire to utilize this litigation to “challenge current precedent that considers compliance with the VRA a sufficient reason to racially gerrymander” is immaterial to the issue of whether a case is moot. Neither *Wis. Legislature v. Wis. Elections Comm’n*, 142 S. Ct. 1245 (2022), nor *Allen v. Santa Clara Cnty. Corr. Peace Officers Ass’n*, 38 F.4th 68 (9th Cir. 2022), stands for the proposition that a trial court, in deciding whether a case is moot, should consider how a party might utilize the litigation to challenge established Supreme Court precedent. Indeed, such an argument reinforces the majority’s finding that the case is moot because a desire to appeal binding Supreme Court precedent, untethered from any specific injury, is far removed from a specific, live controversy.<sup>7</sup> It “would [also] reverse the canon of [constitutional] avoidance . . . [by addressing] divisive constitutional questions that are both unnecessary and contrary to the purposes of our precedents under the Voting Rights Act.” *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009).

This Court “is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the

<sup>7</sup> The dissent, like the State of Alabama, might wish for a different interpretation of § 2 of the VRA than that which has prevailed in this country for nearly forty years. The United States Supreme Court, however, recently rejected Alabama’s invitation to do so in *Milligan*.



result as to the thing in issue in the case before it.” *People of State of California v. San Pablo & T.R. Co.*, 149 U.S. 308, 314 (1893). The fact remains that the *Soto Palmer* court has ordered the State to redraft legislative districts in the Yakima Valley. Having done so, the relief Plaintiff seeks in this litigation is now moot.

## II CONCLUSION

Accordingly, the Court DISMISSES as moot Plaintiff’s claim that LD 15 violates the Equal Protection Clause. A judgment will be entered concurrent with this order.

Dated this 8th day of September, 2023.



David G. Estudillo  
United States District Judge



Robert S. Lasnik  
United States District Judge

*Garcia v. Hobbs et al.*, No 3:22-cv-5152 (W.D. Wash.)  
VANDYKE, J., dissenting,

In 2021, the State of Washington redistricted its state legislature electoral map. In the process, the State, acting through its Redistricting Commission, made the racial composition of Legislative District 15 (LD-15), a district in the Yakima Valley, a nonnegotiable criterion. In other words, the Commission racially gerrymandered. *See Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017). This discrimination means the map was enacted in violation of the U.S. Constitution unless the Commission had a “strong basis in evidence” to believe, and in fact believed, that the federal Voting Rights Act (VRA) required the Commission to perform such racial gerrymandering. *See Wis. Legislature v. Wis. Elections Comm’n*, 142 S. Ct. 1245, 1250 (2022) (quotation omitted). A majority of the Commissioners did not believe the VRA required racial gerrymandering, so the map was drawn—and later enacted—in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

In a parallel case before a single district court judge, *Soto Palmer v. Hobbs*, plaintiffs also challenged the 2021 map as invalid. --- F.Supp.3d ----, 2023 WL 5125390, No. 3:22-cv-5035 (W.D. Wash. Aug. 10, 2023). But they alleged the map violated the VRA, which presented a more challenging question than the relatively straightforward one presented in this matter. Nonetheless, instead of waiting for this case to be decided, which would have mooted *Soto Palmer*, the court in *Soto Palmer*

undertook a complicated analysis involving multiple expert witnesses and an indeterminate nine-factor balancing test and opined that the map violated the VRA and must be redrawn. Worse than undertaking a needless analysis, the court necessarily assumed that the map was not enacted in violation of the Equal Protection Clause. But it was. And because the map violated the Equal Protection Clause, it was “void *ab initio*.” *Mester Mfg. Co. v. INS*, 879 F.2d 561, 570 (9th Cir. 1989) (citation omitted); *see Collins v. Yellen*, 141 S. Ct. 1761, 1788–89 (2021). As it was void *ab initio*, the *Soto Palmer* decision amounts to an advisory opinion on whether a void map would violate the VRA if it existed. That decision should never have been issued.

Even putting aside the advisory nature of the *Soto Palmer* decision, it does not moot this case. Garcia is seeking relief that the court in *Soto Palmer* never provided, and he can still assert arguments not foreclosed by *Soto Palmer*. I thus respectfully dissent from my colleagues’ conclusion to dismiss this case based on mootness.

## **BACKGROUND**

### **I. In 2021, the State of Washington Drew New Legislative and Congressional Electoral Maps Following the Federal Census.**

Under Washington law, the State of Washington redistricts its “state legislative and congressional districts” after the decennial federal census and congressional reapportionment. Wash. Const. art. II, § 43(1); *see* U.S. Const., art. I, § 2. Washington performs this redistricting through a Redistricting Commission

consisting of four voting Commissioners and one non-voting Commission Chair. *See* Wash. Const. art. II, § 43(2). The “legislative leader of the two largest political parties in each house of the legislature” each appoints one Commissioner. *Id.* The four voting Commissioners then select by majority vote a nonvoting chairperson of the Commission. *Id.* “The commission shall complete redistricting as soon as possible following the federal decennial census, but no later than November 15th of each year ending in one.” *Id.* § 43(6). The “redistricting plan” must be approved by “[a]t least three of the voting members.” *Id.* After the Commission approves a plan, a supermajority of two-thirds of the Washington State Legislature may make minor amendments to the plan or do nothing—either way, the map is enacted after “the end of the thirtieth day of the first session convened after the commission ... submitted its plan to the legislature.” *Id.* § 43(7). And in neither event can the Legislature reject the map. *See id.*

After the 2020 decennial census, Washington law called for the appointment of a Redistricting Commission to redistrict Washington’s “state legislative and congressional districts.” *Id.* § 43(1). The House Democratic leadership selected April Sims, the Senate Democratic leadership selected Brady Piñero Walkinshaw, the Senate Republican leadership selected Joe Fain, and the House Republican leadership selected Paul Graves. *Garcia* Dkt. No. 64 at ¶ 58–59. These four voting



Commissioners selected Sarah Augustine as the Commission chairperson. *Garcia* Dkt. No. 64 at ¶ 60.

On September 21, 2021, each of the voting Commissioners released proposed redistricting maps. *Garcia* Dkt. No. 64 at ¶ 62. According to 2020 American Community Survey 5-year estimates, every Commissioner’s September legislative map proposal included a legislative district in the Yakima Valley area of Washington made up of less than 50% Hispanic Citizen Voting Age Population (HCVAP). *Soto Palmer* Dkt. No. 191 at ¶¶ 75–78, 87. The Yakima Valley area, which is in southcentral Washington and encompasses areas in Yakima, Adams, Benton, Grant, and Franklin counties, would ultimately contain LD-15, the district challenged in this case and in *Soto Palmer*. *Soto Palmer* Dkt. No. 191 at ¶ 88.

Around a month later, the Commission received a slideshow presentation file from the Washington State Senate Democratic Caucus. *Garcia* Dkt. No. 64 at ¶ 68. The presentation was prepared by Matt Barreto, PhD, who opined that there was “racially polarized voting” in the Yakima Valley area and that the Republican Commissioners’ maps “crack[ed]” the Latino population into multiple districts. Ex. 179 at 17–18. The presentation also offered two alternative, “VRA Complaint,” maps. Ex. 179 at 22–23.

From the circulation of this slideshow onward, the racial composition of the Yakima Valley district became an enduring focus of the Commission. Unlike with

any other district, the Commission focused intensely on the racial composition of LD-15. As Commissioner Fain put it, although the racial composition of districts was a topic generally discussed for “many districts,” “it was more widely discussed with regards to the Yakima Valley area.” *Garcia* Dkt. No. 74 at 86–87. For LD-15, the “racial composition” was “a very important component of that negotiation” and there were not “other districts where [racial composition] was as important of a component.” *Garcia* Dkt. No. 74 at 87.

Commissioner Sims confirmed in her testimony that without a “majority Hispanic ... CVAP in LD 15,” she “[wasn’t] going to reach an agreement on LD 15.” *Garcia* Dkt. No. 73 at 440. More broadly, one of Commissioner Sims’s “priorities with the Redistricting Commission[] was to create a majority-minority district for Hispanic and Latino voters in the Yakima Valley,” specifically, “to create a majority CVAP Hispanic district in the Yakima Valley.” *Garcia* Dkt. No. 73 at 37. One of Commissioner Walkinshaw’s draft maps included a note that the map “[c]reate[d] a majority Hispanic district” in the Yakima Valley. *Garcia* Dkt. No. 73 at 132; Ex. 150 at 17. And a member of Walkinshaw’s staff confirmed in her testimony that a district that “perform[ed] for Latino voters” “should be nonnegotiable.” *Garcia* Dkt. No. 75 at 111.

Commissioner Fain paid attention to the “Hispanic CVAP measurement” “through the various iterations of maps, in most cases.” *Garcia* Dkt. No. 74 at 49.

He “belie[ved]” that “the Hispanic CVAP was a metric that was important to Democratic commissioners” and he was “willing to give [an increase in Hispanic CVAP in LD-15] in order to secure support for a final compromise map.” *Garcia* Dkt. No. 74 at 49–50. Ultimately, “creating more minority-majority, or majority-minority districts” was important to Fain “as part of the negotiation in getting a final map.” *Garcia* Dkt. No. 74 at 61. Fain testified that “[he] tried to prioritize greater CVAP districts” and that one of the things he was “willing to do” was “of course ... most definitely increasing minority-majority districts.” *Garcia* Dkt. No. 74 at 84.

Commissioner Graves testified that he thought a majority Hispanic CVAP district in LD-15 would be required to obtain both Commissioner Sims and Commissioner Walkinshaw’s votes. He “had [it] in mind” that he “would need to draw a major[ity] Hispanic CVAP district in the 15th LD[] if [he] wanted to secure [Commissioner Walkinshaw’s] vote for the final plan.” *Garcia* Dkt. No. 75 at 67. Based on a variety of indicia, Graves believed that a majority Hispanic CVAP district in LD-15 “would probably be a go, no-go decision point for [Commissioner Walkinshaw].” *Garcia* Dkt. No. 75 at 67–68. Graves also thought that a majority Hispanic CVAP LD-15 was necessary “to get Commissioner Sims’s vote for a final plan.” *Garcia* Dkt. No. 75 at 70. It was “[v]ery hard for [Commissioner Graves] to see three of the voting commissioners voting for a map that did not have a majority Hispanic CVAP district in the Yakima Valley.” *Garcia* Dkt. No. 75 at 73.

Anton Grose, one of Commissioner Graves’s staffers, testified that “[a]s time went on, it became apparent that a Yakima Valley district that was majority Hispanic, by citizens of voting age population, ... would be a requirement to get support from both Republicans and Democrats.” *Garcia* Dkt. No. 73 at 153. Grose testified that for LD-15, in particular, [HCVAP data] was very, very important to our kind of counterparts, and it was [thus] very important to us.” *Garcia* Dkt. No. 73 at 153–54. LD-15, “in particular, certainly was far more race-focused than [Grose] th[ought] any other district on the map.” *Garcia* Dkt. No. 73 at 155. “[T]here were some other considerations neglected in the drawing of the 15th,” Grose thought, “race predominantly being ... the major focus of that district.” *Garcia* Dkt. No. 73 at 153. When drawing proposed maps, Grose was “cognizant” of racial compositions because Commissioner Graves wanted a majority HCVAP district so that he could get a map that passed. *Garcia* Dkt. No. 73 at 186–87.

The Commission had a November 15 deadline to agree to a redistricting plan. Wash. Const. art. II, § 43(6). As the negotiations got underway, the Commissioners split up for negotiations into two groups of two. *Garcia* Dkt. No. 75 at 17, 49. Commissioners Graves and Sims were primarily responsible for negotiating the legislative map, while Commissioners Walkinshaw and Fain were primarily responsible for the congressional map. *Garcia* Dkt. No. 75 at 49. Several days before a final agreement was reached on November 15, Commissioners Graves and

Sims “agreed to ... make the district 50 percent Latino CVAP.” *Garcia* Dkt. No. 75 at 31; *see also id.* at 91 (noting that before the November 15th deadline, Commissioner Graves had reached an agreement with Commissioner Sims that LD-15 “would be a majority Hispanic district[] by eligible voters”). There was “an agreement ... between [Commissioner Graves] and Commissioner Sims that this district would be greater than 50 percent [Hispanic] CVAP.” *Garcia* Dkt. No. 75 at 32. The partisan balance of LD-15 was still “up in the air,” but however that turned out, the district would contain above 50% Hispanic CVAP. *Garcia* Dkt. No. 75 at 32.

Commissioner Sims appears to have made a Hispanic CVAP district a nonnegotiable criterion because she believed such a district was required by the VRA. *Garcia* Dkt. No. 73 at 51. Commissioner Walkinshaw might have believed this, but his testimony on the point was less clear. *Garcia* Dkt. No. 73 at 135. Commissioners Graves and Fain did not think that the VRA required a legislative district in the Yakima Valley containing a majority HCVAP. *Garcia* Dkt. Nos. 75 at 71 (Graves); 74 at 50 (Fain).

When November 15 finally arrived, the Commissioners moved their negotiations to a hotel in Federal Way, Washington. *Garcia* Dkt. No. 73 at 30. There the Commissioners reached what they referred to as a “framework agreement.” *Garcia* Dkt. Nos. 73 at 16–17; 74 at 71; 75 at 42. Although they did not vote on

specific maps before the deadline, they voted on an agreement that they testified could be turned into a legislative map. *Garcia* Dkt. No. 75 at 41 (Commissioner Graves confirming that he stated in a press conference “that the framework that had been agreed to was sufficiently detailed that, without discretion, it could be turned into a map”). The framework agreement was “that [LD-15] would be that 50.1 Hispanic CVAP number.” *Garcia* Dkt. No. 75 at 42. The framework agreement did not “stipulate the racial composition of any other district[] besides the 15th.” *Garcia* Dkt. No. 75 at 72.

After the Commissioners shook on their framework agreement in the evening of November 15, the Commissioners and their staff began turning the framework agreement into an actual map. *Garcia* Dkt. No. 73 at 192. This process went late through the night and into the morning of November 16. During this time, the map drawers tweaked the racial composition (*i.e.*, the percentage of Hispanic citizens of voting age) of LD-15, bringing it as close as reasonably possible to 50% while staying barely above a 50/50 split. Ex. 487 at 7 (comparing Commissioner Graves’s November 12 map, with a 50.2% Hispanic CVAP, to the enacted map, with a 50.02% Hispanic CVAP). While drawing the maps in the early morning hours of November 16, Grose was “also trying to ensure the district was majority Hispanic by CVAP.” *Garcia* Dkt. No. 73 at 205. It is clear the map drawers were aware of the nonnegotiable criteria that LD-15 must be over 50% HCVAP.

On November 16, 2021, the Commission transmitted its final maps to the Washington State Legislature. Ex. 123. The Legislature made minor amendments to the maps, changing only a few census blocks that resulted in no change in the population of LD-15, and voted to enact the maps in February 2022. *See* H. Con. Res. 4407, 67th Leg. Reg. Sess., at 2:35–36, 71:9–77:26.

## **II. Following Redistricting, Two Challenges Were Brought Against the Enacted 2021 Legislative Map.**

On January 19, 2022, several plaintiffs—including lead plaintiff Susan Soto Palmer—filed a lawsuit against the Washington Secretary of State alleging that the legislative map ratified by the legislature in February, the “2021 Legislative Map,” was enacted in violation of the VRA because (i) the map diluted the voting power of Hispanic residents of LD-15 and because (ii) the Commission drew the map with discriminatory intent. *Soto Palmer* Dkt. No. 70 at 39–40. On March 15, 2022, Benancio Garcia, III, filed a lawsuit against the Washington Secretary of State alleging that the Commission, in drawing LD-15, racially gerrymandered in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Garcia* Dkt. No. 14 at 17. Pursuant to Garcia’s request under 28 U.S.C. § 2284, a three-judge panel was drawn consisting of my colleagues in the majority and me. *Garcia* Dkt. No. 1 at 1, 18. The court in both cases joined the State of Washington as a defendant, and the court in *Soto Palmer* granted several individuals’ motion to intervene and defend the map. *Garcia* Dkt. No. 13; *Soto*



*Palmer* Dkt. Nos. 68–69. The court consolidated the cases for trial, which was held the week of June 5, 2023.<sup>1</sup> On August 10, the court in *Soto Palmer* issued a decision finding in favor of the *Soto Palmer* plaintiffs and directing the State of Washington to redraw the legislative map. *Soto Palmer*, 2023 WL 5125390, at \*13.

## ANALYSIS

The majority dismisses this case as moot. It is not. Not only is the case not moot, but the panel should have acknowledged the map was enacted in violation of the Equal Protection Clause, found in favor of Garcia, and directed the State of Washington to redraw the maps in a way that does not violate the Constitution. That would have mooted the VRA challenge in *Soto Palmer* and avoided the issuance of an advisory opinion in that case.

### I. This Case Is Not Moot.

The majority concludes Garcia’s lawsuit is “moot” because, in the panel’s opinion, the court in *Soto Palmer* concluded that the 2021 map violated the VRA and ordered the State of Washington to redraw it. That opinion was advisory, should never have been rendered, and even putting that aside, does not moot this case.

The *Soto Palmer* decision should never have been issued. Because the 2021 map violates the Equal Protection Clause, it was “void *ab initio*.” *Mester Mfg. Co.*, 879 F.2d at 570 (citation omitted). “An act of the legislature, repugnant to the

<sup>1</sup> *Soto Palmer* also included an additional trial day on June 2, 2023.

constitution, is void.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Indeed, as the Supreme Court put it recently, “an unconstitutional provision is never really part of the body of governing law (because the Constitution automatically displaces any conflicting statutory provision from the moment of the provision’s enactment).” *Collins*, 141 S. Ct. at 1788–89. In deciding the claim in *Soto Palmer*—while necessarily aware of this challenge against the map on constitutional grounds—the *Soto Palmer* court simply ignored the unconstitutionality of the map and jumped ahead to decide whether a hypothetically constitutional map would violate the VRA.

In other words, the *Soto Palmer* court issued an advisory opinion. *See Hall v. Beals*, 396 U.S. 45, 48 (1969) (declining to address the constitutionality of a statute that was no longer legally extant on other grounds because of the need to “avoid advisory opinions on abstract propositions of law”). Opining on “important” but hypothetical “questions of law” is not a function within the “exercise of [the] judicial power” granted in Article III of the U.S. Constitution. *United States v. Evans*, 213 U.S. 297, 300–01 (1909). Indeed, “[federal courts] are constitutionally forbidden from issuing advisory opinions.” *United States v. Guzman-Padilla*, 573 F.3d 865, 879 (9th Cir. 2009); *see also United Pub. Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947) (“[F]ederal courts established pursuant to Article III of the Constitution do not render advisory opinions.”).

Beyond the jurisdictional reason to avoid deciding the VRA claim, there is also an important prudential reason that the court in *Soto Palmer* should have at least deferred resolution of the VRA claim until this panel resolved the Equal Protection claim. The VRA claim in *Soto Palmer* was complex and involved the application of a nine-factor indeterminate balancing test. *See Soto Palmer*, 2023 WL 5125390, at \*6–11. As a matter of prudence, it makes little sense to undertake a complicated test that involves indeterminate balancing when a simpler threshold basis exists for resolving the matter.

The majority cites to *Landis v. North American Co.*, 299 U.S. 248 (1936), as a possible reason not to have prioritized this panel’s Equal Protection claim. First, it’s not clear *Landis* is even relevant. *Landis* considered a court’s power to grant a *motion* for a stay, whereas the issue here involves a court’s *internal* docket management. *See id.* at 256. I do not suggest, as the majority believes, that *Soto Palmer* should have been formally “held in abeyance.” Different considerations come into play when a court is assessing its own order-of-business than when a court is considering an application for a formal stay or for a case to be held in abeyance. But even assuming *Landis* did govern, it was no bar to the court in *Soto Palmer* appropriately deferring. “Especially in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not

oppressive in its consequences if the public welfare or convenience will thereby be promoted.” *Id.*

Similarly, despite the majority’s assertion otherwise, the Supreme Court’s recent decision in *Allen v. Milligan* does not indicate that a court should undertake a many-factored VRA analysis ahead of a simple Equal Protection analysis that would moot the VRA claim. 143 S. Ct. 1487 (2023). The Supreme Court in *Allen* granted review on only one question: “Whether the State of Alabama’s 2021 Redistricting Plan ... violated Section 2 of the Voting Rights Act.” The Court did not grant review on any Equal Protection claim. There was thus no Equal Protection claim pending before the Court that would have potentially mooted the case and which it could have answered before addressing the VRA question. The Supreme Court’s discretionary docket allows it to limit itself just to a question granted. *See Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 28 (1993). But we, of course, are not the Supreme Court.

While my colleagues in the majority opine that the *Soto Palmer* decision was not advisory because of the principle of constitutional avoidance, that principle has no application here. That discretionary principle indicates that a nonconstitutional decision should usually be preferred to a constitutional decision when the nonconstitutional decision would render the constitutional decision unnecessary. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936); *see also Lyng v. Nw.*

*Indian Cemetery Protective Ass’n*, 485 U.S. 439, 446 (1988) (explaining that, “before addressing [a] constitutional issue,” courts should consider “whether a decision on that question could have entitled respondents to relief beyond that to which they were entitled on their statutory claims”). Perhaps if there were a symmetrical relationship between the *Soto Palmer* and *Garcia* cases, such that a decision in one would necessarily moot the other case, and vice versa, there might be a better argument for constitutional avoidance in *Garcia*. But that is not the case. There is instead an asymmetry, where the correct decision in *Garcia* would moot *Soto Palmer*, but a decision in *Soto Palmer*, regardless of the result, does not moot *Garcia*.

Resolving *Garcia* in the plaintiff’s favor would have mooted *Soto Palmer*. It would have meant recognizing that the map challenged in *Soto Palmer* has never legally existed—enacted in violation of the Equal Protection Clause, there never was a constitutionally valid map that could possibly violate the VRA. *See Collins*, 141 S. Ct. at 1788–89; *Mester Mfg. Co.*, 879 F.2d at 570. That recognition would leave no map for the *Soto Palmer* plaintiffs to challenge, and thus moot their action.

By contrast, resolving *Soto Palmer* in the *Soto Palmer* plaintiffs’ favor does not moot *Garcia*. The majority disagrees, stating that because LD-15 is now gone as a result of the decision in *Soto Palmer*, the *Garcia* plaintiff got what he wanted. But he didn’t, of course. Consider what happened: In this case, Plaintiff Garcia

complains that the State considered race unlawfully in drawing the legislative map. In *Soto Palmer*, the plaintiff complained that the State violated the VRA because LD-15 did not *consider race enough*—that is, that the final LD-15 contains too few Hispanic voters. The Court in *Soto Palmer* agreed with the plaintiff that there were not enough Hispanic voters in LD-15 to comply with the VRA and directed the State to go redraw the map in a way that complies with the VRA. The State will do this by placing *more* Hispanic voters in LD-15, a task which necessarily requires the State to consider race.<sup>2</sup>

<sup>2</sup> The majority cites a recent order in the now-remanded *Milligan* litigation as support for its decision to dismiss Garcia’s claims as moot. *See Milligan v. Allen*, 2:21-cv-1530-AMM, Dkt. No. 272 at 7–8, 194–95 (N.D. Ala. Sept. 5, 2023). But the relationship between the VRA and constitutional claims in *Milligan* is noticeably different from the relationship between *Soto Palmer*’s VRA claim and Garcia’s constitutional claim. Thus, *Milligan* does not support the majority’s reliance on constitutional avoidance here.

The *Milligan* litigation involves several consolidated cases, but among those with constitutional claims are the aforementioned *Milligan* case and the *Singleton v. Allen* case. The *Milligan* plaintiffs argue that Alabama’s remedial proposal fails to remedy the VRA violation, and because Alabama’s racial gerrymandering cannot otherwise survive strict scrutiny, it also violates the Equal Protection Clause. *See id.*, Dkt. No. 200 at 16–19, 23–26. As the *Milligan* plaintiffs have presented their arguments, their VRA and Equal Protection claims seek the same thing, and both depend on their underlying theory that Alabama has an affirmative obligation to use race properly to satisfy the demands of the VRA. Thus, their constitutional claims effectively serve as a backstop to their VRA claims, and so relief on the latter necessarily eliminates any need to reach the former. That is a textbook application of mootness. Garcia’s argument here, in contrast, is that the Equal Protection Clause requires the State to abstain from considering race, which is, of course, directly at odds with the *Soto Palmer* plaintiffs’ arguments that the State must consider race

The majority's position is thus that an order directing the State to consider race *more* has “granted ... complete relief” to a plaintiff who complains the State shouldn't have considered race *at all*. This kind of logic should make us wonder if this case is really moot.

It is not, for at least two reasons. First, the plaintiff in this case may wish to appeal this matter to the Supreme Court to challenge current precedent that considers

more. Unlike in *Milligan*, where plaintiffs received all the relief they sought (under either of their claims) when the district court tossed Alabama's remedial maps based on the VRA, the majority here cannot avoid Garcia's constitutional claim based on *Soto Palmer*, which does not offer relief that redresses Garcia's claim.

The *Singleton* plaintiffs, who are advancing only constitutional claims, have taken a different view of the Alabama redistricting dispute. They have offered alternative congressional maps that they contend comply with the VRA without taking race into consideration at all. *See Singleton v. Allen*, 2:21-cv-1291-AMM, Dkt. No. 147 at 19–20. If race need not be considered to satisfy the demands of the VRA, they argue, then Alabama's admitted consideration of race must violate the Equal Protection Clause. *Id.* at 17–18. Because the Alabama court again granted relief on VRA grounds, it had no need to separately consider *at this point in the litigation* the *Singleton* plaintiffs' claim that VRA compliance can be achieved without resort to racial gerrymandering. But that reasoning has no purchase here, where Garcia's claim that the State is improperly using race is neither addressed nor resolved by the *Soto Palmer* court's admonition that the State needs to double down on its use of race to comply with the VRA's demands.

And in any event, while it is true that, when faced with both VRA and constitutional claims, the Alabama court in its recent *Milligan* order decided only the VRA claims, the court neither ultimately rejected the constitutional claims nor took any other action preventing their future adjudication. Instead, it merely “reserve[d] ruling” on them. *Milligan v. Allen*, 2:21-cv-1530-AMM, Dkt. No. 272 at 8, 194. Especially in view of the *Singleton* plaintiffs' claim, which—not unlike Garcia's—do not wholly depend on the outcome of the VRA claim, the Alabama court's decision was a measured and constrained course of action that undercuts rather than supports the majority's severe and terminal decision here.



compliance with the VRA a sufficient reason to racially gerrymander. *See Wis. Legislature*, 142 S. Ct. at 1248; *Allen v. Santa Clara Cnty. Corr. Peace Officers Ass’n*, 38 F.4th 68, 70 n.1 (9th Cir. 2022) (noting that the appellants “concede[d] that binding precedent forecloses” one of their arguments “and only seek to preserve that claim for further appellate review”). While that issue is currently foreclosed by current Supreme Court precedent, the plaintiff in *Garcia* could ask the Supreme Court to revisit that precedent. Even assuming success in that endeavor is a longshot, that doesn’t *moot* this case. I agree with the majority that, *if* Garcia had no ongoing injury, he could not litigate a case with simply the hope that he could persuade the Supreme Court to revisit one of its precedents. But he still has injury. He claims injury from past racial gerrymandering. The decision in *Soto Palmer* ordered that the State engage in *even more* racial gerrymandering. That does not somehow eliminate Garcia’s injury.

Secondly, even putting aside the possibility of *Garcia* seeking relief from the Supreme Court, the *Garcia* case is also not moot because, notwithstanding the finding of a VRA violation in *Soto Palmer* and the resulting invalidation of the redistricting maps, “there is still a live controversy” in *Garcia* “as to the adequacy of” the remedy in *Soto Palmer* in addressing all of the relief sought by Garcia in this case. *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307–08 (2012). “A case becomes moot only when it is impossible for a court to grant any effectual relief

whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” *Id.* (cleaned up). And “the burden of demonstrating mootness is a heavy one.” *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631 (1979) (cleaned up). Moreover, a case is not moot simply because the exact remedy sought by the plaintiff cannot be fully given. The existence of a possible partial remedy “is sufficient to prevent [a] case from being moot.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992).

In this case, Garcia seeks a declaration “that Legislative District 15 is an illegal racial gerrymander in violation of the Equal Protection Clause” *and* an order from this court that the State create a “new valid plan for legislative districts ... that does not violate the Equal Protection Clause.” *Garcia* Dkt. No. 14 at 18. Although the decision in *Soto Palmer* might moot some of the relief that Garcia sought to obtain in this case, the court in *Soto Palmer* did not issue an order directing the State to avoid performing an illegal racial gerrymander when it redraws the map—that is, to avoid violating the Equal Protection Clause. *See Soto Palmer*, 2023 WL 5125390, at \*13. Garcia requested the map be redrawn without violating the Equal Protection Clause, and this unfulfilled request for relief “is sufficient to prevent this case from being moot.” *Church of Scientology*, 506 U.S. at 13.

The majority disagrees because “a federal court may only direct parties to undertake activities that comply with the Constitution.” Thus, the panel “presumes”

that the court in *Soto Palmer* “direct[ed] the State to redraw LD 15” in a way that complies with the Constitution. The source of this presumption is unclear. Although courts obviously should avoid intentionally directing parties to violate the Constitution, there is little reason to presume that the court’s order in *Soto Palmer* implicitly instructed the State not to violate the Equal Protection Clause. The State had earlier violated the Equal Protection Clause *by unlawfully considering race*, and the court’s order directs the State to consider race *more*. It doesn’t set any limit for how much more. Garcia has still not received a court order directing the State to redraw the map in a way that does not violate the Equal Protection Clause. The majority is therefore wrong that there remains no “availability of any meaningful injunctive relief.”

The majority relies on *New York State Rifle and Pistol Association, Inc. v. City of New York* to support its belief that the mere fact that the *Soto Palmer* court directed the map be redrawn is enough to moot this case. *See* 140 S. Ct. 1525 (2020) (*per curiam*). The Supreme Court in *New York* said no such thing. The Court instead concluded that a case was partially moot when plaintiffs challenged a rule that was subsequently amended by state and local authorities during litigation. *See id.* at 1526. In this case, however, Garcia requested not just that the old map be held invalid but that a new map be drawn in a way that does not violate the Constitution. He is still seeking that relief and has not received it from the order in *Soto Palmer*.

Indeed, the order in *Soto Palmer* ensures that he will not receive what he argues is a constitutionally valid legislative map. Garcia’s claimed injury is not merely capable of repetition; it is almost certain to repeat itself.

The majority’s insistent portrayal of this case as indistinguishable from *New York* glosses over the starkly different procedural postures of the two cases and ignores the practical consequences of its own decision to dismiss Garcia’s claim as moot. In *New York*, petitioners’ constitutional claims were considered on a discretionary basis by a court of last resort. Here, Garcia’s constitution claim was presented in the first instance to a district court with a non-discretionary obligation to adjudicate it, and that distinction makes a difference.

