

NO. 24-2603

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

BENANCIO GARCIA III,

Plaintiff-Appellant,

v.

STEVEN HOBBS, in his Official Capacity as Secretary of State of Washington
and STATE OF WASHINGTON, et al.,

Defendants-Appellees.

On Appeal from the U.S. District Court for the Western District of Washington
Case No. 3:22-cv-05152-RSL-DGE-LJCV
The Honorable Robert S. Lasnik, David G. Estudillo, and Lawrence J.C. VanDyke

**APPELLEE STATE OF WASHINGTON'S
SUPPLEMENTAL EXCERPTS OF RECORD**

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TRIAL EXHIBIT LIST

NO.	DESCRIPTION	ADMITTED / REFUSED	DATE ADMITTED / REFUSED
1	Expert Report of Dr. Loren Collingwood	A	06-02-2023
2	Supplemental Expert Report of Dr. Loren Collingwood	A	06-02-2023
3	February 25, 2022 Declaration of Dr. Loren Collingwood	A	06-02-2023
4	Dr. Josue Estrada, Totality of the Circumstances Analysis Under Section 2 of the Voting Rights Act	A	06-02-2023
5	February 25, 2022 Declaration of Dr. Matt Barreto	A	06-07-2023
6	March 25, 2022 Second Declaration of Dr. Loren Collingwood	A	06-02-2023
7	Defendant Steven Hobbs' Responses and Objections to Plaintiffs' First Set of Interrogatories	A	06-02-2023
8	Intervenor-Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories	A	06-02-2023
9	Plaintiffs' Amended First Set of Interrogatories to State of Washington, And Defendant State of Washington's Answers and Objections Thereto	A	06-02-2023
10	Intervenor-Defendants' Objections and Responses to Plaintiffs' Second Set of Interrogatories	A	06-02-2023
11	Intervenor-Defendants' Objections and Responses to Plaintiffs' Amended First Set of Requests for Admission to Intervenor Defendants	A	06-02-2023
12	Defendant Steven Hobbs' Responses and Objections to Plaintiffs' Amended First Requests for Admission	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
13	Plaintiffs' Amended First Set of Requests for Admission to Defendant State of Washington, and Defendant State of Washington's Objections and Responses	A	06-02-2023
14	Intervenor-Defendants' Objections and Responses to Plaintiffs' Amended First Set of Requests for Admission to Intervenor-Defendants	A	06-02-2023
15	Plaintiffs' Second Set of Requests for Admission to Defendant State of Washington, and State of Washington's Responses and Objections Thereto	A	06-02-2023
16	Defendant Steven Hobbs' Responses and Objections to Plaintiffs' Second Requests for Admission	A	06-02-2023
17	Intervenor-Defendants' Objections and Responses to Plaintiffs' Second Set of Requests for Admission to Intervenor-Defendants	A	06-02-2023
18	Intervenor-Defendants' Objections and Responses to Plaintiffs' Third Set of Interrogatories to Intervenor-Defendants	A	06-02-2023
19	12/29/2011 2011 Commission Meeting Minutes	A	06-02-2023
20	1/27/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
21	1/27/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
22	1/30/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
23	1/30/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
24	2/21/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
25	2/21/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
26	3/08/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
27	3/08/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
28	3/15/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
29	3/15/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
30	3/29/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
31	3/29/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
32	4/12/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
33	4/12/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
34	4/19/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
35	4/19/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
36	4/26/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
37	4/26/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
38	5/10/21 Washington Redistricting Business Meeting Minutes	A	06-02-2023
39	5/10/21 Washington Redistricting Business Meeting (Video)	A	06-02-2023
40	5/17/2021 Washington State Redistricting Commission Meeting Minutes	A	06-02-2023
41	WSRC Public Outreach Meeting 5.22.21-CD 7 (Transcript)	A	06-02-2023
42	WSRC Public Outreach Meeting 5.22.21- CD 5 (Transcript)	A	06-02-2023
43	5/22/21 Washington Redistricting Commission CD 7 Public Outreach Meeting (Video)	A	06-02-2023
44	5/22/21 Washington Redistricting Commission CD 5 Public Outreach Meeting (Video)	A	06-02-2023
45	5/24/21 Washington Redistricting Commission CD 4 Public Outreach Meeting (Transcript)	A	06-02-2023
46	5/24/21 Washington Redistricting Commission CD 4 Public Outreach Meeting (Video)	A	06-02-2023
47	WSRC Public Outreach Meeting 6.05.21-CD 4 (Transcript)	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
48	WSRC Public Outreach Meeting 6.05.21-CD 1 (Transcript)	A	06-02-2023
49	6/05/21- Washington Redistricting Commission CD 1 Public Outreach Meeting (Video)	A	06-02-2023
50	6/07/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
51	6/07/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
52	WSRC Public Outreach Meeting 6.14.2021- CD 3 (Transcript)	A	06-02-2023
53	6/14/21 Washington Redistricting Commission CD 3 Public Outreach Meeting (Video)	A	06-02-2023
54	6/21/21 Washington Redistricting Commission Regular Business Meeting Minutes	A	06-02-2023
55	6/21/21 Washington Redistricting Commission Regular Business Meeting (Video)	A	06-02-2023
56	WSRC Public Outreach Meeting 6.22.2021- CD 2 (Transcript)	A	06-02-2023
57	WSRC Public Outreach Meeting 6.22.2021- CD 10 (Transcript)	A	06-02-2023
58	6/22/21 Washington Redistricting Commission CD 2 Public Outreach Meeting (Video)	A	06-02-2023
59	6/22/21 Washington Redistricting Commission CD 10 Public Outreach Meeting (Video)	A	06-02-2023
60	WSRC Public Outreach Meeting 6.26.21-CD 9 (Transcript)	A	06-02-2023
61	6/26/21 Washington Redistricting Commission CD 9 Public Outreach Meeting (Video)	A	06-02-2023
62	WSRC Public Outreach Meeting 6.28.21- CD 8 (Transcript)	A	06-02-2023
63	6/28/21 CD 8 Washington Redistricting Commission Public Outreach Meeting (Video)	A	06-02-2023
64	7/31/21 Washington Redistricting Commission CD 7 & 9 Public Outreach Meeting (Video)	A	06-02-2023
65	7/19/21 Washington Redistricting Commission Regular Business Meeting Minutes	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
66	7/19/21 Washington Redistricting Commission Regular Business Meeting (Video)	A	06-02-2023
67	WSRC Public Outreach Meeting 7.24.21- CD 1&2 (Transcript)	A	06-02-2023
68	WSRC Public Outreach Meeting 7.24.21- CD 4&5 (Transcript)	A	06-02-2023
69	7/24/21 Washington Redistricting Commission CD 1 & 2 Public Outreach Meeting (Video)	A	06-02-2023
70	WSRC Public Outreach Meeting 7.26.21- CD 3&6 (Transcript)	A	06-02-2023
71	7/26/21 Washington Redistricting Commission Public Outreach Meeting (Video)	A	06-02-2023
72	WSRC Public Outreach Meeting 7.31.21- CD 7 &9 (Transcript)	A	06-02-2023
73	WSRC Public Outreach Meeting 7.31.21- CD 8& 10 (Transcript)	A	06-02-2023
74	7/31/21 Washington Redistricting Commission CD 8 & 10 Public Outreach Meeting (Video)	A	06-02-2023
75	8/16/21 Washington Redistricting Commission Regular Business Meeting Minutes	A	06-02-2023
76	8/16/21 Washington Redistricting Commission Regular Business Meeting (Video)	A	06-02-2023
77	9/20/21 Washington Redistricting Commission Regular Business Meeting Minutes	A	06-02-2023
78	9/20/21 Washington Redistricting Commission Regular Business Meeting (Video)	A	06-02-2023
79	10/5/2021 WSRC Public Outreach Meeting 10.05.21 (Transcript)	A	06-02-2023
80	10/05/21- Washington Redistricting Commission Statewide Legislative Districts Meeting (Video)	A	06-02-2023
81	WSRC Public Outreach Meeting 10.09.21- Statewide Congressional (Transcript)	A	06-02-2023
82	10/09/21 Washington Redistricting Commission Statewide Congressional Districts Meeting (Video)	A	06-02-2023
83	10/11/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023

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84	10/11/2021 WSRC Meeting 10.11.21 (Transcript)	A	06-02-2023
85	10/11/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
86	10/18/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
87	10/18/2021 WSRC Regular Business Meeting 10/18/21 (Transcript)	A	06-02-2023
88	10/18/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
89	10/25/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
90	10/25/21 WSRC Meeting 10.25.21 (Transcript)	A	06-02-2023
91	10/25/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
92	11/01/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
93	11/01/2021 WSRC Meeting 11.01.21 (Transcript)	A	06-02-2023
94	11/01/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
95	11/08/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
96	11/08/21 WSRC Meeting 11.08.2021 (Transcript)	A	06-02-2023
97	11/08/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
98	11/15/21 Washington Redistricting Commission Regular Business Meeting Minutes	A	06-02-2023
99	11/15/2021 WSRC Meeting 11.15.21 (Transcript)	A	06-02-2023
100	11/15/21 Washington Redistricting Commission Regular Business Meeting	A	06-02-2023
101	11/18/21 Washington Redistricting Commission Press Availability Meeting (Video)	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
102	11/18/21 Washington Redistricting Commission Press Availability Meeting (Transcript)	A	06-02-2023
103	11/24/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
104	11/24/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
105	11/29/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
106	11/29/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
107	12/13/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
108	12/13/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
109	12/14/21 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
110	12/14/21 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
111	1/06/22 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
112	1/06/22 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
113	1/18/22 Washington Redistricting Commission Regular Business Meeting Minutes	A	06-02-2023
114	1/18/22 Washington Redistricting Commission Regular Business Meeting (Video)	A	06-02-2023
115	2/23/22 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
116	2/23/22 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
117	3/7/22 Washington Redistricting Commission Meeting Minutes	A	06-02-2023
118	3/7/22 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
119	6/22/22 Washington Redistricting Commission Meeting Minutes	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
120	6/22/22 Washington Redistricting Commission Meeting (Video)	A	06-02-2023
121	Washington State Redistricting Commission, 2022 Washington State Map Book Congressional & Legislative Districts	A	06-02-2023
122	WITHDRAWN		
123	11/16/21 Email and Attachments from Lisa McLean to Washington Supreme Court re Redistricting News for Chief Justice and the Supreme Court	A	06-02-2023
124	WITHDRAWN		
125	WITHDRAWN		
126	2/8/22 Senate Floor Debate Video HCR 4407	A	06-02-2023
127	House Concurrent Resolution 4407	A	06-02-2023
128	Yakima County Voter Registration Statistics, 2021	A	06-02-2023
129	3/4/22 Email Thread with Paul Graves, Benancio Garcia, Robert Maguire, and David Nordlinger re: Introduction re redistricting lawsuits	A	06-02-2023
130	MGGG Analysis of RPV in Yakima County Commission Elections, January 2020	A	06-02-2023
131	March 25, 2021 email from Osta Davis to April Sims re: A couple of things	A	06-02-2023
132	February 6, 2013 Barreto RPV analysis of Yakima Valley area	A	06-02-2023
133	March 25, 2021 email chain between Osta Davis, Sarah Augustine re: Job Descriptions and Budget Items	A	06-02-2023
134	6/5/21 Email Thread with Paul Graves, Joe Fain, Paul Campos, Anton Grose, Margot Spindola re: RJW monthly meeting	A	06-02-2023
135	June 18, 2021 text messages between Fain and Sims, "2.9 to 8.26 (AS-JF)"	A	06-02-2023
136	6/24/21 Email and Attachment between Fain and Campos re SRC Caucus retreat	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
137	6/24/21 Email Thread with Paul Campos and Joe Fain	A	06-02-2023
138	WITHDRAWN		
139	Asst. Attorney General Brian J. Sutherland Presentation: Minority Vote Dilution in the Context of Redistricting	A	06-02-2023
140	Excerpts of July 16, 2021 Deposition of Jose Trevino in Aguilar v. Yakima County	A	06-07-2023
141	8/12/21 Email Thread with Paul Campos, James Troyer, and @SRC Members email	A	06-02-2023
142	9/1/21 Email Thread with Paul Campos, Anton Grose, James Crandall, and Min Fei re: CVAP population question	A	06-02-2023
143	9/1/21 Email from Matt Bridges to Dominique Meyers	A	06-02-2023
144	September 9, 2021 email and attachment from Ali O'Neil to Brady Pinero Walkinshaw, Adam Hall, Matt Bridges, Adam Bartz, Paulette Avalos re: Leg Map One Pager-DRAFT_9.8.docx	A	06-02-2023
145	9/8/21 Email from Dominique Meyers to April Sims, Joe Fitzgibbon re: draft map	A	06-02-2023
146	Screenshot of Dave's Redistricting App LD Draft - 9/8 (corrected population) dom edits	A	06-02-2023
147	WITHDRAWN		
148	9/10/21 Email Thread with April Sims, Dominique Meyers, Joe Fitzgibbon, Amy Ruble, and Melissa Vanderwerf re: Latest Map	A	06-02-2023
149	Final Sims map 9/13/21	A	06-02-2023
150	September 16, 2021 email and attachment from Ali O'Neil to Brady re: leg map slideshow	A	06-02-2023
151	WITHDRAWN		
152	9/21/21 Email and Attachment from Anton Grose to Paul Graves and Evan Ridley re: TOP8 District Partisanship Breakdown Spreadsheet	A	06-02-2023
153	9/21/21 Email Thread with Paul Campos, Joe Fain, James Troyer, and James Crandall re: Draft map comparisons	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
154	Walkinshaw Proposed Legislative Map September 21, 2021	A	06-02-2023
155	Commissioner Sims' September 21, 2021 Proposed Legislative District Map	A	06-02-2023
156	Commissioner Pinero Walkinshaw's September 21, 2021 Proposed Legislative District Map	A	06-02-2023
157	Commissioner Fain's September 21, 2021 Proposed Legislative District Map	A	06-02-2023
158	Commissioner Grave's September 21, 2021 Proposed Legislative District Map	A	06-02-2023
159	SRC Spreadsheet Comparing 9/21 Draft Proposals	A	06-02-2023
160	WITHDRAWN		
161	9/21/21 Texts between Anton Grose and Paul Graves re: Checking addresses for potential LD 15 legislators proposed by Dufault	A	06-02-2023
162	September 21, 2021 text messages between Paul Graves and Jeremie Dufault re: drawing 15th to include potential candidates	A	06-02-2023
163	September 24, 2021 email from Adam Hall to Brady Pinero Walkinshaw, Ali O'Neil, Adam Bartz, Matt Bridges re: Talking points on Republican legislative proposals (Yakima Valley)	A	06-02-2023
164	September 24, 2021 email from Ali O'Neil to Jim Brunner, Brady Pinero Walkinshaw re: Analysis of Analysis of commissioners' proposed legislative maps, attaching Commissioner Leg Maps FINAL.pdf	A	06-02-2023
165	8/26/21 Email from James Troyer to Paul Campos, James Crandall re: Crosscut Article "WA redistricting efforts aim to give more power to people of color"	A	06-02-2023
166	September 28, 2021 email chain between Matt Barreto, Adam Hall, Paulette Avalos re: VRA analysis data	A	06-02-2023
167	9/28/21 Email and Attachment from Dominique Meyers to April Sims re: DRAFT Messaging Doc 9-23-21	A	06-02-2023
168	September 28, 2021 email chain between Adam Hall, Brady Pinero Walkinshaw, Matt Bridges, Ali O'Neil, Adam Barts re: talking points on Republican legislative proposals (Yakima Valley)	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
169	9/29/2021 Email from Matt Barreto to Adam Hall	A	06-02-2023
170	9/30/2021 Emails between Adam Hall and Matt Barreto	A	06-02-2023
171	October 4, 2021 email from April Sims to Paul Graves re:	A	06-02-2023
172	October 6, 2021 email from Adam Hall to Ali O'Neil, Brady Pinero Walkinshaw re: Grave's map does not comply with the VRA	A	06-02-2023
173	10/6-9/21 Text Messages between Paul Graves and Anton Grose	A	06-07-2023
174	10/11/2021 Email from Matt Barreto to Adam Hall	A	06-02-2023
175	10/12/21 Email from Anton Grose to Paul Graves re: 2019 ACS Demo Comparisons	A	06-02-2023
176	10/13/21 E-Mail from O'Neil to Meyers, re: Press release	A	06-02-2023
177	10/13/2021 Email from Adam Hall to Matt Barreto	A	06-02-2023
178	10/15/21 Dr. Matt Barreto, "Assessment of Voting Patterns in Central / Eastern Washington and Review of Federal Voting Rights Act, Section 2 Issues"	A	06-02-2023
179	10/19/21 Dr. Matt Barreto, "Assessment of Voting Patterns in Central / Eastern Washington and Review of Federal Voting Rights Act, Section 2 Issues"	A	06-02-2023
180	October 19, 2021 email chain between Adam Hall, Brady Pinero Walkinshaw, Ali O'Neil re: Possible Billig line re: Yakima on TVW tomorrow	A	06-02-2023
181	10/20/21 Text Messages between Paul Graves and Anton Grose	A	06-02-2023
182	10/21/21 Email Thread with April Sims, Brady Walkinshaw, Sarah Augustine, Lisa McLean, Dominique Meyers, and Osta Davis re: Commission funding for counsel to advise on VRA	A	06-02-2023
183	10/21/21 Email from Ali O'Neil on behalf of Brady Walkinshaw re: RELEASE: New analysis shows final Washington state legislative map must include a VRA-compliant district in the Yakima Valley	A	06-02-2023
184	Oct. 21, 2021 Email from Sims to Davis, "Re: RELEASE: New analysis shows final Washington state legislative map must include a VRA-compliant district in the Yakima Valley"	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
185	10/21/21 Text messages between Fain and Graves	A	06-02-2023
186	October 21, 2021 texts between Paul Graves and Joe Fain	A	06-02-2023
187	October 22, 2021 email chain among April Sims, Dominique Meyers, Osta Davis re: Apologies	A	06-02-2023
188	10/22/21 Email Thread with Grose, Graves, Ridley re Walkinshaw Press Release on Barreto Analysis	A	06-02-2023
189	October 22, 2021 email from Racial Justice Washington Coalition to Brady Pinero Walkinshaw, April Sims, Joe Fain, Paul Graves, Anton Grose, Ali O'Neil, Dominique Meyers, Kamau Chege, Katie Stultz, Margot Spindola re: Redistricting Justice Washington Ranked Priorities	A	06-02-2023
190	October 22, 2021 email thread with Osta Davis, April Sims, Dominique Meyers re: More Recent Draft	A	06-02-2023
191	October 23 email from April Sims to Paul Graves re: 10/23	A	06-02-2023
192	10-23.xlsx (titled Walkinshaw Exhibit 12)	A	06-02-2023
193	10/25/21 Email and Attachment from Osta Davis to April Sims, Dominique Meyers re: Statement	A	06-02-2023
194	10/25/21 Email from Osta Davis to April Sims re: Most Updated Map	A	06-02-2023
195	10/25/21 email from Brady Pinero Walkinshaw RELEASE: Commissioner Walkinshaw Releases New VRA-Compliant Legislative District Map	A	06-02-2023
196	Pinero Walkinshaw Revised Map October 25, 2021	A	06-02-2023
197	Commissioner Sims' Revised Legislative District Map - October 25, 2021	A	06-02-2023
198	Commissioner Walkinshaw's Revised Legislative District Map - October 25, 2021	A	06-02-2023
199	WITHDRAWN		
200	October 25, 2021 Tweet by April Sims re: legislative map	A	06-02-2023
201	10/25/21 Text Messages between Paul Graves and Anton Grose	A	06-02-2023