After the Supreme Court granted certiorari in *New York*, “the State of New York amended its firearm licensing statute, and the City amended the [challenged] rule” to provide “the precise relief that petitioners requested[.]” 140 S. Ct. at 1526. In response to New York’s argument that the amendments mooted their claims, the petitioners noted (1) that the new rule shared some of the old rule’s constitutional problems and (2) raised the prospect of saving their complaint by amending it to seek damages. *Id.* at 1526–27.

While the Supreme Court concluded that petitioners’ old claims were moot, its subsequent vacatur *and remand* (which, it bears noting, is nowhere near the same thing as this court *finally dismissing* this case for mootness) affirmatively disclaimed

neither of petitioners' arguments. As to the petitioners' first argument, the Supreme Court gave no indication that it disagreed with their contention that New York's replacement rule might have constitutional problems of its own. Instead, it ordered the lower court to address that argument in the first instance. And then, just two years later, the Supreme Court vindicated that exact argument from the very same petitioners. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). And as to petitioners' second argument that they might amend their challenge to the old rule and avoid mootness by adding a damages claim, the Supreme Court *again* merely sent that argument back to the lower court to address in the first instance. *New York*, 140 S. Ct. at 1527. It did not, like the majority does here, reject and dismiss that claim. In short, while the Supreme Court in *New York* did conclude the petitioners' challenge to the old rule was "moot" for purposes of the Supreme Court's own continued review, the Court's actions taken in response to that conclusion bear no resemblance to the majority's decision here. Instead, the Supreme Court merely exercised its unique discretion to have the lower courts address all the remaining non-moot issues in the first instance.

But it bears repeating: we are not the Supreme Court. A three-judge district court panel has nowhere to remand the remaining non-moot issues in this case. The Supreme Court's unique method of managing its own discretionary appellate docket, which in *New York* kept alive the prospect that petitioners' non-moot claims would

receive substantive review, provides no support for the majority’s broad mootness decision here, which kills Garcia’s entire case—including the parts that aren’t moot—before any court had the opportunity to review its merits.

In sum, the panel is wrong on the narrow question of mootness in this case. More broadly—and more disconcerting—the court in *Soto Palmer* was incorrect to issue an advisory opinion opining on whether, assuming LD-15 had been enacted in compliance with the Constitution and was thus legally extant, the district would have violated the VRA. My criticism that the *Soto Palmer* decision is an advisory opinion depends, of course, on my conclusion that the State of Washington violated the Equal Protection Clause. I thus turn now to that question. It is not a hard one on this record.

## **II. The State of Washington Violated the Equal Protection Clause by Racially Gerrymandering Without a Compelling Interest.**

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits a State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. “[A]bsent extraordinary justification,” this clause prohibits a State from “segregat[ing] citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (internal citations omitted). Such sifting is odious to the Constitution and our Republic. It is no less so when a “State assigns voters on the basis of race” and “engages in the offensive and demeaning assumption

that voters of a particular race, because of their race, ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’” *Id.* at 911–12 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)). These “[r]ace-based assignments embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution.” *Id.* In short, “[u]nder the Equal Protection Clause, districting maps that sort voters on the basis of race are by their very nature odious” and “cannot be upheld unless they are narrowly tailored to achieve a compelling state interest.” *Wis. Legislature*, 142 S. Ct. at 1248 (cleaned up).

When a plaintiff has shown that a State racially gerrymandered in drawing a particular district, the burden shifts to the State to show that the gerrymander was “narrowly tailored to achieve a compelling interest.” *Miller*, 515 U.S. at 904; *see also Wis. Legislature*, 142 S. Ct. at 1248. A State may have a compelling interest to draw lines on the basis of race when, “at the time of imposition,” it has a “strong basis in evidence” to believe the racial gerrymander was necessary to comply with the VRA and in fact “judg[ed] [such gerrymandering] necessary under a proper interpretation of the VRA.” *Wis. Legislature*, 142 S. Ct. at 1249–50.<sup>3</sup>

<sup>3</sup> The majority mischaracterizes me as “admi[tting]” that “so long as the State judges the use of race necessary to comply with the VRA it is not unlawful for the State to



In this case, the 2021 Washington State Redistricting Commission (1) racially gerrymandered in drawing LD-15 and (2) a majority of the Commission did not, “at the time of imposition, judge [such a gerrymander] necessary under a proper interpretation of the VRA.” *Id.* (cleaned up). Because the Commission racially gerrymandered without a compelling interest, the 2021 Redistricting Map violated the Equal Protection Clause of the U.S. Constitution and was “void *ab initio*.” *Mester Mfg. Co.*, 879 F.2d at 570; *see also Collins*, 141 S. Ct. at 1788–89. But before discussing the evidence showing the Commission grouped voters on the basis of race and that its racial sorting was not in furtherance of a compelling interest, a threshold question must first be considered. Specifically, the parties dispute whether the Commission or the Washington Legislature is the entity whose intent matters for determining whether the State violated the Equal Protection Clause. The answer is not difficult: it is the Commission’s intent that matters.

**A. The Redistricting Commission’s Intent Matters for Garcia’s Equal Protection Claim.**

create a district with a higher Latino CVAP.” That is incorrect. The mere fact that a State (through its officials) “judges the use of race necessary to comply with the VRA” is decidedly *not* the correct standard for policing the line between racial discrimination that violates the Equal Protection Clause and racial discrimination that complies with the VRA. It is one thing to subject a State that is racially gerrymandering to “the burden of showing that the design of th[e] district withstands strict scrutiny.” *Wis. Legislature*, 142 S. Ct. at 1249. It is quite another to bless a State’s racial discrimination any time “the State judges the use of race necessary to comply with the VRA.” While the Supreme Court has sanctioned the former approach, it has never endorsed the latter, and for good reason.

“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). To establish his prima facie case that the State of Washington violated the Equal Protection Clause in enacting the 2021 map, Garcia must thus show that the State intentionally racially gerrymandered. But whose intent? The State of Washington argues it is the Washington Legislature’s intent. *Garcia* Dkt. No. 78 at 30. Because Washington law structurally makes the Redistricting Commission primarily responsible for redistricting and because the Legislature made only minor changes to the map submitted by the 2021 Redistricting Commission—none of which affected the racial composition of LD-15 imposed by the Commission—the State is incorrect. It is the Commission’s intent that is legally relevant.

“[Supreme Court] precedent teaches that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which may include,” for example, the popular “referendum and the Governor’s veto.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). Accordingly, it is important to first attend to what institution Washington law makes responsible for redistricting. Structurally, Washington law delegates redistricting to the Redistricting Commission, leaving only a minor role for the Washington Legislature.

The Washington Constitution provides that “redistricting of state legislative and congressional districts” shall be performed by “a commission.” Wash. Const. art. II, § 43(1). “The legislature may amend the redistricting plan but must do so by a two-thirds vote of the legislators elected or appointed to each house of the legislature.” *Id.* § 43(7). “After submission of the plan by the commission, the legislature shall have the next thirty days during any regular or special session to amend the commission’s plan.” Wash. Rev. Code § 44.05.100(2). The Legislature’s amendments “may not include [a change of] more than two percent of the population of any legislative or congressional district.” *Id.* Moreover, if the Legislature fails to timely make any amendments, the Commission’s plan automatically becomes “the state districting law.” Wash. Const. art. II, § 43(7).

It is plain from these state constitutional and statutory requirements that Washington law delegates primary redistricting responsibility to the Commission, leaving only tightly circumscribed discretion for a supermajority of the Legislature to make minor changes to the map. Because Washington law delegates almost all responsibility to the Redistricting Commission, the Commission is at least presumptively responsible for performing the “legislative function” of redistricting and is thus the entity whose intent matters for evaluating an Equal Protection claim. *Ariz. State Legislature*, 576 U.S. at 808.

Even assuming that presumption could be overcome in some case, it was not here. The Legislature minimally amended LD-15, the district that Garcia contends was drawn discriminatorily, changing only a few census blocks that resulted in no change in population to LD-15. *See* H. Con. Res. 4407, 67th Leg. Reg. Sess., at 2:35–36, 71:9–77:26. Moreover, the House and Senate majority leaders both explained that they viewed the Commission as the entity responsible for drawing the maps, with the Legislature playing a minor role. The House Majority Leader discussed the changes as “technical in nature” and explained that “[i]f we do nothing, then the maps come into being without our vote” but that the maps would then “come into being without [certain] changes that were recommended by the county commissioners.” Ex. 1065 at 5:04–22. The Senate Majority Leader explained that adopting the maps “is not an approval of the redistricting map and the redistricting plans; it’s not an endorsement of that plan. The Legislature does not have the power to approve or endorse the redistricting plan that the Redistricting Commission approved.” Ex. 126 at 2:10–2:38.

The intent of the 2021 Redistricting Commission is the intent we must consider when evaluating Garcia’s Equal Protection claim.

**B. Race Predominated the Commission’s Considerations in Drawing LD-15.**

Garcia claims that the 2021 Redistricting Commission racially gerrymandered when it drew LD-15. The evidence establishes that he is right. “[A] plaintiff alleging

racial gerrymandering bears the burden ‘to show ... that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.’” *Bethune-Hill*, 580 U.S. at 187 (quoting *Miller*, 515 U.S. at 916). “Race may predominate even when a reapportionment plan respects traditional principles ... if race was the criterion that, in the State’s view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made.” *Id.* at 189 (cleaned up) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)).<sup>4</sup> Finally, it is no excuse that a government racially sorted voters so that it could accomplish an ultimate non-race objective. *See Cooper v. Harris*, 581 U.S. 285, 291 n.1 (2017).

Race clearly predominated the considerations of the 2021 Redistricting Commission when it drew LD-15. The racial composition of LD-15 featured heavily in the Commissioner’s negotiations over the legislative map. *Garcia* Dkt. Nos. 73 at 117, 153–54, 177; 75 at 30–31. And in the ramp-up to final negotiations, the Commissioners reached an agreement to racially gerrymander LD-15 to be at least a bare majority Hispanic CVAP. *Garcia* Dkt. No. 75 at 30, 91. This initial agreement

<sup>4</sup> The Supreme Court recently reinforced that when a State makes the racial composition of a district the criterion on which it will not compromise, it has elevated race to a position of predominance. *See Allen v. Milligan*, 143 S. Ct. at 1510–12 (plurality op.) (obtaining only a minority of the justices for an analysis opining that race does not necessarily predominate when a State crafts a district with an objective of a specific racial composition).

to make LD-15 a majority HCVAP district was then cemented in the final framework agreement among the Commissioners. *Garcia* Dkt. Nos. 73 at 16–17; 74 at 71; 75 at 42, 72. This agreement was the primary criterion for LD-15, contrasting with the other districts where the Commission was aware of racial demographics but nonetheless did not make race a nonnegotiable criterion. *Garcia* Dkt. No. 75 at 42.

All the Commissioners, for varying reasons, elevated the racial composition of LD-15 to be a nonnegotiable criterion around which other factors and passage of the map itself must fall. Commissioner Sims believed that a majority HCVAP in LD-15 was required by the VRA and also believed that the Commission must follow the law. *Garcia* Dkt. No. 73 at 48, 51. One of Commissioner Walkinshaw’s draft maps included a note that the map “[c]reate[d] a majority Hispanic district” in the Yakima Valley. *Garcia* Dkt. No. 73 at 132. And one of Walkinshaw’s staff stated that a district that “perform[ed] for Latino voters” should be nonnegotiable.” *Garcia* Dkt. No. 75 at 110–11. Making LD-15 a majority HCVAP was critical to Commissioner Fain because he “belie[ved] that “the Hispanic CVAP was a metric that was important to Democratic commissioners” and he was “willing to give [an increase in Hispanic CVAP in LD-15] in order to secure support for a final compromise map.” *Garcia* Dkt. No. 74 at 49–50. Commissioner Graves wanted LD-15 to be a majority HCVAP so that he could get a map that obtained a majority of the Commissioners’ votes; it was “[v]ery hard for [Commissioner Graves] to see

three of the voting commissioners voting for a map that did not have a majority Hispanic CVAP district in the Yakima Valley.” *Garcia* Dkt. Nos. 73 at 186–87; 75 at 73. Commissioners Fain and Graves may have wanted LD-15 to be a majority HCVAP district for reasons unrelated to their own concerns about race, but the government may not “elevate[] race to the predominant criterion in order to advance other goals, including political ones.” *Cooper*, 581 U.S. at 291 n.1.

The Commissioners then transformed these intents into an agreement that, come what may, LD-15 would be a majority HCVAP district. In the days leading up to the Commission’s deadline to agree on maps, the two Commissioners responsible for negotiating the legislative map (as opposed to the congressional map) reached an agreement that LD-15 “would be a majority Hispanic district by eligible voters.” *Garcia* Dkt. No. 75 at 91. They “agreed to ... make the district 50 percent Latino CVAP.” *Garcia* Dkt. No. 75 at 31. The district’s partisan makeup was still “up in the air,” but it was agreed that the district would be majority HCVAP.<sup>5</sup> *Garcia* Dkt. No. 75 at 32. And finally, when November 15 arrived, all the Commissioners

<sup>5</sup> The State of Washington notes that Commissioner Fain did not remember the racial composition of LD-15 being a part of the framework agreement. *Garcia* Dkt. No. 78 at 32 n.12. But Commissioner Fain’s lack of memory is hardly surprising given that he was negotiating the congressional map, not the legislative map. *Garcia* Dkt. No. 75 at 49. And his inability to remember this part of the framework agreement is unpersuasive evidence of whether the agreement contained this nonnegotiable criterion, in light of testimony from one of the legislative map negotiators that it was part of the agreement.



reached a framework agreement on how the maps would be drawn, which included that LD-15 would be a majority HCVAP district. *Garcia* Dkt. Nos. 73 at 16–17; 74 at 71; 75 at 42, 72.

Underlining that race predominated the Commission’s drawing of LD-15 is the fact that the Commission did not elevate race to be the predominant factor in drawing other districts. Grose, one of Commissioner Graves’s staffers, testified that LD-15, “in particular,” was “certainly ... far more race-focused than [Grose] th[ought] any other district on the map.” *Garcia* Dkt. No. 73 at 155. Commissioner Fain testified that the “racial composition” of LD-15 was “a very important component of that negotiation” and confirmed that there were not “other districts where [racial composition] was as important of a component.” *Garcia* Dkt. No. 74 at 87. In making the racial composition of LD-15 nonnegotiable—the “criterion that ... could not be compromised”—the Commission elevated race, and it predominated the drawing of LD-15. *Bethune-Hill*, 580 U.S. at 189 (cleaned up).

The majority does not dispute that the racial composition of LD-15 was nonnegotiable for the Commission. The majority instead argues that race did not predominate because the Commissioners considered other factors when drawing the legislative map and because the Commissioners later denied that race predominated their considerations. The reason several of the Commissioners gave for believing that race did not predominate is the same reason relied on by the majority: simply

that, in addition to considering race a nonnegotiable criterion, they also considered other factors.

It is of course not surprising at all that the Commissioners considered other factors. But it is also irrelevant. When a map drawer elevates a specific racial composition as “a “criterion that, in the [map drawer’s] view, could not be compromised,” race predominates. *Bethune-Hill*, 580 U.S. at 189. If the mere consideration of other factors *in addition* to making race nonnegotiable meant race no longer predominated, then race would literally never predominate. Map drawers always consider more than just race, even when they operate with the express purpose of meeting a racial target. Take a simple example. Map drawers always attempt to comply with the Constitution’s requirement that states’ legislative maps be drawn with “equality of population among the districts.” *Mahan v. Howell*, 410 U.S. 315, 321, *modified*, 411 U.S. 922 (1973). If the mere consideration of other factors could stop race from predominating when a map drawer makes racial composition a nonnegotiable criterion, then it would make little sense for the Court to repeatedly state that race predominates when it is a “criterion that ... could not be compromised.” *Shaw*, 517 U.S. at 907; *Bethune-Hill*, 580 U.S. at 189.

By the basic nature of their task, drawers of legislative districts always take a number of essential considerations into account. The ever-present nature of such considerations cannot somehow dilute the constitutional taint of a map drawer who

makes race a nonnegotiable criterion in drawing a map. *See Lee v. City of Los Angeles*, 908 F.3d 1175, 1183 (9th Cir. 2018) (explaining that “traditional redistricting principles are ‘numerous and malleable’” and “a legislative body ‘could construct a plethora of potential maps that look consistent with traditional, race-neutral principles’”) (quoting *Bethune-Hill*, 580 U.S. at 190). That the Commission here unsurprisingly considered “traditional, race-neutral principles” *in addition* to making race a nonnegotiable requirement does not mean those other factors somehow sufficiently watered-down race as the Commission’s predominant consideration in drawing LD-15. *Id.* The racial composition of LD-15—specifically, that it be majority HCVAP—was a “criterion that, in the [Commission’s] view, could not be compromised,” and thus “race-neutral considerations came into play only after the race-based decision had been made.” *Bethune-Hill*, 580 U.S. at 189 (quoting *Shaw*, 517 U.S. at 907).

### **C. The 2021 Legislative Map Fails Strict Scrutiny.**

Race predominated the Commission’s decision to draw LD-15 as it did. For the map to nonetheless be constitutional, the State must show that it survives strict scrutiny. Specifically, the State must show that the map is “narrowly tailored to achieve a compelling state interest.” *Miller*, 515 U.S. at 904. The State argues the gerrymander was justified under the VRA. *Garcia* Dkt. No. 78 at 34. The Supreme Court has held that complying with the VRA can be a compelling state interest, but

only if the State, “at the time of imposition, judge[d] [the racial gerrymander] necessary under a proper interpretation of the VRA.” *Wis. Legislature*, 142 S. Ct. at 1248, 1250 (cleaned up). Because a majority of the voting Commissioners did not “judg[e]” the gerrymander “necessary” under the VRA at the time that the Commission approved the 2021 Legislative Map, the map fails strict scrutiny. *Id.*

Commissioner Graves testified that he was “entirely uncertain” of whether the VRA required “a Hispanic CVAP district.” He thought “that the law was entirely unclear on that particular question.” *Garcia* Dkt. No. 75 at 71. When asked if he had a “clear understanding of what the VRA required[] in the Yakima Valley,” Commissioner Graves answered that he was “not sure the VRA itself has a clear understanding of exactly what it requires in the Yakima Valley.” *Garcia* Dkt. No. 75 at 58. It is evident that Commissioner Graves’s decision to racially gerrymander LD-15 was not because he thought that it was required by the VRA.

So too Commissioner Fain. When he was asked point-blank at trial whether he believed the Hispanic CVAP majority in LD-15 was “required[] by the Voting Rights Act,” Commissioner Fain answered: “No.” *Garcia* Dkt. No. 74 at 50.

Commissioner Walkinshaw was less direct but also unclear as to whether he believed a majority HCVAP was necessary in LD-15. He certainly believed complying with the VRA was important, calling it “mission critical.” *Garcia* Dkt. No. 73 at 106. After he received the slideshow prepared by Dr. Barreto,

Commissioner Walkinshaw released a new map that included an explanation that “[n]ow that we have this information, we as Commissioners should not consider legislative district maps that don’t comply with the VRA.” *Garcia* Dkt. No. 73 at 135. But his general statement that the Commission should comply with the law does not clearly evince that he actually believed the racial gerrymander ultimately embodied in the final legislative map was *necessary* under the VRA. It is possible that Commissioner Walkinshaw believed the VRA required a racial gerrymander, but his testimony and the record are ambiguous.

Ultimately, only Commissioner Sims clearly believed the racial gerrymander performed in LD-15 was required by the VRA. Commissioner Sims straightforwardly answered “Yes” when asked whether she “believe[d] that the VRA required the Commission to create a majority Hispanic CVAP district[] in the Yakima Valley.” *Garcia* Dkt. No. 73 at 51.

The State bears the burden of showing that the 2021 Legislative map survives strict scrutiny. *See Cooper*, 581 U.S. at 292. Even giving the State the benefit of the doubt (which, of course, would not be particularly *strict* scrutiny), and thus assuming Commissioner Walkinshaw believed the VRA required that LD-15 be racially gerrymandered, the State cannot show that a majority of commissioners racially gerrymandered because they intended to comply with the VRA. Two of four commissioners do not constitute a majority of the Commission, *see* Wash. Const. art.

II, § 43(6), and thus there was no majority of the Commission who, “at the time of imposition, judge[d] [the racial gerrymander] necessary under a proper interpretation of the VRA,” *Wis. Legislature*, 142 S. Ct. at 1250 (cleaned up). The judgment of only two Commissioners was not enough to demonstrate that the Commission in any official sense believed racial sorting was necessary to comply with the VRA.


State governments may not arrange people into districts based on race and then hope to justify it by simply pantomiming at the VRA as an interest that could have justified their gerrymander. “What matters is ‘the actual considerations that provided the essential basis for the lines drawn, not post hoc justifications the legislative body in theory could have used but in reality did not.’” *Lee*, 908 F.3d at 1182 (cleaned up) (quoting *Bethune-Hill*, 137 S. Ct. at 799). For good or ill, the Supreme Court has given States “leeway” to draw lines on the basis of race in redistricting when States have good reasons, based in the evidence, to believe the racial gerrymander necessary under the VRA. *Cooper*, 581 U.S. at 306; *see Wis. Legislature*, 142 S. Ct. at 1250. But the Supreme Court also understandably requires that states *actually* judge such segregation necessary under the VRA, not just hope that they can find good experts and good lawyers to make post hoc arguments if someone challenges it as violating the Equal Protection Clause. The State of Washington took the latter approach and so fails to satisfy strict scrutiny. The State

thus enacted the 2021 Legislative Map in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

\* \* \*

My colleagues in the majority are not properly dismissing an already dead case as moot. Instead, after improperly (and unsuccessfully) trying to indirectly kill this case from a distance in *Soto Palmer*, they are forcefully pulling the plug on a case that—even now—still has some life in it. And had they properly reached the merits, a straightforward analysis shows both that race predominated in the drawing of LD-15 in the 2021 Legislative Map and that, because a majority of the Commission did not judge such racial ordering necessary under the VRA at the time the map was adopted, the map cannot survive strict scrutiny. We should have found in favor of Garcia and directed the State of Washington to redraw the Legislative Map without violating the Equal Protection Clause. And then *that* map could be properly evaluated for compliance with the VRA, instead of the advisory analysis provided in the *Soto Palmer* decision. I thus respectfully dissent.

Dated this 8th day of September, 2023.

  
\_\_\_\_\_  
Lawrence VanDyke  
United States Circuit Judge



No. 24-2603

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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BENANCIO GARCIA III,  
Plaintiff-Appellant,

v.

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

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On Appeal from the United States District Court  
for the Western District of Washington  
Case No. 3:22-cv-5152

Hon. Robert S. Lasnik, Hon. David G. Estudillo, Hon. Lawrence J.C. VanDyke

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APPELLANT'S EXCERPTS OF RECORD  
VOLUME 2 of 2

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Jason B. Torchinsky\*  
*\*Counsel of Record*  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
2300 N Street, NW, Ste 643  
Washington, DC 20037  
Phone: (202) 737-8808

Phillip M. Gordon  
Caleb Acker  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
15405 John Marshall Highway  
Haymarket, VA 20169  
Phone: (540) 341-8808

*Counsel for Appellant*

Drew C. Ensign  
Dallin B. Holt  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK, PLLC  
2575 E Camelback Road, Ste 860  
Phoenix, AZ 85381  
Phone: (540) 341-8808

Andrew R. Stokesbary  
CHALMERS, ADAMS, BACKER & KAUFMAN,  
LLC  
701 Fifth Avenue, Suite 4200  
Seattle, WA 98104  
Phone: (206) 813-9322



IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

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,

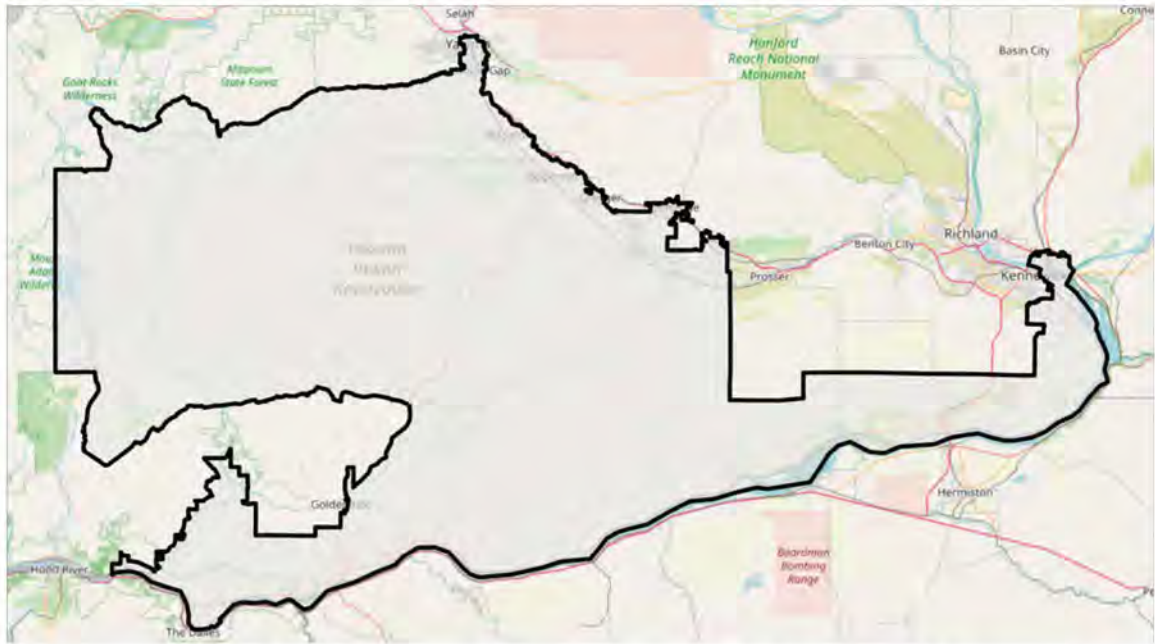
JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,

Intervenor-Defendants.

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

EXPERT REPORT OF SEAN P. TRENDE, Ph.D.

Figure 19: Proposed VRA District in Remedial Maps 3 and 4



© OpenStreetMap contributors

Like the remedial district from Remedial Maps 1 and 2, this district combines populations from Yakima, Pasco, and several small towns along the Yakima River. It differs from that configuration in that it drops some of the VTDs between Pasco and Prosser, and adds population to the Southwest, giving the district a shape that somewhat resembles an octopus slithering along the ocean floor.

Like Remedial Maps 1 and 2, Map 3, involves second and third-order changes that extend well beyond the scope of District 14. Here, for example, are the Enacted Districts that are changed in Remedial Map 3.

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



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.



1 into these discussions.

2 MR. HUGHES: Objection.

3 THE COURT: Just in general, again. This was an  
4 important sticking point, and people are going back and  
5 forth. At one point you don't think they're going to agree,  
6 then suddenly they're agreeing, right?

7 THE WITNESS: Yep. Yep. That's right.

8 THE COURT: That's it.

9 Q I want to turn to the framework, the agreement itself.  
10 What form did the framework take?

11 A Sorry. You mean the final agreement around 8:45 p.m.?

12 Q We'll call the final agreement the framework, for the  
13 purposes of this, since that's how we've been referring to  
14 it. My question is what form did that agreement take?

15 A It was agreement upon, an agreement upon the partisanship  
16 numbers in, I think it's four, five districts, which I have  
17 listed in my notes here. And then the rest of the districts  
18 above a certain metric, the Democratic commissioners would  
19 draw, and other districts below a certain metric, the  
20 Republican districts would draw.

21 MR. HUGHES: Can I ask her to set aside her notes?  
22 And she is reading notes on an exhibit that is currently not  
23 at issue.

24 THE COURT: That's all right.

25 MR. HUGHES: Thank you.



1 this e-mail?

2 A Sure. The purpose was to kind of solidify, in writing to  
3 Commissioner Walkinshaw, some key priorities going into the  
4 final rounds of negotiations. These are priorities that came  
5 from recommendations from our team, our staff team. Also  
6 priorities that we had previously discussed with Commissioner  
7 Walkinshaw. And we wanted to kind of lay out, in order of  
8 priority, for him, as he goes into conversations with other  
9 commissioners.

10 Q And what was the first priority that you laid out for him?

11 A The first priority was a VRA-compliant performing  
12 district, that was the 14th Legislative District.

13 Q You used the word "dem performing" here?

14 A Democratic performing, which also, based on our analysis,  
15 what meant performing for Latino voters in that district.

16 Q And just to be clear, do you mean to say that -- you meant  
17 to say that the district needed to perform to elect Latino  
18 candidates of choice, and you understood that to be the  
19 Democratic candidates?

20 A Yes. Based on our analysis of the racially polarized  
21 voting in that area, performing for Latino voters, allowing  
22 them to elect candidates of their choice, would also mean a  
23 Democratic-performing district.

24 Q What made you believe that Commissioner Walkinshaw would  
25 understand this shorthand?

1 A We discussed it at length, in several meetings, going over  
2 the analysis we had received -- and, yep, in many meetings,  
3 that's what we discussed.

4 Q And you said here it should be nonnegotiable?

5 A Yes.

6 Q What did you mean by that?

7 A I meant that, as our interpretation, that it was a  
8 requirement of the Federal Voting Rights Act to have a  
9 district that performed for Latino voters in the Yakima  
10 Valley, that shouldn't be an item of negotiation or exchange  
11 with other commissioners, that that should be something that  
12 the Commission should prioritize, to comply with federal  
13 redistricting law.

14 Q You say that the list, in the first line of your e-mail,  
15 or actually the second line, was, quote, based on what we've  
16 heard repeatedly in public comment; is that right?

17 A Yes.

18 Q What did you mean by that?

19 A So as I mentioned, as part of my role, I sat in on and  
20 listened to all of the public comment meetings that the  
21 Commission had. I kept track of all that information, and  
22 pulled out a lot of the items that were, if not all, of the  
23 items that were repeatedly mentioned by many people. So that  
24 was a huge part of the maps that we proposed, throughout the  
25 process. Then also what we presented, you know, talked about



1 Q Were you aware -- well, I assume the answer to this is,  
2 yes, given your previous answer. But you were aware, then,  
3 that the 15th District, as adopted by the Commission,  
4 included a slight majority Hispanic CVAP in the 15th  
5 District?

6 A Yes, I was aware of that.

7 Q Do you think the Commission would have ultimately reached  
8 the final deal, if there was not a majority Hispanic CVAP  
9 district in the Yakima Valley?

10 A Very hard for me to see three of the voting commissioners  
11 voting for a map that did not have a majority Hispanic CVAP  
12 district in the Yakima Valley.

13 Q Once you had reached final agreement on the 15th  
14 Legislative District, did you or your staff ever assess that  
15 district, for compliance with the Voting Rights Act?

16 A After we had approved the maps?

17 Q Um-hum. Or in that period of time when you had, I think  
18 it was, a very brief period of time, but that brief period of  
19 time when you sort of had an agreement, in principle, but had  
20 not yet formally approved it via a Commission vote?

21 A No, I don't think -- we did not do like a -- we did not  
22 take that map and ask anybody -- that district, sorry, that  
23 we finally agreed on and ask anybody to analyze it in those  
24 few hours.

25 Q Did you think it was necessary to draw the 15th District



1 Q So for the final plan that the Commission adopted, I think  
2 you said that you recalled the final Hispanic CVAP number  
3 being 50-point-something, a slim majority?

4 A I recall that, yes.

5 Q Did you believe that a Hispanic CVAP district was required  
6 by the Voting Rights Act?

7 A Me personally?

8 Q Yeah.

9 A I was entirely uncertain about that. I think that the law  
10 was entirely unclear on that particular question, so I -- the  
11 most certain answer I can give you is that I was uncertain  
12 about the answer to that question.

13 Q With respect to this, quote-unquote, framework that was  
14 adopted, was the final Hispanic CVAP for Legislative District  
15 one of the components of this framework?

16 A Yes, it was.

17 Q But there was other districts that were included in the  
18 framework, it wasn't just -- it wasn't that everything had  
19 been agreed to, except the 15th. There were other districts  
20 included in the framework agreement?

21 A That's right. In fact, if I recall correctly, the final  
22 agreement that we were talking about, were all districts that  
23 were here on the west side.

24 Q Did this framework stipulate the political composition of  
25 those other districts?

1 A Yes, based on recent election results.

2 Q Did the framework stipulate the racial composition of any  
3 other district, besides the 15th?

4 A No, I don't think so. And my only pause there is that we  
5 had talked about -- because there are other districts that  
6 are majority-minority, by either CVAP or voting age  
7 population, or others, and we had talked about those. But I  
8 don't think any of those made it into -- as key part of that  
9 framework. They still had those characteristics.

10 Q They were agreed to, but they weren't part of the sort of  
11 final agreement that it took to get an actual final agreement  
12 in time for November 15th?

13 A That's right.

14 Q When you voted on this framework, shortly before midnight  
15 on the 15th, did you know what you were approving?

16 A Yes.

17 Q Even though you didn't have a map in front of you at the  
18 time?

19 A Yes.

20 Q Did you examine the final plan, once it was assembled into  
21 map form?

22 A Yes, I did.

23 Q And was that map in line with what you thought you had  
24 agreed to, via the framework?

25 A Yes, it was.



1 Rights Act applied to the Yakima Valley?

2 A Yes, they did.

3 Q Do you recall what she said about what she thought the  
4 Voting Rights Act required in the Yakima Valley?

5 A I think she started most of those conversations by saying,  
6 she is not a lawyer, but that her view was that the  
7 Section 2, from her point of view, required it to be a  
8 district that was majority Hispanic eligible voters. And  
9 that, again, based on past partisan performance, would be a  
10 Democratic district.

11 Q So you also -- so you probably then also felt that in  
12 order to get Commissioner Sims's vote for a final plan, it  
13 had to include a majority Hispanic CVAP?

14 A Yes. I thought that was the case.

15 Q Okay. So this came up a little bit in your testimony  
16 earlier, the court has heard a lot about it, but the deal  
17 that was struck, that the Commission approved, shortly before  
18 midnight on November 15th, there wasn't a physical map in  
19 front of you, but instead you agreed on a framework, is the  
20 word that has been used?

21 A Yeah. We had, in the context of our negotiations, we had  
22 maps, and then we also had particular data that we were  
23 focusing on and negotiating on. And what we finally agreed  
24 to is what I have always called a framework of those data  
25 that you could translate into the maps.

1 think that would probably be a go, no-go decision point for  
2 him.

3 Q And I think you sort of addressed this earlier, but  
4 agreeing to a majority CVAP district in the 15th District, is  
5 something you were willing to do, as long as there was the  
6 appropriate adjustments, in your mind, for overall partisan  
7 performance of all the legislative districts?

8 A No. Because the Hispanic CVAP, this is -- I need to be  
9 really clear here, there are two primary characteristics  
10 here. There's the majority-minority part, and then there's  
11 the partisan-performance part. So you just asked  
12 specifically about --

13 Q I apologize if my question was unclear. I want to focus  
14 in on the majority Hispanic CVAP part. You said that was one  
15 of the conditions you felt that would be required to get his  
16 vote, at least in your mind?

17 A I was going to say I think that fairly describes how I was  
18 viewing the situation.

19 Q Is that characteristic of the district, something that you  
20 were willing to agree to yourself, as long as you had the  
21 other partisan performance things that were important to you?

22 A They were two separate things, in my mind. But I didn't  
23 view reaching agreement on a majority Hispanic CVAP district  
24 as something that was part of those partisan calculations. I  
25 think this is kind of responsive, but after I got elected to



1 could get a map done that day. And I can't remember if we  
2 talked specifically about the configuration of the 15th,  
3 during that meeting.

4 Q I guess, at any point, did you ever discuss, with  
5 Commissioner Walkinshaw, how the Voting Rights Act applied in  
6 the Yakima Valley?

7 A Yes.

8 Q Do you recall what he said the VRA required?

9 A I think if I recall correctly, he took the position that  
10 it was -- that it required a particular -- a district with  
11 particular characteristics, to be drawn. That those  
12 characteristics be both that it be a Hispanic CVAP district,  
13 and that it -- if you use recent partisan-performance, it  
14 would be a district that was Democratic.

15 Q When you say you thought he believed it required a  
16 Hispanic CVAP district, specifically a majority Hispanic CVAP  
17 district?

18 A Yes, where a majority of eligible voters were Hispanic.

19 Q Did you think that you would then need to draw a major  
20 Hispanic CVAP district in the 15th LD, if you wanted to  
21 secure his vote for the final plan?

22 A I think I had that in mind. It was less based on that  
23 meeting, and it was more in his public statements, the things  
24 that he said in that Crosscut article, then his next map that  
25 he put out, and his -- some of his public statements, made me

1 think that would probably be a go, no-go decision point for  
2 him.

3 Q And I think you sort of addressed this earlier, but  
4 agreeing to a majority CVAP district in the 15th District, is  
5 something you were willing to do, as long as there was the  
6 appropriate adjustments, in your mind, for overall partisan  
7 performance of all the legislative districts?

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10 here. There's the majority-minority part, and then there's  
11 the partisan-performance part. So you just asked  
12 specifically about --

13 Q I apologize if my question was unclear. I want to focus  
14 in on the majority Hispanic CVAP part. You said that was one  
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16 vote, at least in your mind?

17 A I was going to say I think that fairly describes how I was  
18 viewing the situation.

19 Q Is that characteristic of the district, something that you  
20 were willing to agree to yourself, as long as you had the  
21 other partisan performance things that were important to you?

22 A They were two separate things, in my mind. But I didn't  
23 view reaching agreement on a majority Hispanic CVAP district  
24 as something that was part of those partisan calculations. I  
25 think this is kind of responsive, but after I got elected to



1 composition, at this stage in the negotiations, with respect  
2 to the 15th District?

3 A "Predominant" is probably the right word there. My only  
4 hesitation here is we were, of course, also looking at the  
5 percentage of eligible voters of other races, as well,  
6 because there's the Hispanic vote, then there's the  
7 percentage of vote of other races. And we were looking at  
8 those, too. But it's probably fair to say the Hispanic CVAP  
9 number was the primary one we were focusing on.

10 Q So during the last week, or so, of negotiations, did you  
11 ever talk to Commissioner Walkinshaw about the configuration  
12 of Yakima Valley legislative districts?

13 A I don't think so, other than our really clunky final  
14 public meeting, on the night of the 15th.

15 Q Maybe I narrowed the timeframe too much. What about in  
16 the last several weeks. Did you ever talk with Commissioner  
17 Walkinshaw about the configuration of Yakima Valley  
18 legislative districts?

19 A During those last couple weeks, I was predominantly  
20 talking with Commissioner Sims, because that's who I was  
21 negotiating with. And also because there was the Public  
22 Meetings Act, and I didn't want to have a serial meeting. So  
23 I wasn't talking to Commissioner Walkinshaw that much. We  
24 had one meeting, the morning of the 15th, that primarily  
25 focused on this process, and whether he wanted to see if we

1 line. But there were proposals to make them horizontal, that  
2 would put Yakima, Tri-Cities and Walla Walla, all into one  
3 congressional district. And I think I recall testimony  
4 suggesting that those communities, along Highway 82, were  
5 something of a community of interest for the purposes of a  
6 congressional map.

7 Q For the purposes of a congressional map?

8 A That's how I remember that testimony. But I would go back  
9 to that particular hearing, to remember it exactly.

10 Q Do you happen to recall the exact size of the  
11 congressional districts, that were mandated after the 2020  
12 decennial census?

13 A 770,152, give or take.

14 Q What was the approximate size mandated for legislative  
15 districts?

16 A 157,200.

17 Q So about a fifth. All right.

18 So honing back in on the process of reaching consensus  
19 on LD 15, and the rest of the Legislative District map, were  
20 there certain key metrics -- you already mentioned partisan  
21 performance and racial composition as something that you  
22 looked at, generally, but were there any particular key  
23 metrics you looked at, with respect to LD 15, as you were  
24 trading proposals and negotiating, over the last few weeks?

25 A The two predominant ones we were discussing were the



1 racial composition of the district, and its partisan  
2 performance. But we were certainly also talking about  
3 communities of interest. And if you draw that district in  
4 various ways, it's not only that district that gets impacted,  
5 it's all of Central and Eastern Washington. So we were  
6 talking about those issues as well.

7 Q Did you ever look at racial data, on a precinct or  
8 census-block level, during this process, in LD 15?

9 A I think so. It wouldn't have been -- we usually didn't  
10 get that granular, for that purpose. But there might have  
11 been times when we were drawing a district, and trying to  
12 include some precincts, or some others, and I might have seen  
13 some of the data from precincts when we were doing that  
14 around the Edge's exercise.

15 Q I know in your testimony earlier, you pointed out there is  
16 a number of ways you could calculate or measure minority  
17 population; one of them, I'm sure you're familiar with, is  
18 this notion of Hispanic citizen voting age population, or  
19 Hispanic CVAP?

20 A Yes.

21 Q So if I say that in a question, you know what I mean?

22 A I assume you mean that's a majority of eligible voters,  
23 citizens of voting age population, are Hispanic.

24 Q Was that particular measurement, the Hispanic CVAP, you  
25 know, probably the most predominant way you examined racial

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3  
 4 SUSAN SOTO PALMER, et al., ) C22-5035-RSL  
 5 )  
 6 Plaintiffs, )  
 7 )  
 8 v. ) Seattle, WA  
 9 )  
 10 STEVEN HOBBS, in his ) June 7, 2023  
 11 official capacity as )  
 12 Secretary of State of ) 8:30 a.m.  
 13 Washington, et al., )  
 14 ) TRIAL - Day 4  
 15 Defendants, )  
 16 )  
 17 and )  
 18 )  
 19 JOSE TREVINO, et al., )  
 20 )  
 21 Intervenor-Defendants, )  
 22 )  
 23 )  
 24 )  
 25 )

14 BENANCIO GARCIA III, ) C22-5152-RSL-DGE-  
 15 ) LJC  
 16 )  
 17 Plaintiff, )  
 18 )  
 19 v. )  
 20 )  
 21 )  
 22 STEVEN HOBBS, in his )  
 23 official capacity as )  
 24 Secretary of State of )  
 25 Washington, et al., )  
 Defendants. )  
 )

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



1 Q So we heard there's a November 15th deadline to complete  
2 negotiations, adopt the final map. What would have happened  
3 if the Commission had not approved a plan by November 15th?

4 A Under our State Constitution, if the Commission can't  
5 agree to a map by the deadline, then the State Supreme Court  
6 is tasked with drawing the maps by the next -- sometime in  
7 April.

8 Q How did you feel about that possibility?

9 A I didn't want it to happen, not because I don't -- I  
10 clerked at our State Supreme Court, I love it. But mostly  
11 because all the other Commissions that have -- not mostly, I  
12 wanted to get it done, because this process is important to  
13 the people of our state, and it matters to me. But also none  
14 of the past Commissions had failed to adopt a map, and I  
15 didn't want to be the first one that failed to do so.

16 Q You said it was something you wanted to avoid. Fair to  
17 say you would have a strong incentive to reach a deal with  
18 Democratic commissioners?

19 A I felt a strong internal motivation to see if we could  
20 reach agreement, on maps.

21 Q Were you willing to negotiate certain concessions, with  
22 Democratic commissioners, in order to avoid handing the  
23 map-drawing process over to the court?

24 A Yes. I think it's fair to say. I certainly recognized if  
25 a map was going to be done, it would have to be done where

1 concessions were made, from commissioners of both parties.

2 Q Before I ask you about what some of those concessions  
3 were, I want to revisit another topic that came up a minute  
4 ago, a slide deck presented by Dr. Matt Baretto. You kind of  
5 generally remember this?

6 A I do, yes.

7 Q Do you know who hired Dr. Barreto to produce the slide  
8 deck?

9 A I think it was the state Senate Democratic Caucus. But  
10 I'm not entirely sure of the payment arrangements, or what  
11 that relationship looked like.

12 Q But certainly, at the time, that was your best guess, that  
13 was your best belief?

14 A I think I remember either hearing or seeing it in an  
15 e-mail.

16 Q Obviously, the Democratic Caucus is now not only, in your  
17 mind, at least hiring Dr. Barreto, but they've also appointed  
18 one of the four commissioners that you're tasked to negotiate  
19 maps with?

20 A Yes. The leader of the State Senate Democrats appointed  
21 Commissioner Walkinshaw.

22 Q Did you know who Dr. Barreto was, before you saw his slide  
23 deck?

24 A I don't think so.

25 Q After you saw the slide deck, did you do any -- spend any



1 THE COURT: Do you have anything, Mr. Stokesbary?

2 RECROSS EXAMINATION

3 BY MR. STOKESBARY:

4 Q Good to see you again, Mr. Fain. A couple quick  
5 questions. I just want to clarify something that I think  
6 every one of us has asked a little bit about, but would you  
7 say the racial composition of LD 15 was an important  
8 component that you considered, when trying to reach a deal?

9 A Yes.

10 Q Was the racial composition of any other of the state's 49  
11 districts, something that you considered in the same way when  
12 trying to reach a deal?

13 A I believe that that metric was viewed with regard to a  
14 number of districts. I believe some of the original -- the  
15 2012 maps had a certain number of districts that had  
16 minority-majority population, although it might not have been  
17 CVAP. So there was attention to how many districts in the  
18 subsequent drafts had the same.

19 Q So you might have known how many -- you might have known  
20 the racial composition of other districts, but did the exact  
21 number -- was that relevant to how those other districts were  
22 formed?

23 A I would say that whether or not a district was  
24 majority-minority, was a data point in -- the number of  
25 districts that were majority-minority, was a data point that

1 was considered for many districts. It is correct to say that  
2 it was more widely discussed with regards to the Yakima  
3 Valley area.

4 Q So in LD 15, the racial composition was top of mind; is  
5 that fair to say?

6 A It was a very important component of that negotiation.

7 Q Were there any other districts where it was as important  
8 of a component?

9 A No.

10 Q So you mentioned a minute ago, when Mr. Hughes walked you  
11 through just one of the old maps, not five of the old maps,  
12 you correctly pointed out that when you draw a circle that  
13 has to include X number of people, you're, by definition,  
14 going to include people that don't necessarily have some  
15 innate connection.

16 But is it fair to say, though, that there was only one  
17 of the 49 districts where you drew a circle around people  
18 that were -- you drew a circle around a district, where  
19 racial composition was top of mind?

20 THE COURT: That's a really complicated question.

21 MR. STOKESBARY: I'll withdraw that last question,  
22 and just rely on your other answers.

23 Q One other quick question. You used the phrase  
24 "majority-minority district." The plaintiffs' exhibit they  
25 had you read, 302, it referenced an offer to include a



1 proposals and counterproposals?

2 A It was my belief that it was, yes.

3 Q Did you believe that you would ultimately need to have a  
4 majority Hispanic CVAP population in LD 15, in order to get  
5 votes from your Democratic colleagues?

6 A I didn't know what was going to be necessary to get votes  
7 for the complete map. I was -- spent most of my time trying  
8 to figure out what the true levels of priority issues were,  
9 for the folks involved in the process.

10 Q Was increasing the Hispanic CVAP percentage in LD 15,  
11 something that you were willing to give, in order to secure  
12 support for a final compromise map?

13 A Certainly.

14 Q Do you recall what the final Hispanic CVAP percentage was,  
15 for LD 15, the version that was enacted?

16 A I believe it was 52 percent.

17 Q So very slight majority?

18 THE COURT: 52 percent, he said.

19 MR. STOKESBARY: Thank you, Your Honor.

20 Q Um, did you believe that this majority was required, by  
21 the Voting Rights Act?

22 A No.

23 Q Earlier you talked that you sort of worked closely with  
24 Commissioner Walkinshaw, albeit on the congressional maps,  
25 but presumably you developed some kind of rapport with him.

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE  
 3

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

Seattle, WA

June 6, 2023

8:30 a.m.

TRIAL - Day 3

C22-5152-RSL-DGE-  
LJCV

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



1 out.

2 Q And so that offer was a step that you concretely took to  
3 comply with the Voting Rights Act; correct?

4 A What was necessary for compliance was still a question,  
5 and whether or not there was any steps necessary for  
6 compliance was still an open question. But the racial makeup  
7 of the districts in question, or the Yakima Valley, was  
8 something that -- was one of many factors that I considered  
9 when I was looking at the drawing of those district  
10 boundaries.

11 Q Mr. Fain, why offer a Voting Rights Act compliant map, if  
12 you didn't believe it was required?

13 A I was very interested in getting an agreement, that  
14 furthered the priorities that I had, namely the statutory  
15 compliance on population size, and an increased sense of  
16 competitiveness.

17 Q Did you release a public legislative district map  
18 proposal?

19 A I did.

20 Q And what did you do, if anything, to check for Voting  
21 Rights Act compliance on that public proposal that you put  
22 out?

23 A I don't recall. My priority, in the initial map that I  
24 laid out, was the -- keeping school districts contained  
25 within legislative districts. And that was the lens that I

1 with them, figure out something that Commissioner Graves  
2 would like to see on the next map. Maybe it's likely some  
3 compromise. He'd direct that to me. I'd help put that  
4 together. Give him the attachment. Then he can review it  
5 and send it.

6 JUDGE VANDYKE: Sometimes when you were making these  
7 maps, were you -- reading these e-mails, it's like you're  
8 very cognizant of the racial composition for the map you're  
9 making.

10 THE WITNESS: Correct.

11 JUDGE VANDYKE: So this is a good question to ask  
12 you, because you were making some of the maps. You were  
13 looking at and designing the map to hit a certain racial  
14 minimum number; is that correct?

15 THE WITNESS: Certainly not a set number,  
16 necessarily. But there would -- we'd be cognizant of that,  
17 especially considering that we thought that a Hispanic  
18 majority CVAP district would likely be necessary, to get  
19 votes of all four commissioners. So it was certainly  
20 something we were aware of.

21 JUDGE VANDYKE: To the extent you were taking that  
22 into consideration, what would be the reason you would be  
23 taking that into consideration?

24 THE WITNESS: Because that was something Commissioner  
25 Graves was looking for.



1 A It's a difficult question to answer. I mentioned this in  
2 my deposition as well. We knew the proposed 15th -- the 15th  
3 proposal that we had, as our kind of draft map that we  
4 released to the public, we certainly knew that wasn't going  
5 to be the final version.

6 Certainly after the Barreto report, we were aware, because  
7 what's important to our colleagues has to be important to us  
8 in this process, because it does require a three-fourths  
9 vote, at least a minimum, to pass a map. So this is to say  
10 that we knew compromise was going to be needed, especially in  
11 that area of the world. So there certainly was plenty of  
12 willingness to alter what we had originally proposed, and we  
13 knew that ultimately there would have to be some sort of  
14 compromise.

15 Q What sort of changes or compromises did you think would be  
16 necessary, for you and Commissioner Graves to make, at that  
17 point?

18 A As time went on, it became apparent that a Yakima Valley  
19 district that was majority Hispanic, by citizens of voting  
20 age population, that that would be a requirement to get  
21 support from both Republicans and Democrats.

22 Q And as you and Commissioner Graves were sort of  
23 negotiating this, with Commissioner Sims and her staff, I  
24 assume that means, then, that you were analyzing the Hispanic  
25 citizen voting age population of the various proposals that

1 but I do know what it is, yes.

2 Q What is it?

3 A This is a presentation that -- along with Senator Billig,  
4 that we gave to the Senate Democratic Caucus, as an update on  
5 the redistricting process.

6 Q I'm going to scroll down to the 16th slide on this. Do  
7 you recall this slide of the presentation?

8 A I believe we did one of these for each one of the  
9 legislative -- for a number of the legislative districts. So  
10 this is the one about the 14th Legislative District, in our  
11 September draft map.

12 Q I'm going to read the first bullet underneath the map that  
13 says, "Creates a majority Hispanic district in 14th LD, which  
14 aligns this district's election with the presidential year,  
15 allowing for more fair and effective representation of the  
16 state's largest Hispanic community, by increasing voter  
17 participation." Did I read that correctly?

18 A You did.

19 Q You'd agree that presidential election years tend to have  
20 higher voter turnout?

21 A I do.

22 Q Do you recall looking at disaggregated data between Latino  
23 voter turnout and white voter turnout, during presidential  
24 election years?

25 A I actually don't recall that. But it is very possible



1 the disclosures, the 14th and the 15th districts were a  
2 source of significant debate, which is why we're here.

3 THE COURT: Did that debate, for the most part, stay  
4 around competitiveness, or was there discussion about racial  
5 situations, too?

6 THE WITNESS: It had to deal with a lot of different  
7 pieces. But I would say none of those were predominant. But  
8 it had to deal with a lot of those pieces. And in addition  
9 to those factors you just raised, Your Honor, it also had to  
10 do with unifying -- we were trying to draw them so they  
11 unified city and county lines, unifying the Yakima  
12 Reservation that abuts those, all the way down -- the  
13 ancestral lands of the Yakima, all the way down to the  
14 Columbia River.

15 THE COURT: Were you in the legislature with  
16 Commissioner Fain when he was in the legislature?

17 THE WITNESS: I was. And also Commissioner Graves.

18 THE COURT: So you kind of knew them a little bit.

19 THE WITNESS: It's a good question. I knew  
20 Commissioner Fain better. I interacted very little with  
21 Commissioner Graves. I think he left the legislature the  
22 year I came in, so I don't believe we overlapped.

23 THE COURT: Go ahead, counsel.

24 Q (By Mr. Gaber) I guess I want to clarify that. For the  
25 most part, the negotiations, over what would actually happen

1 them. Was that your understanding as well?

2 A I don't know, there was a lot of inbound e-mail. Even all  
3 the things that I think were submitted on public record, I  
4 didn't necessarily see all of it.

5 Q In any event, you had the opportunity to ask specific  
6 questions of the Washington Attorney General's office?

7 A I don't remember that specific chain of events, but if  
8 that's what occurred, and you have that in the record, then  
9 I'm sure it's accurate. But I don't remember that specific  
10 thread.

11 Q Now, what were you doing during the day on November 15th?

12 A I genuinely don't recall at this point.

13 Q Do you recall that some time in the -- around 8:30 p.m. in  
14 the evening, there came to be sort of an agreement of a  
15 framework that would dictate the map drawing that would begin  
16 at that point, among the commissioners?

17 A At some point we moved -- we were running behind. At some  
18 point we moved to starting to draw maps, correct, based on  
19 some shared understandings.

20 Q I'm going to play a clip, which is from Exhibit 101. It  
21 will be time stamped 1230 through 1321, that corresponds with  
22 Exhibit 102, which is the transcript of pages 12 through 13.  
23 And this is from the press conference that followed, I  
24 believe, three days after the 15th.

25 (Video clip played.)



1 they wanted a VRA district, that's what was -- I'd have to  
2 reread the testimony to know specifically. There was a lot  
3 of feedback.

4 Q Fair. But, generally speaking, was this sort of feedback  
5 important to you as you were thinking about proposing and  
6 voting on maps?

7 A Yes. And despite my poor recollection, it was important  
8 at the time.

9 Q Fair.

10 Let's talk -- let's shift gears and talk about the VRA.  
11 So I'm quite sure you've already answered this, but was it  
12 your understanding, did you believe that the VRA required the  
13 Commission to create a majority Hispanic CVAP district, in  
14 the Yakima Valley?

15 A Yes.

16 Q And what did you base that understanding on?

17 A Presentations that we received from the Redistricting  
18 Justice Coalition, the AG's presentation, from the Barreto  
19 memo, from previous lawsuits around Voting Rights Act, and  
20 the Yakima Valley.

21 Q Did you believe, at the time, that the majority Hispanic  
22 CVAP district had to lean Democratic, in order to comply with  
23 the VRA?

24 A No, that was an outstanding question.

25 Q Okay. And we'll get a little more into that. But I want

1 A The black community.

2 Q Let's talk about your time on the Commission. So you were  
3 selected as a commissioner. While you were a commissioner,  
4 what were your goals as far as drawing or considering  
5 potential legislative maps?

6 A Well, to comply with the law, and the requirements under  
7 the Constitution regarding how districts were drawn, I wanted  
8 to draw maps that reflected the political realities of our  
9 state, that increased civic engagement and voter  
10 participation, that respected communities of interest, and  
11 tribal sovereignty. There's more. I had four specific  
12 points. That's all I got, off the top of my head today.

13 Q We maybe will get to those. And I don't want to make this  
14 too much of a quiz for you. You mentioned statutory and  
15 constitutional requirements. What statutory and  
16 constitutional requirements, in particular, were you trying  
17 to comply with?

18 A Well, first, that we completed our negotiations by our  
19 November 15th deadline. That we drew maps that were compact,  
20 convenient, contiguous, that didn't favor any person or  
21 party. I used to have these on total recall. I would have  
22 to look at something to -- but I wanted to make sure that our  
23 maps were constitutionally compliant, and that included a VRA  
24 district.

25 Q Understood. And as part of your work on the Commission,



1 compromise position for LD 15, correct?

2 A Correct.

3 Q And I think you stated this earlier, to make sure I  
4 understood it correctly, it was a majority Hispanic or Latino  
5 citizen voting age population -- and a toss-up political  
6 district, or a district that slightly leans Republican, is  
7 the way I remember it from your deposition. Is that an  
8 accurate representation of the compromised position?

9 A Yes. And how we would consolidate different cities in  
10 that map, was also part of the conversation.

11 Q Understood.

12 A Or part of the compromise.

13 Q Now, for yourself and Commissioner Walkinshaw, you both  
14 stated that it was a priority for both -- well, you can only  
15 speak for yourself, so I'll just ask you about what you said.

16 You said earlier it was a priority for you to create a  
17 majority-minority district, a majority Hispanic Latino CVAP  
18 in LD 15, correct?

19 A Correct.

20 Q That was something that was -- you weren't going to reach  
21 an agreement on LD 15, unless that happened; is that a safe  
22 statement?

23 A Yes.

24 Q Okay.

25 Now, the 2019 ACS data, the American Community Survey

1 compromise position for LD 15, correct?

2 A Correct.

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4 understood it correctly, it was a majority Hispanic or Latino  
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25 Now, the 2019 ACS data, the American Community Survey



1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE  
 3

4 SUSAN SOTO PALMER, et al., )  
 5 )  
 6 Plaintiffs, )

7 v. )

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

12 Defendants, )

13 and )

14 JOSE TREVINO, et al., )

15 Intervenor-Defendants, )

16 .  
 17 BENANCIO GARCIA III, )

18 Plaintiff, )

19 v. )

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

24 Defendants. )  
 25 )

C22-5035-RSL

Seattle, WA

June 5, 2023

8:30 a.m.

TRIAL - Day 2

C22-5152-RSL-DGE-  
LJCV

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

1 Treasurer election results. But I don't remember if, for  
2 that district, we were looking at the composite data or if we  
3 were looking at Biden 2020 results.

4 Q Do you know for which other districts you might have been  
5 using the Biden results?

6 A Internally we used the Biden results for all of the  
7 districts. And we also compared that against the composite  
8 data, and against the 2020 Treasurer's race. So we were  
9 looking at all of the data sets throughout the process.

10 Q By "internally," do you mean within the commission or  
11 within your team?

12 A Within my team.

13 Q However, as you said, you don't recall which of those you  
14 agreed to at 50 percent for the 15th Legislative District?

15 A Correct.

16 Q And you said a majority, that the agreement entailed a  
17 majority Latino CVAP district in the 15th Legislative  
18 District. Did you specify a percentage?

19 A I may have. I just know that it was over 50 percent.  
20 Well, let me back up. I think we anticipated that it would  
21 be over 50 percent, because the ACS data was not current.

22 Q Right, okay. So just -- let's just focus on the  
23 agreement. And I asked that question a little confusingly.

24 In the agreement, what was the specific percentage for  
25 2019 Latino CVAP, for the 15th Legislative District?



The Honorable Robert S. Lasnik

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

BENANCIO GARCIA III,

*Plaintiff,*

v.

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

*Defendants.*

Case No.: 3:22-cv-5152-RSL

AMENDED COMPLAINT

THREE JUDGE COURT

“It is a sordid business, this divvying us up by race.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part).

**I. INTRODUCTION**

1. Plaintiff brings this action to challenge the constitutionality of Washington State Legislative District 15 in the Yakima Valley as an illegal racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment to Constitution of the United States.

2. As part of the 2021 redistricting process, the Washington State Redistricting Commission (the “Commission”) approved, and the Washington State Legislature (the “Legislature”) amended and ratified, a plan for the redistricting of state legislative districts in

1 which Legislative District 15 was purposefully drawn to have a Latino citizen voting age  
2 population (“CVAP”) of 50.02%.

3 3. The Equal Protection Clause bars redistricting “on the basis of race without  
4 sufficient justification.” *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018) (citing *Shaw v. Reno*, 509  
5 U.S. 630, 641 (1993)).

6 4. This new Legislative District 15 can only be explained by race. The district’s odd  
7 shape, which crosses five county lines, bisects two of the largest cities in Central and Eastern  
8 Washington and divides certain communities of interest while combining other communities with  
9 divergent interests, flies in the face of traditional districting principles (as well as Washington state  
10 constitutional and statutory requirements). Contemporaneous public statements of the voting  
11 members of the Commission (each, a “Commissioner”) provide further evidence that a majority  
12 Latino CVAP legislative district in Central and Eastern Washington was a precondition to the  
13 Commission’s approval of any state legislative district plan.

14 5. Because “racial considerations predominated over others, the design of the district  
15 must withstand strict scrutiny. The burden thus shifts to the State to prove that its race-based  
16 sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end.” *Cooper v.*  
17 *Harris*, 137 S. Ct. 1455, 1464 (2017) (citing *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct.  
18 788, 800 (2017)).

19 6. There was no compelling interest that justified using race as the predominant factor  
20 in creating Legislative District 15. While complying with Section 2 of the Voting Rights Act is a  
21 compelling state interest, the state has the burden of showing that it had a “strong basis in evidence”  
22 to conclude that Section 2 required its action. *Cooper v. Harris*, 137 S. Ct. at 1464 (quoting *Ala.*  
23 *Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)).