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202	10/26/21 Email from James Troyer to Joe Fain, Paul Campos, James, Crandall, and Min Fei re: some screenshots - Dems on redistricting	A	06-02-2023
203	10/27/21 E-Mail from O'Neil to Walkinshaw, "Leg map must-haves.pdf"	A	06-02-2023
204	10/28/21 Email from O'Neil to Walkinshaw, re: Voting Rights Act AAG Assessment	A	06-02-2023
205	WITHDRAWN		
206	October 28, 2021 email submission to Washington Redistricting Commission from Giovanni Severino at the Latino Community Fund re: All Maps Should Comply with the Voting Rights Act	A	06-02-2023
207	October 28, 2021 text messages between Fain and Graves re: LD14	A	06-02-2023
208	October 28, 2021 texts between April Sims and Paul Graves re: VRA analysis	A	06-02-2023
209	RSOpEd-10.29 edits.docx	A	06-02-2023
210	10/25-30/21 Text Thread between Paul Graves, Chris Corry, and Jeremie Dufault	A	06-02-2023
211	WITHDRAWN		
212	WITHDRAWN		
213	11/1/21 Email and Attachment from O'Neil to Augustine, McLean, Emma Grunberg, Tera Heintz, Brady Walkinshaw, Adam Hall re: Dr. Barreto's VRA Analysis	A	06-02-2023
214	November 1, 2021 email and attachment from Lisa McLean to Washington Redistricting Commission official comment email address re: Dr. Barreto's VRA analysis	A	06-02-2023
215	11/1/21 Texts between Paul Graves and April Sims	A	06-02-2023
216	November 2, 2021 email chain between Osta Davis, Kurt Fritts, April Sims re: Map w/ new E.WA district	A	06-02-2023
217	November 2, 2021 email chain between Adam Hall, Ali O'Neil, Brady Pinero Walkinshaw, Adam Bartz, Matt Bridges, Paulette Avalos re: Similar States w Legislative Data	A	06-02-2023
218	11/2/21 Text Messages between Paul Graves and Anton Grose	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
219	November 1-3, 2021 text messages between April Sims, Paul Graves re: 14th	A	06-02-2023
220	November 3, 2021 email from Anton Grose to Paul Graves re: Stats	A	06-02-2023
221	Nov. 3, 2021 E-mail from Ali O'Neil to Walkinshaw, Fwd: LD Offer from Graves.pdf	A	06-02-2023
222	Graves LD14(2) Map (screenshot)	A	06-02-2023
223	Nov 3.csv	A	06-02-2023
224	November 3, 2021 text messages between Fain and Graves, "Fain_11.03 (2).png"	A	06-02-2023
225	November 4, 2021 Davis Wright Tremaine Memo re: Legal Analysis of Arguments Regarding Creation of a Majority-Minority District	A	06-02-2023
226	Nov. 2021 Text Messages between April Sims and Brady Walkinshaw	A	06-02-2023
227	Compilation of Nov. 2021 Text Messages between April Sims and Brady Walkinshaw	A	06-02-2023
228	November 4, 2021 email from Davis to Sims re: "New 14 th .pdf"	A	06-02-2023
229	11/14/21 Email from Paul Campos to Joe Fain re: Sims CVAP 14LD filled out	A	06-02-2023
230	November 4-10 email chain between Brady Pinero Walkinshaw, Sen. Rebecca Saldana, Adam Hall, Nicole Herrera, Coco Chang re: PLZ REVIEW ASAP Saldana – Redistricting VRA OpEd	A	06-02-2023
231	11/4/2021 Email from Adam Hall to Matt Barreto	A	06-02-2023
232	11/4/2021 Email from Adam Hall to Matt Barreto	A	06-02-2023
233	WITHDRAWN		
234	11/4/21 DWT Engagement Letter	A	06-02-2023
235	11/4/21 Texts between Graves and Fain, "Fain_11.04.png"	A	06-02-2023
236	November 4, 2021 texts between April Sims, Brady Pinero Walkinshaw	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
237	November 5, 2021 e-mail from Graves to Sims, "Fwd_ Legal memo.pdf"	A	06-02-2023
238	November 5, 2021 email and attachment from Adam Hall to Paulette Avalos, Ali O'Neil, Adam Bartz, Matt Bridges re: Rebuttal to Maguire memo 1105.docx	A	06-02-2023
239	WITHDRAWN		
240	11/7/21 Email from Anton Grose to Paul Graves re New Leg Proposal	A	06-02-2023
241	district-shapes (5).geojson	A	06-02-2023
242	block-assignments (13).csv	A	06-02-2023
243	11/7-8/21 Texts between Graves and Fain, "Fain_11.07_.08.png"	A	06-02-2023
244	Email from Ali O'Neil to Brady Walkinshaw, April Sims re: Fain LD Map	A	06-02-2023
245	WITHDRAWN		
246	11/8/21 Email from Min Fei to Paul Campos, Joe Fain re Fain v_2 ranking cover email	A	06-02-2023
247	November 8, 2021 comment submission from Dulce Gutierrez to Washington Redistricting Commission re: Washington State needs a Latino CVAP Majority Legislative District for Yakima and Pasco	A	06-02-2023
248	Depo screenshot of Fain v2 map	A	06-02-2023
249	Fain v_2 spreadsheet with data	A	06-02-2023
250	Ali O'Neil Personal Notes - Part 4	A	06-02-2023
251	Sarah Augustine handwritten notes from September 1, 2021-November 8, 2021	A	06-02-2023
252	November 8, 2021 written public testimony submitted to Commission from Sandra Aguilar re: Yakima	A	06-02-2023
253	11/8/21 text messages between Fain and Graves	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
254	11/8/21 Texts between Paul Graves and Anton Grose	A	06-02-2023
255	November 8, 2021 texts between April Sims, Brady Pinero Walkinshaw	A	06-02-2023
256	November 8, 2021 texts between Paul Graves and April Sims re: 14th	A	06-02-2023
257	Nov. 9, 2021 E-mail thread between Sims, Davis, Meyers, "RE_Map draft.pdf"	A	06-02-2023
258	11/9/21 Email from Jeremie Dufault to Paul Graves and Chris Corry forwarding email from Debra Manjarrez re: Call to Action	A	06-02-2023
259	November 9, 2021 email from Dulce Gutierrez to Official Redistricting Comment Email, Lisa McLean, Sarah Augustine, Maria Garza, Daniel Pailthorp re: Petition for Latino CVAP Majority for Yakima and Pasco	A	06-02-2023
260	Screenshot of "11/9 AM Proposal, Weaker LD14 & 42" Map	A	06-02-2023
261	11/9/21 Texts between Paul Graves and Anton Grose	A	06-02-2023
262	11/10/21 Email from Paul Campos to Min Fei and Joe Fain re ranking 11.10 Brady map	A	06-02-2023
263	Nov. 10, 2021 E-mail from Campos to Fain, "FW_Walkinshaw 11.10 leg map, new VRA.pdf"	A	06-02-2023
264	11/10/21 Email from Dulce Gutierrez to Redistricting Commission Comment Email, Lisa McLean, Aminta Spencer, Daniel Pailthorp, Maria Garza re: Please consider our proposal for a Latino CVAP Majority for Yakima and Pasco	A	06-02-2023
265	November 10, 2021 email thread between Paul Campos, Joe Fain re: Graves and Fain drafts	A	06-02-2023
266	Screenshot 484 (Davis Deposition)	A	06-02-2023
267	Screenshot of Dave's Redistricting App BW 11.10 new VRA block-assignments	A	06-02-2023
268	Brady 11.10 Map with new VRA configuration	A	06-02-2023
269	BW>Fain 11.10 new VRA Map	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
270	Ranking spreadsheet for 11.10 Walkinshaw map	A	06-02-2023
271	Graves Prop 11-10.xlsx	A	06-02-2023
272	Proposal Metrics 1110.xlsx	A	06-02-2023
273	10/11/21 to 11/10/21 Text Thread between Joe Fain and Curtis King "10.11 to 11.10 (JF+King).png"	A	06-02-2023
274	Nov. 10-11, 2021 text messages between Fain and Graves, "Fain_11.11_12.png"	A	06-02-2023
275	Nov. 10-11, 2021 texts between April Sims and Paul Graves	A	06-02-2023
276	11/11/21 Email and Attachment from Anton Grose to Paul Graves re: Prop Metrics 11-11 Spreadsheet	A	06-02-2023
277	Nov. 11, 2021 E-mail chain with Graves, Grose, Sims, Davis, and Meyers, RE: New map proposal	A	06-02-2023
278	November 11, 2021 email from Ali O'Neil to Brady Walkinshaw, forwarding email from Matt Bridges, FW: Graves 11-10 LD Proposal	A	06-02-2023
279	November 11, 2021 email from Ali O'Neil to Brady Pinero Walkinshaw re: 11.11. leg map proposal	A	06-02-2023
280	November 11, 2021 email from Grose to Graves re: Message to April about today's map	A	06-02-2023
281	11/11/21 Email from Anton Grose to Paul Campos re: 14th negotiation	A	06-02-2023
282	November 11, 2021 email thread between Joe Fain, Paul Campos, Min Fei FW: Sims plan activematrix.xlsx.pdf	A	06-02-2023
283	Screenshot of "D Only Commission Vote" Map	A	06-02-2023
284	WITHDRAWN		
285	November 11, 2021 spreadsheet comparing Walkinshaw's latest proposal to April Sims'	A	06-02-2023
286	SimsDraftNov10.xlsx	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
287	Rebecca Saldaña, Latinx community needs fair redistricting map	A	06-02-2023
288	November 11, 2021 text messages between Walkinshaw and Sims, "Sims_11.11(4).pdf"	A	06-02-2023
289	November 11, 2021 texts between Sims and Walkinshaw re: email from Paul Graves	A	06-02-2023
290	November 12, 2021 email thread between April Sims, Paul Graves, Anton Grose, Paul Campos, Joe Fain and forwarded to Brady Pinero Walkinshaw, Ali O'Neil, Osta Davis, Dominique Meyers re: Fwd_Updated Proposal Email	A	06-02-2023
291	11/12/21 Email Thread with April Sims, Osta Davis, and Dominique Meyers re: "Newest version" of state legislative map	A	06-02-2023
292	11/12/21 Email between Paul Campos, Joe Fain, and Min Fei re: Fain Draft Nov12v2	A	06-02-2023
293	November 12, 2021 comment submission from Maria Siguenza to Washington Redistricting Commission re: Comment Submission: Commission on Hispanic Affairs	A	06-02-2023
294	11/12/21 Email from Dulce Gutierrez to Redistricting Commission Comment Email, Lisa McLean, Aminta Spencer, Daniel Pailthorp, Maria Garza re: Please create a Latino CVAP Majority for Yakima and Pasco	A	06-02-2023
295	11/12/2021 Email from Adam Hall to Matt Barreto	A	06-02-2023
296	November 12, 2021 email thread between Joe Fain, Min Fei, and Paul Campos re: Sims Proposal Nov12.xlsx	A	06-02-2023
297	Graves Draft Nov 12(1) Map	A	06-02-2023
298	Spreadsheet for Fain Draft Nov12v2	A	06-02-2023
299	Sims Proposal Nov12.xlsx	A	06-02-2023
300	11/12/21 Text Messages between Paul Graves and Anton Grose	A	06-02-2023
301	11/12-14/2021 texts between O'Neil and Walkinshaw	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
302	November 13, 2021 email and attachment from Joe Fain to Sarah Augustine, Paul Graves, April Sims, Brady Pinero Walkinshaw re: Memo	A	06-02-2023
303	Nov. 13 E-mail from Adam Hall to Walkinshaw, "Fwd Updated Proposal Email.eml.msg.pdf"	A	06-02-2023
304	November 13, 2021 email from Paul Graves to April Sims, Anton Grose, Osta Davis, Dominique Meyers re: Map Proposal; forwarded to Brady Pinero Walkinshaw, Ali O'Neil, Fwd: Map proposal.	A	06-02-2023
305	Nov. 13, 2021 E-mail from Walkinshaw to Fain, "Fwd_BW 11.13 leg map proposal.pdf"	A	06-02-2023
306	WITHDRAWN		
307	Email from Paul Campos to Joe Fain re: labeling of LD14 and LD15	A	06-02-2023
308	11/13/21 Email and Attachment from Anton Grose to Paul Graves re: Proposal Metrics 11-13 Spreadsheet	A	06-02-2023
309	11/13/21 Email from Adam Hall to Matt Barreto re Latest drafts for analysis	A	06-02-2023
310	WITHDRAWN		
311	November 13, 2021 email thread among Joe Fain, Paul Campos, Min Fei FW: Graves Draft Nov12.xlsx	A	06-02-2023
312	Screenshot of Dave's Redistricting App Page for BW 11/13 leg proposal	A	06-02-2023
313	BW 11/13 leg proposal	A	06-02-2023
314	11/13/21 Email from Osta Davis to April Sims re Map w/ 444/47/28 adjusted	A	06-02-2023
315	Spreadsheet for Walkinshaw Draft Nov13	A	06-02-2023
316	WITHDRAWN		
317	Graves Draft Nov12.xlsx	A	06-02-2023
318	WITHDRAWN		

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
319	11/13-11/21 Sarah Augustine Handwritten Notes	A	06-02-2023
320	Nov. 13, 2021 Text from Fain to Walkinshaw, "BW_11.11.13_14.png"	A	06-02-2023
321	11/13/21 messages between Campos and O'Neil	A	06-02-2023
322	11/13/21 Texts between Paul Graves and Joe Fain	A	06-02-2023
323	11/13 messages between Davis and O'Neil	A	06-02-2023
324	November 14, 2021 email from Osta Davis to April Sims, Dominique Meyers re: FWD: scheduling a meeting with Matt Barreto today	A	06-02-2023
325	11/14/21 Email from Paul Campos to Joe Fain re: Fain_GravesPropLD	A	06-02-2023
326	11/14/2021 Email from Adam Hall to Matt Barreto	A	06-02-2023
327	Nov. 14, 2021 E-mail chain between O'Neil and Davis, "DAVIS_019053"	A	06-02-2023
328	November 14, 2021 email from Redistricting Justice for Washington Coalition to Brady Pinero Walkinshaw, April Sims, Ali O'Neil, Dominique Meyers, Dulce Gutierrez, David Morales re: Statement on Yakima VRA District	A	06-02-2023
329	November 14, 2021 comment submission from Dulce Gutierrez to the Washington Redistricting Commission re: Commission will do the right thing by creating a Latino CVAP Majority LD for Yakima and Pasco	A	06-02-2023
330	November 14, 2021 comment submission from David Morales to Washington Redistricting Commission re: Maps for Central Washington	A	06-02-2023
331	Spreadsheet for Fain_GravesPropLD	A	06-02-2023
332	11/13-14/2021 Text Thread with Osta Davis, Dominique Meyers, April Sims	A	06-02-2023
333	11/14/21 texts between Brady Pinero Walkinshaw, April Sims	A	06-02-2023
334	11/14/21 Text messages between Fain and Walkinshaw	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
335	11/14/21 Texts between Paul Graves and Joe Fain	A	06-02-2023
336	11/14/2021 texts between O'Neil and Walkinshaw re travel	A	06-02-2023
337	11/15/21 Email from Paul Campos to Joe Fain re: Fain_Graves_Propv2	A	06-02-2023
338	November 15, 2021 email thread with Ali O'Neil, Brady Pinero Walkinshaw, April Sims, Osta Davis, Dominique Meyers re: Merged leg map	A	06-02-2023
339	Nov. 15 E-mail from Davis to O'Neil, "FW_ R Map Proposal.pdf"	A	06-02-2023
340	November 15, 2021 email from Osta Davis to April Sims re: MAP	A	06-02-2023
341	November 15, 2021 email chain among Adam Hall, Matt Bridges, Ali O'Neil, Brady Walkinshaw, Adam Bartz, Paulette Avalos forwarding email from Katie Stultz re: Coalition LD 14 (RJW final request)	A	06-02-2023
342	November 15, 2021 comment submission and attached signatures for petition "Washington State needs a Latino CVAP Majority Legislative District for Yakima and Pasco" from Dulce Gutierrez to Washington Redistricting Commission re: Please improve representation in southcentral Washington	A	06-02-2023
343	Dissent - document drafted for Commissioner Walkinshaw	A	06-02-2023
344	Screenshot of "Cleanest Possible Map"	A	06-02-2023
345	Spreadsheet for Fain_Graves_Propv2	A	06-02-2023
346	November 15, 2021 Teams chat messages between Ali O'Neil, Adam Hall, Matt Bridges, Paulette Avalos re: Map negotiations	A	06-02-2023
347	November 15, 2021 teams chat messages between Adam Hall, Ali O'Neil, Matt Bridges, Paulette Avalos starting at 8:24 PM re: map negotiations	A	06-02-2023
348	November 15, 2021 teams chat messages between Adam Hall, Ali O'Neil, Matt Bridges, Paulette Avalos starting at 11:23 PM re: map negotiations	A	06-02-2023
349	November 15, 2021 teams chat messages between Adam Hall, Ali O'Neil, Matt Bridges, Paulette Avalos starting at 10:41 PM re: map negotiations	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
350	November 15, 2021 teams chat messages between Adam Hall, Ali O'Neil, Matt Bridges, Paulette Avalos starting at 11:38 PM re: map negotiations	A	06-02-2023
351	WITHDRAWN		
352	Teams chat messages between Ali O'Neil, Adam Hall, Matt Bridges, and Paulette Avalos re: Map negotiations	A	06-02-2023
353	11/15/21 Texts between Sarah Augustine and April Sims	A	06-02-2023
354	11/15/21 Texts between Sarah Augustine and April Sims	A	06-02-2023
355	11/15/21 J.T. Wilcox text chain with Paul Graves	A	06-02-2023
356	November 15, 2021 texts between April Sims and Laurie Jinkins re: map agreement	A	06-02-2023
357	November 15, 2021 texts between April Sims and Laurie Jinkins re: negotiations	A	06-02-2023
358	November 15, 2021 texts between Brady Pinero Walkinshaw and April Sims re: negotiations	A	06-02-2023
359	November 15, 2021 texts between Paul Graves, April Sims re: counter	A	06-02-2023
360	11/15-16/21 Texts between Paul Graves and JT Wilcox	A	06-02-2023
361	11/14/2021 Texts between Paul Graves and Joe Fain	A	06-02-2023
362	Nov. 16 E-mail from Washington State Redistricting Commission to Walkinshaw, "The Washington State Redistricting Commission p....pdf"	A	06-02-2023
363	11/16/21 Email from Justin Bennett to Anton Grose, Paul Campos, Ali O'Neil, Lisa McLean, Sarah Augustine, and Osta Davis re: receiving files in accordance with resolution	A	06-02-2023
364	WITHDRAWN		
365	11/16/21 Email from Paul Campos to Joe Fain re: LD Final	A	06-02-2023
366	WITHDRAWN		

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
367	Fain Spreadsheet of Final Plan	A	06-02-2023
368	November 16, 2021 Spokesman Review article	A	06-07-2023
369	Billig_11/16 texts between Brady Pinero Walkinshaw and Sen. Andrew Billig	A	06-02-2023
370	11/16/21 texts between Brady Pinero Walkinshaw and Sen. Andrew Billig	A	06-02-2023
371	November 16, 2021 texts between Brady Pinero Walkinshaw, April Sims re: map vote	A	06-02-2023
372	November 16, 2021 texts between Brady Pinero Walkinshaw, April Sims re: legal concerns	A	06-02-2023
373	November 16, 2021 texts between April Sims, Paul Graves re: maps	A	06-02-2023
374	11/16/21 PM texts between O'Neil and Walkinshaw	A	06-02-2023
375	11/16/21 Text from Walkinshaw to Augustine	A	06-02-2023
376	11/15-16/21 texts between O'Neil and Walkinshaw	A	06-02-2023
377	11/16/21 messages between Grose and O'Neil	A	06-02-2023
378	November 16, 2021 text messages between Ali O'Neil and Brady Pinero Walkinshaw	A	06-02-2023
379	11/17/21 Email and Attachment from Paul Campos to Joe Fain re: Caucus redistricting briefing	A	06-02-2023
380	November 17, 2021 email chain between Paulette Avalos, Brady Pinero Walkinshaw, and Ali O'Neil re: Billig statement	A	06-02-2023
381	WITHDRAWN		
382	November 17, 2021 texts between April Sims, Osta Davis, Dominique Meyers re: final map	A	06-02-2023
383	Text messages between Ali O'Neil, Brady Pinero Walkinshaw re: final maps	A	06-02-2023
384	November 18, 2021 texts between Ali O'Neil, Adam Hall, Paulette Avalos, Matt Bridges, and Aaron Wasser re: commissioner press conference	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
385	11/18/21 texts between O'Neil and Walkinshaw	A	06-02-2023
386	11/18/21 texts between SDC team	A	06-02-2023
387	Text messages between Ali O'Neil, Brady Pinero Walkinshaw re: final maps	A	06-02-2023
388	Ali O'Neil Production, "Timeline of Redistricting Commission Events 11.19.docx"	A	06-02-2023
389	November 21, 2021 Ali O'Neil Memorandum re: Timeline of Redistricting Commission Events	A	06-02-2023
390	11/22/21 Email and Attachment from Grose to Graves and Ridley re: Final Map Metrics	A	06-02-2023
391	WITHDRAWN		
392	12/3/21 Email from James Troyer to Paul Campos, Jeannie Gorrell, James Crandall re: RE: Redistricting: Supreme Court Order	A	06-07-2023
393	2/2/22 Email from James Troyer to Paul Campos, James Crandall re: Maintaining LD 15 50%+ CVAP	A	06-07-2023
394	2/2/22 Email from James Troyer to Paul Campos, James Crandall re: Uniting Moxee in LD15	A	06-07-2023
395	2/7/22 Email and Attachment from Menzebe Hasati Re: Latino Civic Alliance 2022 Bill List	A	06-07-2023
396	WITHDRAWN		
397	February 21, 2022 texts between Benancio Garcia III and Duke Machado re: campaign	A	06-02-2023
398	February 28, 2022 email thread between Paul Graves, Adam Kincaid, Jason Torchinsky, Joy Lee, Kamillah Prince re: Washington Litigation	A	06-02-2023
399	3/1/22 Text Thread with Paul Graves, Benancio Garcia, and Maia Espinoza	A	06-02-2023
400	3/2/22 Text Thread with Benancio Garcia, Paul Graves	A	06-02-2023
401	3/4-7/22 Email Thread with Drew Stokesbary, Rob Maguire, Adam Kincaid, David Nordlinger, and Harry Korrell re: Connect re Washington state	A	06-07-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
402	3/10/21 DRA Blog Post	A	06-02-2023
403	Plaintiffs Proposed Plan - Preliminary Injunction	A	06-02-2023
404	Texts through State-paid phones through 3.29.22	A	06-02-2023
405	3/28/22-4/21/22 Email Thread with Drew Stokesbary, John Braun, JT Wilcox, Jim Troyer, and Caleb Heimlich re: Status of Redistricting Litigation	A	06-07-2023
406	Redistricting Timeline of Events 2021-2022	A	06-07-2023
407	May 24, 2022 email from James Troyer to Senate Republican Caucus re: These legislators are running unopposed in their districts	A	06-07-2023
408	May 27, 2022 texts between Benancio Garcia III and Duke Machado re: voicemail mix up	A	06-02-2023
409	September 30, 2022 text chain between Benancio Garcia III and Duke Machado re: phone banking	A	06-02-2023
410	8/8/22 DRA Document Subpoena	A	06-02-2023
411	9/29/22 DRA Deposition Subpoena	A	06-02-2023
412	10/25/22 DRA Second Document Subpoena	A	06-02-2023
413	11/15/21 PM messages between O'Neil and Bridges	A	06-02-2023
414	11/15/22 Email from James Troyer to SRC Caucus with Yakima Herald Article "After redistricting rancor, Republicans maintain hold on Yakima Valley legislative districts"	A	06-07-2023
415	Excel Spreadsheet with Election Results from 2022 Election in LD 15	A	06-07-2023
416	15LD EI Results of Torres Race	A	06-07-2023
417	EI Plots for Torres and Keesling Race	A	06-06-2023
418	October 25, 2021 email from Osta Davis to April Sims, Dominique Meyers re: Statement	A	06-02-2023
419	Screenshot 487	A	06-02-2023

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NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
420	Final Enacted State Legislative Map	A	06-02-2023
421	Screenshot of "Fain V2"	A	06-02-2023
422	Screenshot of "Southern LD 14" Map	A	06-02-2023
423	11.7 New leg proposal v. Enacted block assignment file	A	06-02-2023
424	11.7 New leg proposal v. Graves1110LD block assignment file	A	06-02-2023
425	Graves Draft Nov. 12 v. Enacted block assignment file	A	06-02-2023
426	Graves1110LD v. Graves Draft Nov. 12 block assignment file	A	06-02-2023
427	Commission Final LD 15 v. Legislature Enacted LD 15 block assignment file	A	06-02-2023
428	11/16/21 Final Commission LD Plan, FINAL_LD_111521.zip	A	06-02-2023
429	2/2/22 Enacted LD Plan as Amended by Legislature Shapefile, LEG_AMEND_FINAL.zip	A	06-02-2023
430	2/2/22 Enacted LD Plan as Amended by Legislature Block Assignment File, LEG_AMEND_FINAL.txt	A	06-02-2023
431	Map of 1980s State Legislative Districts	A	06-02-2023
432	Map of 1990s State Legislative Districts	A	06-02-2023
433	Map of 2000s State Legislative Districts	A	06-02-2023
434	Map of 2010s State Legislative Districts	A	06-02-2023
435	Analysis of Republican Legislative Map Proposals	A	06-02-2023
436	April Sims Handwritten Notes re: Proposal for Paul	A	06-02-2023
437	Citizen Action Defense Fund One Pager on Washington Redistricting Litigation	A	06-07-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
438	April Sims Handwritten Notes re: "Thoughts on 14th & exchange"	A	06-02-2023
439	April Sims Handwritten Notes re: what wants, needs, what willing to give to get needs, willing to give to get wants	A	06-02-2023
440	Official Washington Redistricting Commission Proposed Maps	A	06-02-2023
441	Ali O'Neil's Personal Notes - Part 3	A	06-02-2023
442	Text chain between Osta Davis, Dominique Meyers, and April Sims re: VRA district	A	06-02-2023
443	Text messages between Paul Graves, Caleb Heimlich re: Tweet by Washington State GOP re LD15	A	06-02-2023
444	Texts between Benancio Garcia III, Duke Machado re: March 4, 2022 email from Paul Graves to Davis Wright Tremaine attorneys re: Introduction re redistricting lawsuits	A	06-02-2023
445	Texts from Benancio Garcia III to Duke Machado re: Latino voter suppression	A	06-02-2023
446	Texts between Benancio Garcia III and Manis Pierre re: Latino voter suppression	A	06-02-2023
447	DRA My Maps Page	A	06-02-2023
448	DRA Map View	A	06-02-2023
449	DRA Shared with Me Page	A	06-02-2023
450	DRA Map View Datasets	A	06-02-2023
451	DRA About Data Page	A	06-02-2023
452	8/22/22 DRA Response to Subpoena1	A	06-02-2023
453	9/9/22 DRA Response to Subpoena2	A	06-02-2023
454	10/31/2022 Response to Request for Revisions	A	06-02-2023
455	DRA ReadMe.txt (archive-updated.zip)	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
456	9/13/22 archive-updated.zip	A	06-02-2023
457	10/31/22 revisions.zip	A	06-02-2023
458	11/3/22 Response to Subpoena3	A	06-02-2023
459	11/3/2022 archive3.zip	A	06-02-2023
460	11/22/22 antongrose_y.zip	A	06-02-2023
461	Washington Secretary of State 2020 Precinct Level Election Results	A	06-02-2023
462	U.S. Census Bureau 2015-2019 ACS Citizen Voting Age Estimates (Block Group Level)	A	06-02-2023
463	Washington P.L. 94-171 Adjusted per RCW 44.05.140	A	06-02-2023
464	U.S. Census P.L. 94-171 for Washington, 2021 Redistricting Data	A	06-02-2023
465	9/21/21 Fain Public Legislative Map Proposal Shapefile	A	06-02-2023
466	9/21/21 Graves Public Legislative Map Proposal Shapefile	A	06-02-2023
467	9/21/21 Sims Public Legislative Map Proposal Shapefile	A	06-02-2023
468	9/21/21 Walkinshaw Public Legislative Map Proposal Shapefile	A	06-02-2023
469	10/25/21 Sims Public Legislative Map Proposal Shapefile	A	06-02-2023
470	10/25/21 Walkinshaw Public Legislative Map Proposal Shapefile	A	06-02-2023
471	BW 11.10 new VRA block-assignments.csv	A	06-02-2023
472	11/11/21 Graves1110LD block-assignments	A	06-02-2023
473	11/12/2021 Graves Draft Nov12 (1) block-assignments	A	06-02-2023

SER-031

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
474	Summary Compilation of "LD Draft - 9/8 (corrected population) dom edits" archive in Dave's Redistricting App	A	06-02-2023
475	Summary Compilation of "GravesLD14 (2)" Archive in Dave's Redistricting App	A	06-02-2023
476	Summary Compilation of "DRA - Fain V2" Archive in Dave's Redistricting App	A	06-02-2023
477	Summary Compilation of "11/11 PM Base Proposal" in Dave's Redistricting App	A	06-02-2023
478	Summary Compilation of "Graves1110LD" Archive in Dave's Redistricting App	A	06-02-2023
479	Summary Compilation of "11/12" Archive in Dave's Redistricting App	A	06-02-2023
480	Summary Compilation of "Graves Draft Nov12 (1)" Archive in Dave's Redistricting App	A	06-02-2023
481	Summary Compilation of "BW 11/13 leg proposal" Archive in Dave's Redistricting App	A	06-02-2023
482	Summary Compilation of "Copy of Merged 11/12" Archive in Dave's Redistricting App	A	06-02-2023
483	Summary Compilation of "Copy of 11/14 7:30pm Merged D Map - LD" Archive in Dave's Redistricting App	A	06-02-2023
484	Summary Compilation of "Copy of Copy of Copy of R Prop Rebalanced" Archive in Dave's Redistricting App	A	06-02-2023
485	Summary Compilation of "Copy of Copy of Copy of 11/14 7:30pm Merged D Map - LD" Archive in Dave's Redistricting App	A	06-02-2023
486	Summary Compilation of "FINAL DRAFT" Archive in Dave's Redistricting App	A	06-02-2023
487	Summary Compilation of Draft LD14/LD15 Maps Created by Commissioner Paul Graves (11/7/21 Map, 11/11/21 Map, 11/12/21 Map, & Enacted Map)	A	06-02-2023
488	Summary Compilation Comparing Final Commission LD15 Map with Final LD15 Map Enacted by Legislature	A	06-02-2023
489	WITHDRAWN		
490	Ten-Year Plan to End Homelessness in Yakima County, 2012 Update	A	06-02-2023

SER-032

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
491	2/14/12 "Immigracion, Seguridad, y Comunidad (Immigration, Security, and Community): The Effect of Secure Communities on Latinos and Local Law Enforcement in Eastern Washington State"	A	06-07-2023
492	Expert Report of Luis Ricardo Fraga in Montes v. City of Yakima, February 22, 2013	A	06-07-2023
493	8/20/14 Sunnyside Sun Article "Councilman taken to task for on-line posting" and Accompanying 5/22/10 Jason Raines Blog Sunnyside Post "Political Humor: A Mexican, An Arab, and an Arizona Girl"	A	06-07-2023
494	February 16, 2015 article, Killing in Washington State Offers "Ferguson" Moment for Hispanics, New York Times	A	06-07-2023
495	3/29/2017 Email and Attachment from Susan Soto Palmer (hotmail) to herself (gmail) re: KKK Flyer from YWCA Racial Justice forum	A	06-07-2023
496	WITHDRAWN		
497	March 15, 2018 article, Franklin County coroner posted a 'white power' meme. Some say his apology isn't enough, Yakima Herald	A	06-07-2023
498	Steve Gonzalez faces Nathan Choi in Washington Supreme Court re-election bid, September 17, 2018, The Spokesman-Review	A	06-07-2023
499	November 19, 2019 article, The Divide in Yakima is the Divide in America, New York Times	A	06-07-2023
500	7/16/2020 NYT Article "Seeing 'Black Lives Matter' Written in Chalk, One City Declares It a Crime"	A	06-07-2023
501	Excerpt of January 29, 2021 Deposition of Yakima County Commissioner Ron Anderson in Aguilar v. Yakima County	A	06-07-2023
502	01/25/2021 Email from Graves to Kincaid	A	06-02-2023
503	February 22, 2021 article, Latino voters being silenced in Franklin commission races, voting rights group claims, Tri-City Herald	A	06-07-2023
504	Affidavit of Susan Soto Palmer in Aguilar v. Yakima County, April 29, 2021	A	06-07-2023
505	2012 Executive Director Bonnie B. Bunning's Advice to the Future	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
506	7/21/21 Email and Attachment from Lisa McLean to Sarah Augustine, Justin Bennett, Maria Garza, Jamie Nixon, Daniel Pailthorp; and Aminta Spencer re: Research on Redistricting Negotiations	A	06-02-2023
507	Oct. 21, 2021 Email from Sims to Davis, "Re: RELEASE: New analysis shows final Washington state legislative map must include a VRA-compliant district in the Yakima Valley"	A	06-02-2023
508	10/30/21 Email from O'Neil to Walkinshaw re FW: Voting Rights Act Advice	A	06-02-2023
509	RCW 44.05	A	06-02-2023
510	Constitution of the State of Washington Section 43 Redistricting	A	06-02-2023
511	Summary Compilation of Fain 9.21.21 Proposal	A	06-02-2023
512	Summary Compilation of Graves 9.21.21 Proposal	A	06-02-2023
513	Summary Compilation of Sims 9.21.21 Proposal	A	06-02-2023
514	Summary Compilation of Walkinshaw 9.21.21 Proposal	A	06-02-2023
515	Summary Compilation of Sims 10.25.21 Proposal	A	06-02-2023
516	Summary Compilation of Walkinshaw 10.25.21 Proposal	A	06-02-2023
517	Summary Compilation of Graves Nov. 7 Draft Map Proposal	A	06-02-2023
518	Summary Compilation of Walkinshaw Nov. 10 Map Proposal	A	06-02-2023
519	Summary Compilation of BW - Fain 11.10 new VRA Archive in DRA	A	06-02-2023
520	Summary Compilation of 11-16-21 Final Commission Legislative District Plan	A	06-02-2023
521	Summary Compilation of 2-2-22 Final Enacted Legislative District Plan	A	06-02-2023
522	Washington 2012-2020 State Legislative District Map block-assignments	A	06-02-2023
523	Summary Compilation of Washington 2012-2020 State Legislative District Map	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
524	12/27/11 Video Recording of 2011 Redistricting Commission Meeting	A	06-02-2023
525	12/28/11 Video Recording of 2011 Redistricting Commission Meeting	A	06-02-2023
526	12/29/11 Video Recording of 2011 Redistricting Commission Meeting	A	06-02-2023
527	12/30/11 Video Recording of 2011 Redistricting Commission Meeting	A	06-02-2023
528	12/31/11 Video Recording of 2011 Redistricting Commission Meeting	A	06-02-2023
529	1/1/12 Video Recording of 2011 Redistricting Commission Meeting	A	06-02-2023
530	3/4/22 WashCOG v. State of Washington Judgment and Consent Decree	A	06-02-2023
531	Dr. Loren Collingwood CV	A	06-02-2023
532	10/28/2021 Email Thread with April Sims and Lisa Mclean re VRA Consultant	A	06-07-2023

SER-035

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
601	Expert Report of John Alford	A	06-02-2023
602	<i>Montes v. City of Yakima</i> , 40 F. Supp. 3d 1377 (E.D. Wash. 2014)	A	06-02-2023
603	Partial Consent Decree, <i>Glatt v. City of Pasco</i> , Case No. 4:16-05108-LRS (E.D. Wash. Sep. 2, 2016) (ECF #16)	A	06-02-2023
604	Memorandum Opinion and Order, <i>Glatt v. City of Pasco</i> , Case No. 4:16-05108-LRS (E.D. Wash. Jan. 27, 2017) (ECF #40)	A	06-02-2023
605	Settlement Agreement in <i>Aguilar v. Yakima County</i> , Case No. 20-2.00180-19 (Kittitas Cnty)	A	06-02-2023
606	Order Approving Settlement and Entering Judgment, <i>Aguilar v. Yakima County</i> , Case No. 20-2.00180-19 (Kittitas Cnty Oct. 29, 2021).	A	06-02-2023
607	Release: Commissioner Joe Fain releases draft 2021 legislative redistricting plan	A	06-02-2023
608	Nov. 13, 2021 email from Adam Hall to Brady Walkinshaw re: "Matt Barreto's advice and availability"	A	06-02-2023
609	Nov. 14, 2021 email from Adam Hall to Brady Walkinshaw re: "FW: Republican claims in Washington state"	A	06-02-2023
610	Nov. 21, 2021 Sworn Declaration of Sarah Augustine, Chair of the Washington State Redistricting Commission, Washington Supreme Court No. 25700-B-675	A	06-02-2023
611	Shifting Boundaries – Redistricting in Washington	A	06-05-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
1001	Expert Report of Dr. Mark Owens	A	06-02-2023
1002a	Supplemental Report of Dr. Mark Owens – 12/16/2022	A	06-02-2023
1002b	Supplemental Response Report of Dr. Mark Owens – 2/6/2023	A	06-02-2023
1003	Intervenor-Defendants' First Set of Requests for Production of Documents to Plaintiffs (Palmer)	A	06-02-2023
1004	Intervenor-Defendants' First Set of Requests for Production of Documents to Defendant State of Washington (Palmer)	A	06-02-2023
1005	Intervenor-Defendants' First Set of Requests for Production of Documents to Defendant Steven Hobbs (Palmer)	A	06-02-2023
1006	Intervenor-Defendants' First Set of Interrogatories to Plaintiffs (Palmer)	A	06-02-2023
1007	Intervenor-Defendants' First Set of Interrogatories to Defendant State of Washington (Palmer)	A	06-02-2023
1008	Intervenor-Defendants' First Set of Interrogatories to Defendant Steven Hobbs (Palmer)	A	06-02-2023
1009	Intervenor-Defendants' First Requests for Admissions to Plaintiffs (Palmer)	A	06-02-2023
1010	Intervenor-Defendants' First Requests for Admissions to Defendant State of Washington (Palmer)	A	06-02-2023
1011	Intervenor-Defendants' First Requests for Admissions to Defendant Steven Hobbs (Palmer)	A	06-02-2023
1012	Plaintiffs' Responses and Objections to Intervenor-Defendants' First Set of Requests for Documents	A	06-02-2023
1013	Defendant State of Washington's Objections and Responses to Intervenor-Defendants' First Set of Requests for Production	A	06-02-2023
1014	Defendant Steve Hobbs' Objections and Responses to Intervenor-Defendants' First Set of Requests for Production	A	06-02-2023
1015	Plaintiffs' Responses and Objections to Intervenor-Defendants' First Set of Interrogatories	A	06-02-2023
1016	Defendant State of Washington's Objections and Responses to Intervenor-Defendants' First Set of Interrogatories	A	06-02-2023

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
1017	Defendant Steve Hobbs' Objections and Responses to Intervenor-Defendants' First Set of Interrogatories	A	06-02-2023
1018	Plaintiffs' Responses and Objections to Intervenor-Defendants' First Requests for Admission	A	06-02-2023
1019	Defendant State of Washington's Objections and Responses to Intervenor-Defendants' First Requests for Admissions	A	06-02-2023
1020	Defendant Steve Hobbs' Objections and Responses to Intervenor-Defendants' First Requests for Admissions	A	06-02-2023
1021	WITHDRAWN		
1022	WITHDRAWN		
1023	WITHDRAWN		
1024	WITHDRAWN		
1025	WITHDRAWN		
1026	WITHDRAWN		
1027	WITHDRAWN		
1028	WITHDRAWN		
1029	WITHDRAWN		
1030	WITHDRAWN		
1031	WITHDRAWN		
1032	WITHDRAWN		
1033	WITHDRAWN		
1034	WITHDRAWN		

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
1035	WITHDRAWN		
1036	WITHDRAWN		
1037	WITHDRAWN		
1038	WITHDRAWN		
1039	WITHDRAWN		
1040	WITHDRAWN		
1041	WITHDRAWN		
1042	WITHDRAWN		
1043	Currently Enacted Map	A	06-02-2023
1044	State of WA Members of the Legislature	A	06-02-2023
1045	WITHDRAWN		
1046	Order re: WA Redistricting Commission's Letter to the Supreme Court and the Commission Chair's Declaration - 12.3.21	A	06-02-2023
1047	WITHDRAWN		
1048	WITHDRAWN		
1049	WITHDRAWN		
1050	WITHDRAWN		
1051	WITHDRAWN		
1052	WITHDRAWN		

SER-039

NO.	DESCRIPTION	ADMITTED/ REFUSED	DATE ADMITTED/ REFUSED
1053	WITHDRAWN		
1054	WITHDRAWN		
1055	November 8, 2022, General Election – Legislative District 15	A	06-02-2023
1056	Washington State Legislative Map – Final	A	06-02-2023
1057	WITHDRAWN		
1058	WITHDRAWN		
1059	WITHDRAWN		
1060	3.11.22 Seattle Times Op Ed from Sarah Augustine	A	06-07-2023
1061	Members of the Wash. Legislature 1889-2019	A	06-02-2023
1062	Emails between various state officials regarding preparation of HCR 4407—01/24/2022-01/25/2022	A	06-02-2023
1063	Emails between various state officials regarding preparation of HCR 4407—12/09/2021	A	06-02-2023
1064	Trapped Polygon and Problematic Boundary Analysis regarding HCR 4407	A	06-02-2023
1065	02/02/2022—Washington House Floor Debate on HCR 4407 (Video)	A	06-02-2023
1066	Seattle Times article on Death of Representative Mary Skinner	A	06-07-2023

SER-040

Case 3:22-cv-05152-RSL-DGE-LJCV Document 71 Filed 06/07/23 Page 1 of 1

Susan Soto Palmer, et al. v. Hobbs, et al. v. Trevino, et al.
3-22-cv-05035-RSL

Benancio Garcia III v. Hobbs, et al.
3:22-cv-05152-RSL-DGE-LJCV

TRIAL WITNESS LIST

Witness Name	Date(s) Testified
Faviola Lopez	06-02-2023
Dr. Loren Collingwood	06-02-2023
Dr. Josué Q. Estrada	06-02-2023
Sen. Rebecca Saldaña	06-02-2023
April Sims	06-05-2023
Susan Soto Palmer	06-05-2023
Brady Walkinshaw	06-05-2023
Anton Grose	06-05-2023
Joe Fain	06-06-2023
Dr. Mark Owens	06-06-2023
Dr. Matt Barreto	06-06-2023
Paul Graves	06-07-2023
Alison O'Neil	06-07-2023
Gabriel Portugal	06-07-2023
Dr. John Alford	06-07-2023

Wood, Jennifer (ATG)

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U.S. District Court

United States District Court for the Western District of Washington

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Case Name: Garcia v. Hobbs et al
Case Number: [3:22-cv-05152-RSL-DGE-LJCV](#)
Filer:
Document Number: 70(No document attached)

Docket Text:

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)

3:22-cv-05152-RSL-DGE-LJCV Notice has been electronically mailed to:

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Phillip M Gordon pgordon@holtzmanvogel.com, kacres@holtzmanvogel.com

Dallin Holt dholt@holtzmanvogel.com, eholcombe@holtzmanvogel.com, snorwood@holtzmanvogel.com

Caleb Acker cacker@holtzmanvogel.com

3:22-cv-05152-RSL-DGE-LJCV Notice will not be electronically mailed to:

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United States District Court for the Western District of Washington

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Case Name: Garcia v. Hobbs et al
Case Number: [3:22-cv-05152-RSL-DGE-LJCV](#)
Filer:
Document Number: 69(No document attached)

Docket Text:

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)

3:22-cv-05152-RSL-DGE-LJCV Notice has been electronically mailed to:

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Cristina Sepe SGOOlyEF@atg.wa.gov, comcec@atg.wa.gov, cristina.sepe@atg.wa.gov

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Phillip M Gordon pgordon@holtzmanvogel.com, kacres@holtzmanvogel.com

Dallin Holt dholt@holtzmanvogel.com, eholcombe@holtzmanvogel.com, snorwood@holtzmanvogel.com

Caleb Acker cacker@holtzmanvogel.com

3:22-cv-05152-RSL-DGE-LJCV Notice will not be electronically mailed to:

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U.S. District Court

United States District Court for the Western District of Washington

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The following transaction was entered on 6/5/2023 at 3:38 PM PDT and filed on 6/5/2023

Case Name: Garcia v. Hobbs et al
Case Number: [3:22-cv-05152-RSL-DGE-LJCV](#)
Filer:
Document Number: 68(No document attached)

Docket Text:

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)

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jennifer.wood@atg.wa.gov, vyna.nguyen@atg.wa.gov

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3:22-cv-05152-RSL-DGE-LJCV Notice will not be electronically mailed to:

The Honorable Robert S. Lasnik
The Honorable David G. Estudillo
The Honorable Lawrence Van Dyke

**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

[PROPOSED] PRETRIAL ORDER

I. JURISDICTION¹

1. 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.

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

3. A three-judge district court was requested and convened pursuant to 28 U.S.C. § 2284(a), because Plaintiff is "challenging the constitutionality of . . . the apportionment of a[] statewide legislative body."

¹ The Plaintiffs in *Soto Palmer* would not consent to the filing of a joint pretrial statement for both *Soto Palmer* and *Garcia*, as such, the Parties in *Garcia* file this Pretrial Statement for *Garcia*, and incorporate by reference the contentions, legal and factual, and other sections as otherwise provided in the *Soto Palmer* Pretrial Statement by the Intervenor-Defendants, the State of Washington, and Secretary Steve Hobbs, therein. A copy of the Pretrial Statement in *Soto Palmer* is attached hereto as Exhibit 1.

[PROPOSED] PRETRIAL ORDER

1

No. 3:22-CV-5152-RSL-DGE-LJCV

II. CLAIMS AND DEFENSES

Plaintiff asserts the following claim at trial on the merits scheduled for June 5, 2023:

1. Racial gerrymandering of the 15th Legislative District in the State of Washington in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Based on the conclusions of the State's expert, the other record evidence, and factual findings in relevant VRA cases, the State of Washington cannot and does not intend to dispute at trial that *Soto Palmer* Plaintiffs have satisfied the three *Gingles* preconditions for pursuing a claim under section 2 of the VRA based on discriminatory results. Based on the same evidence, the State cannot and does not intend to dispute that the totality of the evidence test likewise favors the *Soto Palmer* Plaintiffs' claim based on discriminatory results. Accordingly, the State believes that resolution of the *Soto Palmer* litigation will render this case moot.

Additionally, the State disputes Plaintiff Garcia's claim and intends to present evidence to the contrary, if necessary.

Beyond mootness, the State does not intend to assert any affirmative defenses or counterclaims.

Secretary Hobbs takes no position on Plaintiff Garcia's claims or the State's defenses. Secretary Hobbs does not intend to pursue any affirmative defenses or counterclaims.

III. ADMITTED FACTS

The following are facts about which Plaintiff asserts there is no dispute and which Plaintiff is prepared to admit:

Party Information

1. Plaintiff Benancio Garcia III is a United States citizen, is over the age of 18, and is a registered voter in the State of Washington.

2. Plaintiff Garcia currently resides in Legislative District 15 at the following address: 311 Birch Avenue, Grandview, Washington 98930.

3. Plaintiff Garcia identifies his ethnicity as Hispanic, as the term is defined by the U.S. Bureau of the Census.

1 4. Defendant Steve Hobbs is being sued in his official capacity as the Secretary of
2 State of Washington. Hobbs, as Secretary of State, “shall be the chief election officer for all federal,
3 state, county, city, town, and district elections.” RCW 29A.04.230.

4 5. Defendant Secretary of State is also responsible for receiving all declarations of
5 candidacy for the state legislative races for Legislative District 15.

6 6. Defendant State of Washington is a sovereign state of the United States of America.
7 The State of Washington is sued pursuant to the Court’s Order of Joinder. (Dkt. # 13.)

8 **Washington’s Demographics**

9 7. According to 2020 Census Data, over one million people in Washington identify as
10 Hispanic or Latino.

11 8. Washington received P.L. 94-171 data on August 12, 2021.

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

14 10. According to 2020 Census data, the combined population of people who identify
15 as Hispanic or Latino in Yakima, Franklin, and Benton counties was 231,833.

16 11. According to 2010 and 2020 Census data, the Latino or Hispanic identified
17 population in Washington grew by 303,423 between 2010 and 2020.

18 12. According to 2020 Census Data, the total population of Yakima County identified
19 as Hispanic or Latino in 2020 was 130,049, approximately 50.7% of the county population.

20 13. According to 2020 Census Data, the total population of Franklin County identified
21 as Hispanic or Latino in 2020 was 52,445, approximately 54.2% of the county population.

22 14. According to 2020 Census Data, the total population of Benton County identified
23 as Hispanic or Latino in 2020 was 49,339, approximately 23.8% of the county population.

24 15. According to 2020 Census Data, the total population of Grant County identified as
25 Hispanic or Latino in 2020 was 42,401, approximately 42.8% of the county population.

26 16. According to 2020 Census Data, the total population of Adams County identified
27 as Hispanic or Latino in 2020 was 13,120, approximately 63.6% of the county population.

1 17. According to 2020 Census Data, the total population in Yakima County identified
2 as Hispanic or Latino grew by 20,579 between 2010 and 2020.

3 18. According to 2020 Census Data, the total population in Franklin County identified
4 as Hispanic or Latino grew by 12,441 between 2010 and 2020.

5 19. According to 2020 Census Data, the total population in Benton County identified
6 as Hispanic or Latino grew by 16,643 between 2010 and 2020.

7 20. According to 2020 Census Data, the total population in Grant County identified as
8 Hispanic or Latino grew by 8,238 between 2010 and 2020.

9 21. According to 2020 Census Data, the total population in Adams County identified
10 as Hispanic or Latino grew by 2,021 between 2010 and 2020.

11 22. According to the Census Bureau's 2020 5-Year American Community Survey
12 ("ACS") estimates, the CVAP of Hispanic or Latino identified individuals in Yakima County was
13 48,250, approximately 32.8% of the county CVAP.

14 23. According to the Census Bureau's 2020 ACS estimates, the CVAP of Hispanic or
15 Latino identified individuals in Franklin County was 17,695, approximately 35.2% of the county
16 CVAP.