24 7. Two Commissioners stated that Section 2 of the Voting Rights Act compelled a  
25 safe Democrat, majority Latino CVAP district. But that was solely based upon a short presentation  
26 solicited by the State Senate Democratic Caucus and created by an interested advocacy  
27 organization. Neither the Commission nor the State of Washington conducted independent



analysis to determine what Section 2 of the Voting Rights Act required. A presentation by an interested party is not enough to create a compelling interest. As Justice Alito warned in an analogous redistricting case, “[a] group that wants a State to create a district with a particular design may come to have an overly expansive understanding of what § 2 demands. So one group’s demands alone cannot be enough.” *Abbott v. Perez*, 138 S. Ct. at 2334.

8. The state must also prove its action was narrowly tailored, which the state cannot do if it does not carefully evaluate and consider race-neutral alternatives. *See, e.g., Cooper v. Harris*, 137 S. Ct. at 1471. The Commissioners’ stated prerequisite of a majority Latino CVAP district necessarily means the Commission did not consider race-neutral alternatives. Moreover, it is unclear how the Commission arrived at a 50.02% Latino CVAP in Legislative District 15 other than to meet its preferred racial balance.

9. Because race was the predominant motivating factor in creating Legislative District 15, but such race-based sorting neither served a compelling government interest nor was narrowly tailored to that end, it violates the Equal Protection Clause of the Fourteenth Amendment.

10. Plaintiff seeks a declaration that Legislative District 15 is invalid and an injunction prohibiting the Defendant from calling, holding, supervising or taking any action with respect to State Legislative elections based on Legislative District 15 as it currently stands.

## II. PARTIES

11. Plaintiff Benancio Garcia III is a United States citizen, over the age of 18, and registered voter in the State of Washington. He currently resides in Legislative District 15. He intends to vote in future elections.

12. Defendant Steven Hobbs is being sued in his official capacity as the Secretary of State of Washington. Under state law, the Secretary of State is “the chief election officer for all federal, state, county, city, town, and district elections,” RCW 29A.04.230, responsible for “the

administration, canvassing, and certification of . . . state primaries, and state general elections,”<sup>1</sup> RCW 43.07.310. In addition, “declarations of candidacy for the state legislature . . . in a district comprised of voters from two or more counties”—such as Legislative District 15—are to be filed with the Secretary of State. RCW 29A.24.070.

13. Defendant State of Washington is being sued pursuant to the Court’s Order of Joinder (Dkt. # 13) ordering Plaintiff to add the State of Washington as a Defendant. The State of Washington includes the respective governmental arms responsible for adopting redistricting plans and ensuring that elections are conducted in accordance with those plans in the State.

### III. JURISDICTION AND VENUE

14. This Court has jurisdiction to hear Plaintiff’s claim pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and 1357. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction to award Plaintiff’s costs and attorneys’ fees pursuant to 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e).

15. A three-judge district court is requested pursuant to 28 U.S.C. § 2284(a), as Plaintiff is “challenging the constitutionality of . . . the apportionment of a[] statewide legislative body.”

16. This Court has personal jurisdiction over the Defendant. Defendant Steve Hobbs is a state official who resides in Washington and performs his official duties in Olympia, Washington. Defendant State of Washington is a state of the United States of America.

17. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred and will occur in this judicial district. In addition, Defendant is a state official performing his official duties in the Western District of Washington.

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<sup>1</sup> “The plan approved by the commission . . . shall constitute the districting law applicable to this state for legislative . . . elections, beginning with the next elections held in the year ending in two.” RCW 44.05.100. Thus, the Secretary of State administers legislative district elections based on the boundaries established by the Commission’s redistricting plan.



IV. FACTS

A. Washington State Redistricting

18. The Washington state constitution directs that “[i]n January of each year ending in one, a commission shall be established to provide for the redistricting of state legislative and congressional districts.” WASH. CONST. art. II, § 43(1); *see also* RCW 44.05.030.

19. The Commission is composed of five members. Each of the “leader[s] of the two largest political parties in each house of the legislature . . . appoint one voting member.” These four voting members select a fifth, nonvoting member to serve as the Commission’s chairperson WASH. CONST. art. II, § 43(2); *see also* RCW 44.05.030.

20. The Washington state constitution requires that “[e]ach district . . . contain a population . . . as nearly equal as practicable to the population of any other district” and that “[t]o the extent reasonable, each district . . . contain contiguous territory, . . . be compact and convenient, and . . . be separated from adjoining districts by natural geographic barriers, artificial barriers, or political subdivision boundaries.” WASH. CONST. art. II, § 43(5). In addition, the Commission’s redistricting plan “shall not be drawn purposely to favor or discriminate against any political party or group.” *Id.*

21. The Commission’s redistricting plan must also, “insofar as practical,” follow certain other traditional redistricting principles, including that “[d]istrict lines should be drawn so as to coincide with the boundaries of local political subdivisions and areas recognized as communities of interest” and that “[t]he number of counties and municipalities divided among more than one district should be as small as possible.” RCW 44.05.090.

22. In order to adopt a redistricting plan, it must be approved by “[a]t least three of the voting members” of the Commission. WASH. CONST. art. II, § 43(6).

23. The Commission is required to “complete redistricting . . . no later than November 15th of each year ending in one.” *Id.*; *see also* RCW 44.05.100.

24. “Upon approval of a redistricting plan,” the Commission “shall submit the plan to the legislature,” which may amend the Commission’s plan within the first 30 days of the next

regular or special legislative session by “an affirmative vote in each house of two-thirds of the members elected or appointed thereto.” RCW 44.05.100.

25. After such 30-day period, “[t]he plan approved by the commission, with any amendment approved by the legislature, shall be final . . . and shall constitute the districting law applicable to this state for legislative and congressional elections, beginning with the next elections held in the year ending in two.” *Id.*

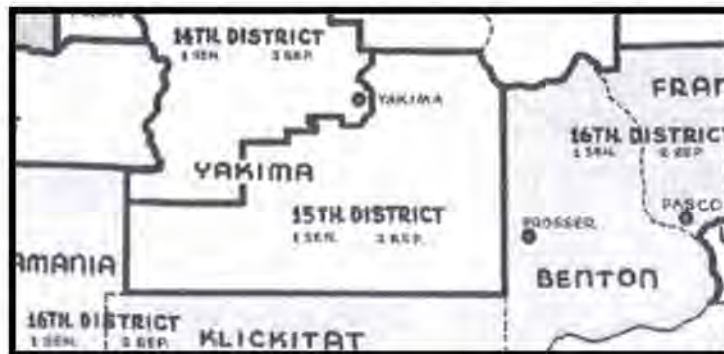
26. Following the Commission’s adoption of a redistricting plan, it “shall take all necessary steps to conclude its business and cease operations . . . on July 1<sup>st</sup> of each year ending in two . . . .” RCW 44.05.110.

27. If the Commission has ceased to exist, the Legislature may “adopt legislation reconvening the commission for purposes of modifying the redistricting plan.” RCW 44.05.120(1).

#### **B. The History of Legislative District 15**

28. Over the past 90 years, Legislative District 15 has changed during each round of redistricting, but never as drastically as between 2012 and 2022. Historically, the district has covered a substantial portion of Yakima County. (From 1982 through 2001, it also included portions of neighboring counties, but never as far northeast as Othello or as far east as Pasco).

29. A map of Legislative District 15 from 1931 through 1957 is shown below. The district included only a portion of Yakima County. STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889-2019 174 (2019).

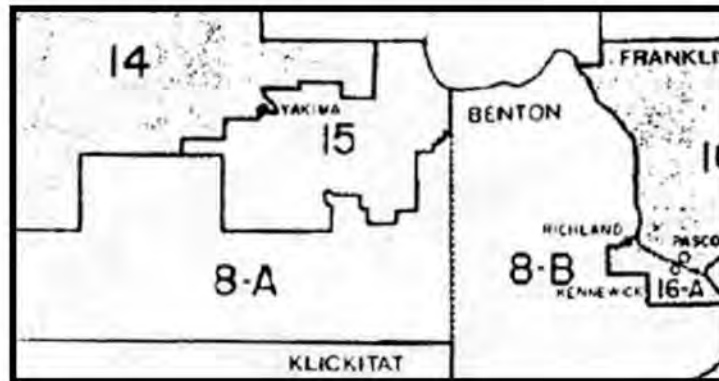




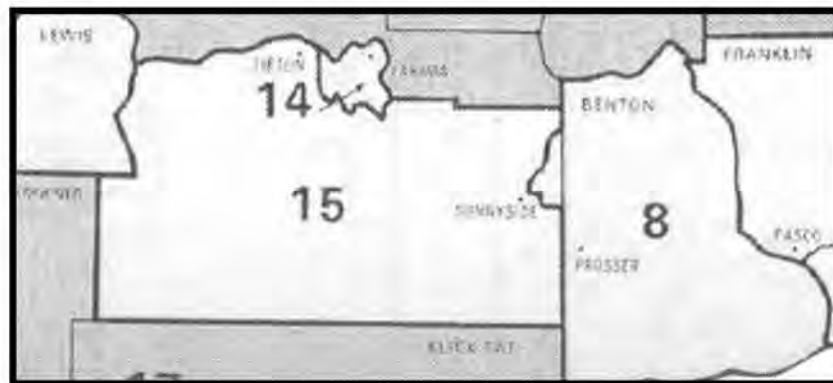
30. A map of Legislative District 15 from 1957 through 1965 is shown below. The districted included only a portion of Yakima County. *Id.* at 177.



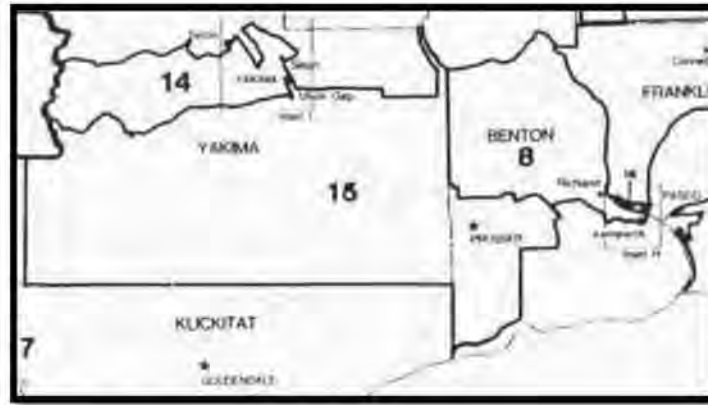
31. A map of Legislative District 15 from 1965 through 1972 is shown below. The district included only a portion of Yakima County. *Id.* at 180.



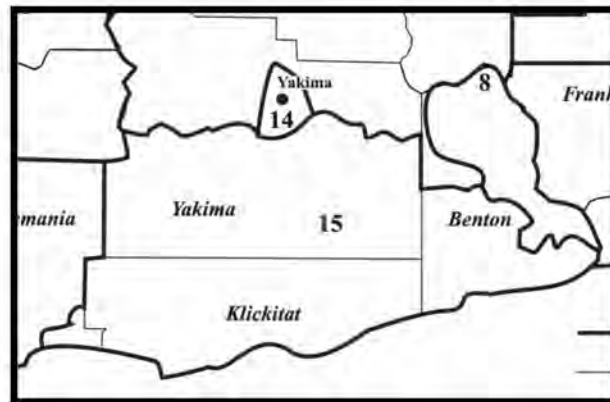
32. A map of Legislative District 15 from 1972 through 1981 is shown below. The district included only a portion of Yakima County. *Id.* at 182.



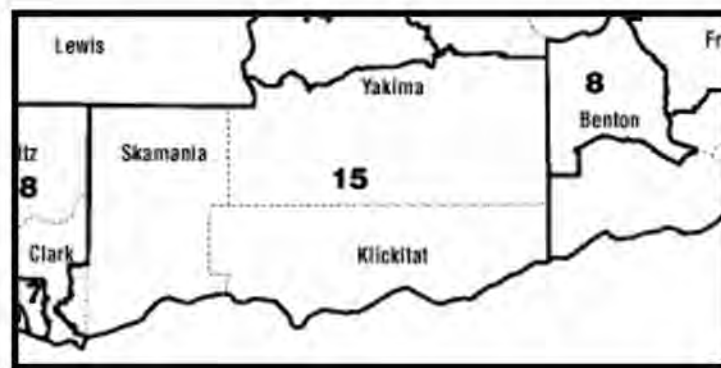
33. A map of Legislative District 15 from 1982 through 1991 is shown below. The district included portions of Yakima and Benton Counties. *Id.* at 184



34. A map of Legislative District 15 from 1991 through 2001 is shown below. The district included a portion of Yakima, Benton, Klickitat, and Skamania Counties. *Id.* at 186.

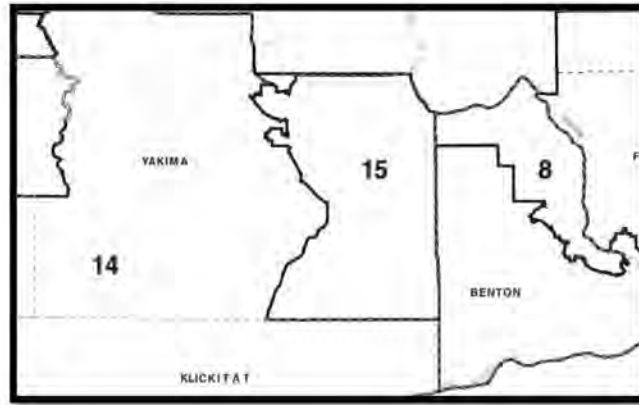


35. A map of Legislative District 15 from 2002 through 2011 is shown below. The district included a portion of Yakima, Klickitat, Skamania, and Clark Counties. *Id.* at 188.





36. A map of the current version of Legislative District 15, in effect since 2012, is shown below. The district once again includes only a portion of Yakima County. *Id.* at 190.



### C. The 2021 Redistricting Process

37. On December 10, 2020, the Speaker of the House of Representatives announced the appointment of April Sims as a Commissioner representing the House Democratic Caucus and the Senate Majority Leader announced the appointment of Brady Piñero Walkinshaw as a Commissioner representing the Senate Democratic Caucus. *E.g.*, Press Release, Washington State House Democrats, *House, Senate leaders announce their appointees for Redistricting Commission* (Dec. 10, 2020), <https://housedemocrats.wa.gov/blog/2020/12/10/house-senate-leaders-announce-their-appointees-for-redistricting-commission/>.

38. On January 15, 2021, the Senate Minority Leader announced the appointment of Joe Fain as a Commissioner representing the Senate Republican Caucus and the House Minority leader announced the appointment of Paul Graves as a Commissioner Representing the House Republican Caucus. *See, e.g.*, Eric Rosane, *Former Lawmakers Joe Fain, Paul Graves Tapped by Legislative GOP Leaders as Members of Redistricting Commission*, THE CHRONICLE (Centralia), Jan. 15, 2021, available at <https://www.chronline.com/stories/former-lawmakers-joe-fain-paul-graves-tapped-by-legislative-gop-leaders-as-members-of,260219>.

39. On January 30, 2021, the four voting Commissioners appointed Sarah Augustine as the nonvoting fifth member and Chair of the Commission. *E.g.*, Pat Muir, YAKIMA HERALD-REPUBLIC, *White Swan woman tapped to lead state Redistricting Commission*, Feb. 8,

2021, available at [https://www.yakimaherald.com/news/local/white-swan-woman-tapped-to-lead-state-redistricting-commission/article\\_37671834-78c9-5cec-a5a5-d9d1aab30f72.html](https://www.yakimaherald.com/news/local/white-swan-woman-tapped-to-lead-state-redistricting-commission/article_37671834-78c9-5cec-a5a5-d9d1aab30f72.html).

40. Between February 2021 and November 2021, the Commission held Special Business Meetings, Regular Business Meetings, and Public Outreach Meetings. *See, e.g.,* Washington State Redistricting Commission, Business Meetings, <https://www.redistricting.wa.gov/commission-meetings>; Washington State Redistricting Commission, Public Outreach Meetings, <https://www.redistricting.wa.gov/outreach-meetings>.

41. On September 21, 2021, each of the four voting Commissioners released a proposed legislative district map to the public. *E.g.,* Washington State Redistricting Commission, Legislative Maps, <https://www.redistricting.wa.gov/commissioner-proposed-maps>.

42. No Commissioner proposed a version of Legislative District 15 that resembled the district as drawn by the Commission's final redistricting plan. No proposal, for example, contained the cities of Pasco or Othello, and none contained a majority Latino CVAP. *See id.*

43. The map of Legislative District 15 initially proposed by Commissioner Sims is shown below. It combined the Yakama Indian Reservation with parts of Yakima and communities along Interstate 82 to Grandview. Commissioner Sims stated that her map "recognizes the responsibility to create districts that provide fair representation for communities of interest" and that "[m]aintaining and creating communities of interest" and "[c]entering and engaging communities that have been historically underrepresented" were "values guid[ing]" her efforts. *Id.*

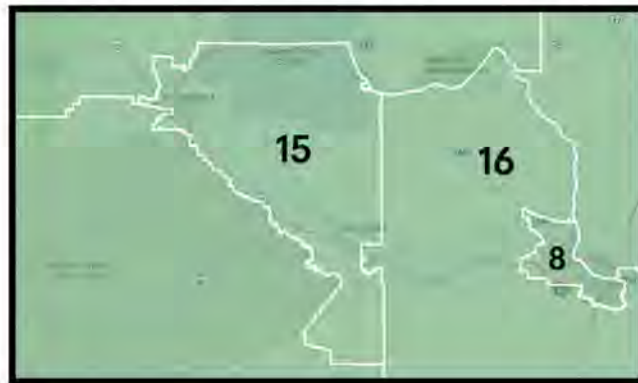




44. The map of Legislative District 15 initially proposed by Commissioner Walkinshaw is shown below. It merged cities around Yakima into a district that stretched north beyond Ellensburg and south to the Columbia River. Commissioner Walkinshaw stated his goals were to “[m]aintain and unite communities of interest and reduce city splits” and “prioritize[e] the needs of . . . historically underrepresented communities.” His plan also “[c]reate[d] a majority-Hispanic/Latino district” in the neighboring Legislative District 14, which was “55.5% [Hispanic/Latino] by Voting Age Population (VAP)” and “65.5% people-of-color by VAP.” *Id.*



45. The map of Legislative District 15 as proposed by Commissioner Fain is shown below. It included the City of Yakima and consisted of the eastern third of Yakima County. Commissioner Fain “place[d] existing school district boundaries at the cornerstone of his legislative framework.” His plan also “create[d] seven majority-minority districts statewide, and one additional majority-minority citizen voting age population (CVAP) district.” *Id.*



46. The map of Legislative District 15 as proposed by Commissioner Graves is shown below. It combined the northeastern portion of Yakima County, including the cities along Interstate 82, with most of Benton County apart from Richland and Kennewick. Commissioner Graves’s plan “focuses on communities of interest and is not drawn to favor either party or incumbents” and featured eight “majority-minority” districts. *Id.*



47. On October 19, 2021, the Washington State Senate Democratic Caucus circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA and co-founder of the UCLA Voting Right Project. *See* Presentation by Matt Barreto, Assessment of Voting Patterns in Central/Eastern Washington and Review of the Federal Voting Rights Act, Section 2 Issues, (Oct. 19, 2021), <https://senatedemocrats.wa.gov/wp-content/uploads/2021/10/Barreto-WA-Redistricting-Public-Version.pdf>.

48. Upon information and belief, Dr. Barreto was hired by the Washington Senate Democrat Caucus, not by the Commission, the State of Washington or the Legislature.

49. The presentation argued that, in order to comply with Section 2 of the Voting Right Act, a majority Latino CVAP district in the Yakima Valley that voted for the Democratic Party’s preferred candidates is required. *See id.*

50. The presentation included analysis of voting patterns for just two statewide general elections, the 2012 U.S. Senate race between Maria Cantwell and Michael Baumgartner and the 2020 Governor race between Jay Inslee and Loren Culp. The presentation did not include analysis



1 of voting patterns in primary elections, or any other analysis, exploring whether voting patterns  
2 could be explained by partisanship, rather than race. *See id.*

3 51. Importantly, the presentation also did not consider or suggest any race-neutral  
4 alternatives despite showing that the districts initially proposed by Commissioners Sims and  
5 Walkinshaw would have voted for the Latino bloc's preferred candidate over the majority bloc's  
6 preferred candidate in the 2020 President/Vice President race. *See id.*

7 52. Only two claimed "VRA Compliant" legislative district options were presented.  
8 One district contained a Latino CVAP of 60% and the other contained a combined Latino and  
9 Native American CVAP of 60%, without any explanation for why a 60% threshold was chosen or  
10 why Latino and Native American voters should or could be grouped together for Voting Rights  
11 Act purposes. *See id.*

12 53. Despite the brevity and potential bias of the analysis, Commissioner Walkinshaw  
13 issued a statement on October 21, 2021, two days after the presentation, stating that he and  
14 Commissioner Sims "will be releasing new statewide legislative maps early next week." Press  
15 Release, Washington Senate Democrats, *New definitive analysis by UCLA Voting Rights Expert:*  
16 *final Washington state legislative plan must include VRA-compliant district in the Yakima Valley*  
17 (Oct. 21, 2021), [https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-](https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-district-in-the-yakima-valley/)  
18 [ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-](https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-district-in-the-yakima-valley/)  
19 [district-in-the-yakima-valley/](https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-district-in-the-yakima-valley/).

20 54. Commissioner Walkinshaw also stated that "as the first ever Latino commissioner,  
21 it has been extremely important for me to lift up and elevate Hispanic voters, and undo patterns of  
22 racially polarized voting, particularly in the Yakima Valley." Melissa Santos, *Proposed WA*  
23 *redistricting maps may violate Voting Rights Act*, CROSSCUT (Oct. 21, 2021),  
24 [https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-](https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-act)  
25 [act](https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-act).

26 55. On October 25, 2021, Commissioners Sims and Walkinshaw released revised  
27 legislative plans, both of which incorporated the "Yakama Reservation" district option from Dr.

1 Bareto's presentation, which achieved a 60% majority CVAP by combining Latino and Native  
2 populations.

3 56. On October 26, 2021, less than three weeks before the Commission's statutory  
4 deadline, Washington State Senate Democrats issued a press release holding out Dr. Bareto's  
5 presentation as "definitive," stipulating that "the final adopted map must include a  
6 majority-Hispanic district in the Yakima Valley." Press Release, Washington Senate Democrats,  
7 *Walkinshaw releases new VRA-Compliant Legislative map* (Oct. 26, 2021),  
8 [https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-](https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/)  
9 [walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/](https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/).

10 **D. Legislative District 15 under the 2021 Plan**

11 57. Shortly before midnight on November 15, 2021, the Commission "voted  
12 unanimously to approve a legislative redistricting plan." Order Regarding the Washington State  
13 Redistricting Commission's Letter to the Supreme Court on November 16, 2021 and the  
14 Commission Chair's November 21, 2021 Declaration (Redistricting Order), No. 25700-B-676, at  
15 2 (Wash. Dec. 3, 2021).

16 58. Shortly after midnight on November 16, 2021, the Commission submitted "a formal  
17 resolution adopting the redistricting plan" and "a letter transmitting the plan" to the Legislature.  
18 *Id.*

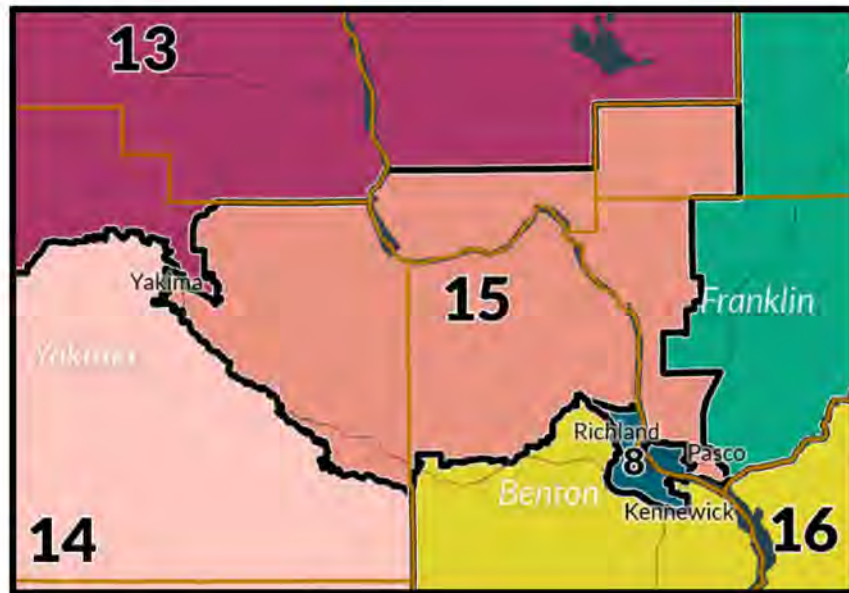
19 59. The Legislature approved minor adjustments to the Commission's final plan. *See*  
20 H. Con. Res. 4407, 67th Leg., 2022 Reg. Sess. (Wash. 2022).

21 60. The redistricting plan approved by the Commission, together with the Legislature's  
22 amendments, constitutes Washington state's districting law for legislative elections, beginning  
23 with the upcoming 2022 elections. *See* WASH. CONST. art. II, § 43(7); RCW 44.05.100(3); *see also*  
24 Redistricting Order at 4.

25 61. The map of the new Legislative District 15 as defined by the Commission's  
26 approved plan is shown below. It disregards traditional districting principles such as compactness,  
27



maintaining communities of interest, and respecting political subdivisions or geographical boundaries.



62. The shape of Legislative District 15 is strained and noncompact. Its northwest and southeast corners are narrow slivers of land that reach into the cities of Yakima and Pasco respectively, where a substantial majority the district's population resides. The district extends north to Mattawa and northeast to Othello, based upon information and belief, for the sole purpose of including those cities' substantial Latino populations. The interior of the district is sparsely populated.

63. The odd shape of Legislative District 15 cannot be explained by political or natural boundaries. It stretches into parts of five counties, yet contains not a single whole county. Its western and eastern sections are divided by the Yakima Firing Center, Rattlesnake Hills, the Hanford Nuclear Site, and the Columbia River. Despite these geographic boundaries, Legislative District 15 does not follow major thoroughfares. To travel just from Sunnyside to Pasco via Interstate 82 and Interstate 182 would require crossing through both Legislative Districts 16 and 8 before reentering Legislative District 15 in Pasco.

64. The Commission ignored communities of interest in creating Legislative District 15. The district's boundaries not only split up urban communities like Yakima and Pasco, but



1 smaller cities like Grandview, Moxee and Union Gap. And while Legislative District 15 divides  
2 communities of shared interest, it also groups together communities with distinctly different  
3 interests. For example, it extends to Pasco, Othello, Mattawa and the Hanford Nuclear Site, none  
4 of which have previously been placed in the same legislative district as the city of Yakima or any  
5 portion of Yakima County in the state's history.

6 65. The boundaries of the new Legislative District 15 approved by the Commission do  
7 not resemble prior Legislative District 15 boundaries or those of any publicly-proposed districts  
8 by any Commissioner during the 2021 redistricting process.

9 66. However, the new Legislative District 15 does contain a Latino CVAP of 50.02%,  
10 a figure so barely sufficient to constitute a majority that it is statistically impossible to have  
11 occurred by random chance.

12 67. The boundaries of the new Legislative District 15 were clearly negotiated and  
13 approved predominantly on the basis of race in order to create a majority Latino CVAP legislative  
14 district.

15 68. No compelling interest justified the predominant consideration of race in creating  
16 Legislative District 15.

17 69. The Commission cannot justify its decision to use race as the predominant factor in  
18 drawing Legislative District 15's boundaries under Section 2 of the Voting Rights Act. The  
19 Commission could not have a strong basis in evidence to believe that it was required to create a  
20 new Latino-opportunity district to avoid liability under Section 2 because the Commission did not  
21 conduct any analysis of racial voting patterns or of what Section 2 required. *See, e.g., Cooper v.*  
22 *Harris*, 137 S. Ct. at 1464 (“[S]aid otherwise, the State must establish that it had ‘good reasons’ to  
23 think that it would transgress the [Voting Rights] Act if it did not draw race-based district lines.”  
24 (citing *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. at 278)).

25 70. Two Commissioners cited the presentation from the UCLA Voting Rights Project,  
26 but one advocacy group's demands alone are insufficient to create a strong basis in evidence that  
27 justifies sorting voters by race. *See, e.g., Abbott v. Perez*, 138 S. Ct. at 2334 (“A group that wants

a State to create a district with a particular design may come to have an overly expansive understanding of what § 2 demands. So one group's demands alone cannot be enough.")

71. Even if there were a compelling state interest in creating Legislative District 15 using race as the predominant factor, Legislative District 15 is not narrowly tailored to achieve that interest. The Commission did not perform any analysis whatsoever of race-neutral alternatives, including, for example, what percentage of Latino voters would be necessary to have the opportunity to elect their candidates of choice. *See, e.g., Cooper v. Harris*, 137 S. Ct. at 1471 ("To have a strong basis in evidence to conclude that § 2 [of the Voting Rights Act] demands such race-based steps, the State must carefully evaluate whether a plaintiff could establish the *Gingles* preconditions . . . in a new district created without those measures.").

## V. CLAIMS

### A. Violation of the Equal Protection Clause of the United States Constitution

72. Plaintiff realleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

73. Section 1 of the Fourteenth Amendment to the U.S. Constitution provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

74. Race was the predominant factor motivating the Commission's decision to draw the lines encompassing Legislative District 15.

75. The Commission's race-based sorting of voters in Legislative District 15 neither served a compelling state interest nor was narrowly tailored to that end.

76. Therefore, Legislative District 15 violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

77. Plaintiff has no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin the conduct of elections based on Legislative District 15 will irreparably harm Plaintiff by violating his constitutional rights.



**VI. PRAYER FOR RELIEF**

78. WHEREFORE, Plaintiff asks for the following relief:

- a. Convene a court of three judges pursuant to 28 U.S.C. § 2284(a);
- b. Declare that Legislative District 15 is an illegal racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;
- c. Issue a permanent injunction enjoining Defendant from enforcing or giving any effect to the boundaries of Legislative District 15, including an injunction barring Defendant from conducting any further elections for the Legislature based on Legislative District 15;
- d. Order the creation of a new valid plan for legislative districts in the State of Washington that does not violate the Equal Protection Clause;
- e. Award Plaintiff reasonable attorneys' fees and costs incurred in this action under 42 U.S.C. § 1988, 52 U.S.C. § 10310(e) and any other applicable law; and
- f. Grant such other and further relief as this Court deems just and proper.

DATED this 9<sup>th</sup> day of June, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary

Andrew R. Stokesbary, WSBA #46097

STOKESBARY PLLC

1003 Main Street, Suite 5

Sumner, WA 98390

T: (206) 486-0795

[dstokesbary@stokesbarypllc.com](mailto:dstokesbary@stokesbarypllc.com)

*Counsel for Plaintiff*



**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 9<sup>th</sup> day of June, 2022.

Respectfully submitted,

s/ Andrew R. Stokesbary

Andrew R. Stokesbary, WSBA #46097

*Counsel for Plaintiff*

1  
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6  
7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 BENANCIO GARCIA III,

11 Plaintiff,

12 v.

13 STEVEN HOBBS, in his official capacity as  
14 Secretary of State of Washington,

15 Defendant.

No. 3:22-cv-5152

COMPLAINT FOR  
THREE-JUDGE PANEL

16 “It is a sordid business, this divvying us up by race.” *League of United Latin Am. Citizens*  
17 *v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in the judgment  
18 in part, and dissenting in part).