17 24. According to the Census Bureau's 2020 ACS estimates, the CVAP of Hispanic or
18 Latino identified individuals in Benton County was 17,550, approximately 13% of the county
19 CVAP.

20 25. According to the Census Bureau's 2020 ACS estimates the CVAP of Hispanic or
21 Latino identified individuals in Grant County was 13,660, approximately 24% of the county
22 CVAP.

23 26. According to the Census Bureau's 2020 ACS estimates, the CVAP of Hispanic or
24 Latino identified individuals in Adams County was 3,805, approximately 41.4% of the county
25 CVAP.

26 **Geography of Legislative District 15 (LD 15)**

27 27. LD 15 includes parts of the Yakima Valley and Pasco.

1 28. LD 15 includes parts of Adams, Benton, Grant, Franklin, and Yakima counties.

2 29. LD 15 includes the City of Othello, in Adams County.

3 30. The cities of Yakima, Toppenish, Wapato, and Mabton are located in Yakima
4 County.

5 31. LD 15 contains the eastern portion of Yakima County.

6 32. LD 15 does not include the cities of Wapato, Toppenish, and Mabton.

7 **Procedural Issues**

8 33. Jurisdiction for Plaintiff's claim for costs and attorneys' fees is based upon 42
9 U.S.C. § 1988, and 52 U.S.C. § 10310(e).

10 34. Venue is proper in this judicial district because a substantial part of the events or
11 omissions giving rise to Plaintiff's claim occurred in this district.

12 35. Venue is also proper in this district as Defendant Hobbs is a state official
13 performing his official duties in the Western District of Washington.

14 36. Defendant State of Washington is properly joined as a Defendant in this case. (*See*
15 Dkt. # 13.)

16 **The Redistricting Commission**

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

20 38. The Washington State Redistricting Commission (the "Commission") is composed
21 of five members. WASH. CONST. art. II, § 43(2); *see also* RCW 44.05.030.

22 39. Each of the "leader[s] of the two largest political parties in each house of the
23 legislature . . . appoint one voting member." WASH. CONST. art. II, § 43(2).

24 40. These four voting members select a fifth, nonvoting member to serve as the
25 Commission's chairperson. *Id.*

26 41. The Washington Constitution requires that "[e]ach district . . . contain a
27 population . . . as nearly equal as practicable to the population of any other district" and that "[t]o

1 the extent reasonable, each district . . . contain contiguous territory, . . . be compact and
2 convenient, and . . . be separated from adjoining districts by natural geographic barriers, artificial
3 barriers, or political subdivision boundaries.” WASH. CONST. art. II, § 43(5).

4 42. Additionally, the Commission’s redistricting plan “shall not be drawn purposely to
5 favor or discriminate against any political party or group.” *Id.*

6 43. The plan must also, “insofar as practical, accomplish the following:” “[d]istrict
7 lines should be drawn so as to coincide with the boundaries of local political subdivisions and
8 areas recognized as communities of interest[]” and that “[t]he number of counties and
9 municipalities divided among more than one district should be as small as possible.” RCW
10 44.05.090. And “Districts should be composed of convenient, contiguous, and compact territory.”
11 *Id.* “Land areas may be deemed contiguous if they share a common land border or are connected
12 by a ferry, highway, bridge, or tunnel.” *Id.* But “[a]reas separated by geographical boundaries or
13 artificial barriers that prevent transportation within a district should not be deemed contiguous[.]”
14 *Id.* Moreover, “[w]henver practicable, a precinct shall be wholly within a single legislative
15 district.” *Id.*

16 44. Districts must also “have a population as nearly equal as is practicable, excluding
17 nonresident military personnel, based on the population reported in the federal decennial census
18 as adjusted by RCW 44.05.140.” *Id.*

19 45. For a redistricting plan to be adopted, it must be approved by “[a]t least three of the
20 voting members” of the Commission. WASH. CONST. art. II, § 43(6).

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

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

1 48. The Legislature’s amendment authority is limited, as it “may not include more than
2 two percent of the population of any legislative or congressional district.” *Id.* After such 30-day
3 period, “[t]he plan approved by the commission, with any amendment approved by the legislature,
4 shall be final . . . and shall constitute the districting law applicable to this state for legislative and
5 congressional elections, beginning with the next elections held in the year ending in two.” *Id.*

6 49. Article II, Section 43(6) states that “[i]f three of the voting members of the
7 commission fail to approve a plan within the time limitations provided in this subsection, the
8 supreme court shall adopt a plan by April 30th of the year ending in two in conformance with the
9 standards set forth in subsection (5) of this section.”

10 50. Under RCW 44.05.100, “[i]f three of the voting members of the commission fail to
11 approve and submit a plan within the time limitations provided in subsection (1) of this section,
12 the supreme court shall adopt a plan by April 30th of the year ending in two. Any such plan
13 approved by the court is final and constitutes the districting law applicable to this state for
14 legislative and congressional elections, beginning with the next election held in the year ending in
15 two. This plan shall be in force until the effective date of the plan based on the next succeeding
16 federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).”

17 51. Following the adoption of a plan, the Commission is required to cease operations
18 by July 1st of the year ending in two unless the term is extended. RCW 44.05.110.

19 52. “If a commission has ceased to exist, the legislature may, upon an affirmative vote
20 in each house of two-thirds of the members elected or appointed thereto, adopt legislation
21 reconvening the commission for the purpose of modifying the redistricting plan.” RCW 44.05.120.

22 53. All districting plans must comply with the United States Constitution.

23 54. The Secretary of State is the State of Washington’s current custodian of the
24 Commission’s official record for purposes of reprecincting and election administration. RCW
25 44.05.110.

1 **Previous Redistricting in the Yakima Valley**

2 55. Over the past 90 years, what is now LD 15 has changed during each round of
3 redistricting.

4 56. Historically, the District has covered a portion of Yakima County.

5 57. From 1982 through 2001, it also included portions of neighboring counties, but
6 never Othello or Pasco.

7 **2021 Redistricting Process**

8 58. On December 10, 2020, the Speaker of the Washington House of Representatives
9 announced the appointment of April Sims as a Commissioner representing the House Democratic
10 Caucus and the Senate Majority Leader announced the appointment of Brady Piñero Walkinshaw
11 as a Commissioner representing the Senate Democratic Caucus.

12 59. On January 15, 2021, the Senate Minority Leader announced the appointment of
13 Joe Fain as a Commissioner representing the Senate Republican Caucus and the House Minority
14 Leader announced the appointment of Paul Graves as a Commissioner Representing the House
15 Republican Caucus.

16 60. On January 30, 2021, the four voting Commissioners appointed Sarah Augustine
17 as the nonvoting, fifth member and Chair of the Commission.

18 61. Between February 2021 and November 2021, the Commission had Regular
19 Business Meetings, Special Business Meetings, and Public Outreach Meetings to develop
20 districting plans.

21 62. On September 21, 2021, each of the four voting Commissioners released a proposed
22 legislative district map to the public.

23 63. No Commissioner proposed a version of LD 15 that resembled the district as drawn
24 by the Commission's final redistricting plan. For example, no proposal, contained the cities of
25 Pasco or Othello, and none contained a majority HCVAP.

26 64. The map of LD 15 initially proposed by Commissioner Sims combined the Yakama
27 Indian Reservation with parts of Yakima and communities along Interstate 82 to Grandview.

1 Commissioner Sims stated that her map “recognizes the responsibility to create districts that
2 provide fair representation for communities of interest” and that “[m]aintaining and creating
3 communities of interest” and “[c]entering and engaging communities that have been historically
4 underrepresented” were “values guid[ing]” her efforts.

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

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

17 67. The map of Legislative District 15 as proposed by Commissioner Graves combined
18 the northeastern portion of Yakima County, including some of the cities along Interstate 82, with
19 most of Benton County apart from Richland and Kennewick. Commissioner Graves’s plan
20 “focuse[d] on communities of interest and is not drawn to favor either party or incumbents” and
21 featured eight “majority-minority” districts.

22 68. On or about October 19, 2021, the Washington State Senate Democratic Caucus
23 circulated a presentation by Dr. Matt Barreto, a professor of political science and Chicana/o studies
24 at UCLA and co-founder of the UCLA Voting Rights Project. Dr. Barreto was hired by the
25 Washington Senate Democratic Caucus, not by the Commission, the State of Washington, or the
26 Legislature.

1 69. Subsequently, Commissioners Fain and Graves and the Washington State
2 Republican Party commissioned a legal analysis from a law firm headquartered in Washington
3 State, Davis Wright Tremaine, that concluded a majority-minority district was not required in the
4 Yakima Valley.

5 70. On October 25, 2021, Commissioners Walkinshaw and Sims submitted revised
6 maps to the public.

7 71. Commissioners Sims and Graves were primarily responsible for negotiating and
8 drafting the legislative maps.

9 72. Shortly before midnight on November 15, 2021, the Commission voted
10 unanimously to approve a legislative redistricting plan.

11 73. And, shortly after midnight on November 16, 2021, the Commission voted to
12 approve a formal resolution adopting the redistricting plan and also voted to approve a letter
13 transmitting the plan to the Legislature. Thereafter, the Commission transmitted the resolution and
14 letter to the secretary of the Senate and the chief clerk of the House of Representatives.

15 74. On December 3, 2021, the process by which the November 15 deadline was met
16 was deemed to be compliant with Washington law by the Washington Supreme Court. *Order re:*
17 *Wash. State Redistricting Comm'n's Letter*, No. 25700-B-676, 504 P.3d 795 (Wash. 2021).

18 75. In House Concurrent Resolution 4407, the legislature amended the map submitted
19 by the Commission to the Washington Supreme Court. It added seven and removed two Census
20 Blocks to LD 15. Each of the added and removed Census Blocks had zero population change.

21 76. LD 15 in the Enacted Plan has a Hispanic or Latino CVAP of 50.02% according to
22 2019 5-Year ACS estimates and 51.5% according to 2020 5-year ACS estimates.

23 **Subsequent Election in LD 15**

24 77. The redistricting plan approved by the Commission, together with the Legislature's
25 amendments, constitutes Washington state's districting law for legislative elections, which began
26 with the 2022 election.

1 78. Elections have already taken place under the new legislative maps, whereupon, in
2 LD-15, Nikki Torres, a Hispanic, female whose stated party preference is “Prefers Republican
3 Party,” prevailed over her opponent, whose stated party preference is “Prefers Democratic Party,”
4 in the State Senate race by approximately 68% to 32%.

5 79. In the 2022 LD 15 senate race, Lindsey Keesling, a candidate whose stated party
6 preference is “Prefers Democratic Party,” advanced to the general election ballot after running as
7 a write-in candidate during the primary election.

8 **Other Litigation**

9 80. Three recent cases have applied the federal VRA and Washington Voting Rights
10 Act to elections in Yakima and Pasco.

11 81. In *Montes v. City of Yakima*, the court concluded that Yakima’s at-large voting
12 system for city council elections violated Section 2 of the VRA. 40 F. Supp. 3d 1377 (E.D. Wash.
13 2014). The court reviewed evidence regarding the three *Gingles* factors and concluded that each
14 was satisfied with respect to Latino voters in the City of Yakima. *Id.* at 1390-1407. The Court also
15 found that the totality of the circumstances demonstrated that the City’s electoral process was not
16 equally open to participation by Latino voters after analyzing the Senate Factors. *Id.* at 1408-14.

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

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

2024 Elections

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

85. Should the Court determine a new legislative district map must be drawn as a remedy, March 25, 2024 is the latest date a finalized legislative district map must be transmitted to counties without significantly disrupting the 2024 election cycle.

IV. ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. Whether Plaintiff's claim is moot in light of the Court's disposition (if any) in *Soto Palmer v. Hobbs*.

2. Whether Plaintiff has established that race or ethnicity predominated in the drawing by the Commission and adoption by the Legislature of Legislative District 15 in violation of the Fourteenth Amendment to the U.S. Constitution.

3. If the Court finds that race or ethnicity predominated in the drawing and adoption of Legislative District 15, whether the Commission and Legislature's race-based decision was required to serve the compelling governmental interest of complying with Section 2 of the Voting Rights Act.

4. Finally, if the map is stricken, the appropriate state entity to be given the first opportunity to redraw Legislative District 15 in compliance with the Fourteenth Amendment to the U.S. Constitution.

V. EXPERT WITNESSES

The Parties incorporate by reference the Expert Witness section from the Pretrial Order submitted to the Court in *Soto Palmer, et. al v. Hobbs, et al*. A copy of the Pretrial Statement in *Soto Palmer* is attached hereto as Exhibit 1.

VI. OTHER WITNESSES

The Parties incorporate by reference the Other Witness section from the Pretrial Order submitted to the Court in *Soto Palmer, et. al v. Hobbs, et al.* A copy of the Pretrial Statement in *Soto Palmer* is attached hereto as Exhibit 1.

VII. EXHIBITS

The Parties incorporate by reference the Exhibits section from the Pretrial Order submitted to the Court in *Soto Palmer, et. al v. Hobbs, et al.*, as the same exhibit numbers will be used by all Parties at the consolidated trial. A copy of the Pretrial Statement in *Soto Palmer* is attached hereto as Exhibit 1.

VIII. DEPOSITIONS

Pursuant to LCR 32, the Parties in *Soto Palmer* have offered deposition designations, objections to those designations, and responses to objections with the Pretrial Statement in *Soto Palmer*. The Parties agree that those designations, and the Court's rulings on objections, apply to this action.

IX. ACTION BY THE COURT

(a) This case is scheduled for trial without a jury on June 5, 2023, at 8:30 a.m.

(b) Trial briefs shall be submitted to the Court on or before May 31, 2023.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this _____ day of _____, 2023.

The Honorable Robert S. Lasnik
UNITED STATES DISTRICT JUDGE

FORM APPROVED

[PROPOSED] PRETRIAL ORDER

13

No. 3:22-CV-5152-RSL-DGE-LJCV

1 Presented by:

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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 24th day of May, 2023.

Respectfully submitted,

s/ Andrew R. Stokesbary

Andrew R. Stokesbary, WSBA No. 46097

Counsel for Plaintiff

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, et al.,

Defendants,

and

JOSE TREVION, et al.,

Intervenor-Defendants.

NO. 3:22-cv-05035-RSL

DECLARATION OF STUART HOLMES
IN SUPPORT OF DEFENDANT
SECRETARY OF STATE STEVEN
HOBBS'S RESPONSE TO PLAINTIFFS'
MOTION FOR CLARIFICATION
REGARDING TRIAL SCHEDULE

BENANCIO GARCIA III,

Plaintiffs,

v.

STEVE HOBBS, et. al.

Defendants.

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

I, Stuart Holmes, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge. I am currently employed as Director of Elections in the Office of the Secretary of State, a position I have held since November 2021. During a portion of this period my title was Acting Director of Elections.

DECLARATION OF STUART HOLMES IN
SUPPORT OF DEFENDANT HOBBS'S
MOTION FOR CLARIFICATION RE:
TRIAL SCHEDULE
NO. 3:22-cv-05035-RSL

1

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

SER-063

1 2. Before I became Director of Elections, I was Deputy Director of Elections.

2 3. I have worked for the Office of the Secretary of State since 2014 and worked in

3 elections administration since 2005.

4 4. I am a nationally and state certified election administrator.

5 5. As director I oversee the statewide voter registration and election management

6 system; voter education and outreach; and election official certification and training.

7 6. I supervise a staff of 27 people, who include Specialists in Candidate Filing,

8 Auditing, Voter Education, Election Certification, Training, as well as Management Analysts

9 for the statewide voter registration and election management system.

10 7. I understand that Plaintiffs in this litigation seek revised legislative district maps

11 based on their contention that Legislative District 15, as drawn by the Redistricting Commission

12 in 2021, violates Section 2 of the Voting Rights Act.

13 8. Based on my knowledge and experience, any revised district maps would need to

14 be final by March 25, 2024, to allow my office and county elections officials to perform

15 necessary tasks before the primary election on August 6, 2024.

16 9. Any change to the district maps after this date would put us in serious jeopardy

17 of failing to meet our constitutional obligations.

18 10. When the a new legislative district plan is adopted, my office transmits that

19 information—not just the maps showing district lines, but the files containing the geographic

20 data underlying those maps, known as shapefiles—from the Commission to county auditors’

21 offices.

22 11. County auditors use that information to redraw precinct lines within the new

23 districts.

24 12. My office is not directly responsible for drawing precinct boundaries.

25 13. We do provide technical assistance to counties as needed in the precinct revision

26 process. My staff serve as subject matter experts and provide assistance with understanding of

1 the Geographic Information System (GIS) software, assistance with collaboration with county
2 GIS experts, integration with the voter registration and election management system, and
3 precinct requirements under state law. This is particularly true for smaller counties that lack
4 technical resources.

5 14. Once revised, precinct boundaries require approval from a county commission or
6 county council, which would take one to two weeks. Many counties require a public comment
7 period before approving precincts.

8 15. After counties finish revising precinct boundaries—which must, by law, be
9 complete no later than one week before candidate filing opens—counties submit their precinct
10 lines and the associated shapefiles to us. We consolidate files from all the counties into our
11 Geographic Information System (GIS) software.

12 16. We then validate the precinct boundaries counties have drawn to make sure they
13 comply with state law and do not contain errors. For example, our staff must confirm that
14 precinct boundaries do not cross congressional or legislative district boundaries, cross county
15 lines, or have gaps or overlap. Depending on the size of the county, this may take anywhere from
16 several hours to a few days per county.

17 17. We then import those shapefiles into a consolidated data file and import it into
18 our statewide system, which connects the precinct information to voter information.

19 18. We then inform counties which voters are affected by the revisions and have
20 changed precincts in the statewide voter registration and election management system.

21 19. The counties review groups of voters subject to split precincts and approve
22 changes in the statewide voter registration and election management system.

23 20. Voters' precinct assignments are updated by an authorized county user in the
24 statewide voter registration and election management system.

25 21. Precinct assignments (and for some types of offices, even more precise
26 information) determine what districts a voter will vote in, but also in what districts they are

1 eligible to run for office. When candidates file online, our VoteWA system determines their
2 eligibility based upon what precinct, or portion of a precinct, they are registered to vote in.

3 22. For that reason, the precinct revision process must be complete before candidate
4 filing opens, which, barring a veto of recent legislation, will be May 6, 2024.

5 23. The candidate filing dates are set by state law.

6 24. Any change to the candidate filing dates would create significant impacts for my
7 office and for counties.

8 25. Pushing back the candidate filing deadline will cost time that we don't have. It
9 would force us to delay all other dates and deadlines related to the election, including the election
10 date itself.

11 26. Barring a veto of recent legislation, in 2024, the candidate withdrawal deadline
12 will be May 18, eleven days after the filing period opens.

13 27. Barring a veto of recent legislation, the deadline for candidates to submit
14 photographs and candidate statements for the voter pamphlet will be May 20, 2024.

15 28. As soon as we have that information from candidates, our staff has to prepare
16 material for voter pamphlets for the primary election. We compile, review, approve, and translate
17 the material content for all candidates that file with the state. This includes candidates for federal
18 office, statewide executive office, legislative office, supreme court justices, court of appeals
19 judges, and superior court judges. We translate that content into Spanish statewide and Chinese
20 and Vietnamese for King County.

21 29. Counties are then responsible for printing the voter pamphlets for the Primary.
22 Materials for state and federal candidates need to be completed before each county's print
23 deadline for printing of their voter pamphlet.

24 30. Each county prepares the ballots to be sent to voters in their county. Substantial
25 time is required for ballot formatting after its content is certain, because every county must
26 prepare multiple ballot styles based on every combination of issues and offices that will appear

1 in various parts of the county. This can amount to many different ballot styles within a single
2 county. Each of the resulting ballot styles must be carefully reviewed and proofread for accuracy.
3 Counties must allow voters who will be 18 by the time of the General Election to participate in
4 the Primary. These “Primary Only Voters” are prohibited from participating in any special or
5 general election. This results in effectively doubling the number of necessary ballot styles to
6 accommodate this new category of voters to ensure they are only able to participate in their
7 eligible contests. In addition, some counties must translate ballots, a task that requires additional
8 time. Counties must also test each ballot style in their vote tallying system to ensure the ballots
9 are formatted properly and can be tabulated correctly.

10 31. Many counties use private vendors to print, assemble, and mail ballot packets to
11 voters. Once the ballots are final, counties then provide the electronic file to their contracted
12 vendor to print the ballots. After printers receive the ballot orders, they prepare proofs of each
13 ballot style, and provide them to the county auditors for final review and correction of any errors,
14 as well as for testing of the proofs in the tabulation equipment. After counties approve these
15 proofs (with or without changes), the ballots are printed.

16 32. After ballots are printed, county auditors (or their vendors) must collate each
17 ballot style with the correct personalized outgoing envelope, correct personalized return
18 envelope, a security envelope, and instruction sheet. In some counties, the ballot printing vendor
19 and mailing vendor are the same. In other counties, they are not.

20 33. Each county also must compile and print a voter pamphlet before each Primary
21 and as soon as practical mail the voter pamphlet to each residence or registered voter. The Office
22 of Secretary of State strives to have the approved voter pamphlet content available electronically
23 online before the mailing of ballots to military and overseas voters.


24 34. Under Washington law, counties must mail ballots to military and overseas voters
25 45 days before an election. Federal law also requires that ballots for elections for federal offices
26

1 be available for mailing to military and overseas voters at the same time. For the 2024 Primary,
2 that deadline is June 22.

3 35. Between candidate filing and mailing of the first ballots, there are just six weeks.
4 There is no wasted time in that time period. Any compression of that schedule would be
5 extremely cost-intensive and cumbersome for my staff and for the counties we work with and
6 support.

7
8 I declare under penalty of perjury under the laws of the State of Washington and the
9 United States that the foregoing is true and correct.

10 SIGNED this 9 day of May 2023, at Olympia, Washington.

11 
12
13 STUART HOLMES
14 Director of Elections
15
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24
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26

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 9th day of May 2023, at Olympia, Washington.

s/ Leena Vanderwood
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1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3

4 SUSAN SOTO PALMER, et al.,)
 5 Plaintiffs,) C22-5035-RSL
 6 v.)
 7 STEVEN HOBBS, in his)
 8 official capacity as) June 5, 2023
 9 Secretary of State of) 8:30 a.m.
 10 Washington, et al.,) TRIAL - Day 2
 11 Defendants,)
 12 and)
 13 JOSE TREVINO, et al.,)
 14 Intervenor-Defendants,)
 15 BENANCIO GARCIA III,) C22-5152-RSL-DGE-
 16 Plaintiff,) LJC
 17 v.)
 18 STEVEN HOBBS, in his)
 19 official capacity as)
 20 Secretary of State of)
 21 Washington, et al.,)
 22 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

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1 THE CLERK: We are here in the matters of Garcia
2 versus Hobbs, et al., Cause No. C22-5152, assigned to Judge
3 Lasnik, Chief Judge Estudillo and Circuit Judge Lawrence
4 VanDyke.

5 And we're also here in the matter of Soto Palmer, et al.
6 versus Hobbs, et al., and Trevino, et al., C22-5035, assigned
7 to Judge Lasnik.

8 If counsel could please rise and make your appearances for
9 the record.

10 MR. HERRERA: Good morning, Your Honors. My name is
11 Ernest Herrera, for the plaintiffs. And with us today I also
12 have Vivian Alejandro and Paula Turnbull.

13 MR. DUNN: Good morning, Your Honor, Chad Dunn on
14 behalf of the plaintiffs.

15 MR. GABER: Good morning, Mark Gaber on behalf of the
16 Soto Palmer plaintiffs.

17 MS. LEEPER: Good morning, Your Honor, Simone Leeper
18 on behalf of Soto Palmer plaintiffs.

19 MS. HARLESS: Annabelle Harless for the Soto Palmer
20 plaintiffs.

21 MR. PHILLIPS: Benjamin Phillips on behalf of the
22 Soto Palmer plaintiffs.

23 MR. MORFIN: Edwardo Morfin on behalf of the Soto
24 Palmer plaintiffs.

25 MS. WAKNIN: Sonni Waknin on behalf of the Soto

1 conference. Admitted Exhibit 101. And this clip is from
2 marker 8 minutes 53 seconds to 1015.

3 THE COURT: Okay.

4 (Video clip played.)

5 Q Now, Ms. Sims, what did you mean when you say you voted on
6 an agreement on November 15, 2021?

7 A That we had reached agreement around how the districts
8 would be drawn, but we hadn't -- yeah. That we had reached
9 agreement around how specific districts would be drawn.

10 Q And does that mean that you did not vote on a final
11 legislative district map, on November 15, 2021?

12 A Well, it means we voted on what we had agreed to, but we
13 didn't have a final map drawn at the time.

14 Q And you also mentioned something about various maps
15 needing to be reconciled. Does that mean that there were
16 various versions of the legislative map, at midnight on
17 November 15, 2021?

18 A Yes.

19 Q Okay. And do you recall how many versions of the
20 legislative map existed at that point?

21 A I don't. Over the course of several months, there were a
22 number of draft legislative maps.

23 Q However, the ones that you were trying to reconcile, how
24 many different maps were there of the legislative district
25 plan?

1 A There were at least two.

2 Q At least two.

3 And do you remember -- well, I'll withdraw that
4 question.

5 Now, if it was an agreement that you were voting on, on
6 November 15th, was that agreement written down anywhere?

7 A No, I don't believe so.

8 Q How is the agreement memorialized?

9 A Verbally. And through our draft maps.

10 Q Now, what were the details of that agreement that you
11 voted on, on November 15, 2021, with regard to the
12 legislative map?

13 A I don't remember all of the specifics. There were
14 agreements made around where we would pull population, from
15 the west side of the state, agreements made around how the
16 45th and the 47th would be drawn. How the 3rd and the 15th
17 would be drawn. Agreements around the 42nd. Agreements
18 around how we would honor tribal requests. I don't remember
19 all of the specifics today.

20 Q Do you recall the specifics about the 15th Legislative
21 District, in the agreement you voted on?

22 A Not all of the specifics.

23 Q What specifics do you recall about the 15th?

24 A I recall that it was a CVAP, majority CVAP Hispanic
25 district, that did not include Yakima Nation, and moved east

1 instead of north, or grabbed population moving east and not
2 grabbing population moving north.

3 Q And when you -- just to clarify for the court, what do you
4 mean when you say "CVAP"?

5 A Citizen voting age population.

6 Q And so if you say Hispanic or Latino CVAP, does that mean
7 the percentage of U.S. citizens of voting age who are
8 Hispanic or Latino?

9 A Yes.

10 Q Now, when you say that the agreement was going to be CVAP
11 or Latino CVAP majority, do you mean -- do you recall which
12 year of ACS data you were referring to?

13 A I believe it was the data from 2019, which I understood to
14 be an average of the 2015 through 2019.

15 Q Do you recall anything else about the agreement with
16 regard to the 15th Legislative District, in what you voted
17 on, on November 15th?

18 A That it was to be a true swing district.

19 Q And can you tell the court what you mean by a "true swing
20 district"?

21 A That the Democratic performance in the district was right
22 around 50 percent.

23 Q And do you know what you used to measure Democratic
24 performance in that district?

25 A In general, for our negotiations, we were using 2020

1 MR. HERRERA: Now, Ms. Alejandro, can we pull up
2 admitted Exhibit 139?

3 Q Do you recall a discussion of cracking, in relation to the
4 minority population's ability to elect their candidate of
5 choice?

6 A I do.

7 Q And do you recall what was being -- what was said about
8 not being able to elect -- do you recall what was said about
9 a minority community not being able to elect their candidate
10 of choice?

11 A I don't recall, specifically.

12 Q Okay.

13 I'm going to show you another exhibit. This is
14 admitted Exhibit 131.

15 And, Ms. Davis, do you recall this e-mail exchange --
16 I'm sorry, Ms. Sims, do you recall an e-mail exchange with
17 Osta Davis?

18 A I do.

19 Q And that e-mail exchange is reflected in this Exhibit 131.
20 Do you see that the date of it is March 25, 2021?

21 A I do.

22 Q And do you recall Ms. Davis writing to you that OneAmerica
23 had, in 2020, commissioned a study of racially polarized
24 voting in the Yakima City Council races?

25 A Yes.

1 Q And do you recall Ms. Davis writing to you that Dr. Matt
2 Barreto had looked at racially polarized voting in the State
3 of Washington?

4 A I do.

5 Q Do you recall Ms. Davis writing to you that Dr. Baretto
6 had also been retained by the California Redistricting
7 Commission, to do a voting rights district analysis?

8 A I do.

9 Q And then do you recall responding to Ms. Davis's e-mail,
10 that you loved the idea of Dr. Baretto's analysis for the
11 Commission?

12 A I do.

13 Q Did the Commission ever hire a statistician or consultant,
14 for analyzing any district in the Legislative District map,
15 with regard to Voting Act map compliance?

16 A No.

17 Q Do you recall attending a presentation by Dr. Matt
18 Baretto, to the commissioners, regarding redistricting in the
19 Yakima Valley area?

20 A To any of the commissioners?

21 Q To any of you?

22 A I recall a presentation, yes.

23 Q Which commissioners attended that presentation?

24 A I believe it was Commissioner Walkinshaw.

25 Q Just Commissioner Walkinshaw?

1 A And me. I believe so, yeah.

2 Q And that presentation was on October 19, 2021, right?

3 A I don't remember the exact date, but if that's what the
4 records show.

5 Q Do you recall the details of that presentation?

6 A Some of the details. Yes.

7 Q And do you recall that one of your takeaways from
8 Dr. Barreto's presentation was that your original public
9 draft of the 14th or 15th District map, was not good enough
10 to satisfy the Federal Voting Rights Act?

11 A I do.

12 Q And by "the 14th or 15th," would it be fair to say that
13 we're talking about the district in the Yakima Valley area?

14 A Yes.

15 Q And you thought, after Dr. Barreto's presentation, that
16 your 14th or 15th District in the Yakima Valley area, should
17 be above 50 percent Latino voting age population, in order to
18 comply with the Voting Rights Act, right?

19 A Correct.

20 Q Now, after Dr. Barreto's presentation, and in late October
21 of 2021, you publicly released a second, draft legislative
22 map, right?

23 A I did.

24 Q Do you know which, if any other commissioners, also
25 released a second public map proposal?

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1 A Yes.

2 Q And which ones were those?

3 A Commissioner Walkinshaw.

4 Q For your second public map proposal, one of the
5 differences between this second proposal, and your first
6 legislative public map, was that this second map had a Latino
7 CVAP percentage higher than 50 percent, using 2019 ACS data,
8 right?

9 A Correct.

10 Q Do you recall some posts that you made on Twitter,
11 regarding your second public map?

12 A Yes.

13 Q And do you recall exactly what you said in those tweets?

14 A I don't.

15 MR. HERRERA: Ms. Alejandro, can we show Exhibit 200?
16 And for the court, these are -- this is admitted Exhibit 200
17 that we're going to show here in a second.

18 Q Ms. Sims, these were your tweets about the second public
19 map, right?

20 A Yes.

21 Q You say that the Voting Rights Act gave you a clear
22 directive in the Yakima Valley, right? If you look on that
23 third tweet in the thread.

24 A Yes.

25 Q And that clear directive was to draw a district that

1 allows the Latino community in the Yakima Valley to elect
2 their candidate of choice, right?

3 A Correct.

4 Q Now, let's go forward in time, again, to November 15,
5 2021, just after that near-midnight vote. What happened
6 after the vote?

7 A Can you be more specific?

8 Q Sure. You mentioned earlier that there was an agreement
9 that you all voted on, right?

10 A Yes.

11 THE COURT: Are you talking about the 15th now? What
12 date?

13 MR. HERRERA: Yes, Your Honor. November 15th, right.

14 THE COURT: Great.

15 A Okay.

16 Q So you mentioned earlier that there was going to need to
17 be some reconciliation of at least two different legislative
18 maps, right?

19 A Correct.

20 Q Who was working on that project of drawing the final map,
21 at that point?

22 A At that point, Dominique Meyers, Osta Davis, and Anton --
23 I'm drawing a blank on Anton's last name. Commissioner
24 Graves' map drawer.

25 Q Is it Anton Grose?

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 Q And that's, again for the record, *Montes v. City of*
2 *Yakima*. It's not going cleanly back in my binder. I
3 apologize.

4 Then as far as the Yakima County case, does
5 Exhibit 606, does this look like the Yakima County case to
6 which you were referring, *Aguilar v. Yakima County*?

7 A Yes.

8 Q Do you remember, Ms. Sims, a case called *Glatt v. City of*
9 *Pasco*, about redistricting in the Pasco area?

10 A Vaguely. I don't know the specifics around that case.

11 Q Do you have any general understanding of what that case
12 was about?

13 A Just that there was another lawsuit filed around racially
14 polarized voting.

15 Q Understood. Did these lawsuits influence your thinking
16 about the need to create a majority Hispanic district, in the
17 Yakima Valley?

18 A Yes.

19 Q How so?

20 A Well, there had already been lawsuits filed and won, that
21 stated that there should be majority Latino districts created
22 at the local level in Yakima Valley. So I believe that based
23 on that, we needed to do the same thing at the state level.

24 Q And so coming into the process, this was something that
25 you understood you might have to do?

1 A Yes.

2 Q I want to ask you about some other things you looked at,
3 including an exhibit that you were shown earlier. It's
4 Exhibit 1301. And it's an e-mail from Osta Davis. Do you
5 recall taking a look at this earlier?

6 A I do.

7 Q And in Bullet 1, she talks about a report OneAmerica
8 commissioned. Do you see that?

9 A Yes.

10 Q And she says in -- I guess it starts right at the end of
11 the third line of that first bulleted paragraph, "I think
12 that OneAmerica could build a pretty strong case for majority
13 Latinx districts in Eastern Washington." Did I read that
14 right?

15 A Yes.

16 Q What did you understand that to mean?

17 A That we could potentially work with OneAmerica, to provide
18 us with some more analysis.

19 Q And, Ms. Sims, did you click on the link that Ms. Davis
20 provided in this e-mail?

21 A Yes.

22 Q I'm showing you a report from MGG Redistricting Lab, and
23 this is Exhibit 130. Do you understand this is what comes up
24 when you click on the link that Ms. Davis provided you?

25 A Yes.

1 Q Was this something you reviewed, while you were a
2 commissioner?

3 A I'm sorry, repeat that.

4 Q This was something you reviewed, while you were a
5 commissioner?

6 A Yes.

7 Q And I want to highlight for you, right here, and ask if
8 you could read that.

9 A "We find that Yakima has a clear pattern of racial
10 polarization, with strong *Gingles* 2 and 3 findings. In
11 particular, we find strong cohesion between Hispanic and
12 native voters, in their support of Hispanic candidates, while
13 white voters block these candidates of choice for the
14 minority coalition from ever reaching office."

15 Q Do you recall reading this, when you were commissioner?

16 A I do.

17 Q Was this important to you?

18 A Yes.

19 Q Was this part of the total mix of information you
20 considered, in determining whether the Commission needed to
21 draw a majority Hispanic CVAP district in the Yakima area?

22 A Yes.

23 Q Let's go back to Ms. Davis's e-mail.

24 Incidentally, do you know why Ms. Davis sent you this
25 e-mail?

1 A She was doing her job.

2 Q Part of her job was to make sure you understood what you
3 had to do?

4 A Yes.

5 Q Perfect. So I want to go to the second bullet point.
6 Bullet 2 mentions Dr. Matt Baretto; do you see that?

7 A Yes.

8 Q There's references in this bullet to racially polarized
9 voting. Do you see those?

10 A Yes.

11 Q Was it your understanding, racially polarized voting was
12 something that was important for VRA purposes?

13 A Yes.

14 Q Ms. Sims, did you click this link?

15 A I believe I did, yes.

16 Q I want to show you -- I apologize, I haven't been saying
17 this for the record, but that MGG report we looked at earlier
18 was Exhibit 130.

19 So I want to move on to Exhibit 132. Are you aware,
20 Ms. Sims, that this is the report that comes up when you
21 click on that link?

22 A Yes.

23 Q Was this something you reviewed while you were
24 commissioner?

25 A Yes.

1 Q And I want to move to the third page. What do you
2 understand about these slides? I can ask a better question
3 if you don't like that one.

4 A Okay.

5 Q Okay.

6 Do you understand that in these slides, Dr. Barreto is
7 laying out or previewing how he's going to demonstrate
8 whether or not there is racially polarized voting in the
9 Yakima area?

10 A Yes.

11 Q Okay. And then moving through these slides. As you
12 understand it, does Dr. Barreto conclude that there is
13 racially polarized voting in the election that he's --
14 elections that he's looking at here?

15 A Yes.

16 Q Was this something that was important to you as a
17 commissioner?

18 A Yes.

19 Q For the record, do you see the date of this?

20 A I do.

21 Q So it's February 6, 2013?

22 A Correct.

23 Q Was this report, from Dr. Barreto, part of the total mix
24 of information you were considering, in determining whether
25 the Commission had to draw a majority Hispanic CVAP district?

1 final topics.

2 Did you believe the plan that you ultimately voted for,
3 complied with the Voting Rights Act?

4 A I did.

5 Q And why?

6 A Because, based on all of the information I had at the
7 time, I knew that we needed to draw a majority CVAP district
8 in the 15th, and that we needed to make it competitive. And
9 I think that's what we ultimately did.

10 Q And the information you had at the time, that was the
11 *Montes* and the *Aguilar* cases we referred to, correct?

12 A Correct.

13 Q That was the two reports Ms. Davis sent you, correct?

14 A Correct.

15 Q That was Dr. Barreto's report, correct?

16 A Correct.

17 Q That was the advice you got from Mr. Osenbach, correct?

18 A Correct.

19 Q All of that together led you to the conclusion that the
20 district that you voted on, complied with the Voting Rights
21 Act, correct?

22 A Correct.

23 Q Do you believe that the plan that you voted for, racially
24 gerrymandered Hispanic voters?

25 A No.

1 Q Why not?

2 A Because the way that I understand it, you're allowed to
3 consider race as it relates to a VRA district.

4 Q And as you went through the process, you looked at racial
5 or ethnic demographics, in drawing and evaluating maps; is
6 that correct?

7 A That's right.

8 Q What else did you look at?

9 A Total population, geography, communities of interest,
10 cities and towns, natural borders, highways. There's a lot
11 of data points that went into determining how to draw the
12 districts.

13 Q How about partisan lean. Was that something that you
14 considered?

15 A Yes.

16 Q Did the final maps that you voted on, have a partisan
17 target for LD 15?

18 A Yes.

19 Q So racial or ethnic demographics, was just one element you
20 looked at; is that right?

21 A That's correct.

22 Q Was it the most important element you looked at?

23 A Specific to?

24 Q Let me move on.

25 Do you recall how many majority-minority districts the

1 Now, Mr. Hughes had asked you a question regarding
2 whether or not race was the most important factor for you, in
3 drawing the map. And you kind of paused, then he moved on.
4 Do you remember that line of questioning?

5 A I do.

6 Q So would you -- I just want to follow up with that point.
7 Would you agree that -- and specifically looking at
8 District 15, and the compromise you reached there, with that
9 district, that race was the most important factor there,
10 meaning that the CVAP number of Hispanic or Latino voters?

11 A I would not agree that it was the most important factor.
12 But that it was a factor.

13 Q It was an equally important factor, aligned with the
14 partisan leaning of the district; and that was the compromise
15 you reached. On one side you had the CVAP majority for
16 Hispanic and Latinos that was politically competitive; is
17 that correct?

18 A I would say it was part of the negotiation. I think I'm
19 struggling with this idea of what was most important, because
20 there were a number of priorities. Most important was
21 drawing a legally compliant map; so given all of the
22 requirements in the map, and making sure that we had a
23 majority Hispanic CVAP district. So I think I'm struggling
24 with where you would say I prioritized, and whether or not
25 that's accurate.

1 A No, I did not.

2 Q What are -- what did you learn about the Latino community,
3 in your experience, running as a candidate in these
4 elections?

5 A I learned that the Latino Hispanic community has felt that
6 there has not been a person that they align with, to
7 represent them on the ballot, for such a long time, that they
8 just end up throwing away their ballots.

9 And I also learned, from several households, that for the
10 Latino and Hispanic communities, that there are some that
11 feel that their employers would -- their jobs would be in
12 jeopardy, if they voted for a Latino-preferred candidate.
13 They would lose benefits. A lot of the Latino Hispanic
14 families work in the same industries together. And some of
15 them told me that they felt that they would lose their jobs,
16 and their family might also lose their jobs, so they don't
17 vote.

18 Q Thank you.

19 I want to turn now to the 2021 redistricting process.
20 Did you participate in any way in the 2021 redistricting
21 process?

22 A Yes, I did participate.

23 Q How so?

24 A I attended meetings of the community, particularly
25 concerned around drawing, or getting a map advocated for,

1 that would allow the Latino Hispanic community an opportunity
2 to elect a candidate of choice.

3 Q In addition to participating in those meetings, were there
4 other ways that you participated in the 2021 redistricting
5 process?

6 A I also gave testimony at one hearing of the Redistricting
7 Commission.

8 Q And at a high level, how would you describe what the
9 Latino community wanted, from the Redistricting Commission?

10 A One of the things that we wanted was to keep the lower
11 valley, with the portion of Eastern Yakima, together as much
12 as possible, to allow the Latino and Hispanic community an
13 opportunity to elect a candidate of choice.

14 Q And do you feel that the Commission listened to your
15 concerns?

16 A I believe they were not responsive to my concerns, or to
17 the concerns of the community, because the map that we see
18 drawn today, does not allow us or give us a fair and
19 equitable opportunity to elect a candidate of choice.

20 Q And what is your hope for the outcome of this litigation?

21 A It is my sincere hope that this is one step forward for
22 Yakima County, and the legislative districts, to be allowed
23 an equitable opportunity, and a fair opportunity, for Latinos
24 and Hispanics to elect a candidate of choice.

25 MR. PHILLIPS: Thank you, Ms. Soto Palmer. Thank

1 of concepts were ones that were incorporated into the maps.

2 Q What about with respect to Legislative District 15, what
3 was the agreement with respect to its boundaries or
4 characteristics?

5 A My understanding was that there was -- I don't recall the
6 specifics, but I would say that I had put forward -- I was
7 not directly involved in those negotiations, but I put
8 forward the idea that I put forward in October, around
9 minority representation, Hispanic representation in the
10 district. Maybe be more specific with your question.

11 Q I guess my question was whether you -- you know, what you
12 recall about the specifics of the agreement that Commissioner
13 Sims and Commissioner Graves principally came to, with
14 respect to District 15?

15 A I don't recall all the specifics of it at this point. But
16 there was -- there were a lot of discussions around unifying
17 the Yakima Nation with Latino communities in the Yakima
18 Valley. But I don't -- and there were other discussions
19 around competitiveness. I don't remember the very, very
20 specific, final criteria that was decided on. But it is what
21 was agreed to and then drawn in the maps.

22 Q And that didn't reflect necessarily your proposals or any
23 of your proposals from October onward?

24 A I think it reflected a bipartisan compromise.

25 Q Now, I want to pull up what's been marked or admitted as

1 legislature moved the deadline up six weeks, prior to where
2 it had previously been. So this Commission had a
3 historically short period of time to do it, because the data
4 was late. And it was the first time the Commission had to do
5 it under the shortened timeline from the legislature, which
6 moved it to November 15th, from January 1st.

7 So we were dealing in those circumstances. This was one
8 of the few times we actually negotiated in person, because we
9 thought that that would be helpful to see one another
10 face-to-face.

11 THE COURT: That's when you were in Federal Way?

12 THE WITNESS: That's when we were in Federal Way,
13 correct; which then became the subject of other discussions.

14 So that -- those negotiations were happening, as you just
15 described, in Federal Way, for those few days prior to the
16 evening of the 15th. We were primarily negotiating those in
17 diads, again, along the lines of the congressional and state
18 maps. But I'll pause there. I mean, I think that a lot of
19 the debates and the disagreements were around the
20 competitiveness of districts, around -- I was fighting,
21 personally was arguing to keep a lot of the tribes together,
22 which was a lot of the input that we had received from our
23 consultations with the 28 sovereign tribes in the state. So
24 that's the nature of it.

25 We did run out of time. And I think, as you know from all

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 prepared you for your testimony this afternoon; is that
2 correct?

3 A Not that I recall. That's correct.

4 Q You earlier testified that you were working at Grist while
5 you were also serving as a commissioner. Why did you agree
6 to be a commissioner?

7 A Because I thought it was a volunteer opportunity to have
8 an impact on democracy.

9 Q And what did it mean to you to be the first Latino
10 commissioner appointed?

11 A Just that. I think representation is extremely important.

12 Q And you reviewed the state statutes that govern the
13 Redistricting Commission, before you started as a
14 commissioner?

15 A Those were shared with me. I reviewed them, correct.

16 Q The same with the constitutional provision regarding the
17 Redistricting Commission?

18 A Yes.

19 THE COURT: State Constitution?

20 MS. SEPE: Yes, State Constitution.

21 Q And you applied the principles of those statutes to your
22 work?

23 A To the best of my ability.

24 Q I'd like to talk a little bit about the outreach process
25 that the Commission undertook. Did the Commission hold many

1 public outreach meetings?

2 A Many, many, many.

3 Q Does over 15 sound about right to you?

4 A Whatever the number is, there were many of them.

5 Q And you also met with coalition groups about their
6 interests in redistricting?

7 A We had a whole variety of meetings in the process,
8 including the tribes, too.

9 Q Can you tell me about your consultation process with the
10 tribes?

11 A We opened it up to try to engage all 28 sovereign nations
12 in the state. And there were a number that -- there was a
13 number that I participated in individually. But we sort of
14 split them up. So there were diads of commissioners. Two of
15 us would try to participate in each one. I remember I
16 participated in one with the Colville, the Confederated
17 Tribes of Colville. That was the only one I believe I did in
18 person, outside Spokane.

19 Q To your knowledge, it was the first time the Commission
20 had created a consultation policy?

21 A Yes.

22 Q Do you recall the nation requesting to be unified?

23 A Which?

24 Q The nation of Yakima, I'm sorry.

25 A No. I believe -- I believe so, yes. There were a number

1 of requests that came in. There were requests also about the
2 ancestral lands. And there were a number of requests. But I
3 believe so. I don't remember the specific requests, but you
4 may have it on record.

5 MS. SEPE: It's my first time with this tech here,
6 crossing my fingers. Give me one moment.

7 THE COURT: Sure.

8 Q So I have pulled up what's been preadmitted as
9 Exhibit 156. Does this look like the first proposed map that
10 you publicly proposed?

11 A I think that's right. I think there were two. I did one
12 in September, and I believe I did the second one in October.

13 Q Leading up to the release of this first proposed map, what
14 were your guiding ethos for what you wanted for this map?

15 A I believe it was really guided by one -- this initial one
16 was really guided by a principle of keeping communities
17 together. So it really tried to draw lines that were driven
18 by communities of interest, which is in the state statute.