19 **I. INTRODUCTION**

20 1. Plaintiff brings this action to challenge the constitutionality of Washington State  
21 Legislative District 15 in the Yakima Valley as an illegal racial gerrymander in violation of the  
22 Equal Protection Clause of the Fourteenth Amendment to Constitution of the United States.

23 2. As part of the 2021 redistricting process, the Washington State Redistricting  
24 Commission (the “Commission”) approved, and the Washington State Legislature (the  
25 “Legislature”) amended and ratified, a plan for the redistricting of state legislative districts in  
26  
27

1 which Legislative District 15 was purposefully drawn to have a Latino citizen voting age  
2 population (“CVAP”) of 50.02%.

3 3. The Equal Protection Clause bars redistricting “on the basis of race without  
4 sufficient justification.” *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018) (citing *Shaw v. Reno*, 509  
5 U.S. 630, 641 (1993)).

6 4. This new Legislative District 15 can only be explained by race. The district’s odd  
7 shape, which crosses five county lines, bisects two of the largest cities in Central and Eastern  
8 Washington and divides certain communities of interest while combining other communities with  
9 divergent interests, flies in the face of traditional districting principles (as well as Washington state  
10 constitutional and statutory requirements). Contemporaneous public statements of the voting  
11 members of the Commission (each, a “Commissioner”) provide further evidence that a majority  
12 Latino CVAP legislative district in Central and Eastern Washington was a precondition to the  
13 Commission’s approval of any state legislative district plan.

14 5. Because “racial considerations predominated over others, the design of the district  
15 must withstand strict scrutiny. The burden thus shifts to the State to prove that its race-based  
16 sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end.” *Cooper v.*  
17 *Harris*, 137 S. Ct. 1455, 1464 (2017) (citing *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct.  
18 788, 800 (2017)).

19 6. There was no compelling interest that justified using race as the predominant factor  
20 in creating Legislative District 15. While complying with Section 2 of the Voting Rights Act is a  
21 compelling state interest, the state has the burden of showing that it had a “strong basis in evidence”  
22 to conclude that Section 2 required its action. *Cooper v. Harris*, 137 S. Ct. at 1464 (quoting *Ala.*  
23 *Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)).

24 7. Two Commissioners stated that Section 2 of the Voting Rights Act compelled a  
25 safe Democrat, majority Latino CVAP district. But that was solely based upon a short presentation  
26 solicited by the State Senate Democratic Caucus and created by an interested advocacy  
27



1 organization. Neither the Commission nor the State of Washington conducted independent  
2 analysis to determine what Section 2 of the Voting Rights Act required. A presentation by an  
3 interested party is not enough to create a compelling interest. As Justice Alito warned in an  
4 analogous redistricting case, “[a] group that wants a State to create a district with a particular  
5 design may come to have an overly expansive understanding of what § 2 demands. So one group’s  
6 demands alone cannot be enough.” *Abbott v. Perez*, 138 S. Ct. at 2334.

7 8. The state must also prove its action was narrowly tailored, which the state cannot  
8 do if it does not carefully evaluate and consider race-neutral alternatives. *See, e.g., Cooper v.*  
9 *Harris*, 137 S. Ct. at 1471. The Commissioners’ stated prerequisite of a majority Latino CVAP  
10 district necessarily means the Commission did not consider race-neutral alternatives. Moreover, it  
11 is unclear how the Commission arrived at a 50.02% Latino CVAP in Legislative District 15 other  
12 than to meet its preferred racial balance.

13 9. Because race was the predominant motivating factor in creating Legislative District  
14 15, but such race-based sorting neither served a compelling government interest nor was narrowly  
15 tailored to that end, it violates the Equal Protection Clause of the Fourteenth Amendment.

16 10. Plaintiff seeks a declaration that Legislative District 15 is invalid and an injunction  
17 prohibiting the Defendant from calling, holding, supervising or taking any action with respect to  
18 State Legislative elections based on Legislative District 15 as it currently stands.

## 19 II. PARTIES

20 11. Plaintiff Benancio Garcia III is a United States citizen, over the age of 18, and  
21 registered voter in the State of Washington. He currently resides in Legislative District 15. He  
22 intends to vote in future elections.

23 12. Defendant Steven Hobbs is being sued in his official capacity as the Secretary of  
24 State of Washington. Under state law, the Secretary of State is “the chief election officer for all  
25 federal, state, county, city, town, and district elections,” RCW 29A.04.230, responsible for “the  
26  
27

1 administration, canvassing, and certification of . . . state primaries, and state general elections,”<sup>1</sup>  
2 RCW 43.07.310. In addition, “declarations of candidacy for the state legislature . . . in a district  
3 comprised of voters from two or more counties”—such as Legislative District 15—are to be filed  
4 with the Secretary of State. RCW 29A.24.070.

### 5 6 **III. JURISDICTION AND VENUE**

7 13. This Court has jurisdiction to hear Plaintiff’s claim pursuant to 42 U.S.C. §§ 1983  
8 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and 1357. This Court has jurisdiction to grant  
9 declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction to award  
10 Plaintiff’s costs and attorneys’ fees pursuant to 42 U.S.C. § 1988, and 52 U.S.C. § 10310(e).

11 14. A three-judge district court is requested pursuant to 28 U.S.C. § 2284(a), as Plaintiff  
12 is “challenging the constitutionality of . . . the apportionment of a[] statewide legislative body.”

13 15. This Court has personal jurisdiction over the Defendant. Defendant Steve Hobbs is  
14 a state official who resides in Washington and performs his official duties in Olympia,  
15 Washington.

16 16. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part  
17 of the events or omissions giving rise to Plaintiff’s claims occurred and will occur in this judicial  
18 district. In addition, Defendant is a state official performing his official duties in the Western  
19 District of Washington.

### 20 **IV. FACTS**

#### 21 **A. Washington State Redistricting**

22 17. The Washington state constitution directs that “[i]n January of each year ending in  
23 one, a commission shall be established to provide for the redistricting of state legislative and  
24 congressional districts.” WASH. CONST. art. II, § 43(1); *see also* RCW 44.05.030.

25  
26 <sup>1</sup> “The plan approved by the commission . . . shall constitute the districting law applicable to this state for  
27 legislative . . . elections, beginning with the next elections held in the year ending in two.” RCW 44.05.100. Thus,  
the Secretary of State administers legislative district elections based on the boundaries established by the  
Commission’s redistricting plan.



1           18. The Commission is composed of five members. Each of the “leader[s] of the two  
2 largest political parties in each house of the legislature . . . appoint one voting member.” These  
3 four voting members select a fifth, nonvoting member to serve as the Commission’s chairperson  
4 WASH. CONST. art. II, § 43(2); *see also* RCW 44.05.030.

5           19. The Washington state constitution requires that “[e]ach district . . . contain a  
6 population . . . as nearly equal as practicable to the population of any other district” and that “[t]o  
7 the extent reasonable, each district . . . contain contiguous territory, . . . be compact and convenient,  
8 and . . . be separated from adjoining districts by natural geographic barriers, artificial barriers, or  
9 political subdivision boundaries.” WASH. CONST. art. II, § 43(5). In addition, the Commission’s  
10 redistricting plan “shall not be drawn purposely to favor or discriminate against any political party  
11 or group.” *Id.*

12           20. The Commission’s redistricting plan must also, “insofar as practical,” follow  
13 certain other traditional redistricting principles, including that “[d]istrict lines should be drawn so  
14 as to coincide with the boundaries of local political subdivisions and areas recognized as  
15 communities of interest” and that “[t]he number of counties and municipalities divided among  
16 more than one district should be as small as possible.” RCW 44.05.090.

17           21. In order to adopt a redistricting plan, it must be approved by “[a]t least three of the  
18 voting members” of the Commission. WASH. CONST. art. II, § 43(6).

19           22. The Commission is required to “complete redistricting . . . no later than November  
20 15th of each year ending in one.” *Id.*; *see also* RCW 44.05.100.

21           23. “Upon approval of a redistricting plan,” the Commission “shall submit the plan to  
22 the legislature,” which may amend the Commission’s plan within the first 30 days of the next  
23 regular or special legislative session by “an affirmative vote in each house of two-thirds of the  
24 members elected or appointed thereto.” RCW 44.05.100.

25           24. After such 30-day period, “[t]he plan approved by the commission, with any  
26 amendment approved by the legislature, shall be final . . . and shall constitute the districting law  
27



1 applicable to this state for legislative and congressional elections, beginning with the next elections  
2 held in the year ending in two.” *Id.*

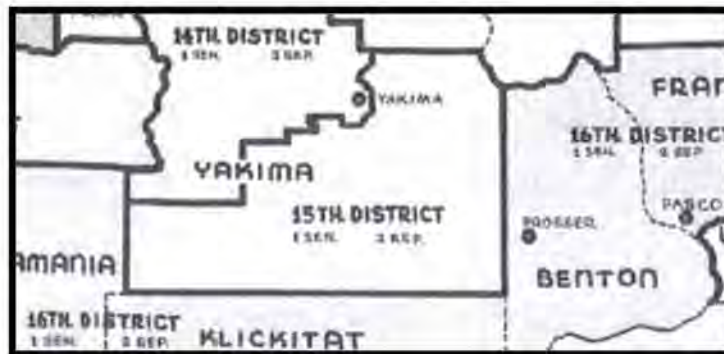
3 25. Following the Commission’s adoption of a redistricting plan, it “shall take all  
4 necessary steps to conclude its business and cease operations . . . on July 1<sup>st</sup> of each year ending  
5 in two . . . .” RCW 44.05.110.

6 26. If the Commission has ceased to exist, the Legislature may “adopt legislation  
7 reconvening the commission for purposes of modifying the redistricting plan.” RCW 44.05.120(1).

8 **B. The History of Legislative District 15**

9 27. Over the past 90 years, Legislative District 15 has changed during each round of  
10 redistricting, but never as drastically as between 2012 and 2022. Historically, the district has  
11 covered a substantial portion of Yakima County. (From 1982 through 2001, it also included  
12 portions of neighboring counties, but never as far northeast as Othello or as far east as Pasco).

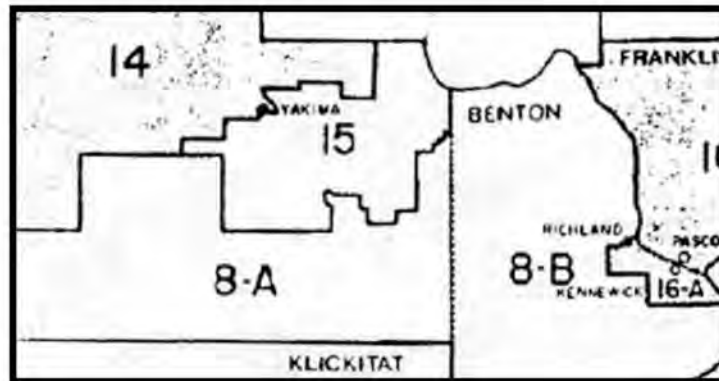
13 28. A map of Legislative District 15 from 1931 through 1957 is shown below. The  
14 district included only a portion of Yakima County. STATE OF WASH., MEMBERS OF THE  
15 LEGISLATURE 1889-2019 174 (2019).



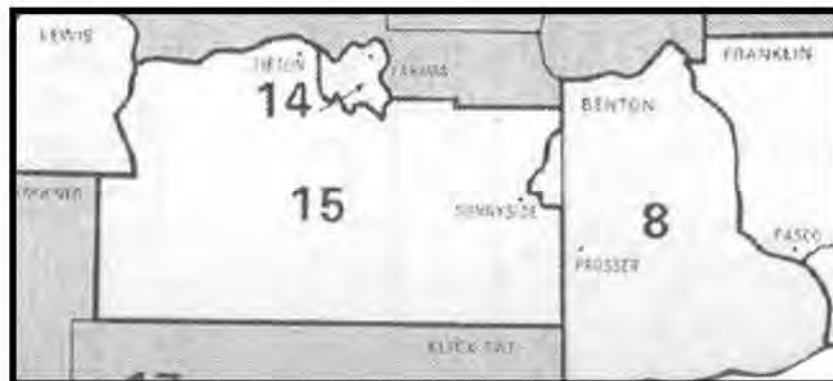
29. A map of Legislative District 15 from 1957 through 1965 is shown below. The districted included only a portion of Yakima County. *Id.* at 177.



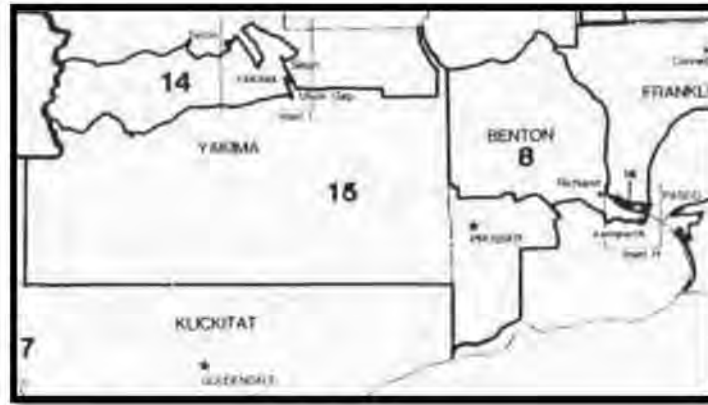
30. A map of Legislative District 15 from 1965 through 1972 is shown below. The district included only a portion of Yakima County. *Id.* at 180.



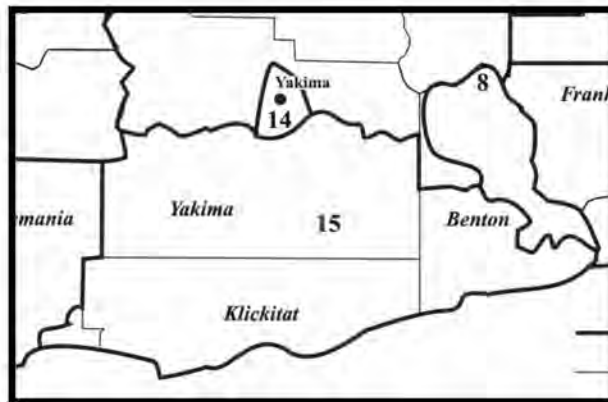
31. A map of Legislative District 15 from 1972 through 1981 is shown below. The district included only a portion of Yakima County. *Id.* at 182.



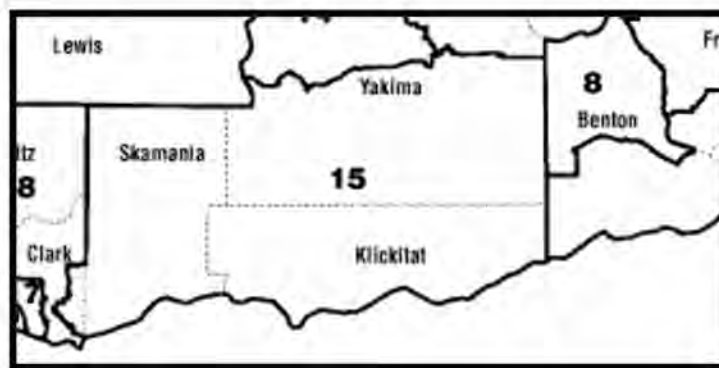
32. A map of Legislative District 15 from 1982 through 1991 is shown below. The district included portions of Yakima and Benton Counties. *Id.* at 184



33. A map of Legislative District 15 from 1991 through 2001 is shown below. The district included a portion of Yakima, Benton, Klickitat, and Skamania Counties. *Id.* at 186.

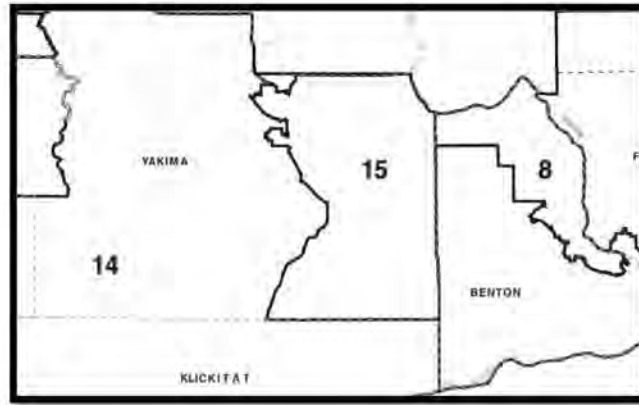


34. A map of Legislative District 15 from 2002 through 2011 is shown below. The district included a portion of Yakima, Klickitat, Skamania, and Clark Counties. *Id.* at 188.





35. A map of the current version of Legislative District 15, in effect since 2012, is shown below. The district once again includes only a portion of Yakima County. *Id.* at 190.



### C. The 2021 Redistricting Process

36. On December 10, 2020, the Speaker of the House of Representatives announced the appointment of April Sims as a Commissioner representing the House Democratic Caucus and the Senate Majority Leader announced the appointment of Brady Piñero Walkinshaw as a Commissioner representing the Senate Democratic Caucus. *E.g.*, Press Release, Washington State House Democrats, *House, Senate leaders announce their appointees for Redistricting Commission* (Dec. 10, 2020), <https://housedemocrats.wa.gov/blog/2020/12/10/house-senate-leaders-announce-their-appointees-for-redistricting-commission/>.

37. On January 15, 2021, the Senate Minority Leader announced the appointment of Joe Fain as a Commissioner representing the Senate Republican Caucus and the House Minority leader announced the appointment of Paul Graves as a Commissioner Representing the House Republican Caucus. *See, e.g.*, Eric Rosane, *Former Lawmakers Joe Fain, Paul Graves Tapped by Legislative GOP Leaders as Members of Redistricting Commission*, THE CHRONICLE (Centralia), Jan. 15, 2021, available at <https://www.chronline.com/stories/former-lawmakers-joe-fain-paul-graves-tapped-by-legislative-gop-leaders-as-members-of,260219>.

38. On January 30, 2021, the four voting Commissioners appointed Sarah Augustine as the nonvoting fifth member and Chair of the Commission. *E.g.*, Pat Muir, YAKIMA

1 HERALD-REPUBLIC, *White Swan woman tapped to lead state Redistricting Commission*, Feb. 8,  
2 2021, available at [https://www.yakimaherald.com/news/local/white-swan-woman-tapped-to-](https://www.yakimaherald.com/news/local/white-swan-woman-tapped-to-lead-state-redistricting-commission/article_37671834-78c9-5cec-a5a5-d9d1aab30f72.html)  
3 [lead-state-redistricting-commission/article\\_37671834-78c9-5cec-a5a5-d9d1aab30f72.html](https://www.yakimaherald.com/news/local/white-swan-woman-tapped-to-lead-state-redistricting-commission/article_37671834-78c9-5cec-a5a5-d9d1aab30f72.html).

4 39. Between February 2021 and November 2021, the Commission held Special  
5 Business Meetings, Regular Business Meetings, and Public Outreach Meetings. *See, e.g.,*  
6 Washington State Redistricting Commission, Business Meetings,  
7 <https://www.redistricting.wa.gov/commission-meetings>; Washington State Redistricting  
8 Commission, Public Outreach Meetings, <https://www.redistricting.wa.gov/outreach-meetings>.

9 40. On September 21, 2021, each of the four voting Commissioners released a proposed  
10 legislative district map to the public. *E.g.,* Washington State Redistricting Commission,  
11 Legislative Maps, <https://www.redistricting.wa.gov/commissioner-proposed-maps>.

12 41. No Commissioner proposed a version of Legislative District 15 that resembled the  
13 district as drawn by the Commission's final redistricting plan. No proposal, for example, contained  
14 the cities of Pasco or Othello, and none contained a majority Latino CVAP. *See id.*

15 42. The map of Legislative District 15 initially proposed by Commissioner Sims is  
16 shown below. It combined the Yakama Indian Reservation with parts of Yakima and communities  
17 along Interstate 82 to Grandview. Commissioner Sims stated that her map "recognizes the  
18 responsibility to create districts that provide fair representation for communities of interest" and  
19 that "[m]aintaining and creating communities of interest" and "[c]entering and engaging  
20 communities that have been historically underrepresented" were "values guid[ing]" her efforts. *Id.*

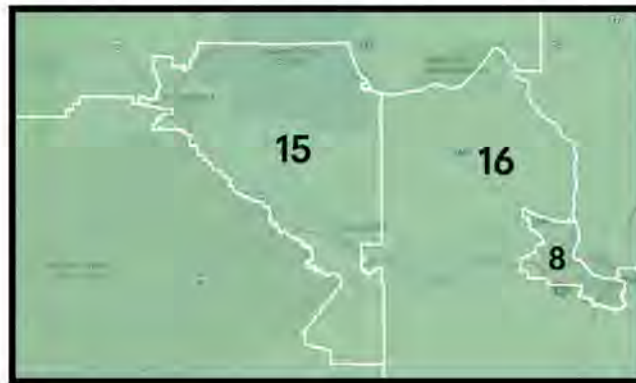




43. The map of Legislative District 15 initially proposed by Commissioner Walkinshaw is shown below. It merged cities around Yakima into a district that stretched north beyond Ellensburg and south to the Columbia River. Commissioner Walkinshaw stated his goals were to “[m]aintain and unite communities of interest and reduce city splits” and “prioritize[e] the needs of . . . historically underrepresented communities.” His plan also “[c]reate[d] a majority-Hispanic/Latino district” in the neighboring Legislative District 14, which was “55.5% [Hispanic/Latino] by Voting Age Population (VAP)” and “65.5% people-of-color by VAP.” *Id.*



44. The map of Legislative District 15 as proposed by Commissioner Fain is shown below. It included the City of Yakima and consisted of the eastern third of Yakima County. Commissioner Fain “place[d] existing school district boundaries at the cornerstone of his legislative framework.” His plan also “create[d] seven majority-minority districts statewide, and one additional majority-minority citizen voting age population (CVAP) district.” *Id.*





1        45. The map of Legislative District 15 as proposed by Commissioner Graves is shown  
2 below. It combined the northeastern portion of Yakima County, including the cities along Interstate  
3 82, with most of Benton County apart from Richland and Kennewick. Commissioner Graves's  
4 plan "focuses on communities of interest and is not drawn to favor either party or incumbents" and  
5 featured eight "majority-minority" districts. *Id.*



13        46. On October 19, 2021, the Washington State Senate Democratic Caucus circulated  
14 a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies at UCLA  
15 and co-founder of the UCLA Voting Right Project. *See* Presentation by Matt Barreto, Assessment  
16 of Voting Patterns in Central/Eastern Washington and Review of the Federal Voting Rights Act,  
17 Section 2 Issues, (Oct. 19, 2021), [https://senatedemocrats.wa.gov/wp-](https://senatedemocrats.wa.gov/wp-content/uploads/2021/10/Barreto-WA-Redistricting-Public-Version.pdf)  
18 [content/uploads/2021/10/Barreto-WA-Redistricting-Public-Version.pdf](https://senatedemocrats.wa.gov/wp-content/uploads/2021/10/Barreto-WA-Redistricting-Public-Version.pdf).

19        47. Upon information and belief, Dr. Barreto was hired by the Washington Senate  
20 Democrat Caucus, not by the Commission, the State of Washington or the Legislature.

21        48. The presentation argued that, in order to comply with Section 2 of the Voting Right  
22 Act, a majority Latino CVAP district in the Yakima Valley that voted for the Democratic Party's  
23 preferred candidates is required. *See id.*

24        49. The presentation included analysis of voting patterns for just two statewide general  
25 elections, the 2012 U.S. Senate race between Maria Cantwell and Michael Baumgartner and the  
26 2020 Governor race between Jay Inslee and Loren Culp. The presentation did not include analysis  
27

1 of voting patterns in primary elections, or any other analysis, exploring whether voting patterns  
2 could be explained by partisanship, rather than race. *See id.*

3 50. Importantly, the presentation also did not consider or suggest any race-neutral  
4 alternatives despite showing that the districts initially proposed by Commissioners Sims and  
5 Walkinshaw would have voted for the Latino bloc's preferred candidate over the majority bloc's  
6 preferred candidate in the 2020 President/Vice President race. *See id.*

7 51. Only two claimed "VRA Compliant" legislative district options were presented.  
8 One district contained a Latino CVAP of 60% and the other contained a combined Latino and  
9 Native American CVAP of 60%, without any explanation for why a 60% threshold was chosen or  
10 why Latino and Native American voters should or could be grouped together for Voting Rights  
11 Act purposes. *See id.*

12 52. Despite the brevity and potential bias of the analysis, Commissioner Walkinshaw  
13 issued a statement on October 21, 2021, two days after the presentation, stating that he and  
14 Commissioner Sims "will be releasing new statewide legislative maps early next week." Press  
15 Release, Washington Senate Democrats, *New definitive analysis by UCLA Voting Rights Expert:*  
16 *final Washington state legislative plan must include VRA-compliant district in the Yakima Valley*  
17 (Oct. 21, 2021), [https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-](https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-district-in-the-yakima-valley/)  
18 [ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-](https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-district-in-the-yakima-valley/)  
19 [district-in-the-yakima-valley/](https://senatedemocrats.wa.gov/blog/2021/10/21/new-definitive-analysis-by-ucla-voting-rights-expert-final-washington-state-legislative-plan-must-include-vra-compliant-district-in-the-yakima-valley/).

20 53. Commissioner Walkinshaw also stated that "as the first ever Latino commissioner,  
21 it has been extremely important for me to lift up and elevate Hispanic voters, and undo patterns of  
22 racially polarized voting, particularly in the Yakima Valley." Melissa Santos, *Proposed WA*  
23 *redistricting maps may violate Voting Rights Act*, CROSSCUT (Oct. 21, 2021),  
24 [https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-](https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-act)  
25 [act](https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-act).



1       54. On October 25, 2021, Commissioners Sims and Walkinshaw released revised  
2 legislative plans, both of which incorporated the “Yakama Reservation” district option from Dr.  
3 Bareto’s presentation, which achieved a 60% majority CVAP by combining Latino and Native  
4 populations.

5       55. On October 26, 2021, less than three weeks before the Commission’s statutory  
6 deadline, Washington State Senate Democrats issued a press release holding out Dr. Bareto’s  
7 presentation as “definitive,” stipulating that “the final adopted map must include a  
8 majority-Hispanic district in the Yakima Valley.” Press Release, Washington Senate Democrats,  
9 *Walkinshaw releases new VRA-Compliant Legislative map* (Oct. 26, 2021),  
10 [https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-](https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/)  
11 [walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/](https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/).

12       **D. Legislative District 15 under the 2021 Plan**

13       56. Shortly before midnight on November 15, 2021, the Commission “voted  
14 unanimously to approve a legislative redistricting plan.” Order Regarding the Washington State  
15 Redistricting Commission’s Letter to the Supreme Court on November 16, 2021 and the  
16 Commission Chair’s November 21, 2021 Declaration (Redistricting Order), No. 25700-B-676, at  
17 2 (Wash. Dec. 3, 2021).

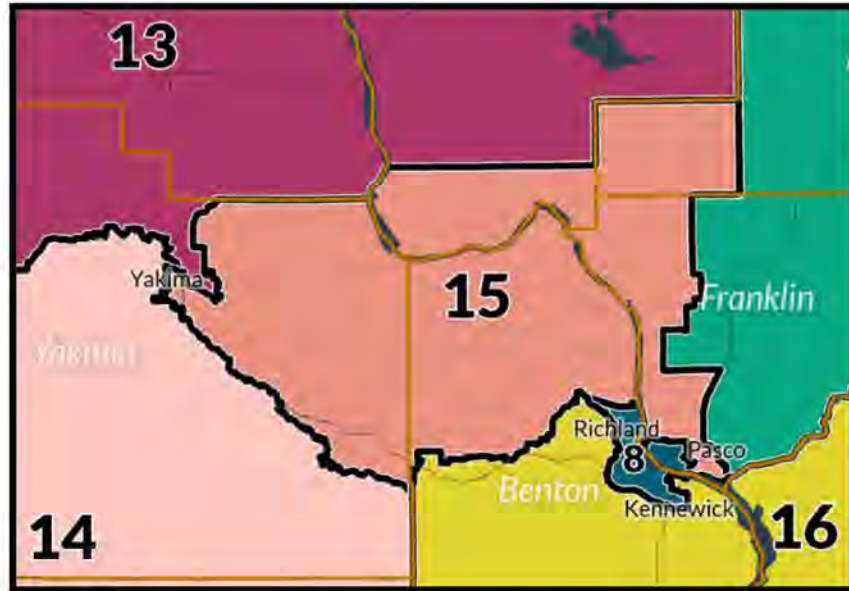
18       57. Shortly after midnight on November 16, 2021, the Commission submitted “a formal  
19 resolution adopting the redistricting plan” and “a letter transmitting the plan” to the Legislature.  
20 *Id.*

21       58. The Legislature approved minor adjustments to the Commission’s final plan. *See*  
22 H. Con. Res. 4407, 67th Leg., 2022 Reg. Sess. (Wash. 2022).

23       59. The redistricting plan approved by the Commission, together with the Legislature’s  
24 amendments, constitutes Washington state’s districting law for legislative elections, beginning  
25 with the upcoming 2022 elections. *See* WASH. CONST. art. II, § 43(7); RCW 44.05.100(3); *see also*  
26 Redistricting Order at 4.



60. The map of the new Legislative District 15 as defined by the Commission's approved plan is shown below. It disregards traditional districting principles such as compactness, maintaining communities of interest, and respecting political subdivisions or geographical boundaries.



61. The shape of Legislative District 15 is strained and noncompact. Its northwest and southeast corners are narrow slivers of land that reach into the cities of Yakima and Pasco respectively, where a substantial majority the district's population resides. The district extends north to Mattawa and northeast to Othello, based upon information and belief, for the sole purpose of including those cities' substantial Latino populations. The interior of the district is sparsely populated.

62. The odd shape of Legislative District 15 cannot be explained by political or natural boundaries. It stretches into parts of five counties, yet contains not a single whole county. Its western and eastern sections are divided by the Yakima Firing Center, Rattlesnake Hills, the Hanford Nuclear Site, and the Columbia River. Despite these geographic boundaries, Legislative District 15 does not follow major thoroughfares. To travel just from Sunnyside to Pasco via

1 Interstate 82 and Interstate 182 would require crossing through both Legislative Districts 16 and 8  
2 before reentering Legislative District 15 in Pasco.

3 63. The Commission ignored communities of interest in creating Legislative District  
4 15. The district's boundaries not only split up urban communities like Yakima and Pasco, but  
5 smaller cities like Grandview, Moxee and Union Gap. And while Legislative District 15 divides  
6 communities of shared interest, it also groups together communities with distinctly different  
7 interests. For example, it extends to Pasco, Othello, Mattawa and the Hanford Nuclear Site, none  
8 of which have previously been placed in the same legislative district as the city of Yakima or any  
9 portion of Yakima County in the state's history.

10 64. The boundaries of the new Legislative District 15 approved by the Commission do  
11 not resemble prior Legislative District 15 boundaries or those of any publicly-proposed districts  
12 by any Commissioner during the 2021 redistricting process.

13 65. However, the new Legislative District 15 does contain a Latino CVAP of 50.02%,  
14 a figure so barely sufficient to constitute a majority that it is statistically impossible to have  
15 occurred by random chance.