19 Q What does that mean to combine communities of interest?

20 A Our understanding of it was to try to draw lines that
21 corresponded, as best we could, to counties, cities -- even
22 school district lines were considered. Tribal, tribal lines.
23 You know, tribal nations. So it was really trying to make it
24 so you'd be dividing as few communities as possible. That
25 was the goal.

1 Q I'm going to turn next to Exhibit 144, which has also been
2 preadmitted. Do you recall this document?

3 A Yep. That's right. The Senate Democratic Caucus staff
4 worked on this with me.

5 Q Could you please read the first paragraph?

6 A Sure. It's along the lines of what I just said.

7 "Commissioner Brady Pinero Walkinshaw, appointed to the
8 Washington State Redistricting Commission by the Senate
9 Democratic Caucus, released his proposed legislative map
10 earlier today. Commissioner Walkinshaw's plan prioritizes
11 community interest, minimizes city and county split, and
12 creates the most opportunity for communities to have fair
13 representation of their choosing. The plan also respects the
14 needs of tribal nations, as well as transportation corridors
15 in communities that are economically and geographically
16 connected."

17 Q Is that an accurate summary of what you remember your
18 ethos to be?

19 A Very much behind this. And this, again, was before the
20 bipartisan negotiations, but, yes.

21 Q I'm going to turn next to what's been preadmitted as
22 Exhibit 150. As you can see, this is an e-mail from Ali
23 O'Neil to you. And I'm going to scroll down to the second
24 page. Do you know what this document is?

25 A I recall it. I can't tell you all the specifics of it,

1 that I did look at that. I don't recall that, no.

2 Q You don't recall sharing those turnout differences with
3 your commissioner colleagues?

4 A I don't. But it's very possible that it occurred. But I
5 don't recall that, no.

6 Q Turning to the Voting Rights Act, which I might shorthand
7 as the VRA. When do you recall the issue of the Federal
8 Voting Rights Act coming first to your mind as a
9 commissioner?

10 A I think from the beginning.

11 Q And how did that come from the beginning?

12 A Just that this was an important issue, that I wanted to
13 bring into the maps that I was drawing.

14 Q And were you also apprised about the need for a
15 VRA-compliant district, by the staffers that you worked with,
16 with the Senate Democratic Caucus?

17 A It was discussed, you know, as you will see in -- yes, it
18 was discussed.

19 Q And you previously testified you were aware of other
20 lawsuits in the Yakima Valley area related to this issue?

21 A I had awareness of past -- I believe it was the city,
22 though. But, yes.

23 Q Do you recall the county?

24 A I may have misspoken. I was aware they existed, but as
25 you can see, I don't have the specificity.

1 Q And do you recall receiving any community feedback on this
2 issue?

3 A We did consultations around the state, so I'm sure this
4 came up.

5 Q And --

6 A I don't recall the specifics, though.

7 Q I'm sorry to cut you off.

8 A No, go ahead.

9 Q Would it be fair to say that it was a priority for you to
10 create a VRA-compliant district in the Yakima Valley?

11 A Yes. I said that in public statements.

12 Q I'm going to turn next to what's been preadmitted as
13 Plaintiffs' Exhibit 195. I'll scroll up for a second. Do
14 you recall this document?

15 A I do.

16 Q And what is it?

17 A I believe it was -- was it a press release? I believe it
18 was a press release, that my -- our team from the Senate
19 Democratic Caucus put out. I believe it was -- you'd have to
20 correct me if I'm wrong, but I believe it was released after
21 our next set of maps, our October maps that we released.

22 Q And those October maps came after you received
23 Dr. Baretto's analysis; is that correct?

24 A I believe that's the case, but I don't remember the
25 specifics of the timing.

June 6, 2023 - 425

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

3

4 SUSAN SOTO PALMER, et al.,)
 5 Plaintiffs,) C22-5035-RSL
 6 v.)
 7 STEVEN HOBBS, in his)
 8 official capacity as) June 6, 2023
 9 Secretary of State of) 8:30 a.m.
 10 Washington, et al.,) TRIAL - Day 3
 11 Defendants,)
 12 and)
 13 JOSE TREVINO, et al.,)
 14 Intervenor-Defendants,)
 15 BENANCIO GARCIA III,) C22-5152-RSL-DGE-
 16 Plaintiff,) LJC
 17 v.)
 18 STEVEN HOBBS, in his)
 19 official capacity as)
 20 Secretary of State of)
 21 Washington, et al.,)
 22 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

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1 THE CLERK: We are resuming our bench trial in the
2 matters of Garcia v. Hobbs, et al., No. C22-5152, assigned to
3 Judges Lasnik, Estudillo and VanDyke; and Soto Palmer, et
4 al., v. Hobbs, et al., and Trevino, et al., C22-5035,
5 assigned to Judge Lasnik.

6 THE COURT: Okay. We see that yesterday we had Chief
7 Judge Estudillo needing a cane. Today we have our courtroom
8 deputy, Victoria's wrist is in a sling.

9 JUDGE ESTUDILLO: We're falling apart.

10 THE COURT: I don't know what's going to happen next.
11 But I'd be very careful if I was the court reporter and the
12 law clerks, and the fellow judges.

13 And there's no truth to the rumor that Victoria tried to
14 stop Judge VanDyke when he tipped over, and that's how it
15 happened.

16 Okay. We're ready. Thank you for giving us another sheet
17 of potential witnesses, including one, if we do get further
18 along than we feared.

19 And is Commissioner Fain in the courtroom? Let's get him
20 in. Yeah, bring him on in. If you're starting the day, just
21 have your witness ready to go.

22 MR. HOLT: Just a brief administrative matter, if I
23 may. Just a clarification on the deposition designations.
24 Your Honor, on Friday, had made the statement that if the
25 witness comes live, designations are out. I just -- for

1 Q When you were asking that question, did you have a
2 particular area in mind?

3 A A particular area, meaning?

4 Q Geographic area.

5 A Geographic area. I don't remember if there had been,
6 previously discussed, a geographic area, in this
7 presentation. Generally speaking, I was aware, based on
8 conversations with other commissioners, that VRA and race was
9 going to be an issue that was important to them, in
10 negotiations. So I wanted to be educated about it.

11 Q While you were doing your work, did you understand, or --
12 did you understand that the focus of the Voting Rights Act
13 was about the ability of a minority group to have an equal
14 opportunity to elect candidates of their choice?

15 A Generally speaking, I believe.

16 Q And given the importance you placed on the Voting Rights
17 Act, you said it was extremely important in this clip. What
18 steps did you take to ensure compliance with the Voting
19 Rights Act?

20 A I had requested, I believe, if I -- it's possible I
21 requested this particular briefing. There may have been
22 other follow-up conversations, to solicit more information
23 about it. I did not yet know whether or not it was something
24 that -- how it would apply, or in what way. But this was
25 part of my preliminary work of just getting educated as a

1 commissioner.

2 THE COURT: Ms. Wakin, could you lower that
3 microphone closer to your mouth?

4 MS. WAKIN: Does that work?

5 THE COURT: It does work.

6 Q After your preliminary information gathering, what steps
7 did you take, then, to assure compliance with the Voting
8 Rights Act for the legislative district maps?

9 A I don't know of any specific step.

10 Q Any general steps you took?

11 A In the negotiations, it was very clear that there was a
12 desire from the Democratic commissioners to have a
13 majority-minority district in that region, and in the --
14 there was also a desire to unify the Yakima Reservation into
15 one district. I believe my initial map that I offered did
16 unify the Yakima Reservation, as was requested by the
17 reservation, as well as the Democratic commissioners.

18 And I think I had made several offers that involved maps
19 that matched the Democratic commissioners' requests for those
20 regions, throughout the negotiating process.

21 Q Mr. Fain, my question to you was, what steps did you take
22 to ensure Voting Rights Act compliance, throughout the
23 process, not what did you offer in negotiations.

24 A Well, I would say that an offer in a negotiation is a
25 pretty concrete step towards achieving that -- those issues.

1 used to draw that initial map.

2 Q Mr. Fain, you're a lawyer, correct?

3 A That's correct.

4 Q And you understand that federal law is supreme over state
5 law?

6 A I do.

7 Q And so you didn't do anything to check for Federal Voting
8 Rights Act compliance, on that first map you put out? Is
9 that what I'm understanding you to say?

10 A I don't recall what the CVAP number of the districts that
11 I drew in that map were.

12 Q Did you look if Latinos in the Yakima Valley could elect
13 candidates of choice, in your map?

14 A I don't know what analysis I had at that point in the
15 process, to be able to determine that.

16 Q Did you not have that analysis, because you didn't hire a
17 Voting Rights Act consultant who could tell you that
18 analysis?

19 A I'm not certain that I had that data available, when I was
20 drawing the map.

21 Q You saw Dr. Barreto's analysis on elections in the Yakima
22 Valley region; is that correct?

23 A I did.

24 Q And Dr. Barreto's analysis showed racially polarized
25 voting in the Yakima Valley area; is that right?

1 important. And I think that, in recent years, over the
2 course of the many states, that it has proven to isolate
3 like-minded people, rather than to force important
4 conversation.

5 Q Did you view being a redistricting commissioner, as a
6 public service that you felt like you could do?

7 A I did.

8 Q So when you became a commissioner, did you review
9 Washington statutes governing the Commission's work?

10 A I did.

11 Q Did you review the Washington constitutional provision
12 governing the Commission's work?

13 A I did.

14 Q To the best of your recollection, what did the statute and
15 the constitutional provision provide, as far as what you were
16 required to do, in creating districts?

17 A It has been a long time since I've read it. But the
18 various items in the statute would have included proportional
19 number of voters matching the number of voters in --
20 residents in each district, excuse me, equalizing those
21 populations, keeping communities of interest together, and
22 fostering competitiveness.

23 Q How about keeping cities together. Was that one of the
24 things that you were looking at?

25 A Yes.

1 Q And I'd like to just put those up on the screen, just to
2 make sure that we're talking about the same things.

3 Are you guys seeing the document camera? What a time
4 to be alive, you guys.

5 I'm going to start with Exhibit 509, which has been
6 admitted. I'm going to zoom out. Does this look like the
7 statute that you were looking at, Mr. Fain?

8 A It does.

9 Q And I'm going to go specifically to 44.05. And
10 unfortunately -- 44.05.090 -- unfortunately, the way it's
11 printed, it flips over the page. So I'm going to flip this
12 over. Is this, right here, roughly the factors that you were
13 looking at in how to draw a map?

14 A Yes. Those were factors, statutory factors.

15 Q I don't want to read those all into the record, the court
16 has those. Again, just to be sure we're all talking about
17 the same thing, is this the constitutional provision,
18 Exhibit 510, is this the constitutional provision you were
19 looking at?

20 A Yes, it is.

21 Q And, again, right here in Section 43.5, those are the
22 requirements that were guiding the work that you were doing?

23 A Yes.

24 Q Okay. Now, there was a dispute, wasn't there -- you
25 mentioned competitiveness a number of times. There was a

1 dispute, wasn't there, about what competitiveness meant,
2 amongst the commissioners?

3 A Yes.

4 Q Can you tell me a little bit about that dispute?

5 A If I recall, Commissioner Walkinshaw had mentioned he
6 thought competitiveness could be solved by evidence of a
7 competitive -- any competitive election, like a Democratic
8 primary in a largely Democratic district.

9 I viewed it -- I did not discount that that may be a
10 factor, but I felt that the more pressing definition of
11 competitiveness would have been cross-party competitiveness.

12 Q So just to crystallize that a little bit, when you were
13 thinking of competitiveness, you meant sort of cross-partisan
14 competitiveness. Other commissioners may have meant just
15 that there will be elections, that the voters will have a
16 choice?

17 A Yeah. I think my position would have been competitive
18 elections, and even if -- cross-party competitive elections
19 in the general, would be my strong preference. For highly
20 partisan districts, I would far prefer to see fierce
21 interparty competitive elections in the general, again.

22 Q And just for those -- for who may be visiting us from
23 out-of-state, Washington is a Top 2 primary state; is that
24 correct?

25 A That's correct.

1 Q We have occurrences, like in your former district, where
2 you have two Democrats running against each other in a
3 general election?

4 A That's correct.

5 Q So let me move on from that.

6 Was it your view, thinking through competitiveness,
7 that any map should at least give either party a chance of
8 achieving majority control in the state legislature?

9 A It was.

10 Q And if a map didn't do that, would you reject it?

11 A I would be less likely to look upon it favorably.

12 Q Okay. In addition to competitiveness, what were some of
13 your other goals, as a redistricting commissioner?

14 A My initial map prioritized the communities of interests of
15 school districts. And so I issued a legislative map that
16 tried to maintain the sanctity of school district boundaries,
17 viewing that school district boundaries were a better
18 reflection of a community of interest, in some cases, even
19 more perhaps than a city boundary might be, given how
20 families, neighborhoods, and communities tend to sort
21 themselves along those school district boundaries.

22 Q You have answered my next question, and that certainly
23 jibes with my experience as a parent of a school child.

24 You mentioned that you released maps. That was about
25 September of 2021?

1 Q In the next paragraph you say, "Fain's plan." I assume
2 that's you, Fain, not a brother. "Fain's plan also makes
3 several changes to keep other communities of interest
4 intact."

5 What other changes did you make to keep communities of
6 interest intact?

7 A I believe the Yakima Reservation was one of the
8 communities that I -- I believe all four commissioners put
9 that entirely into a district, and as referenced there, with
10 regard to CVAP, as one of the data points being used.

11 Q Was creating more minority-majority, or majority-minority
12 districts important to you?

13 A I believe that it would be important to do so, as part of
14 the negotiation to getting to a final map. And it was
15 something that I thought would be beneficial in offering
16 such, that we would also be -- we would also get more
17 competitive elections in the process.

18 Q And this press release reflects your initial map; is that
19 right?

20 A That's correct.

21 Q We've heard testimony from others that the initial maps
22 can often be read as sort of a commissioner's statement of
23 priorities, here is my initial negotiating position. Is that
24 a fair characterization of your initial map, as well?

25 A I believe so.

1 Q So as an initial position, increasing the number of
2 majority-minority districts, was something that you were
3 concerned about?

4 A Yes, it was -- yes.

5 Q Okay. And then lastly, you wrote, if I can find it, I
6 think you already talked about this, but just additionally,
7 "Fain's plan reflects the interest of each of the tribal
8 governments, that communicated with the Commission."

9 How did your plan, again, briefly, reflect the
10 interests of the tribal governments, with which you
11 communicated?

12 A I recall hearing, specifically from both Colville and the
13 Yakima Nation, that they had some specific desires that they
14 wanted. And in this particular case, the Yakima wished to be
15 consolidated, and the Colville did not.

16 Q The Colville, in fact, wished to be kept separate; is that
17 right?

18 A That's correct.

19 Q Why was it important to you to listen to input from native
20 tribes in Washington?

21 A Significant community of interest, long held by both
22 culture and treaty rights, and have always wanted to maintain
23 good government-to-government relations with them. And
24 coming from a legislative district that represents the
25 Muckleshoot Tribe, I've worked with tribal communities for a

1 number of years.

2 Q Mr. Fain, did your core priorities change, over time?

3 A No.

4 Q Okay.

5 I'd like to show you another document that I believe
6 you wrote. This is admitted Exhibit 302. Can you take a
7 look at that, and just briefly identify that?

8 A Yes. I wrote that.

9 Q What is it?

10 A It is a memo that analyzes how I viewed what calculus I
11 used for determining what a competitive district was, and
12 what calculus I used determining the overall competitiveness
13 of the state, vis-a-vis how those districts performed, not as
14 a district compared to its previous self, but as a district
15 performance compared to the previous district that held its
16 same competitiveness ranking.

17 Q And the date of this memo is November 13, 2021?

18 A That's correct.

19 Q I said I wouldn't ask you about dates, so I'll instead
20 tell you. This is basically three days before the deadline,
21 the November 15th deadline.

22 A That's correct.

23 Q Thirteen, 14, 15.

24 Okay. So you start by saying, "I think it is helpful
25 for each of you" -- the other commissioners -- "to see how I

1 didn't know those two names.

2 Q I think after discovery in this case, we all know those
3 names.

4 So I interrupted you. Could you pick up at, "I have
5 regularly compared."

6 A "I have regularly compared all proposed maps, from each
7 commissioner, against this baseline. Some districts may
8 become much more or much less Democratic, in each proposal,
9 but this visualization emphasizes the relative
10 competitiveness of the overall map, rather than just
11 comparing a single district's current and proposed partisan
12 performance."

13 Q So could you just, very briefly, summarize -- not that you
14 didn't do a brief job of it there -- what you mean by this?

15 A It would not be appropriate to look at where, let's say,
16 for example, the 44th District was, competitively, and say
17 its performance increased or decreased from a partisan
18 standpoint, and therefore you have somehow achieved your
19 competitiveness goal.

20 What matters is, from a statewide perspective, how many
21 districts fall into various tranches of competitiveness. And
22 is your future map holistically more or less competitive than
23 your previous map?

24 Q Is it fair to say that you were looking at competitiveness
25 across the whole map, rather than district-by-district?

1 A That is correct.

2 Q So when you reviewed a proposal, would you care whether,
3 for example, LD 15 tilted Democratic or Republican, or would
4 you care whether the whole map tilted Republican or
5 Democratic?

6 A The whole map.

7 Q I've heard you use this term in your deposition, and it
8 took me back to 11th grade economics. You used the term
9 "indifference curve."

10 A I did, yes. That's embarrassing.

11 Q Can you explain what you mean by that?

12 A At any given point, I feel exactly the same with regards
13 to my level of support for a map, given different variables.
14 And those variables, in this particular instance, would have
15 been the individual partisan performance of a given district;
16 whereas, the indifference curve represented the overall
17 competitiveness of the map.

18 Q And I will not embarrass myself by trying to remember how
19 to draw an indifference curve. But if I see Mr. Vance, I'll
20 be sure to ask for a refresher.

21 There's a section here -- well, I guess it starts here,
22 where you talk about the Walkinshaw 11/13 proposal. And
23 there's a lot of text here. But can you just sort of walk me
24 through, at a high level, what's going on here?

25 A Yeah. It actually might be as helpful to have the chart

1 on the visual, as you go along. I think that provides the
2 metric. You can see the draft Democratic performance, in all
3 of the identified swing districts. And, again, that's a
4 chart of -- ranked by the order of competitiveness. So it's
5 not how a certain district performed in the past versus in
6 the proposed map.

7 So you can see the current Pellicciotti performance in
8 green, which is the right bar, and the draft Pellicciotti
9 performance, from Walkinshaw, November 13th, on the left in
10 blue. You can see in each of those, in each of the
11 districts, there is a marked shift that is occurring in
12 pretty much just one direction, taking several districts out
13 of being considered competitive, both on the upper scale, in
14 the case of the first two on the map, on lines 23 and 24, as
15 well as on the Republican side of the scale, in line 34,
16 where the current performance was above 45, but the new
17 performance was at 43.5.

18 Q Is the upshot of this analysis, then, that Commissioner
19 Walkinshaw's 11/13 proposal, undermined your goal of
20 electoral competitiveness?

21 A It did not move it in the direction I hoped, yes.

22 Q I take it, then, you did not support Commissioner
23 Walkinshaw's 11/13 proposal?

24 A I was critical of it.

25 Q In criticizing this proposal, was your aim to dilute

1 Hispanic voter power?

2 A Certainly not.

3 Q Certainly not, you said?

4 A Um-hum.

5 Q Okay. Just one last thing I want to ask you about here.

6 So you say, after discussing Commissioner Walkinshaw's
7 proposal, "I have also remained very flexible to Democratic
8 priorities, including offering several maps that create a
9 majority-minority citizens of voting age population district
10 in the Yakima area, as you have proposed. I only ask that
11 through the many significant changes that you have each
12 proposed to our state's legislative districts, that we
13 maintain an overall balance of competition."

14 Did I read that right?

15 A That is correct.

16 Q Is this true, that you were proposing maps that the
17 Democratic commissioners preferred, as long as it preserved
18 overall competitiveness?

19 A That I was proposing maps that matched their configuration
20 and goals for the Yakima Valley area, that also met my goals
21 for greater competition throughout the map.

22 Q You answered the question I should have asked. I
23 appreciate that.

24 When you proposed maps, broadly speaking, did you have
25 racial or ethnic targets in mind?

1 A I didn't have specific targets in mind.

2 Q When you voted on a final map, did you have racial or
3 ethnic targets in mind?

4 A No specific targets in mind.

5 Q Did you ever conclude you wouldn't vote for a map, unless
6 it was X-percent Hispanic?

7 A No, I didn't.

8 Q X-percent white?

9 A No.

10 Q Black?

11 A No.

12 Q Native American?

13 A No.

14 Q Not to leave anyone out, but I'll move on.

15 Let's move on. Speaking of moving on, Commissioner
16 Fain, you ultimately voted for a plan that the Commission
17 recommended to the legislature, correct?

18 A Correct.

19 Q You testified that you couldn't remember everything about
20 that plan, I think on your first examination. But did the
21 plan you voted on include a final map?

22 A The map was not drafted at the time of the vote, but the
23 map was drafted subsequently, in the hours after.

24 Q Okay. Did the plan you voted on include particular
25 geographic boundaries?

1 A Again, we're referring to prior to the deadline?

2 Q Let me ask it this way. When you voted on a map, did you
3 understand you were voting on a particular -- I started the
4 question on the wrong foot. When you voted on the plan -- we
5 heard it called a framework?

6 A Yes.

7 Q When you voted on the framework, did you understand that
8 it included particular geographic boundaries?

9 A No.

10 Q So when you voted on the framework, did you understand
11 that it included particular partisan metrics?

12 A Yes.

13 Q When you voted on the map, did you understand -- when you
14 voted on the framework, did you understand that it included
15 particular racial or ethnic metrics?

16 A I don't recall at the time.

17 Q Okay. So what you voted on was essentially a partisan
18 framework that may or may not have included some racial
19 targets, you don't remember, and that may or may not have
20 included some particular geographic boundaries. Is that
21 about right?

22 A Yes.

23 Q Did you believe that the plan the Commission ultimately
24 recommended to the legislature, followed the goals laid out
25 in the statute?

1 Q I want to talk about the VRA now, a little bit more. And
2 you mentioned, I think, that at the time you became a
3 commissioner, you were aware of at least one lawsuit applying
4 the VRA in the City of Yakima?

5 A That's correct.

6 Q What do you remember about that lawsuit?

7 A I remember that the suit was -- I'm going to get it
8 backwards, I always do -- going from districts to at-large
9 versus at-large to districts. And I believe it was going
10 from at-large elections to district elections, in order to
11 empower a Latino or Hispanic voting community, that was more
12 concentrated in one part of the city.

13 Q Mr. Fain, you've heard the term "racially polarized
14 voting" before, I assume?

15 A I have.

16 Q Is it your recollection that the *Montes v. City of Yakima*
17 case, found racially polarized voting in Yakima?

18 A Yes.

19 Q So coming into the process, then, did you understand there
20 was a possibility that Section 2 of the VRA, might apply to
21 the maps that you drew in the Yakima area?

22 A Yes.

23 Q "Yes," you said?

24 A Yes.

25 Q You were asked some questions by Ms. Waknin about the

June 7, 2023 - 1

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

3

4 SUSAN SOTO PALMER, et al.,)
 5 Plaintiffs,) C22-5035-RSL
 6 v.)
 7 STEVEN HOBBS, in his)
 8 official capacity as) June 7, 2023
 9 Secretary of State of) 8:30 a.m.
 10 Washington, et al.,) TRIAL - Day 4
 11 Defendants,)
 12 and)
 13 JOSE TREVINO, et al.,)
 14 Intervenor-Defendants,)
 15 BENANCIO GARCIA III,) C22-5152-RSL-DGE-
 16 Plaintiff,) LJC
 17 v.)
 18 STEVEN HOBBS, in his)
 19 official capacity as)
 20 Secretary of State of)
 21 Washington, et al.,)
 22 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

June 7, 2023 - 2

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1 THE CLERK: We are resuming our bench trial in the
2 matters of Garcia v. Hobbs, et al., Cause No. C22-5152,
3 assigned to Judges Lasnik, Estudillo and VanDyke; and Soto
4 Palmer, et al., v. Hobbs, et al., Cause No. C22-5035,
5 assigned to Judge Lasnik.

6 THE COURT: Okay. Thank you. And, Mr. Dunn, you
7 want to call your next witness, please?

8 MR. DUNN: Thank you, Your Honor. The plaintiffs
9 call Paul Graves.

10 THE COURT: Mr. Graves, come on up into the well of
11 the courtroom.

12 PAUL GRAVES

13 Having been sworn under oath, testified as follows:

14 THE CLERK: If you could please state your first and
15 last names, and spell your last name for the record.

16 THE WITNESS: My name is Paul Graves, and Graves is
17 G-R-A-V-E-S.

18 DIRECT EXAMINATION

19 BY MR. DUNN:

20 Q Good morning, Commissioner. I'm Chad Dunn. I think we
21 met virtually at your deposition. Can you introduce yourself
22 to the court, where you were born?

23 A My name is Paul Graves. I live in Newcastle now. I was
24 born and raised in Maple Valley, 25 minutes southeast of
25 Seattle. I'm a lawyer, by trade, by background. And among

1 A You could treat them as white, for the purposes of race.
2 You could treat them as Hispanics, and include them among the
3 whole group of Hispanics across racial classifications. But
4 that was an important distinction, and I thought was
5 important bringing it up.

6 Q What was the Commission's final decision on how to deal
7 with white Hispanics?

8 A If I recall correctly -- well, I don't know if it's that
9 the Commission had a whole final agreement on it. But me and
10 Commissioner Sims, in particular, I think we agreed to
11 include white Hispanics, when we were talking about, in
12 general, racial numbers, when it came to particular
13 districts.

14 Q All right. I would like to now move on and show you the
15 Dr. Barreto report. This is admitted as 179. This is the
16 public version that was initially released on October 19th.
17 Do you recall this, generally, sir?

18 A Yeah, I recall it generally. This presentation.

19 Q After you looked at this presentation, one of your initial
20 reactions, you told me at your deposition, was that you
21 didn't feel like just analyzing two elections was compelling
22 to you. Is that fair to say?

23 A I don't know if I'd say "compelling," but I had really
24 serious concerns with it.

25 Q And then ultimately, though, you were shared a fuller

1 A Yes. That's the process we employed, to try to negotiate
2 draft versions of the maps.

3 Q I want to show you what's been marked and admitted as
4 Exhibit 277. Take a minute, sir, and I'll take you to the
5 second page, when you let me know.

6 A Can you go to the next page?

7 Q There you are.

8 A Okay. I see all that.

9 Q This is an e-mail exchange that you had with Commissioner
10 Sims, and you include some staff. Is that true?

11 A Yes, that's right.

12 Q You say here, in the first, what I'll call the long
13 paragraph of the November 11, 10:48, a.m. e-mail, the first
14 bullet. "The 14th here is ever so slightly more Republican
15 here than your last proposal, but is still firmly swing, as
16 it is majority Hispanic CVAP." Do you see that?

17 A Yes, I see that.

18 Q In the next bullet, in the last line you say, "The biggest
19 question to you, then, what do you think the fair exchange is
20 for this 14th?" Is that what you said?

21 A Yes, I see that there.

22 Q On the second page, you again say, "Again, looking forward
23 to talking at one, and I will be especially interested to
24 hear from you what you think a fair price is for the 14th."

25 Do you see that?

1 A I do see that, yeah.

2 Q So is it fair to say, you're telling Commissioner Sims:
3 I'll give you a district that is over 50 percent Latino CVAP,
4 lean-Republican, but kind of swing, but you've got to give me
5 something else?

6 A No.

7 Q What did you mean by "fair price"?

8 A The Hispanic CVAP part of that is something we were
9 negotiating toward, that it would be a district where a
10 majority of the eligible voters would be Hispanic. The fair
11 price there refers to the partisan nature of the district.
12 The current district there was solidly Republican, so if
13 you're going to take any of the 49 districts, and you're
14 going to move them from being solidly supporting one party,
15 to a swing district, or favoring another party, then it
16 requires a balance somewhere else on the map. That was the
17 price I was trying to figure out for Commissioner Sims, if
18 you wanted this to be, just from a pure partisan basis, if
19 you wanted it to be a swing district, or a lean Democratic
20 district, where else are we going to rebalance the map?
21 What's the price on other parts of the map, to make sure that
22 the whole map itself would be fairly balanced.

23 Q Is it fair to say you were settled or agreed to, at this
24 point, to make the district 50 percent Latino CVAP?

25 A I think so. And my only hesitation is this e-mail is

1 November 11th. This was four days before our map was due.
2 We were working 20 hours a day. I should note, too, that I
3 -- we had a baby in July of 2021, and he was a very bad
4 sleeper. So my only hesitation is it was right around this
5 time, when we really -- Commissioner Sims and I reached that
6 agreement, that it would be a majority CVAP district. But I
7 just can't recall if it was firmly settled by this point, or
8 a day or two after.

9 Q And I guess I'm less interested in the timing and more
10 interested, I want to focus on -- it sounds like there was an
11 agreement, at some point in time, between you and
12 Commissioner Sims, that this district would be greater than
13 50 percent CVAP?

14 A Yes. I think that's right.

15 Q And what was up in the air in the negotiations, at least
16 still on November 11th, was whether it was Republican, 50/50,
17 or leaning democrat; is that fair to say?

18 A Yes. You can draw a district there that has a number of
19 it different partisan profiles, based on recent elections.

20 Q It's also fair to say that if Commissioner Sims had
21 responded -- well, actually, before I get to that, let me ask
22 you here about the third bullet here at the bottom that
23 begins with, "My proposal here for the 14th is Republican
24 improvement in 47, 24, and 28." Do you see that, sir?

25 A Yes, I see that.

1 A If we could have -- we're talking here, this is the purely
2 partisan aspect of this. You know, I don't read the
3 Section 2 of the Voting Rights Act to say one party gets to
4 win, or another. So I consider this to be purely in the
5 range of our negotiations with the rest of the districts.
6 And I was more than open, with this district, and all the
7 others in the state, to make more districts competitive. But
8 to do that, and have a fair map, if you're going to have
9 greater performance for one party in district, one district,
10 it needs to be offset by greater partisan performance for
11 another party in a different district.

12 Q Thank you for that answer. I'm asking a bit more precise
13 question.

14 A Okay.

15 Q You would have agreed, and given -- agreed with
16 Commissioner Sims, to draw a 50.1 or more Latino CVAP
17 district, in the Yakima Valley, that leaned Democratic, if
18 you could have gotten accommodation, more Republican in 47,
19 24, and/or 28?

20 A Those are the exact negotiations we were having across the
21 entire map. Hey, can we get more partisan performance here,
22 in exchange for more partisan performance there? That was
23 kind of the meat and potatoes of our negotiation.

24 Q Was that a, "yes"?

25 THE COURT: It was an answer. He was trying to make

1 was only one way to draw those. Then the rest of them are
2 already kind of locked in. So it maybe seemed kind of funny
3 to say it that way. But by that point, considering the whole
4 history of our negotiations, from our point of view, it
5 wasn't discretionary, it was turning the framework we agreed
6 to into the maps.

7 Q You didn't need to be there, then?

8 A Well, I thought it was important for me to be there.

9 Q Now, you testified that the framework agreement, with
10 regard to the 15th Legislative District, is that it would be
11 50.1 CVAP, and more for the Republicans. Is that accurate?

12 A I think the agreement we had was that it would be that
13 50.1 Hispanic CVAP number, using the 2019 American Community
14 Survey data. And if you used the 2020 State Treasurer's
15 race, it would be a district that Wade Davidson would have
16 won by, like, maybe 53 percent. I don't remember the exact
17 number. There was a particular number in there.

18 Q The 53 percent you just mentioned was the Pellicciotti
19 race, again?

20 A Pellicciotti, yes.

21 Q You may not remember, and that's fair, but the metric in
22 the adopted 15 is 46.6 Democrat and 56.3 Republican?

23 A I believe you told me that. I don't remember off the top
24 of my head.

25 Q Going back to the framework, also as part of the

1 framework, you agreed that the Yakima Reservation would be in
2 the 14th, in other words, not in the CVAP district?

3 A It wasn't just the Yakima reservation, it was the Yakima
4 reservation, plus the Yakima's traditional hunting and
5 fishing lands.

6 Q Okay. Fair enough. But the agreement was the Yakima
7 Reservation would be in the 14th?

8 A Yes. It's entirely included in the 14th.

9 Q And you testified that you don't think the Yakima
10 preferred whether they would be in the 14th or 15th?

11 A I don't recall hearing from them on whether one of those
12 numbers mattered to them more than -- yeah, the biggest thing
13 that I heard from the Yakima Nation, was that they preferred
14 to have both their reservation and their traditional hunting
15 and fishing lands, be contained within one Legislative
16 District.

17 Q And in the final plan, the 15th is, in fact, 50.1 percent
18 CVAP?

19 A If you use that 2019 number, which was the number we were
20 using, I think that's right around where it landed.

21 Q At your deposition, when I told you that it's actually
22 50.02, you told me that was the first time you had heard
23 that?

24 A Yeah. I don't recall, for those, or for any numbers we
25 were using, going to the second digit beyond the decimal

1 A Yes.

2 Q Did you attempt to apply these statutory and
3 Constitutional requirements, to your own work?

4 A Absolutely, yes.

5 Q In what ways?

6 A It was for each one of those. So like, for example, with
7 roughly equal population per district, that one is the
8 easiest and most straightforward to apply, because you take
9 the census number for total people in the state, divide by 49
10 for the LDs, and we didn't have a set criteria for exactly
11 how much it could deviate, but our biggest deviation was
12 one-tenth of a percentage point, or something like that, from
13 the ideal perfect population.

14 Then the other ones were not as exact, but you consider
15 things like, are we splitting cities or counties here? Are
16 we splitting school districts? Are we dividing communities
17 of interest, based on the testimony we received? Things like
18 that.

19 Q And a few minutes ago, you also mentioned competitiveness
20 as one of the criteria. What did that mean to you?

21 A It means trying to have districts that, if they perform
22 similarly to how recent past elections have performed,
23 they're likely to be competitive. Say maybe within five
24 points one way or the other. But the general idea there,
25 from my point of view, would be to have districts where, in

1 any given year, candidates from either party might have a
2 chance of winning.

3 Q This was a priority for you, throughout the process?

4 A It was one of my top priorities, was trying to encourage
5 electoral competition.

6 Q Was it also important to you to keep communities of
7 interest together?

8 A Yes, it absolutely was.

9 Q Were there particular communities of interest that were
10 particularly important to you?

11 A There were lots of them.

12 Q What about tribes?

13 A I certainly considered tribes to be both, one of those
14 communities of interest, and then little separate sovereign
15 governments that we -- as a Commission, we adopted a policy,
16 tribal consultation policy, so we could hear directly from
17 the tribal representatives, as well. And we tried, and
18 succeeded, in every request we received from a tribe, to
19 honor their wishes.

20 Q And was the racial or ethnic breakdown of a given
21 district, also a factor you look at in evaluating proposed
22 maps, at least with respect to LD 15?

23 A Yes, it was.

24 Q Was it your only consideration?

25 A No.

1 Q Was it your predominant consideration?

2 A Me, personally?

3 Q That's what I'm asking, yes.

4 A I don't know if I can say "tie," but it was -- but the
5 race and the partisan breakdown of the district were, in my
6 mind kind, of my two top predominant considerations, when
7 drawing that district.

8 Q So they were kind of on par with one another, you would
9 say?

10 A I think they were.

11 Q Would you have agreed to a district that was majority
12 Hispanic CVAP in LD 15, that violated the statutory
13 requirements around competitiveness and some of the other
14 statutory requirements we were just talking about?

15 A No, I would not have voted for a map that had any district
16 that I thought violated the law.

17 Q And you didn't do that here, correct?

18 A No, I don't believe we did.

19 Q Was complying -- now, I'd like to switch gears and spend a
20 couple minutes talking about your understanding of the
21 federal VRA, during the time that you served as a
22 commissioner, and throughout. I'm talking about your service
23 on the Washington State Redistricting Commission.

24 Was complying with the VRA important to you as a
25 commissioner?

1 A Yes, it was.

2 Q And you mentioned early on this morning, I think, that you
3 had done some legal poking around, after you were appointed,
4 just to get the lay of the land. Did that include looking at
5 Department of Justice guidance on the VRA?

6 A Yes. The Department of Justice has some publicly
7 available information on Section 2 of the VRA, and how it
8 interacts with drawing maps.

9 Q You reviewed that?

10 A Yes, I did.

11 Q Did you also read some court cases on the VRA?

12 A I read a couple of them.

13 Q Were you aware of previous cases involving allegations of
14 racially polarized voting in the Yakima Valley?

15 A You're asking about, like, the city and county lawsuits?

16 Q Yeah, of Yakima. Were you aware of those?

17 A I was generally aware there were lawsuits going on there.

18 Q And did those cases suggest to you, at the time, that
19 racially polarized voting in Yakima might be something that
20 you would need to think about, in the 2021 redistricting
21 cycle?

22 A Maybe. I follow those cases mostly through reading about
23 them in the newspaper. And, of course, they're really
24 different than drawing a Legislative District there. So the
25 biggest upshot I had from being aware of those, there was the

1 possibility of litigation, that also we better spend some
2 time thinking about Section 2, and what it might mean in the
3 Yakima Valley.

4 Q Okay. And so other commissioners have testified that they
5 believe that the VRA required a majority Hispanic CVAP in the
6 Yakima Valley. Do you believe that your colleagues held this
7 view in good faith?

8 A I do. I think that depends. This law is really
9 complicated and hard to apply, but I have a lot of respect
10 for all the commissioners I worked with, and I think they
11 held those views in good faith.

12 Q Do you think there was a good-faith basis for holding
13 those views?

14 A I think there was.

15 Q Can you say more about that?

16 A Sure. Again, this law here, and both the Fourteenth
17 Amendment side, and the Section 2 side, it's not like the
18 equal population, you can't just put in a number and see if
19 you get the number right. There are multifactor tests. You
20 can use a whole different set of -- whole bunch of data to
21 try to figure out how you might apply that somewhat uncertain
22 law, to any particular district or map. And I saw the law as
23 hard to get a really firm yes or no answer on. But I also
24 think that my fellow commissioners, who thought there was a
25 requirement to draw a majority Hispanic CVAP district, I

MGGG, January 2020

Analysis of county commission elections in Yakima County, WA



Introduction

At first glance, Yakima County seems to already be districted to facilitate minority opportunity to elect candidates of choice. There are three districts; District 1 is mostly White, but District 2 has a slight POC majority, including about 40% Hispanic VAP and an additional 8% Native VAP, while District 3 is 55% Hispanic by VAP.

This is undercut by an unusual—and very problematic—system of electing County Commissioners. Each district is represented by a Commissioner. The primary election is conducted by a *district-wide* "jungle primary," in which any number of candidates may run and the top two vote-getters advance to the general election without regard to party affiliation. (In fact, candidates with the "prefers Republican" label predominate over all others in Yakima, and this is even true for Hispanic candidates.) But the *entire county*, and not just the district, then votes to choose a winner between the two finalists. This indicates that the system itself negates any advantage of districting, nullifying the minorities' opportunity to elect.

This is a report by the MGGG Redistricting Lab, based at Tisch College of Civic Life within Tufts University. Below, we give racial polarization findings using King's ecological inference in the County Commission races (i.e., with endogenous data) as well as selected legislative and statewide (exogenous) races.¹ We find that Yakima has a clear pattern of racial polarization, with strong Gingles 2 and 3 findings. In particular, we find strong cohesion between Hispanic and Native voters in their support of Hispanic candidates, while White voters block these candidates of choice for the minority coalition from ever reaching office.

MGGG has developed a tool called Districtr to allow members of the public to draw and study districting plans, focusing attention on the possibilities facing redistricters. We have built a customized Districtr module to allow you to experiment with district design in Yakima. You can access it at [this link](#).

Finally, we consider below several possible remedies for the exclusion of candidates of choice for minority voters in Yakima's county commission, including several ways to draw majority-minority districts in a 3-district system. We find that **ranked choice voting**, rather than the use of majority-minority districts, is likely to provide the most effective and long-lasting opportunity for Hispanic and Native voters to elect their candidates of choice.

¹ For instance, the State Supreme Court primary in 2012, had a highly qualified Hispanic candidate (Gonzalez) against a non-Hispanic White candidate widely considered to be unqualified (Danielson).



MGGG, January 2020

Yakima County RPV

These data come from the 2010 decennial Census and the 2013-17 American Community Survey (ACS).

BASIC STATS

Total population 243,231 with a VAP of 169,193 (Census) and CVAP of 143,265 (ACS)

District 1: 80,920, District 2: 80,275, District 3: 82,036

Hispanic pct of pop. - County: 45%, District 1: 25.6%, District 2: 46.4, District 3: 62.8%

Hispanic pct of VAP - County: 37.5%, District 1: 19.9%, District 2: 39.5%, District 3: 55.1%

Hispanic pct CVAP - County: 29.6%, District 1: 15.1%, District 2: 31.4%, District 3: 46.1%

Native pct of pop. - County: 3.7%, District 1: 1.0%, District 2: 9.1%, District 3: 1.2%

Native pct of VAP - County: 3.6%, District 1: 1.0%, District 2: 8.2%, District 3: 1.3%

Native pct of CVAP - County: 4.3%, District 1: 1.2%, District 2: 10%, District 3: 2.1%

Note that Hispanic means Hispanic of any race, and Native means non-Hispanic American Indian/Native American. This means you can add our Hispanic and Native counts to get a correct total for residents who identified as Hispanic and/or Native.

Most of the other residents are White (below, this means non-Hispanic White).

ELECTIONS INVESTIGATED (17)

County Commission District 1 primary - 2016 (12,456 votes)

County Commission District 2 primary - 2016 (7093 votes) *Debra Manjarrez

County Commission District 3 primary - 2018 (9583 votes) *Susan Soto Palmer, Jose Trevino

County Commission District 1 general - 2016 (67,197 votes)

County Commission District 2 general - 2016 (67,283 votes) *Debra Manjarrez

County Commission District 3 general - 2018 (67,927 votes) *Susan Soto Palmer

State Supreme Court Seat 8 primary - 2012 (25,627 votes) *Steve Gonzalez

State House District 15-2 primary - 2012 (14,308 votes) *Pablo Gonzalez

State Senate District 15 primary - 2018 (18,051 votes) *Bengie Aguilar

State House District 14-1 primary - 2016 (14,776 votes) *Susan Soto Palmer

State House District 15-2 general - 2012 (35,966 votes) *Pablo Gonzalez

State Senate District 15 general - 2018 (33,536 votes) *Bengie Aguilar

State House District 14-1 general - 2016 (36,764 votes) *Susan Soto Palmer

Lieutenant Governor primary - 2016 (27,716 votes) *Javier Figueroa

Lieutenant Governor general - 2016 (75,950 votes)

U.S. Senate general 2016 - (78,461 votes)



Governor general 2016 - (78,212 votes)

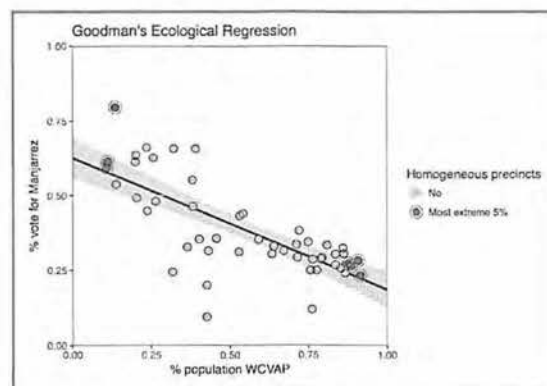
MGGG, January 2020

FINDINGS WITH RESPECT TO CITIZEN VOTING AGE POPULATION

election	Hispanic candidate	est. NH White support	est. Hispanic support	est. Native support	outcome
CCD2 primary 2016	D.Manjarrez (4 cand)	19.3%	60.9%	85.5%	Advance
CCD2 general 2016	D.Manjarrez (2 cand)	37.1%	69%	84.5%	Loss
CCD3 primary 2018	S.Soto Palmer (7 cand)	11.4%	44.8%	8%	Advance
CCD3 general 2018	S.Soto Palmer (2 cand)	24%	73.3%	95.9%	Loss
SSC8 primary 2012	S.Gonzalez (2 cand)	26.8%	60%	29%	Loss in county, Win statewide
SH15-2 primary 2012	P.Gonzalez (2 cand)	18.8%	50.5%	24%	Advance
SH15-2 general 2012	P.Gonzalez (2 cand)	18.4%	66.1%	95.9%	Loss
SS15 primary 2018	B.Aguilar (2 cand)	20%	57.1%	32%	Advance
SS15 general 2018	B.Aguilar (2 cand)	21.7%	68.2%	90.5%	Loss
SH14-1 primary 2016	S.Soto Palmer (2 cand)	18.5%	78.1%	21.3%	Advance
SH14-1 general 2016	S.Soto Palmer (2 cand)	17.3%	82.7%	75%	Loss

Table 2: EI 2x2 runs for Yakima County. White support is computed via named candidate vs all other candidates / White vs non-White voter. (Similar for Hispanic and Native.) Important note: general election calculations are county-wide.

-  Green: 95% confidence intervals are not disjoint, but ecological regression indicates support for result. See regression plot below, showing that higher minority share of citizen voting age population correlates clearly with share of Manjarrez support by precinct.
-  Gray: 95% confidence intervals are not disjoint, and ecological regression does not corroborate the result, so this result should not be used. Sample size was too small.



Page 3 of 6

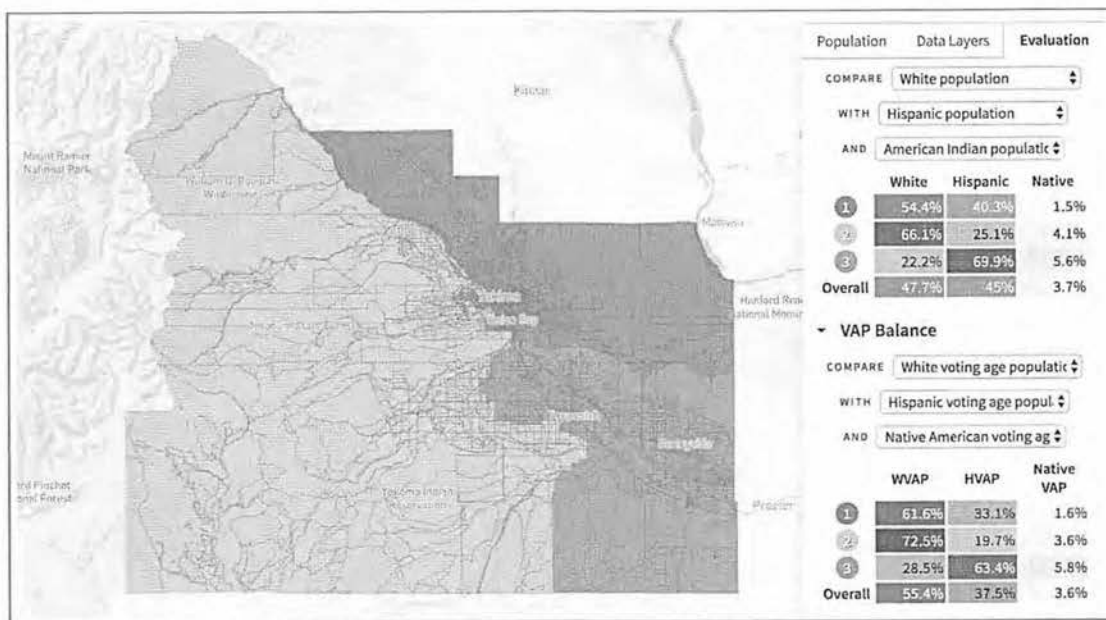
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Possible Remedies - Districts

Using randomized algorithms called Markov chains (github.com/mggg/GerryChain) that generate tens of thousands of legally compliant districting plans out of census blocks, we proposed several demonstration plans to consider. Below, we will write HVAP for Hispanic share of Voting Age Population, NVAP for Native VAP, and WVAP for White VAP. Likewise, HCVAP stands for Hispanic share of CVAP, and NCVAP and WCVAP are similar.