16 66. The boundaries of the new Legislative District 15 were clearly negotiated and  
17 approved predominantly on the basis of race in order to create a majority Latino CVAP legislative  
18 district.

19 67. No compelling interest justified the predominant consideration of race in creating  
20 Legislative District 15.

21 68. The Commission cannot justify its decision to use race as the predominant factor in  
22 drawing Legislative District 15's boundaries under Section 2 of the Voting Rights Act. The  
23 Commission could not have a strong basis in evidence to believe that it was required to create a  
24 new Latino-opportunity district to avoid liability under Section 2 because the Commission did not  
25 conduct any analysis of racial voting patterns or of what Section 2 required. *See, e.g., Cooper v.*  
26 *Harris*, 137 S. Ct. at 1464 (“[S]aid otherwise, the State must establish that it had ‘good reasons’ to  
27



1 think that it would transgress the [Voting Rights] Act if it did not draw race-based district lines.”  
2 (citing *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. at 278)).

3 69. Two Commissioners cited the presentation from the UCLA Voting Rights Project,  
4 but one advocacy group’s demands alone are insufficient to create a strong basis in evidence that  
5 justifies sorting voters by race. *See, e.g., Abbott v. Perez*, 138 S. Ct. at 2334 (“A group that wants  
6 a State to create a district with a particular design may come to have an overly expansive  
7 understanding of what § 2 demands. So one group’s demands alone cannot be enough.”)

8 70. Even if there were a compelling state interest in creating Legislative District 15  
9 using race as the predominant factor, Legislative District 15 is not narrowly tailored to achieve  
10 that interest. The Commission did not perform any analysis whatsoever of race-neutral  
11 alternatives, including, for example, what percentage of Latino voters would be necessary to have  
12 the opportunity to elect their candidates of choice. *See, e.g., Cooper v. Harris*, 137 S. Ct. at 1471  
13 (“To have a strong basis in evidence to conclude that § 2 [of the Voting Rights Act] demands such  
14 race-based steps, the State must carefully evaluate whether a plaintiff could establish the *Gingles*  
15 preconditions . . . in a new district created without those measures.”).

## 16 V. CLAIMS

### 17 A. Violation of the Equal Protection Clause of the United States Constitution

18 71. Plaintiff realleges and incorporates by reference, as if fully set forth herein, the  
19 allegations in the paragraphs above.

20 72. Section 1 of the Fourteenth Amendment to the U.S. Constitution provides that “[n]o  
21 State shall make or enforce any law which shall abridge the privileges or immunities of citizens of  
22 the United States; nor shall any State deprive any person of life, liberty, or property, without due  
23 process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

24 73. Race was the predominant factor motivating the Commission’s decision to draw  
25 the lines encompassing Legislative District 15.  
26  
27



1       74. The Commission's race-based sorting of voters in Legislative District 15 neither  
2 served a compelling state interest nor was narrowly tailored to that end.

3       75. Therefore, Legislative District 15 violates the Equal Protection Clause of the  
4 Fourteenth Amendment of the United States Constitution.

5       76. Plaintiff has no adequate remedy at law other than the judicial relief sought here.  
6 The failure to temporarily and permanently enjoin the conduct of elections based on Legislative  
7 District 15 will irreparably harm Plaintiff by violating his constitutional rights.

8  
9                   **VI. PRAYER FOR RELIEF**

10       77. WHEREFORE, Plaintiff asks for the following relief:

- 11           a. Convene a court of three judges pursuant to 28 U.S.C. § 2284(a);  
12           b. Declare that Legislative District 15 is an illegal racial gerrymander in  
13 violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;  
14           c. Issue a permanent injunction enjoining Defendant from enforcing or giving  
15 any effect to the boundaries of Legislative District 15, including an injunction barring Defendant  
16 from conducting any further elections for the Legislature based on Legislative District 15;  
17           d. Order the creation of a new valid plan for legislative districts in the State of  
18 Washington that does not violate the Equal Protection Clause;  
19           e. Award Plaintiff reasonable attorneys' fees and costs incurred in this action  
20 under 42 U.S.C. § 1988, 52 U.S.C. § 10310(e) and any other applicable law; and  
21           f. Grant such other and further relief as this Court deems just and proper.
- 22  
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1  
2  
3 DATED this 15<sup>th</sup> day of March, 2022.

4 Respectfully submitted,

5 Stokesbary PLLC  
6 Attorney for Plaintiff

7 By s/ Andrew R. Stokesbary  
8 Andrew R. Stokesbary, WSBA #46097

9 Stokesbary PLLC  
10 1003 Main Street, Suite 5  
11 Sumner, WA 98390  
12 Telephone: (206) 486-0795  
13 E-mail: [dstokesbary@stokesbarypllc.com](mailto:dstokesbary@stokesbarypllc.com)  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

BENANCIO GARCIA III

(b) County of Residence of First Listed Plaintiff Yakima  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stokesbary PLLC, 1003 Main St, Ste 5, Sumner, WA  
98390, Phone 206-486-0795

## DEFENDANTS

Secretary of State STEVEN HOBBS, in his official capacity  
as Secretary of State of WashingtonCounty of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Attorney General of Washington

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		<b>INTELLECTUAL PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<b>LABOR</b>	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 440 Other Civil Rights	<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 448 Education			
	<b>PRISONER PETITIONS</b>			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<b>Other:</b>			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

Deprivation of civil rights

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Robert S. LasnikDOCKET NUMBER 3:22-cv-05035-RSL

DATE

03/15/2022

SIGNATURE OF ATTORNEY OF RECORD

s/ Andrew R. Stokesbary

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

ER 126

JUDGE

MAG. JUDGE





**ASSESSMENT OF VOTING PATTERNS IN  
CENTRAL / EASTERN WASHINGTON AND  
REVIEW OF FEDERAL VOTING RIGHTS ACT,  
SECTION 2 ISSUES**

---

Dr. Matt Barreto, UCLA Political Science & Chicana/o Studies  
Faculty Director of the UCLA Voting Rights Project

[matt@uclavrp.org](mailto:matt@uclavrp.org) 909.489.2955

**ER 128**



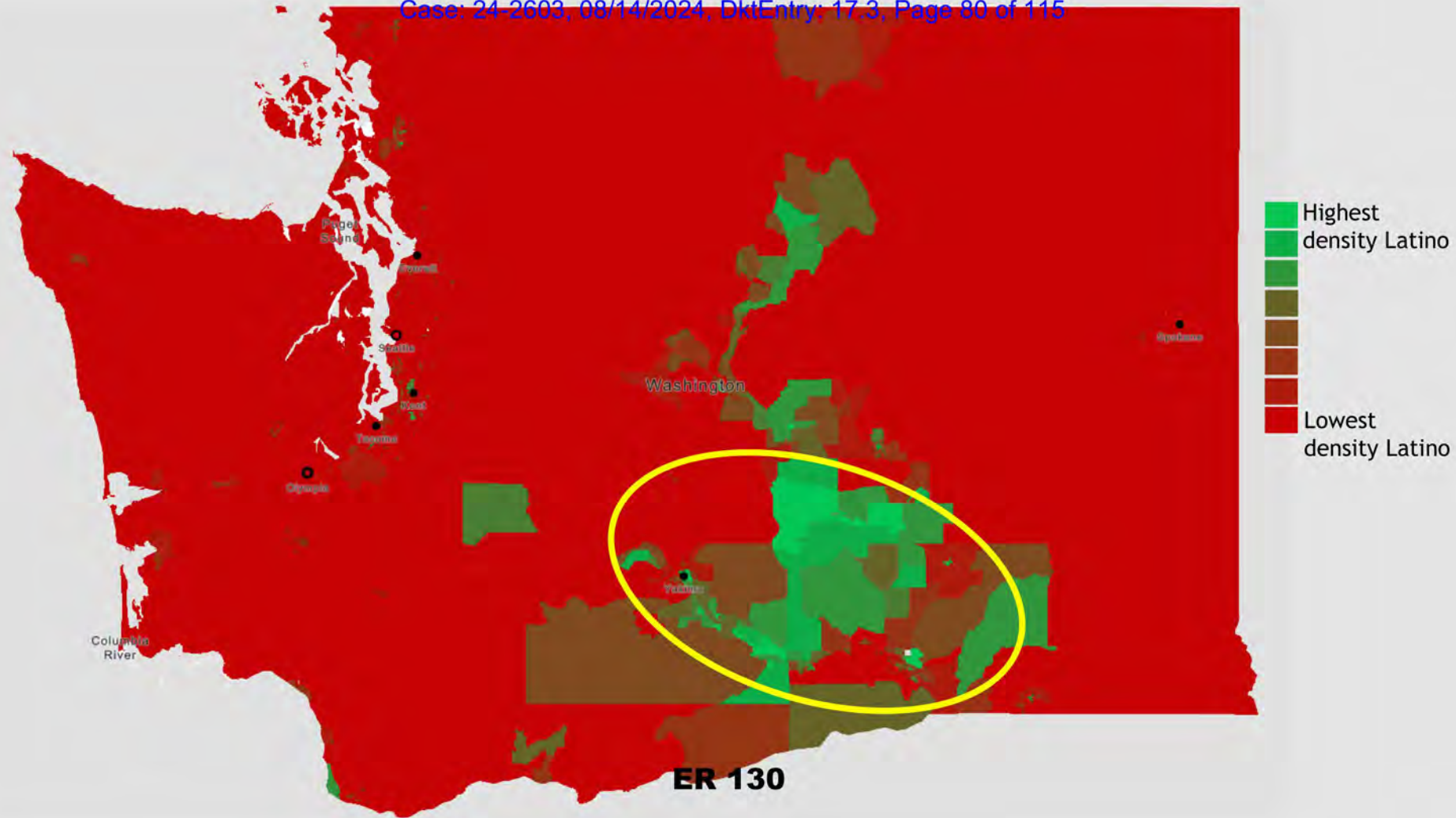
## Current Landscape in Washington

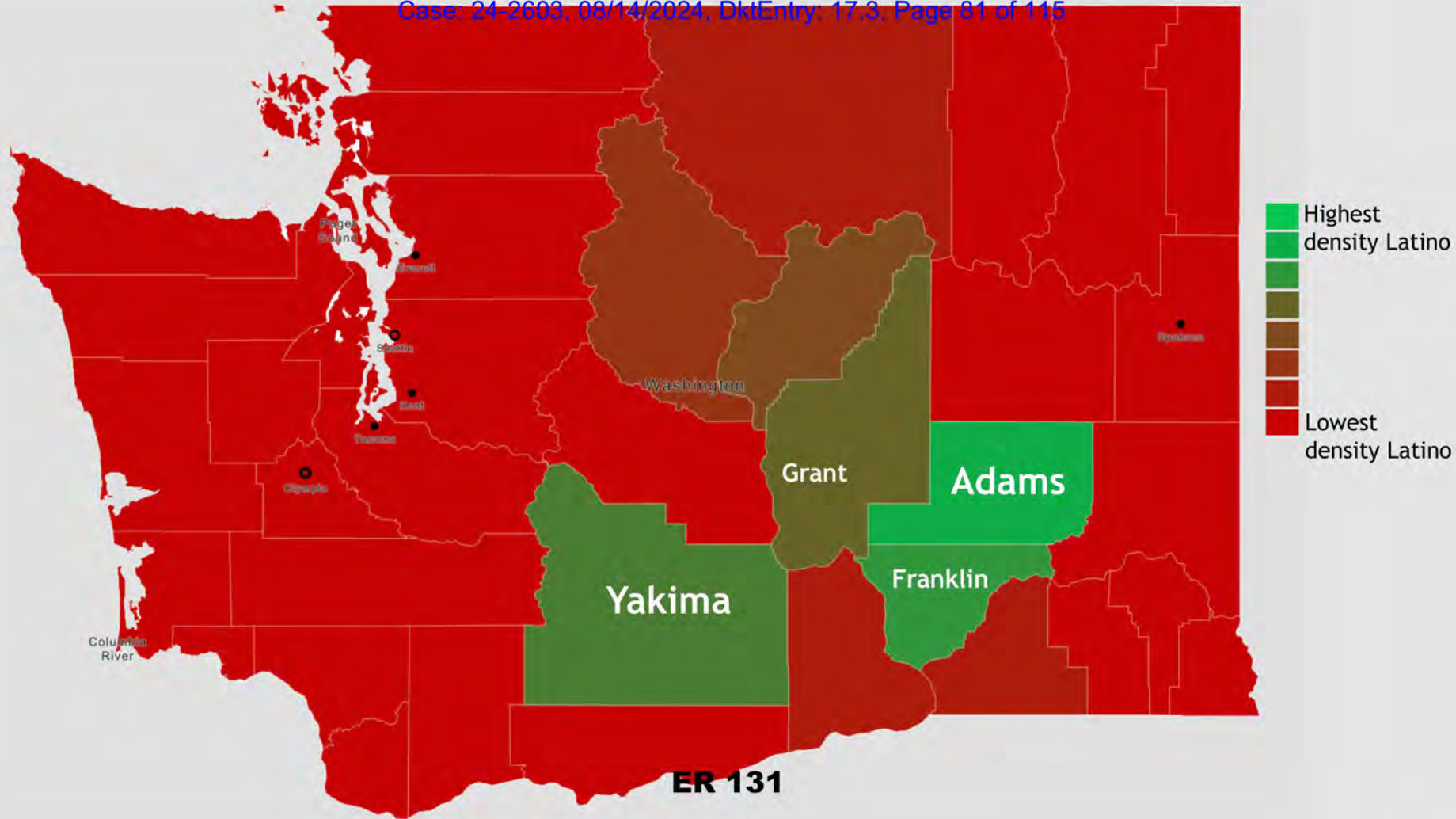
- Washington state Latino population surpassed 1 Million in 2020, now stands at 1,059,213, 12<sup>th</sup> largest of any state

	2010	2020	Growth
Total	6,724,540	7,705,281	980,741 (14.5%)
Latino	755,790	1,059,213	303,423 (40.1%)
Non-Latino	5,900,00	6,700,000	677,318 (11.3%)

- The growth has been especially large in the Yakima Valley region and is quite concentrated







## Section 2 of the Federal VRA

- Section 2 - Prohibits discrimination in any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.
- Section 2 applies nationwide
- *Montes v. Yakima*, 2014 created majority-Latino districts in city of Yakima



## Section 2 of the Federal VRA

Section 2(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

## Section 2 of the Federal VRA

- ❑ Specifically, the VRA Section 2 prohibits districting plans that use racial gerrymandering to dilute minority rights to meaningful opportunity to elect candidates of choice
- ❑ Has been used by Black, Latino, AAPI, Native American, White plaintiffs to challenge districting schemes that draw lines in a way that “crack” or divide their population so it is too small to have influence
- ❑ State redistricting plans must comply with the Federal Voting Rights Act



## The Gingles Test: Factor 1

- Is the minority group sufficiently large and geographically compact to constitute a district?
- Can a sufficiently large and geographically contiguous district be drawn that will allow minority group to elect a candidate of their choice?
  - This is established using information from the Census Bureau and Statewide voter file
    - Decennial Census, ACS 1-year or 5-year for CVAP, Voter Reg Rates
  - District that is 50.1% or greater minority, among eligible voters



## The Gingles Test: Factors 2 - 3

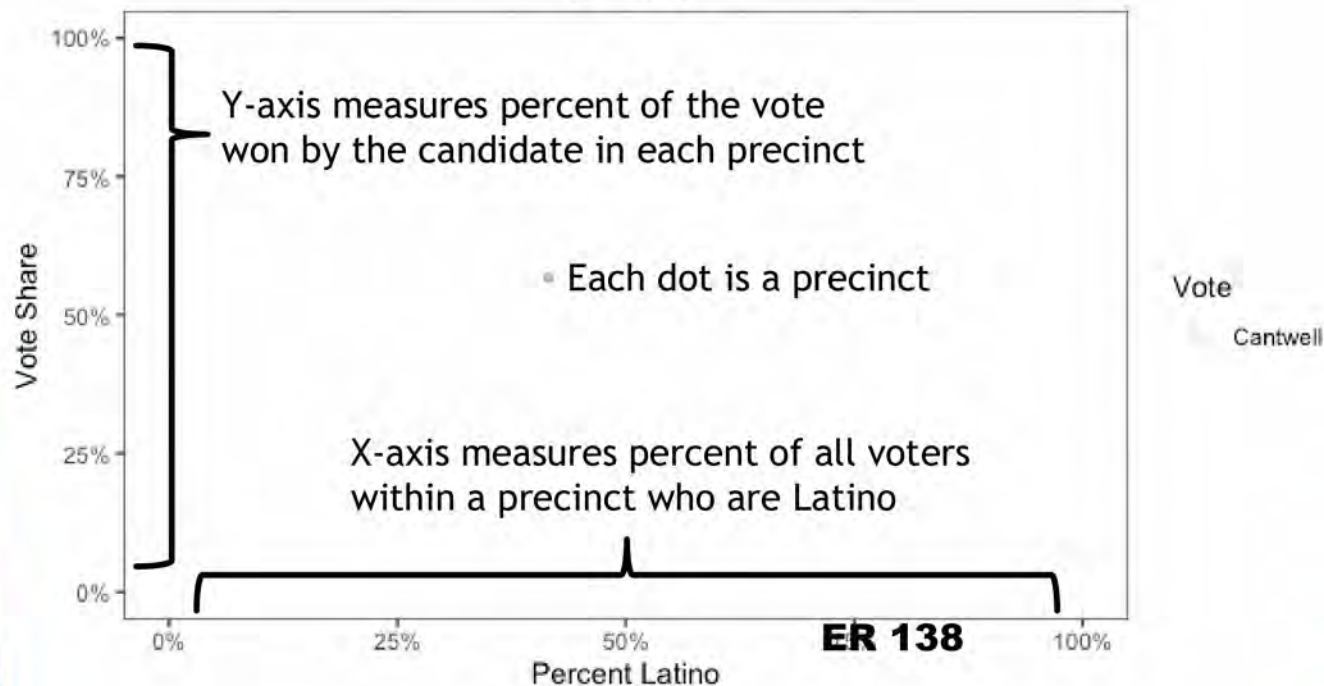
- ❑ Minority voters are politically cohesive in supporting their candidate of choice
- ❑ Majority votes in a bloc to usually defeat minority's preferred candidate
- ❑ This requires an analysis of voting patterns by race/ethnicity
  - ❑ Question the courts will ask us to answer is: Is there evidence of “racially polarized voting”?

## Defining Racially Polarized Voting

- ❑ Racially polarized voting exists when voters of different racial or ethnic groups exhibit very different candidate preferences in an election.
- ❑ It means simply that voters of different groups are voting in polar opposite directions, rather than in a coalition.
- ❑ RPV does not necessarily mean voters are racist, it only measures the outcomes of voting patterns and determines whether patterns exist based on race/ethnicity

# Measuring Racially Polarized Voting

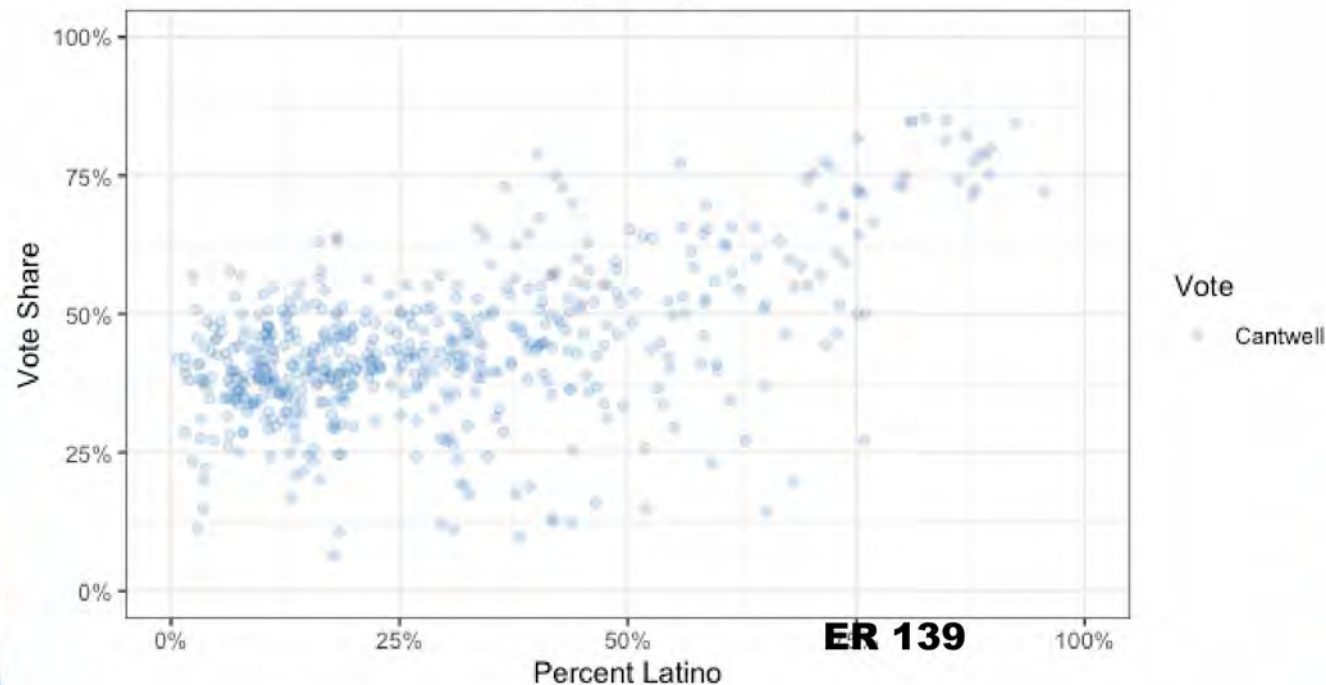
2012 General, Cantwell - 5 WA Counties  
Sorted by Percent Latino within each Precinct  
(n=569)





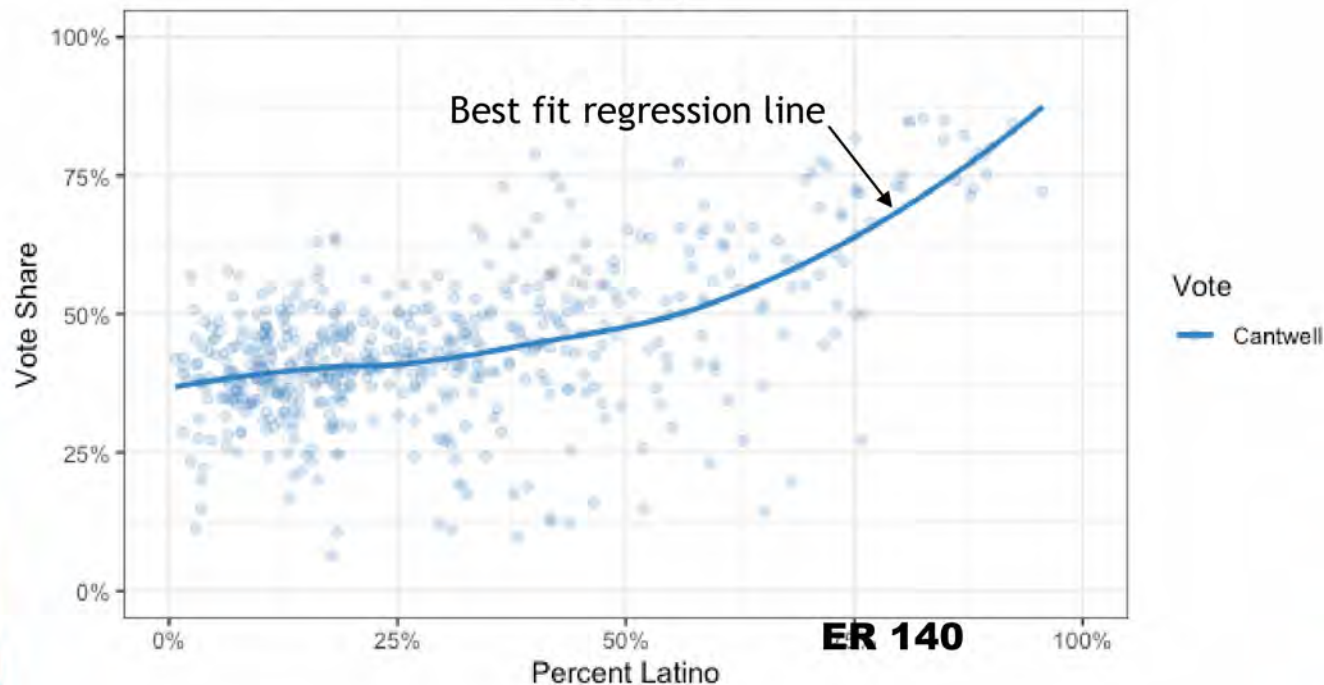
# Measuring Racially Polarized Voting

2012 General, Cantwell - 5 WA Counties  
Sorted by Percent Latino within each Precinct  
(n=569)



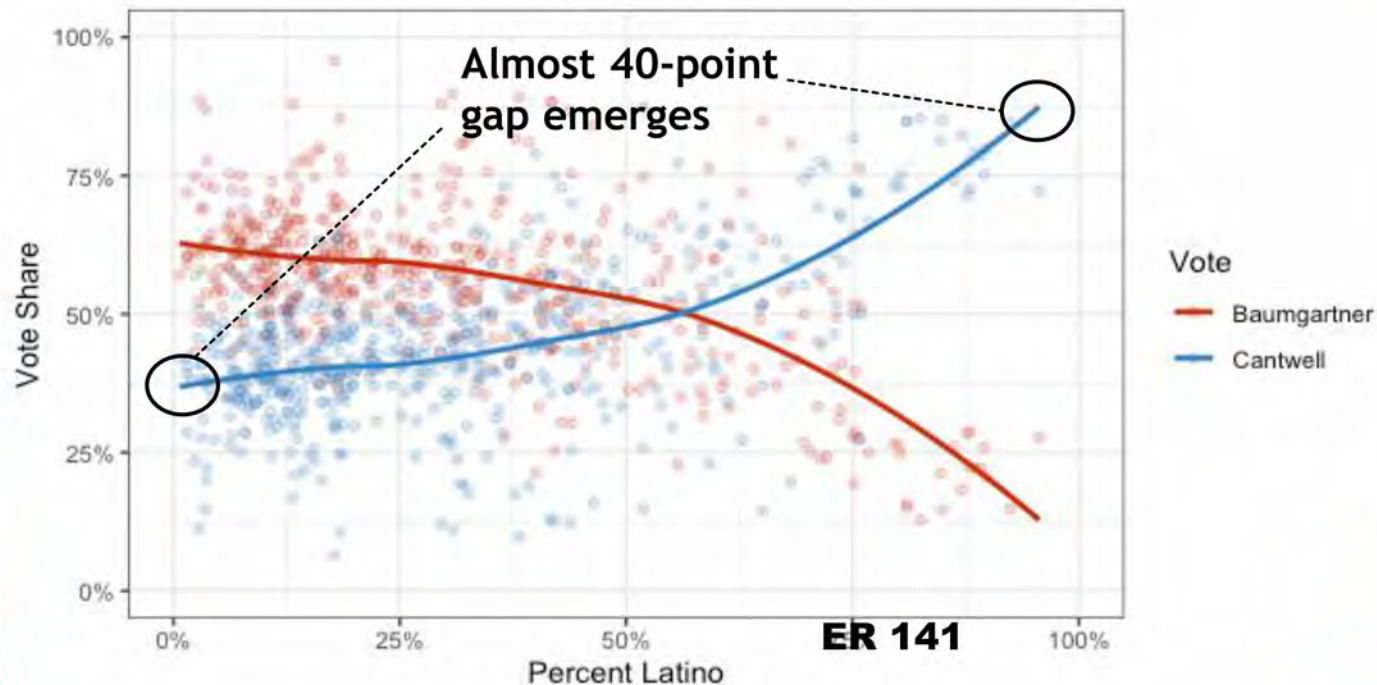
# Measuring Racially Polarized Voting

2012 General, Cantwell - 5 WA Counties  
Sorted by Percent Latino within each Precinct  
(n=569)



# Measuring Racially Polarized Voting

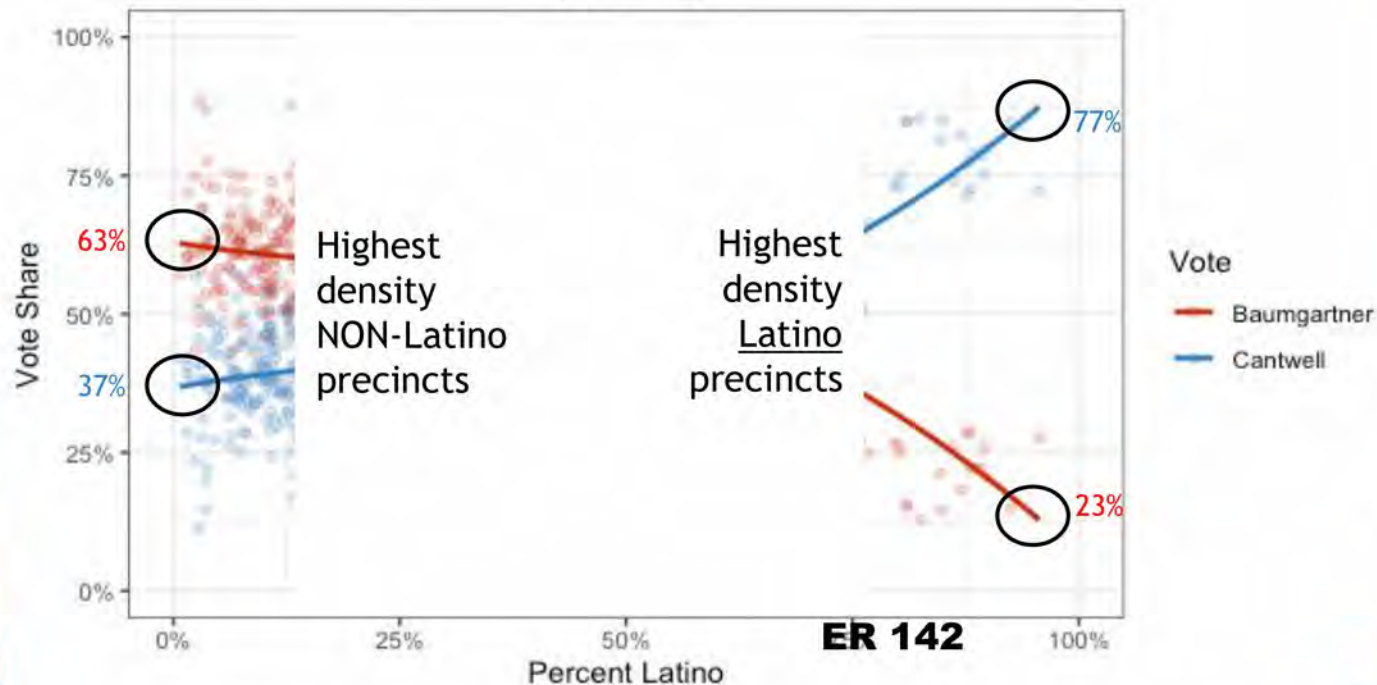
2012 General, Baumgartner v Cantwell - 5 WA Counties  
Sorted by Percent Latino within each Precinct  
(n=1138)





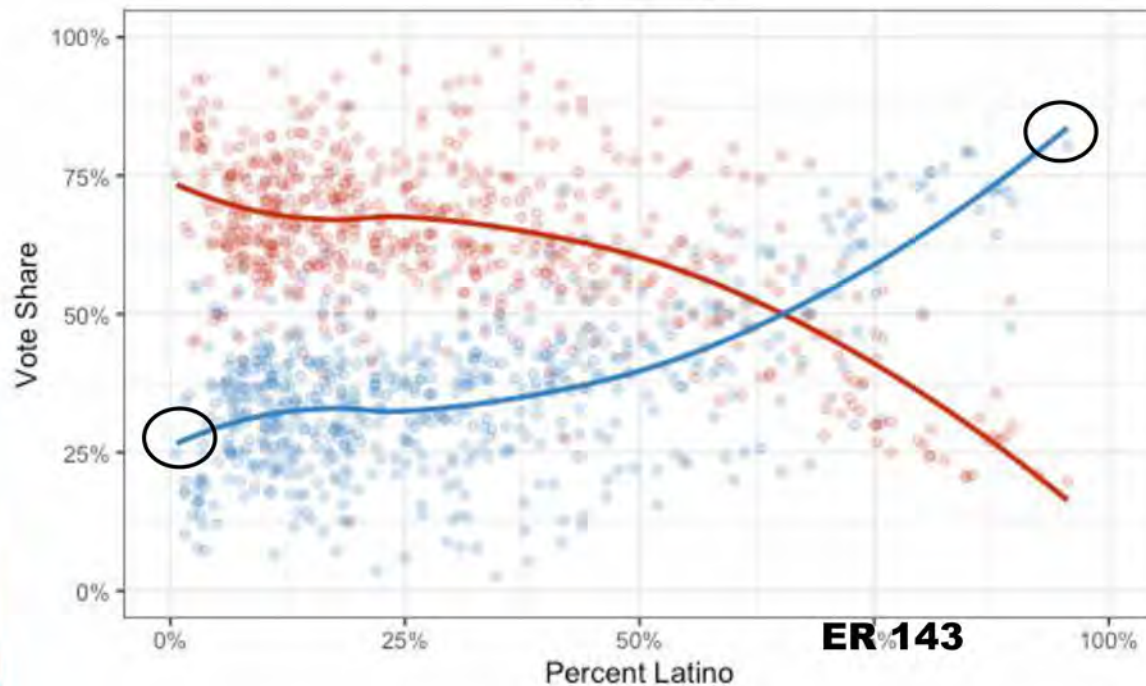
# Measuring Racially Polarized Voting

2012 General, Baumgartner v Cantwell - 5 WA Counties  
Sorted by Percent Latino within each Precinct  
(n=1138)



# Voting Patterns in Yakima Valley Region: 2020

2020, Culp v Inslee - 5 WA Counties  
Sorted by Percent Latino within each Precinct  
(n=1204)



From 2012 to 2020 -  
every single major  
election analyzed shows  
clear pattern of racially  
polarized voting

## Evaluating Different Maps

- Latest analysis is crystal clear - there is a strong finding of racially polarized voting in this 5-county region
  - Federal Court agreed in *Montes* lawsuit 2014, State Court agreed in WVRA Yakima County settlement in 2021
- Question for maps are the following:
  1. Is it possible to create a majority-CVAP Latino district in the Yakima Valley region?
  2. Do the proposed maps dilute or crack Latino voting strength?
  3. Do the proposed maps “perform” to allow election of Latino candidates of choice, or will Latino-favored candidates lose?
  4. What is the strongest Latino performing map that is VRA-compliant and not dilutive?



## Evaluating Different Maps

### □ House Republicans - Commissioner Graves

- <https://washington.mydistricting.com/legdistricting/comments/plan/1185/15>
- Text-book “cracking” of Latino population into 3 districts (14, 15, 16)
- Latino Total Pop: 14<sup>th</sup> = 37% / 15<sup>th</sup> = 54% / 16<sup>th</sup> = 41%
- Latino CVAP: 14<sup>th</sup> = 22% / 15<sup>th</sup> = 34% / 16<sup>th</sup> = 23%

### □ Senate Republicans - Commissioner Fain

- <https://washington.mydistricting.com/legdistricting/comments/plan/1186/15>
- Obvious racial gerrymander/cracking, likely an “intent” finding
- Text-book “cracking” of Latino population into 4 districts (13, 14, 15, 16)
- Latino Total Pop: 13<sup>th</sup> = 33% / 14<sup>th</sup> = 23% / 15<sup>th</sup> = 55% / 16<sup>th</sup> = 42%
- Latino CVAP: 13<sup>th</sup> = 16% / 14<sup>th</sup> = 13% / 15<sup>th</sup> = 34% / 16<sup>th</sup> = 23%

**ER 145**

## Evaluating Different Maps

### □ House Democrats - Commissioner Sims

- <https://washington.mydistricting.com/legdistricting/comments/plan/1182/15>
- Latino Total Pop: 15<sup>th</sup> = 65% / 16<sup>th</sup> = 48%
- Latino CVAP: 15<sup>th</sup> = 45% / 16<sup>th</sup> = 28%
- TODAY Latino CVAP: 15<sup>th</sup> = 47.6%

### □ Senate Democrats - Commissioner Piñero Walkinshaw

- <https://washington.mydistricting.com/legdistricting/comments/plan/1183/15>
- Latino Total Pop: 14<sup>th</sup> = 61% / 15<sup>th</sup> = 34%
- Latino CVAP: 14<sup>th</sup> = 40% / 15<sup>th</sup> = 16%
- TODAY Latino CVAP: 14<sup>th</sup> = 43.2%

**ER 146**



# Comparing Latino Pop, VAP, CVAP & Reg

- Total Population is used to balance all Senate districts across the state to the same total population size
  - Courts allow a total population deviation of 10% from largest to smallest district
- However, Citizen Voting Age Population (CVAP) is required by the Courts to establish a performing VRA-compliant district

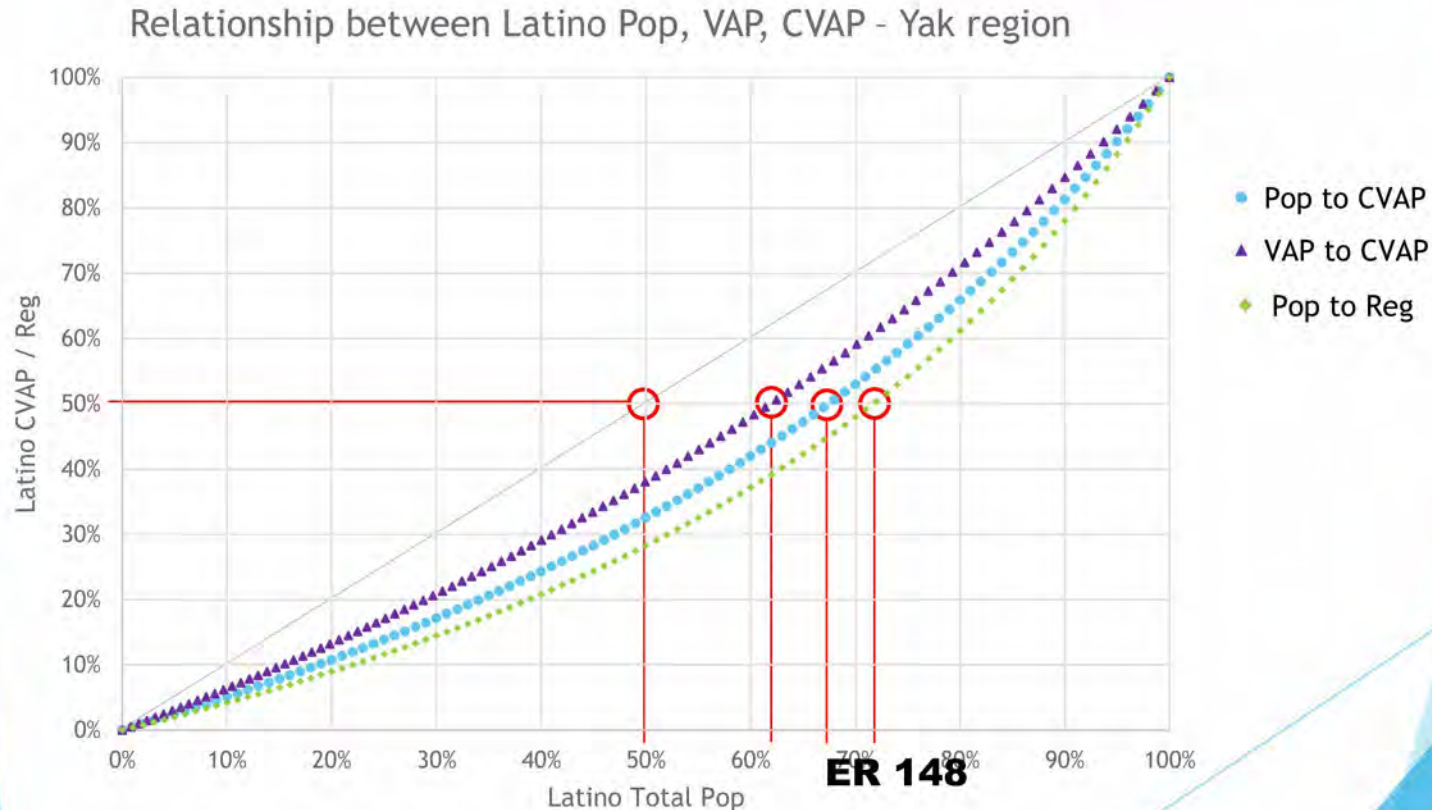
Majority-Latino Population DOES NOT WORK. Courts have recognized this.

- For Latinos in the Yakima Valley 37% are UNDER 18 and can not vote
- For Whites in this same region, 17% are UNDER 18 and can not vote
- For Latino Adults, 40% are not currently U.S. citizens and can not vote
- In Yakima County 125,816 Total Latinos → 76,989 Adults → 46,611 Citizen Adults
- In Yakima County 105,255 Total Whites → 86,584 Adults → 85,629 Citizen Adults

ER 147

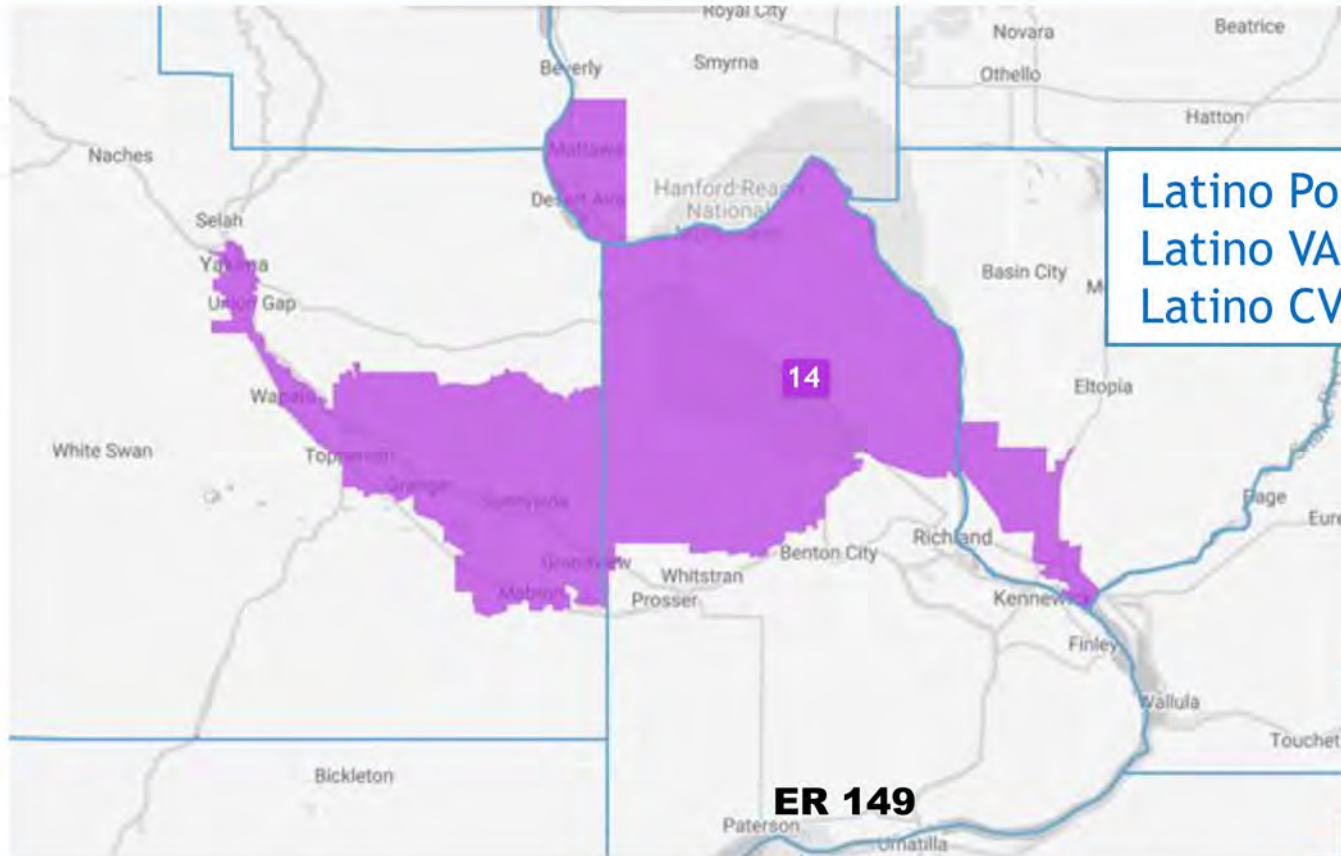


# Comparing Latino Pop, VAP, CVAP & Reg



Based on 2019 1-year ACS  
VAP and Citizenship for  
Latinos in Yakima Region

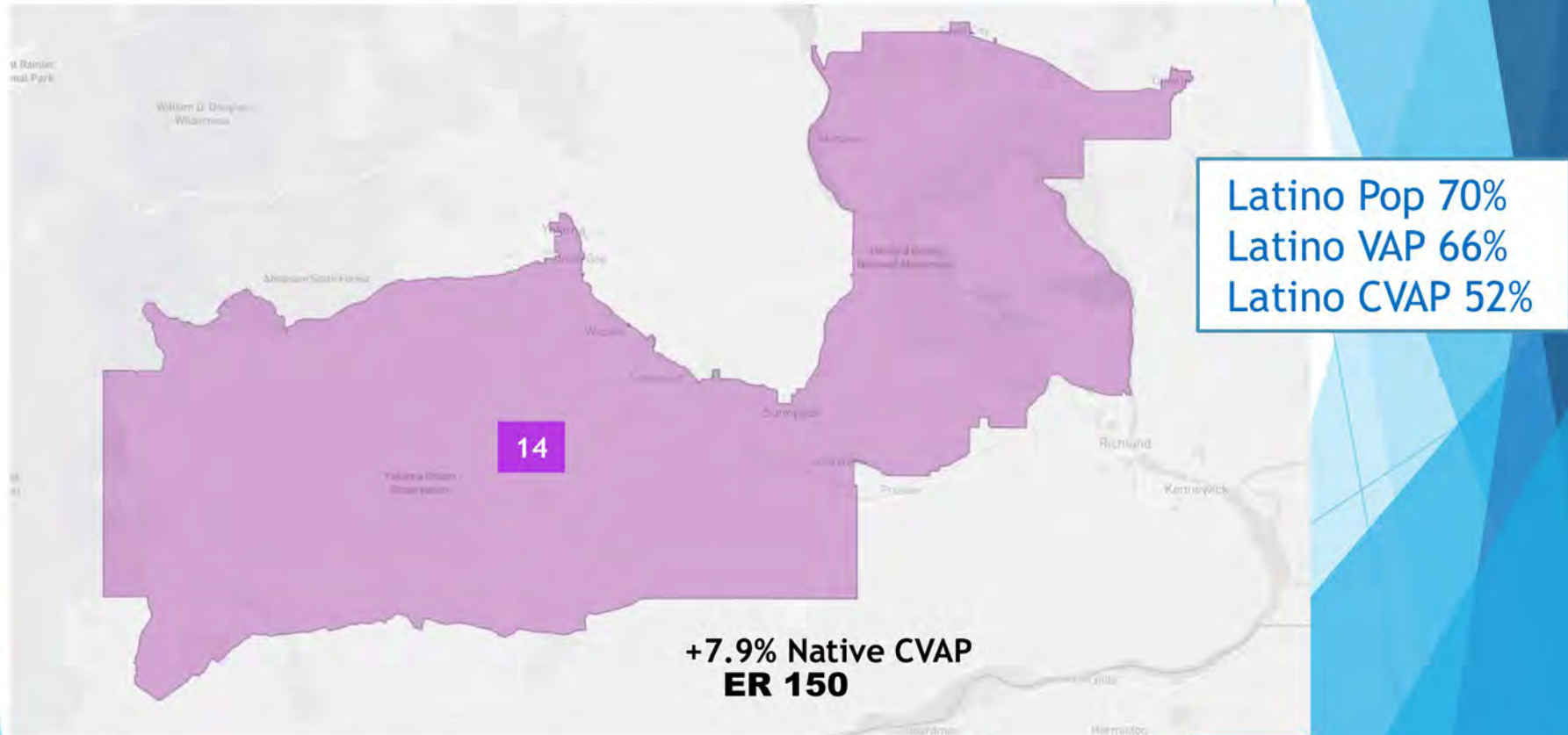
# VRA Compliant Option-1: Yakima-Columbia River Valley



Latino Pop 76%  
Latino VAP 71%  
Latino CVAP 60%

**ER 149**

# VRA Compliant Option-2: Yakama Reservation





# Evaluating Different Maps

District Plan	Latino Pop	Latino CVAP '19	Latino CVAP now	Predict Dem	Predict Rep	Biden '20 margin
Graves	54	34	35.9	38	62	-8,925
Fain	55	34	36.1	43	57	-2,833
Sims	65	45	47.6	50	50	4,607
Walkinshaw	61	40	43.2	52	48	6,299
Yak-Rez	70	52	54.5	54	45	8,104
Yak-Col Riv	76	58	60.4	59	40	11,375

\* Partisan scores based on Campaign Legal Center election analysis and reconstituted precincts into proposed districts by Dr. Barreto

**ER 151**

# THANK YOU

Dr. Matt Barreto, UCLA Political Science & Chicana/o Studies  
Faculty Director of the UCLA Voting Rights Project

[matt@uclavrp.org](mailto:matt@uclavrp.org) 909.489.2955

The Honorable Robert S. Lasnik  
The Honorable David G. Estudillo  
The Honorable Lawrence VanDyke

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

BENANCIO GARCIA III,

*Plaintiff,*

v.

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

*Defendants.*

Case No.: 3:22-cv-5152-RSL-DGE-LJCV

NOTICE OF APPEAL TO THE  
UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

**NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT**

**OF AMENDED JUDGMENT DISMISSING PLAINTIFF'S CLAIM**

Notice is hereby given that Plaintiff in the above-captioned case hereby appeals to the Ninth Circuit Court of Appeals from this Court's March 25, 2024 Amended Judgment in a Civil Case Dismissing Plaintiff's Claim as Moot (Dkt. # 88), and its September 8, 2023 Opinion and Order Judgment regarding the same (Dkt. # 81).

This appeal is being taken under 28 U.S.C. §§ 1291 and 1292.



1 DATED this 17<sup>th</sup> day of April, 2024.

2 Respectfully submitted,

3 s/ Andrew R. Stokesbary

4 Andrew R. Stokesbary, WSBA No. 46097  
5 CHALMERS, ADAMS, BACKER & KAUFMAN, LLC  
6 701 Fifth Avenue, Suite 4200  
7 Seattle, WA 98104  
8 T: (206) 207-3920  
9 dstokesbary@chalmersadams.com

10 Jason B. Torchinsky (admitted pro hac vice)  
11 Phillip M Gordon (admitted pro hac vice)  
12 Caleb Acker (admitted pro hac vice)  
13 HOLTZMAN VOGEL BARAN  
14 TORCHINSKY & JOSEFIK PLLC  
15 15405 John Marshall Hwy  
16 Haymarket, VA 20169  
17 T: (540) 341-8808  
18 jtorchinsky@holtzmanvogel.com  
19 pgordon@holtzmanvogel.com  
20 cacker@holtzmanvogel.com

21 Dallin B. Holt (admitted pro hac vice)  
22 HOLTZMAN VOGEL BARAN  
23 TORCHINSKY & JOSEFIK PLLC  
24 Esplanade Tower IV  
25 2575 East Camelback Road, Suite 860  
26 Phoenix, AZ 85016  
27 T: (540) 341-8808  
dholt@holtzmanvogel.com

*Counsel for Plaintiff*

The Honorable Robert S. Lasnik  
The Honorable David G. Estudillo  
The Honorable Lawrence VanDyke

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

BENANCIO GARCIA III,

*Plaintiff,*

v.

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

*Defendants.*

Case No.: 3:22-cv-5152-RSL-DGE-LJCV

NOTICE OF APPEAL TO THE SUPREME  
COURT OF THE UNITED STATES

**NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES  
OF OPINION AND ORDER DISMISSING PLAINTIFF'S CLAIM**

Notice is hereby given that Plaintiff in the above-captioned case hereby appeals to the Supreme Court of the United States from this Court's September 8, 2023, Opinion and Order Dismissing Plaintiff's Claim as Moot (Dkt. # 81), and its September 8, 2023, Judgment regarding the same (Dkt. # 82).

This appeal is being taken under 28 U.S.C. § 1253.

1 DATED this 28<sup>th</sup> day of September, 2023.

2 Respectfully submitted,

3 s/ Andrew R. Stokesbary

4 Andrew R. Stokesbary, WSBA No. 46097  
5 CHALMERS, ADAMS, BACKER & KAUFMAN, LLC  
6 701 Fifth Avenue, Suite 4200  
7 Seattle, WA 98104  
8 T: (206) 207-3920  
9 dstokesbary@chalmersadams.com

10 Jason B. Torchinsky (admitted pro hac vice)  
11 Phillip M Gordon (admitted pro hac vice)  
12 Caleb Acker (admitted pro hac vice)  
13 HOLTZMAN VOGEL BARAN  
14 TORCHINSKY & JOSEFIK PLLC  
15 15405 John Marshall Hwy  
16 Haymarket, VA 20169  
17 T: (540) 341-8808  
18 jtorchinsky@holtzmanvogel.com  
19 pgordon@holtzmanvogel.com  
20 cacker@holtzmanvogel.com

21 Dallin B. Holt (admitted pro hac vice)  
22 HOLTZMAN VOGEL BARAN  
23 TORCHINSKY & JOSEFIK PLLC  
24 Esplanade Tower IV  
25 2575 East Camelback Road, Suite 860  
26 Phoenix, AZ 85016  
27 T: (540) 341-8808  
dholt@holtzmanvogel.com

*Counsel for Plaintiff*



Document:

3:22cv5152, Garcia V. Hobbs Et Al

Actions



&lt; 1 of 2 Results list &gt;

**3:22cv5152, Garcia V. Hobbs Et Al**

US District Court Docket

United States District Court, Washington Western

(Tacoma)

This case was retrieved on 08/09/2024

## ▼Header

Case Number: 3:22cv5152

Date Filed: 03/15/2022

Nature of Suit: Other Civil Rights (440)

Cause: Federal Question: Other Civil Rights

Lead Docket: None

Other Docket: 9th Circuit Court of Appeals, 24-02603, US Supreme Court, 23-00467

Jurisdiction: Federal Question

Class Code: Closed

Closed: 09/08/2023

Statute: 28:1331

Jury Demand: None

Demand Amount: \$0

NOS Description: Other Civil Rights

## ▼Participants

## Litigants

Benancio Garcia, III

Plaintiff

## Attorneys

Caleb Acker

LEAD ATTORNEY;PRO HAC VICE;ATTORNEY TO BE NOTICED

HOLTZMAN VOGEL BARAN TORCHINSKY &amp; JOSEFIK PLLC (VA)

15405 John Marshall Hwy

Haymarket, VA 20169

USA

540-341-8808 Email:Cacker@holtzmanvogel.Com

Dallin Holt

LEAD ATTORNEY;PRO HAC VICE;ATTORNEY TO BE NOTICED

HOLTZMAN VOGEL BARAN TORCHINSKY &amp; JOSEFIK PLLC (AZ)

2575 E Camelback Rd Ste 860 Esplanade Tower Iv

Phoenix, AZ 85016

USA

540-341-8808 Email:Dholt@holtzmanvogel.Com

Jason Brett Torchinsky

LEAD ATTORNEY;PRO HAC VICE;ATTORNEY TO BE NOTICED

HOLTZMAN VOGEL BARAN TORCHINSKY &amp; JOSEFIK PLLC 2300 N St Nw Ste 643a

Washington, DC 20037

## Litigants

## Attorneys

Steven Hobbs  
in his official capacity as Secretary of State of Washington |  
**Defendant**

State of Washington  
**Defendant**

USA  
202-737-8808 Email: Jtorchinsky@holtzmanvogel.Com

Phillip M Gordon  
LEAD ATTORNEY;PRO HAC VICE;ATTORNEY TO BE  
NOTICED  
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIK PLLC  
(VA)  
15405 John Marshall Hwy  
Haymarket, VA 20169  
USA  
540-341-8808 Email: Pgordon@holtzmanvogel.Com

Andrew R Stokesbary  
ATTORNEY TO BE NOTICED  
CHALMERS ADAMS BACKER & KAUFMAN LLC  
701 Fifth Ave Ste 4200  
Seattle, WA 98104  
USA  
206-207-3920 Email: Dstokesbary@chalmersadams.Com  
Karl David Smith  
ATTORNEY TO BE NOTICED

Attorney General's Office (40100-Oly) Po Box 40100 1125  
Washington St Se  
Olympia, WA 98504-0100  
USA  
360-664-2510 Email: Karl.Smith@atg.Wa.Gov

Leslie Ann Griffith

[Terminated: 08/19/2022]

Attorney General's Office (40100-Oly) Po Box 40100 1125  
Washington St Se  
Olympia, WA 98504-0100  
USA  
360-753-6200 Email: Leslie.Griffith@atg.Wa.Gov

Andrew R W Hughes  
ATTORNEY TO BE NOTICED  
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE (SEA)  
FIFTH A  
800 5th Ave Ste 2000  
Seattle, WA 98104-3188  
USA  
Email: Andrew.Hughes@atg.Wa.Gov

Cristina Sepe  
ATTORNEY TO BE NOTICED

Attorney General's Office (800 Seattle) 800 Fifth Avenue Ste  
2000  
Seattle, WA 98104  
USA  
360-753-7085 Email: Cristina.Sepe@atg.Wa.Gov

Erica R. Franklin  
ATTORNEY TO BE NOTICED

## Litigants

## Attorneys

ATTORNEY GENERAL'S OFFICE (SEA-FIFTH AVE)  
 800 5th Ave Ste 2000  
 Seattle, WA 98104-3188  
 USA  
 206-521-3692 Fax: 206-587-4229  
 Email: Erica.Franklin@atg.Wa.Gov

## ▼ Proceedings

Retrieves Document(s)					
<input type="checkbox"/>	Availability	#	Date	Proceeding Text	Source
<input type="checkbox"/>	<a href="#">Free</a>	1	03/15/2022	COMPLAINT FOR THREE-JUDGE PANEL against defendant(s) Steven Hobbs (Receipt # AWAADC-7474835) Attorney Andrew R Stokesbary added to party Benancio Garcia, III (pty:pla), filed by Benancio Garcia, III. (Attachments: # 1 <a href="#">Civil Cover Sheet</a> , # 2 <a href="#">Summons Defendant Hobbs</a> )(Stokesbary, Andrew) (Entered: 03/15/2022)	
<input type="checkbox"/>	<a href="#">Runner</a>		03/17/2022	Judge J Richard Creatura added. (SP) (Entered: 03/17/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	2	03/17/2022	Summons(es) Electronically Issued as to defendant(s) Steven Hobbs. (SP) (Entered: 03/17/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	3	03/21/2022	MINUTE ORDER REASSIGNING CASE. Case reassigned to Judge Robert S. Lasnik for all further proceedings as it is related to 3:22-cv-05035-RSL. Judge J Richard Creatura no longer assigned to case. Authorized by Judge Robert S. Lasnik. (GMR) (Entered: 03/21/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	4	03/22/2022	Notice of Filing Deficiency re 1 Complaint. ***Action Required*** Notice of Related Cases Omitted. See attached letter for more information and instructions. Notice of Related Case must be filed by 3/28/2022. (SP) (Entered: 03/22/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	5	03/22/2022	NOTICE of Related Case(s) 3:22-cv-05035-RSL, by Plaintiff Benancio Garcia, III. (Stokesbary, Andrew) (Entered: 03/22/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	6	03/24/2022	WAIVER OF SERVICE of Summons upon defendant Steven Hobbs mailed on 3/17/2022 (Stokesbary, Andrew) (Entered: 03/24/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	7	03/30/2022	NOTICE of Appearance by attorney Karl David Smith on behalf of Defendant Steven Hobbs. (Smith, Karl) (Entered: 03/30/2022)	
<input type="checkbox"/>	<a href="#">Runner</a>		03/30/2022	Attorney Leslie Ann Griffith added for Steven Hobbs per 7 Notice of Appearance (LH) (Entered: 03/31/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	8	04/05/2022	ORDER REGARDING INITIAL DISCLOSURES, JOINT STATUS REPORT AND EARLY SETTLEMENT by Judge Robert S. Lasnik. Joint Status Report due by 5/3/2022. (AD) (Entered: 04/05/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	9	05/03/2022	JOINT STATUS REPORT signed by all parties. Estimated Trial Days: 4-5. (Smith, Karl) (Entered: 05/03/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	10	05/05/2022	MINUTE ORDER SETTING TRIAL DATE AND RELATED DATES. Length of Trial: 4-5 days. Bench Trial is set for 2/6/2023 at 9:00 AM in Courtroom 15106 before Judge Robert S. Lasnik. Joinder of Parties due by 6/6/2022, Amended Pleadings due by 8/10/2022, Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 8/10/2022, Discovery completed by 10/9/2022, Attorney settlement conference to be held by 10/23/2022, Dispositive motions due by 11/8/2022, Motions in Limine due by 1/9/2023, Pretrial Order due by 1/25/2023, Trial briefs and trial exhibits to be submitted by 2/1/2023. Authorized by Judge Robert S. Lasnik. (VE) (Entered: 05/05/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	11	05/12/2022	MOTION for Joinder, filed by Defendant Steven Hobbs. (Attachments: # 1 <a href="#">Proposed Order Motion to Join Required Parties</a> ) Noting Date 5/27/2022, (Smith, Karl) (Entered: 05/12/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	12	05/13/2022	ANSWER to 1 Complaint, by Steven Hobbs.(Griffith, Leslie) (Entered: 05/13/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	13	06/02/2022	ORDER of Joinder re Defendant's 11 Motion for Joinder. Plaintiff shall, within seven days of the date of this Order, file an amended complaint adding the State of Washington as a defendant. Signed by Judge Robert S. Lasnik. (LH) (Entered: 06/02/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	14	06/09/2022	AMENDED COMPLAINT against All Defendants, filed by Benancio Garcia, III.(Stokesbary, Andrew) (Entered: 06/09/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	15	06/13/2022	NOTICE of Appearance by attorney Andrew R. W. Hughes on behalf of Defendant State of Washington. (Hughes, Andrew) (Entered: 06/13/2022)	



	Availability	#	Date	Proceeding Text	Source
<input type="checkbox"/>	<a href="#">Online</a>	16	06/13/2022	WAIVER OF SERVICE of Summons upon defendant State of Washington mailed on 6/10/2022 (Hughes, Andrew) (Entered: 06/13/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	17	06/16/2022	NOTICE of Appearance by attorney Cristina Sepe on behalf of Defendant State of Washington. (Sepe, Cristina) (Entered: 06/16/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	18	06/17/2022	ORDER signed by Mary H. Murgia, Chief Judge, United States Court of Appeals for the Ninth Circuit. Pursuant to 28 U.S.C. § 2284(a), the Honorable Robert S. Lasnik, Senior District Judge for the Western District of Washington, has requested the appointment of a three-judge district court pursuant to 28 U.S.C. § 2284(b)(1). Having received this statutory notification, the Honorable Lawrence Van Dyke, United States Circuit Judge for the Ninth Circuit, is designated and appointed to sit with the Honorable Robert S. Lasnik and the Honorable David G. Estudillo, District Judge for the Western District of Washington, to hear and determine this matter as the district court for the Western District of Washington, at a time and place and in a manner to be agreed upon by the court. (VE) (Entered: 06/17/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	19	07/07/2022	Unopposed MOTION for Extension of Time to File Answer re 14 Amended Complaint, filed by Defendant Steven Hobbs. (Attachments: # <a href="#">1 Proposed Order</a> ) Noting Date 7/15/2022, (Smith, Karl) (Entered: 07/07/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	20	07/07/2022	DECLARATION of Karl D. Smith filed by Defendant Steven Hobbs re 19 Unopposed MOTION for Extension of Time to File Answer re 14 Amended Complaint (Smith, Karl) (Entered: 07/07/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	21	07/08/2022	ANSWER to 14 Amended Complaint by Steven Hobbs. (Smith, Karl) (Entered: 07/08/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	22	07/28/2022	NOTICE of Change of Address/Change of Name of Attorney Andrew R Stokesbary. Filed by Plaintiff Benancio Garcia, III. (Stokesbary, Andrew) (Entered: 07/28/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	23	08/09/2022	NOTICE of Appearance by attorney Erica R. Franklin on behalf of Defendant State of Washington. (Franklin, Erica) (Entered: 08/09/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	24	08/09/2022	ANSWER to 14 Amended Complaint by State of Washington. (Franklin, Erica) (Entered: 08/09/2022)	
<input type="checkbox"/>	<a href="#">Online</a>	25	08/19/2022	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Leslie Ann Griffith for Defendant Steven Hobbs. (Griffith, Leslie) (Entered: 08/19/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	26	08/22/2022	Stipulated MOTION to Modify Scheduling Order and Extend Trial Date and Related Dates, filed by Defendant State of Washington. (Attachments: # <a href="#">1 Exhibit 1</a> , # <a href="#">2 Proposed Order</a> ) Noting Date 8/22/2022, (Hughes, Andrew) (Entered: 08/22/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	27	08/23/2022	MINUTE ORDER SETTING AMENDED TRIAL DATE AND RELATED DATES; Length of Trial: 4-5 days. Bench Trial is continued to 6/5/2023 at 9:00 AM in Courtroom 15106 before Judge Robert S. Lasnik. Discovery completed by 2/5/2023. Attorney settlement conference to be held by 2/19/2023. Dispositive motions due by 3/7/2023. Motions in Limine due by 5/8/2023. Pretrial Order due by 5/24/2023. Trial briefs and trial exhibits to be submitted by 5/31/2023. Authorized by Judge Robert S. Lasnik. (VE) (Entered: 08/23/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	28	08/31/2022	ORDER granting Defendant's 19 Unopposed MOTION for Extension of Time to File Answer re 14 Amended Complaint. The Answer filed on July 8, 2022, is hereby accepted. Signed by Judge Robert S. Lasnik. (LH) (Entered: 08/31/2022)	
<input type="checkbox"/>	<a href="#">Free</a>	29	02/14/2023	MOTION Inquiry Concerning Potential Conflicts of Interest, filed by Defendant State of Washington. Noting Date 3/3/2023, (Hughes, Andrew) (Entered: 02/14/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	30	02/14/2023	DECLARATION of Andrew Hughes filed by Defendant State of Washington re 29 MOTION Inquiry Concerning Potential Conflicts of Interest (Attachments: # <a href="#">1 Exhibit 1</a> , # <a href="#">2 Exhibit 2</a> , # <a href="#">3 Exhibit 3</a> , # <a href="#">4 Exhibit 4</a> , # <a href="#">5 Exhibit 5</a> )(Hughes, Andrew) (Entered: 02/14/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	31	02/22/2023	MINUTE ORDER entered at the direction of Robert S. Lasnik. Oral argument on Defendant State of Washington's 29 MOTION for Inquiry Concerning Potential Conflicts of Interest is scheduled for 3/7/2023 at 1:30 PM, before the Honorable Robert S. Lasnik, the Honorable David G. Estudillo, and the Honorable Lawrence J.C. VanDyke. The hearing will be held via Zoom videoconference. (VE) (Entered: 02/22/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	32	02/27/2023	RESPONSE, by All Plaintiffs, to 29 MOTION Inquiry Concerning Potential Conflicts of Interest. (Attachments: # <a href="#">1 Exhibit</a> , # <a href="#">2 Exhibit</a> , # <a href="#">3 Exhibit</a> )(Stokesbary, Andrew) (Entered: 02/27/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	33	03/01/2023	REPLY, filed by Defendant State of Washington, TO RESPONSE to 29 MOTION Inquiry Concerning Potential Conflicts of Interest (Hughes, Andrew) (Entered: 03/01/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	34	03/03/2023	ORDER: At the hearing scheduled for March 7, 2023, the parties shall be prepared to respond to the Court's inquiries regarding the existence of potential and actual conflicts in this	

	Availability	#	Date	Proceeding Text	Source
				case and to discuss appropriate remedies if the Court finds that a conflict exists. Signed by Judge Robert S. Lasnik. (LH) (Entered: 03/03/2023)	
<input type="checkbox"/>	<a href="#">Online</a>	35	03/03/2023	APPLICATION OF ATTORNEY Jason B. Torchinsky FOR LEAVE TO APPEAR PRO HAC VICE for All Plaintiffs (Fee Paid) Receipt No. AWAADC-7912836 (Stokesbary, Andrew) (Entered: 03/03/2023)	
<input type="checkbox"/>	<a href="#">Online</a>	36	03/03/2023	APPLICATION OF ATTORNEY Phillip M. Gordon FOR LEAVE TO APPEAR PRO HAC VICE for All Plaintiffs (Fee Paid) Receipt No. AWAADC-7912887 (Stokesbary, Andrew) (Entered: 03/03/2023)	
<input type="checkbox"/>	<a href="#">Online</a>	37	03/03/2023	APPLICATION OF ATTORNEY Dallin B. Holt FOR LEAVE TO APPEAR PRO HAC VICE for All Plaintiffs (Fee Paid) Receipt No. AWAADC-7912899 (Stokesbary, Andrew) (Entered: 03/03/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	38	03/06/2023	NOTICE of Errata Corrections for Deposition of Benancio Garcia III ; filed by All Plaintiffs. (Attachments: # 1 STRICKEN <a href="#">Exhibit A (Errata Corrections)</a> )(Stokesbary, Andrew) Modified to strike Exhibit 1 on 4/20/2023 (LH). (Entered: 03/06/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	39	03/07/2023	ORDER re 35 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Jason Brett Torchinsky for Plaintiff Benancio Garcia, III by Clerk Ravi Subramanian. No document associated with this docket entry, text only.NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d). (JWC) (Entered: 03/07/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	40	03/07/2023	ORDER re 36 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Phillip M Gordon for Plaintiff Benancio Garcia, III by Clerk Ravi Subramanian. No document associated with this docket entry, text only.NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d). (JWC) (Entered: 03/07/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	41	03/07/2023	ORDER re 37 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Dallin Holt for Plaintiff Benancio Garcia, III by Clerk Ravi Subramanian. No document associated with this docket entry, text only.NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d). (JWC) (Entered: 03/07/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	42	03/07/2023	MINUTE ENTRY for proceedings held before Judge Robert S. Lasnik, Chief Judge David G. Estudillo, and Circuit Judge Lawrence J.C. VanDyke - Dep Clerk: Victoria Ericksen; Pla Counsel: Dallin Holt and Andrew Stokesbary for Plaintiff; Def Counsel: Andrew Hughes, Cristina Sepe and Erica Franklin for Defendant State of Washington; Karl Smith for Defendant Hobbs; CR: Sheri Schelbert; MOTION HEARING held on 3/7/2023 via Zoom videoconference on 29 MOTION for Inquiry Concerning Potential Conflicts of Interest filed by State of Washington. The Court hears argument of counsel and takes this matter under advisement. (VE) (Entered: 03/07/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	43	03/07/2023	MOTION Strike re 38 Notice-Other Errata, filed by Defendant State of Washington. Noting Date 3/24/2023, (Hughes, Andrew) (Entered: 03/07/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	44	03/07/2023	PLEASE DISREGARD MOTION for Summary Judgment , filed by All Plaintiffs. Oral Argument Requested. (Attachments: # 1 <a href="#">Exhibit Table of Contents of Exhibits</a> , # 2 <a href="#">Exhibit</a> , # 3 <a href="#">Exhibit</a> , # 4 <a href="#">Exhibit</a> , # 5 <a href="#">Exhibit</a> , # 6 <a href="#">Exhibit</a> , # 7 <a href="#">Exhibit</a> , # 8 <a href="#">Exhibit</a> , # 9 <a href="#">Exhibit</a> , # 10 <a href="#">Exhibit</a> , # 11 <a href="#">Exhibit</a> , # 12 <a href="#">Exhibit</a> , # 13 <a href="#">Exhibit</a> , # 14 <a href="#">Exhibit</a> , # 15 <a href="#">Exhibit</a> , # 16 <a href="#">Exhibit</a> , # 17 <a href="#">Exhibit</a> , # 18 <a href="#">Exhibit</a> , # 19 <a href="#">Exhibit</a> , # 20 <a href="#">Exhibit</a> , # 21 <a href="#">Exhibit</a> , # 22 <a href="#">Exhibit</a> , # 23 <a href="#">Exhibit</a> , # 24 <a href="#">Exhibit</a> , # 25 <a href="#">Exhibit</a> , # 26 <a href="#">Exhibit</a> , # 27 <a href="#">Exhibit</a> , # 28 <a href="#">Exhibit</a> , # 29 <a href="#">Exhibit</a> , # 30 <a href="#">Exhibit</a> , # 31 <a href="#">Exhibit</a> , # 32 <a href="#">Exhibit</a> , # 33 <a href="#">Exhibit</a> , # 34 <a href="#">Exhibit</a> , # 35 <a href="#">Exhibit</a> , # 36 <a href="#">Exhibit</a> ) Noting Date 3/31/2023, (Stokesbary, Andrew) Modified on 3/8/2023 to strike docket entry and terminate motion - to be refiled (KB). (Entered: 03/07/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>		03/08/2023	NOTICE of Docket Text Modification re 44 MOTION for Summary Judgment: Modified on 03/08/2023 to strike docket entry and terminate motion at request of filer. Motion and exhibits to be refiled with updated exhibit descriptions. (KB) (Entered: 03/08/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	45	03/08/2023	MOTION for Summary Judgment , filed by All Plaintiffs. Oral Argument Requested. (Attachments: # 1 <a href="#">Table of Contents of Exhibits</a> , # 2 <a href="#">Exhibit 1</a> , # 3 <a href="#">Exhibit 2</a> , # 4 <a href="#">Exhibit 3</a> , # 5 <a href="#">Exhibit 4</a> , # 6 <a href="#">Exhibit 5</a> , # 7 <a href="#">Exhibit 6</a> , # 8 <a href="#">Exhibit 7</a> , # 9 <a href="#">Exhibit 8</a> , # 10 <a href="#">Exhibit 9</a> , # 11 <a href="#">Exhibit 10</a> , # 12 <a href="#">Exhibit 12</a> , # 13 <a href="#">Exhibit 14</a> , # 14 <a href="#">Exhibit 15</a> , # 15 <a href="#">Exhibit 16</a> , # 16 <a href="#">Exhibit 17</a> , # 17 <a href="#">Exhibit</a>	



	Availability	#	Date	Proceeding Text	Source
				18, # 18 <a href="#">Exhibit 19</a> , # 19 <a href="#">Exhibit 20</a> , # 20 <a href="#">Exhibit 21</a> , # 21 <a href="#">Exhibit 22</a> , # 22 <a href="#">Exhibit 23</a> , # 23 <a href="#">Exhibit 24</a> , # 24 <a href="#">Exhibit 25</a> , # 25 <a href="#">Exhibit 26</a> , # 26 <a href="#">Exhibit 27</a> , # 27 <a href="#">Exhibit 28</a> , # 28 <a href="#">Exhibit 29</a> , # 29 <a href="#">Exhibit 30</a> , # 30 <a href="#">Exhibit 32</a> , # 31 <a href="#">Exhibit 33</a> , # 32 <a href="#">Exhibit 34</a> , # 33 <a href="#">Exhibit 35</a> , # 34 <a href="#">Exhibit 36</a> , # 35 <a href="#">Exhibit 37</a> , # 36 <a href="#">Exhibit 38</a> ) Noting Date 3/31/2023, (Stokesbary, Andrew) Modified on 3/8/2023 correct Exhibit title from 10 to 11 per counsels request (JF). (Entered: 03/08/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	46	03/09/2023	NOTICE of Conflict Affidavits Requested by Court ; filed by Plaintiff Benancio Garcia, III. (Attachments: # 1 <a href="#">Exhibit Declaration of Benancio Garcia III</a> , # 2 <a href="#">Exhibit Declaration of Jose Trevino</a> , # 3 <a href="#">Exhibit Declaration of Alex Ybarra</a> , # 4 <a href="#">Exhibit Declaration of Ismael Campos</a> )(Stokesbary, Andrew) (Entered: 03/09/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	47	03/13/2023	ORDER re Washington State's 29 Motion Concerning Potential Conflicts of Interest. The Court finds that plaintiff has been adequately informed of the potential conflicts arising from counsels' representation of multiple individuals and that the clients' litigation positions are not directly adverse to each other. Signed by Judge Robert S. Lasnik. (LH) (Entered: 03/13/2023)	
<input type="checkbox"/>	<a href="#">Online</a>	48	03/13/2023	NOTICE of Change of Address/Change of Name of Attorney Andrew R Stokesbary. Filed by All Plaintiffs. (Stokesbary, Andrew) (Entered: 03/13/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	49	03/20/2023	RESPONSE, by All Plaintiffs, to 43 MOTION Strike re 38 Notice-Other Errata. (Stokesbary, Andrew) (Entered: 03/20/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	50	03/24/2023	REPLY, filed by Defendant State of Washington, TO RESPONSE to 43 MOTION Strike re 38 Notice-Other Errata (Sepe, Cristina) (Entered: 03/24/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	51	03/27/2023	RESPONSE, by Defendant Steven Hobbs, to 45 MOTION for Summary Judgment . (Smith, Karl) (Entered: 03/27/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	52	03/27/2023	RESPONSE, by Defendant State of Washington, to 45 MOTION for Summary Judgment . Oral Argument Requested. (Hughes, Andrew) (Entered: 03/27/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	53	03/27/2023	DECLARATION of Andrew Hughes filed by Defendant State of Washington re 45 MOTION for Summary Judgment (Attachments: # 1 <a href="#">Exhibit A</a> , # 2 <a href="#">Exhibit B</a> , # 3 <a href="#">Exhibit C</a> , # 4 <a href="#">Exhibit D</a> , # 5 <a href="#">Exhibit E</a> , # 6 <a href="#">Exhibit F</a> , # 7 <a href="#">Exhibit G</a> , # 8 <a href="#">Exhibit H</a> , # 9 <a href="#">Exhibit I</a> , # 10 <a href="#">Exhibit J</a> , # 11 <a href="#">Exhibit K</a> , # 12 <a href="#">Exhibit L</a> , # 13 <a href="#">Exhibit M</a> , # 14 <a href="#">Exhibit N</a> , # 15 <a href="#">Exhibit O</a> , # 16 <a href="#">Exhibit P</a> , # 17 <a href="#">Exhibit Q</a> , # 18 <a href="#">Exhibit R</a> , # 19 <a href="#">Exhibit S</a> , # 20 <a href="#">Exhibit T</a> , # 21 <a href="#">Exhibit U</a> )(Hughes, Andrew) (Entered: 03/27/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	54	03/31/2023	REPLY, filed by All Plaintiffs, TO RESPONSE to 45 MOTION for Summary Judgment (Stokesbary, Andrew) (Entered: 03/31/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	55	04/20/2023	ORDER Striking Errata re Defendant's 43 Motion to Strike. The errata (Dkt. # 38 -1) is hereby STRICKEN. Signed by Judge Robert S. Lasnik. (LH) (Entered: 04/20/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	56	04/21/2023	ORDER denying Plaintiff's 45 Motion for Summary Judgment. Signed by Judge Robert S. Lasnik. (LH) (Entered: 04/21/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	57	05/02/2023	ORDER Expediting Briefing for Motion for Clarification filed in the Soto Palmer case. The Court hereby renotes the Motion for Clarification (Dkt. # 174) for consideration on Wednesday, May 10, 2023. Responses and counterproposals shall be filed no later than noon on Tuesday, May 9th. The Soto Palmer plaintiffs may file a reply by 5:00 p.m. on Wednesday, May 10th. Signed by Judge Robert S. Lasnik. (LH) (Entered: 05/02/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	58	05/09/2023	RESPONSE by Defendant Steven Hobbs re 57 Order, Expediting Briefing Regarding Motion for Clarification (Smith, Karl) (Entered: 05/09/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	59	05/09/2023	DECLARATION of Stuart Holmes in Support of Defendant Secretary of State Steven Hobbs's Response to Plaintiffs' Motion for Clarification Regarding Trial Schedule re 57 Order. by Defendant Steven Hobbs (Smith, Karl) (Entered: 05/09/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	60	05/09/2023	RESPONSE by Plaintiff Benancio Garcia, III re 57 Order, and by Defendant State of Washington (Stokesbary, Andrew) (Entered: 05/09/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	61	05/24/2023	APPLICATION OF ATTORNEY Caleb Acker FOR LEAVE TO APPEAR PRO HAC VICE for All Plaintiffs (Fee Paid) Receipt No. AWAWDCC-8020630 (Stokesbary, Andrew) (Entered: 05/24/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	62	05/24/2023	ORDER re 61 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Caleb Acker for Plaintiff Benancio Garcia, III by Clerk Ravi Subramanian. No document associated with this docket entry, text only.NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date	



	Availability	#	Date	Proceeding Text	Source
				scheduled by the court, pursuant to LCR 83.1(d). (JWC) (Entered: 05/24/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	63	05/24/2023	MINUTE ORDER AUTHORIZING FOOD AND LIQUIDS entered at the direction of Judge Robert S. Lasnik. The Court will permit the attorneys and staff in this matter to bring food and liquids into the courthouse for the bench trial scheduled to begin 6/5/2023. (cc: USMO, Courthouse Security Officers) (VE) (Entered: 05/24/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	64	05/24/2023	Proposed Pretrial Order by All Plaintiffs. (Attachments: # 1 <a href="#">Exhibit 1 - Soto Palmer Proposed Pretrial Order</a> )(Stokesbary, Andrew) (Entered: 05/24/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	65	05/31/2023	TRIAL BRIEF by Defendant State of Washington. (Hughes, Andrew) (Entered: 05/31/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	66	05/31/2023	TRIAL BRIEF by Defendant Steven Hobbs. (Smith, Karl) (Entered: 05/31/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	67	05/31/2023	TRIAL BRIEF by All Plaintiffs. (Stokesbary, Andrew) (Entered: 05/31/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	68	06/05/2023	MINUTE ENTRY for proceedings held before Judge Robert S. Lasnik, Chief Judge David G. Estudillo and Circuit Judge Lawrence J.C. VanDyke - Dep Clerk: Victoria Ericksen; Pla Counsel: Dallin Holt, Caleb Acker, Andrew Stokesbary and Jason Torchinsky for Plaintiff; Def Counsel: Andrew Hughes, Cristina Sepe and Erica Franklin for Defendant State of Washington; Karl Smith for Defendant Hobbs; CR: Debbie Zurn; BENCH TRIAL -- DAY 1 held on 6/5/2023. Exhibits 1-4, 6-121, 123, 126-137, 139, 141-146, 148-150, 152-159, 161-172, 174-198, 200-204, 206-210, 213-232, 234-238, 240-244, 246-283, 285-305, 307-309, 311-315, 317, 319-350, 352-363, 365, 367, 369-380, 382-390, 397-400, 402-404, 408-413, 418-436, 438-488, 490, 502, 505-531, 601-610, 1001-1020, 1043-1044, 1046, 1055-1056 and 1061-1065 were admitted on 6/2/2023 in the related matter Soto Palmer v. Hobbs, et al v. Trevino, et al., Case No. 3:22-cv-05035-RSL. April Sims, Susan Soto Palmer, Brady Walkinshaw and Anton Gross are sworn and testify, Exhibit Admitted: 611. Bench Trial to resume on 6/6/2023 at 8:30 AM before Judge Robert S. Lasnik, Chief Judge David G. Estudillo and Circuit Judge Lawrence J.C. VanDyke. (VE) (Entered: 06/05/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	69	06/06/2023	MINUTE ENTRY for proceedings held before Judge Robert S. Lasnik, Chief Judge David G. Estudillo and Circuit Judge Lawrence J.C. VanDyke - Dep Clerk: Victoria Ericksen; Pla Counsel: Dallin Holt, Caleb Acker, Andrew Stokesbary and Jason Torchinsky for Plaintiff; Def Counsel: Andrew Hughes, Cristina Sepe and Erica Franklin for Defendant State of Washington; Karl Smith for Defendant Hobbs; CR: Debbie Zurn; BENCH TRIAL -- DAY 2 held on 6/6/2023. Joe Fain, Dr. Mark Owens and Dr. Matt Barreto are sworn and testify. Exhibit Admitted: 417. Bench Trial to resume on 6/7/2023 at 8:30 AM before Judge Robert S. Lasnik, Chief Judge David G. Estudillo and Circuit Judge Lawrence J.C. VanDyke. (VE) (Entered: 06/06/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>	70	06/07/2023	MINUTE ENTRY for proceedings held before Judge Robert S. Lasnik, Chief Judge David G. Estudillo and Circuit Judge Lawrence J.C. VanDyke - Dep Clerk: Victoria Ericksen; Pla Counsel: Dallin Holt, Caleb Acker, Andrew Stokesbary and Jason Torchinsky for Plaintiff; Def Counsel: Andrew Hughes, Cristina Sepe and Erica Franklin for Defendant State of Washington; Karl Smith for Defendant Hobbs; CR: Debbie Zurn; BENCH TRIAL -- DAY 3 held on 6/7/2023. Paul Graves, Alison O'Neil, Gabriel Portugal and Dr. John Alford are sworn and testify. Exhibits Admitted: 5, 140, 173, 368, 392, 393, 394, 395, 401, 405, 406, 407, 414, 415, 416, 437, 491, 492, 493, 494, 495, 497, 498, 499, 500, 501, 503, 504, 532, 1060 and 1066. Upon the agreement of the parties, in lieu of further live testimony, counsel may present additional exhibits and deposition designations for the Court's consideration. Counsel is directed to submit written closing arguments no later than 7/12/2023. A deadline to submit proposed Findings of Fact and Conclusions of Law will be set by the Court. (VE) (Entered: 06/08/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	71	06/07/2023	TRIAL WITNESS LIST (VE) (Entered: 06/08/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	72	06/07/2023	TRIAL EXHIBIT LIST (VE) (Entered: 06/08/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	73	06/29/2023	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial - Day 2 held on 6/5/2023 before Judge Robert S. Lasnik. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter	

	Availability	#	Date	Proceeding Text	Source
<input type="checkbox"/>	<a href="#">Online</a>	74	06/29/2023	Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504. Release of Transcript Restriction set for 9/27/2023, (DZ) (Entered: 06/29/2023) NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial - Day 3 held on 6/6/2023 before Judge Robert S. Lasnik. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504. Release of Transcript Restriction set for 9/27/2023, (DZ) (Entered: 06/29/2023)	
<input type="checkbox"/>	<a href="#">Online</a>	75	06/29/2023	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial - Day 4 held on 6/7/2023 before Judge Robert S. Lasnik. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504. Release of Transcript Restriction set for 9/27/2023, (DZ) (Entered: 06/29/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	76	07/12/2023	Unopposed MOTION for Leave to File Over-length Motions and Briefs, filed by Plaintiff Benancio Garcia, III. (Attachments: # 1 <a href="#">Proposed Order</a> ) Noting Date 7/12/2023, (Stokesbary, Andrew) (Entered: 07/12/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	77	07/12/2023	STATEMENT of Defendant Steve Hobbs re: Closing Argument re 70 Three-Judge Court Hearing,,, by Defendant Steven Hobbs (Smith, Karl) (Entered: 07/12/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	78	07/12/2023	TRIAL BRIEF Closing by Defendant State of Washington. (Hughes, Andrew) (Entered: 07/12/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	79	07/12/2023	TRIAL BRIEF Closing by All Plaintiffs. (Stokesbary, Andrew) (Entered: 07/12/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	80	07/12/2023	ORDER granting Movants' 76 Motion for Leave to File Over-length Post Trial Brief. Signed by Judge Robert S. Lasnik. (LH) (Entered: 07/13/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	81	09/08/2023	OPINION AND ORDER Dismissing Plaintiff's Claim as Moot. Signed by U.S. District Judges David G Estudillo and Robert S Lasnik. (Attachments: # 1 <a href="#">Dissent</a> )(MW) (Entered: 09/08/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	82	09/08/2023	JUDGMENT BY COURT. This case is dismissed as moot. (MW) (Entered: 09/08/2023)	
<input checked="" type="checkbox"/>	<a href="#">Free</a>	83	09/28/2023	NOTICE OF APPEAL to the United States Supreme Court (23-467) Ninth Circuit re 82 Judgment by Court, 81 Order by All Plaintiffs. \$505, receipt number AWAWD-8183043 (cc: USCA) (Attachments: # 1 <a href="#">Exhibit Opinion and Order</a> , # 2 <a href="#">Exhibit Judgment</a> )(Stokesbary, Andrew) Modified on 10/2/2023 to indicate corrected receiving court (PS). Modified on 3/5/2024 to add case number. (RE) (Entered: 09/28/2023)	
<input type="checkbox"/>	<a href="#">Runner</a>		10/02/2023	NOTICE of Docket Text Modification re 83 Notice of Appeal. : Amended docket text to correctly identify receiving court. (PS) (Entered: 10/02/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	84	11/21/2023	NOTICE FROM US SUPREME COURT (23-467) re 83 Notice of Appeal. The petition for a writ of certiorari in the above entitled case was filed on October 31, 2023 and placed on the docket November 2, 2023 as No. 23-467. (RE) (Entered: 11/22/2023)	
<input type="checkbox"/>	<a href="#">Free</a>	85	11/25/2023	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion for Inquiry held on 3/7/2023 before Judge Robert S. Lasnik. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter Sheri Schelbert, sheri_schelbert@wawd.uscourts.gov, 206-370-	



	Availability	#	Date	Proceeding Text	Source
<input type="checkbox"/>	<a href="#">Free</a>	86	03/01/2024	8507. Release of Transcript Restriction set for 2/23/2024, (Schelbert, Sheri) (Entered: 11/25/2023) ORDER FROM US SUPREME COURT (23-467) The Court today entered the following order in the above-entitled case: The judgment is vacated, and the case is remanded to the United States District Court for the Western District of Washington with instructions to enter a fresh judgment from which an appeal may be taken to the United States Court of Appeals for the Ninth Circuit. The judgment or mandate of this Court will not issue for at least thirty-two days pursuant to Rule 45. Should a petition for rehearing be filed timely, the judgment or mandate will be further stayed pending this Court's action on the petition for rehearing. (RE) (Entered: 03/05/2024)	
<input type="checkbox"/>	<a href="#">Free</a>	87	03/25/2024	JUDGMENT FROM US SUPREME COURT (23-467) ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated with costs, and the case is remanded to the United States District Court for the Western District of Washington with instructions to enter a fresh judgment from which an appeal may be taken to the United States Court of Appeals for the Ninth Circuit. IT IS FURTHER ORDERED that the petitioner, Benancio Garcia, III, recover from Steven Hobbs, Secretary of State of Washington, et al., Three Hundred Dollars (\$300.00) for costs herein expended. (Attachments: # <a href="#">1 Correspondence from US Supreme Court regarding Judgment</a> ) (RE) (Entered: 03/25/2024)	
<input type="checkbox"/>	<a href="#">Free</a>	88	03/25/2024	AMENDED JUDGMENT BY THE COURT. This action is again before the Court on remand from the United States Supreme Court with instructions to enter a fresh judgment from which an appeal can be taken to the United States Court of Appeals for the Ninth Circuit. The issues were previously considered and a decision was rendered. This case is dismissed as moot. (VE) (Entered: 03/25/2024)	
<input checked="" type="checkbox"/>	<a href="#">Free</a>	89	04/17/2024	NOTICE OF APPEAL to Ninth Circuit (24-2603) re 88 Amended Judgment, 81 Order by All Plaintiffs. \$605, receipt number AWA/DC-8433608 (cc: USCA) (Stokesbary, Andrew) Modified on 4/24/2024 to add CCA#. (RE) (Entered: 04/17/2024)	
<input type="checkbox"/>	<a href="#">Free</a>	90	04/24/2024	TIME SCHEDULE ORDER/USCA CASE NUMBER (24-2603) as to 89 Notice of Appeal filed by Benancio Garcia, III. (RE) (Entered: 04/24/2024)	
<input type="checkbox"/>	<a href="#">Free</a>	91	05/06/2024	TRANSCRIPT DESIGNATION (#24-2603) by Plaintiff Benancio Garcia, III. Requesting Attorney: Andrew R Stokesbary. (Stokesbary, Andrew) (Entered: 05/06/2024)	

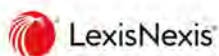
[Retrieve Document\(s\)](#)

### ▼ Judgments

Date	In Favor Of	Against	Amount	Interest	Court Cost	Status	Status Date
09/08/2023	Steven Hobbs	Benancio Garcia, III	\$ 0.00 Amended as of 3/25/2024	0.00%	\$ 0.00	No Payment	09/08/2023
09/08/2023	State of Washington	Benancio Garcia, III	\$ 0.00 Amended as of 3/25/2024	0.00%	\$ 0.00	No Payment	09/08/2023

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