Current majority-minority district: 55.1% HVAP, 1.3% NVAP / 46.1% HCVAP, 2.1% NCVAP
Plan A majority-minority district: 63.4% HVAP, 5.8% NVAP / 53.6% HCVAP, 7.5% NCVAP
Plan B majority-minority district: 62.8% HVAP, 6.2% NVAP / 53.2% HCVAP, 8.1% NCVAP
Plan C majority-minority district: 60.2% HVAP, 4.0% NVAP / 50.9% HCVAP, 4.9% NCVAP

All three plans have top-to-bottom (Census) population deviation under 2% of ideal, which is better than the current enacted plan (2.17%). Plan C has a second district with reasonably high minority share. These three demonstration plans are also more compact than the current plan, as measured by cut edges. Plan A is shown below.



Plan A. District 3 has 53.6% HCVAP and 7.5% NCVAP.

We have thousands of demonstration plans available on request for 3 districts, or for larger commission sizes.

MGGG, January 2020

Possible Remedies - Ranked Choice

To assess the outcomes under a possible move to ranked choice voting, we built a stochastic model and devised eight different scenarios of voter behavior. In all cases, we assume that for a k -seat commission, there will be k Hispanic and k White candidates running. We then vary voter behavior as follows. (Illustrated for $k=3$ but easily generalized to other magnitudes.)

Model runs: 100 runs of 10,000 voters using one of the standard Single Transferable Vote mechanisms (weighted Gregory method), coded in python. Average outcomes reported below.

Voting Scenario	3 seat commission	5 seat commission	7 seat commission	9 seat commission
total polarization, unanimous order	1 out of 3	2 out of 5	3 out of 7	3 out of 9
total polarization, non-white vary order of non-white	1 out of 3	2 out of 5	3 out of 7	3 out of 9
total polarization, all vary order	1 out of 3	2 out of 5	3 out of 7	3 out of 9
total polarization, white vary order	1 out of 3	2 out of 5	3 out of 7	3 out of 9
crossover, unanimous order	1 out of 3	2 out of 5	3 out of 7	4 out of 9
crossover, non-white vary order of non-white	1 out of 3	2 out of 5	3 out of 7	4 out of 9
crossover, all vary order	1 out of 3	1.81 out of 5	2 out of 7	3 out of 9
crossover, white vary order	1 out of 3	1 out of 5	2 out of 7	2.93 out of 9

Total polarization: all White voters vote WWWWHH and non-White voters vote HHHWWW.

Crossover: EI estimates from general elections (see above) are used to estimate rate of crossover voting: White voters vote 80% W and 20% crossover; Hispanic voters vote 70% H and 30% crossover; Native voters vote 80% H and 20% crossover; Other voters vote 70% H and 30% crossover. A crossover ballot alternates HWHWHW or WHWHWH.

Unanimous order: White candidates always ranked W1W2W3, Hispanic H1H2H3. This simulates community agreement or coordination about which are the preferred candidates.

Vary order of non-white: H1H2H3 equally likely to H2H1H3, H1H3H2, etc. Each voter orders the candidates randomly. This simulates vote-splitting among Hispanic candidates by non-White voters.

Vary order: same random order for White candidates.

Recall that about one-third of Yakima County CVAP is Hispanic and/or Native. We find that all ranked choice voting setups tend to do a good job securing minority representation at rates close to, and sometimes exceeding, that share of CVAP.

For model details and code, please visit our [github repo](#).

MGGG, January 2020

Comparison of Remedy Options

3x1 plurality - The traditional remedy would be to draw three districts, giving one of them a high share of Hispanic and Native voters. But even the most favorable plan (such as Plan A above) will produce a Hispanic and/or Native majority district that is not certain to be sufficient to elect a candidate of choice with current polarization patterns. (For instance, the projected vote margin for a generic Hispanic-preferred vs White-preferred candidate roughly 52-48. This is very close.)

1x3 STV - An alternative would be to move to a system of ranked choice voting, where each voter would be able to give their preference ranking for all of the candidates for county commission. Under every scenario we considered and in every one of thousands of model runs, 1 out of 3 commissioners would be a candidate of choice for Hispanic and Native voters.

1xM STV - If the commission size were enlarged to M seats (with $M=5,7$, or 9), results were more variable, but most outcomes were at or above one-third representation on the commission for minority candidates of choice.

On balance, we find strong evidence that **county-wide ranked choice voting** by a standard system such as single transferable vote (STV) is the most likely to provide minority opportunity to elect candidates of choice. In addition, it requires no line-drawing, and it is stable to population shifts over time.

We welcome questions to contact@mggg.org about the methods or findings in this report.

From: [Sims, April](#)
To: [Davis, Osta](#)
Subject: Re: A couple of things
Date: Thursday, March 25, 2021 7:59:22 PM

Thank you Osta, love the idea of Dr Barreto doing an analysis for the commission! Let's talk about how best to engage One America!

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From: Davis, Osta <Osta.Davis@leg.wa.gov>
Sent: Thursday, March 25, 2021 12:51:01 PM
To: Sims, April <April.Sims@redistricting.wa.gov>
Subject: A couple of things

Hi April,

A couple of items I came across when researching redistricting stuff:

1. It looks like in 2020 OneAmerica commissioned a group in Boston to do some in-depth analysis about racially polarized voting in the Yakima city council races. It was interesting that Pramila mentioned that OneAmerica isn't engaging in redistricting this year since I'd think that they could build a pretty strong case for majority latinx districts in E. Washington and they've invested so much energy in this region. Do you think it would be helpful for me or someone to reach out to OneAmerica or MGGG Labs that developed the report? The information is available online here: <https://megg.org/uploads/Yakima.pdf>; and <https://districtr.org/yakima>
2. Similarly, I came across the work of Dr. Matt Barreto who is a former UW professor who now works at UCLA. He has done some really interesting work on racially polarized voting across the state. I believe that the California Redistricting Commission had retained him to do a voting rights district analysis for their commission. I'm not sure if our budget would allow for this sort of thing, but I might put it on Sarah's radar if that makes sense. Here's Dr. Barreto's work: http://mattbarreto.com/papers/polarized_voting_wa.pdf



#49461.1

2/6/2013

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 opposite directions, rather than in a coalition.
- ▶ RPV does not mean voters are racist, it only measures the outcomes of voting patterns and determines whether patterns exist based on race/ethnicity

Analysis by: Professor Matt A. Barreto, University of Washington

Defining Racially Polarized Voting

- ▶ Bottom line: minority voters are voting one way, and non-minority voters are voting another way
- ▶ But because White voters are more numerous in the at-large system, minority voters systematically lose.
- ▶ The analysis is about the individual voters within a jurisdiction. It does not imply that the governing body or appointed officials are acting in a racially discriminatory fashion. Even if a governing body is well intentioned, the individual voters across the county may behave in a way that blocks minority representation.

Analysis by: Professor Matt A. Barreto, University of Washington

PLAINTIFF'S
EXHIBIT

132

DEPOSITION
EXHIBIT

26
SIMS

10.24.22

2/6/2013

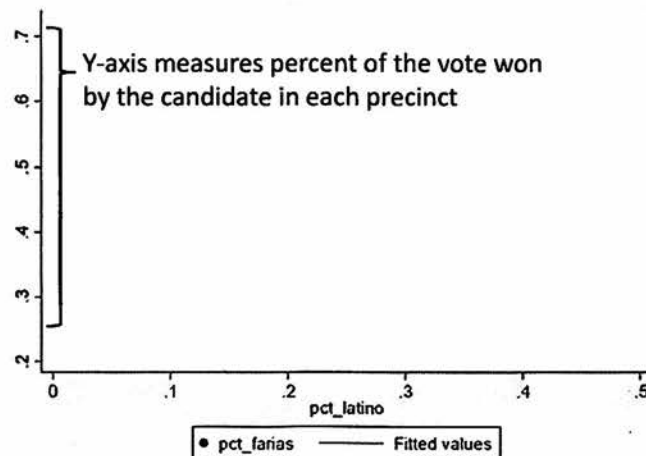
Defining Racially Polarized Voting

- ▶ RPV can vary in degree of intensity, and it can be easily measured and quantified using statistical analysis that has been accepted by the courts.
- ▶ We now have very good data collection methods that can tell us electoral preferences precinct by precinct. And because we also have very detailed demographic data that goes precinct by precinct, we can determine with confidence how certain constituencies are voting.
- ▶ Harvard Prof. Gary King has developed a technique called "Ecological Inference" which has been accepted by state and federal courts as a reliable method

Analysis by: Professor Matt A. Barreto, University of Washington

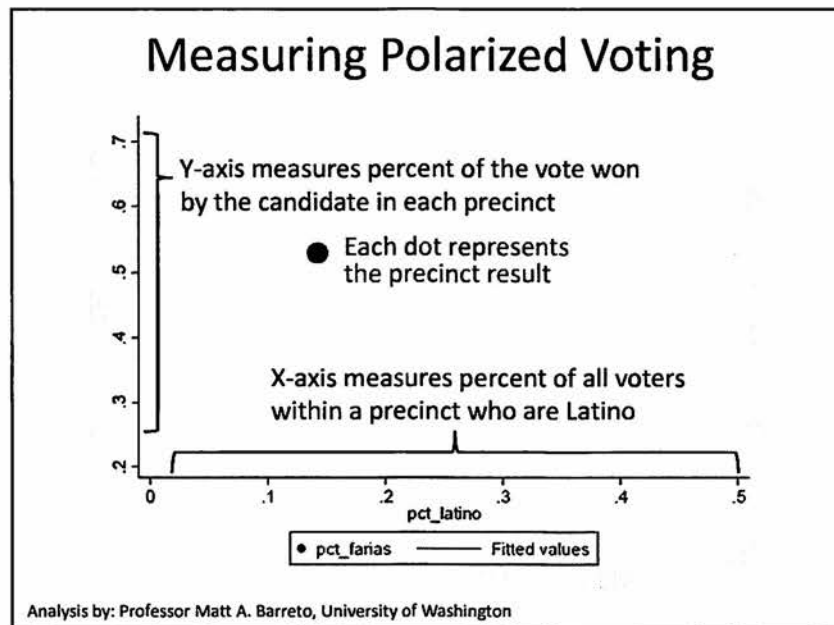
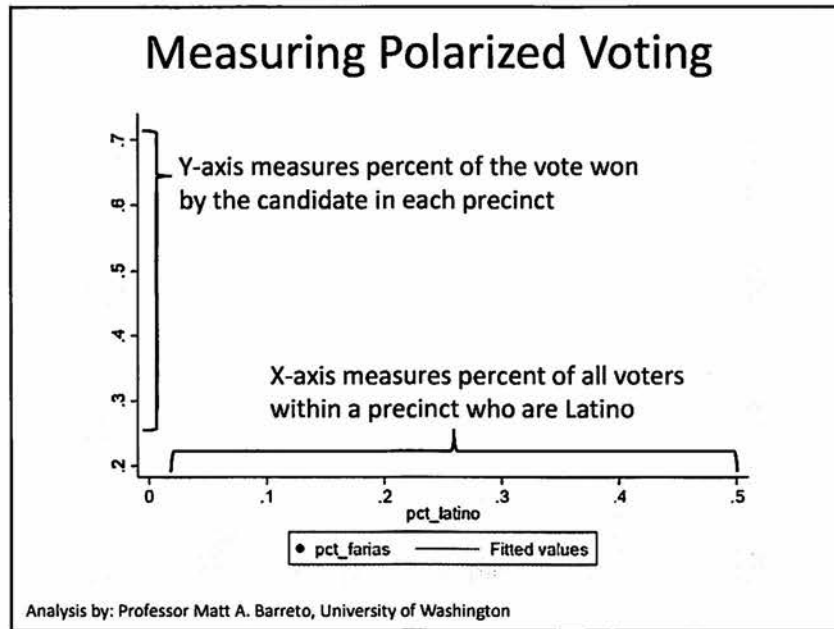
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Measuring Polarized Voting

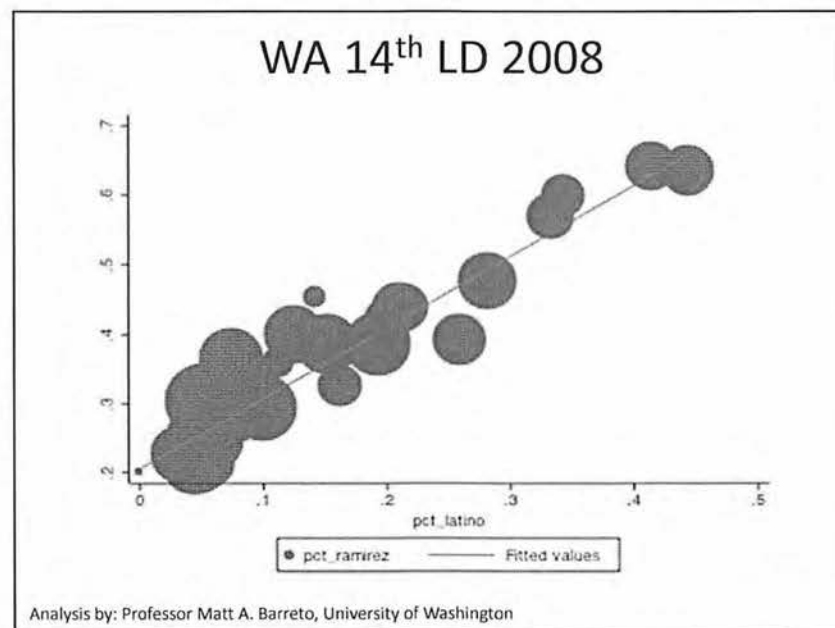
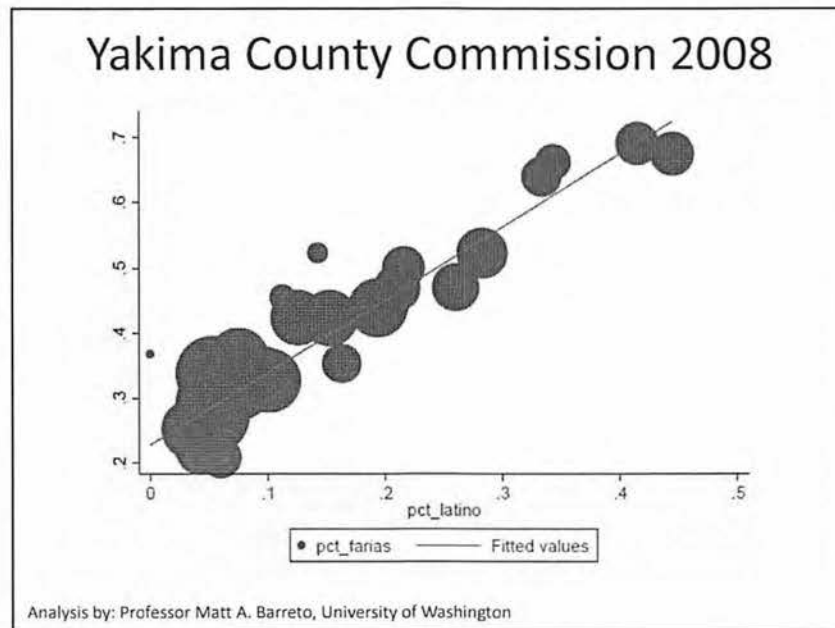


Analysis by: Professor Matt A. Barreto, University of Washington

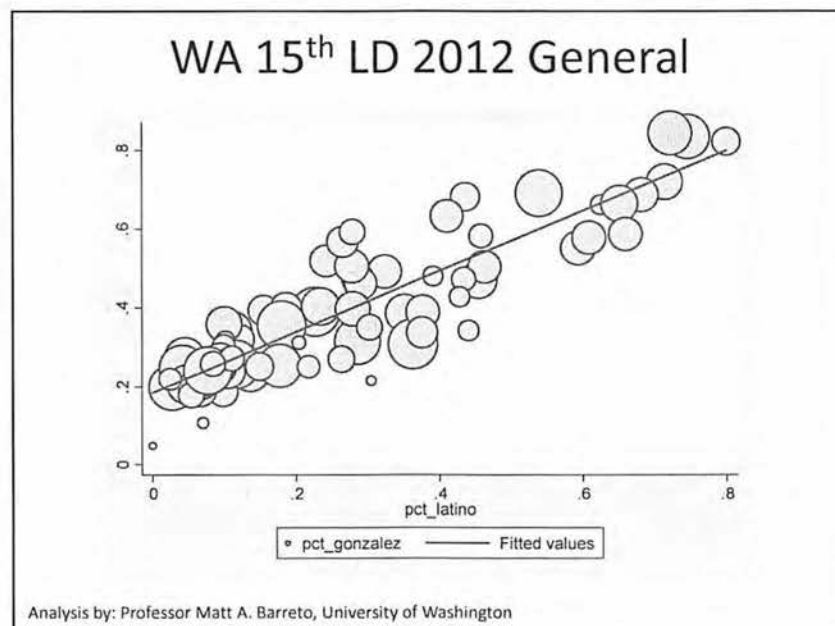
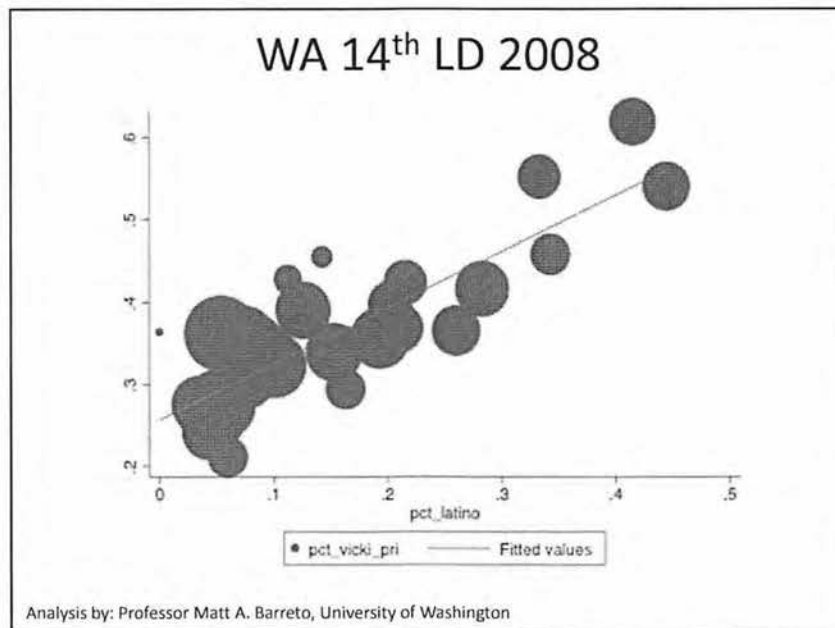
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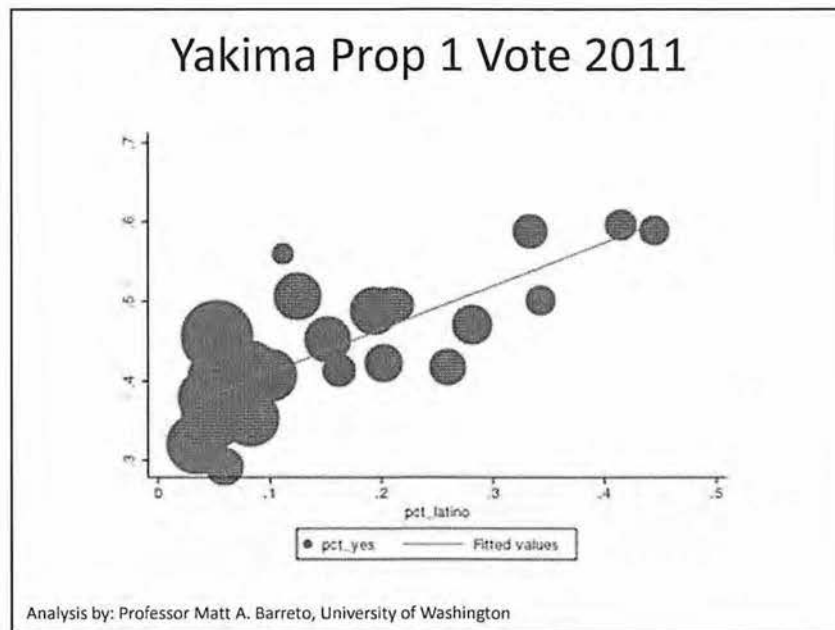
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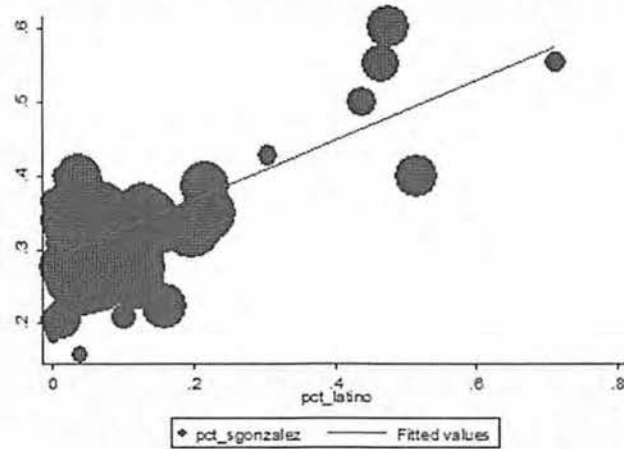
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Examples beyond Yakima

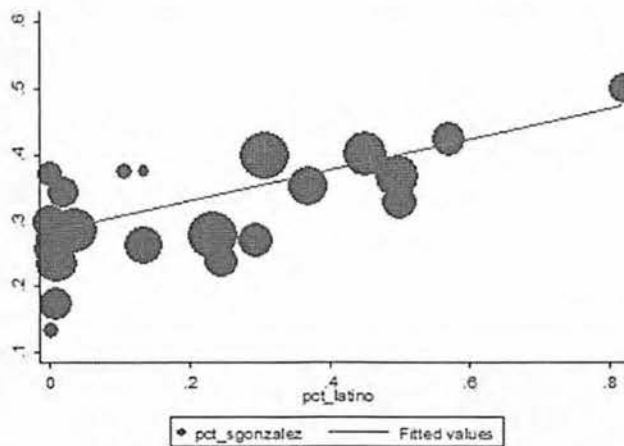
2/6/2013

Grant County Sup Ct Primary 2012



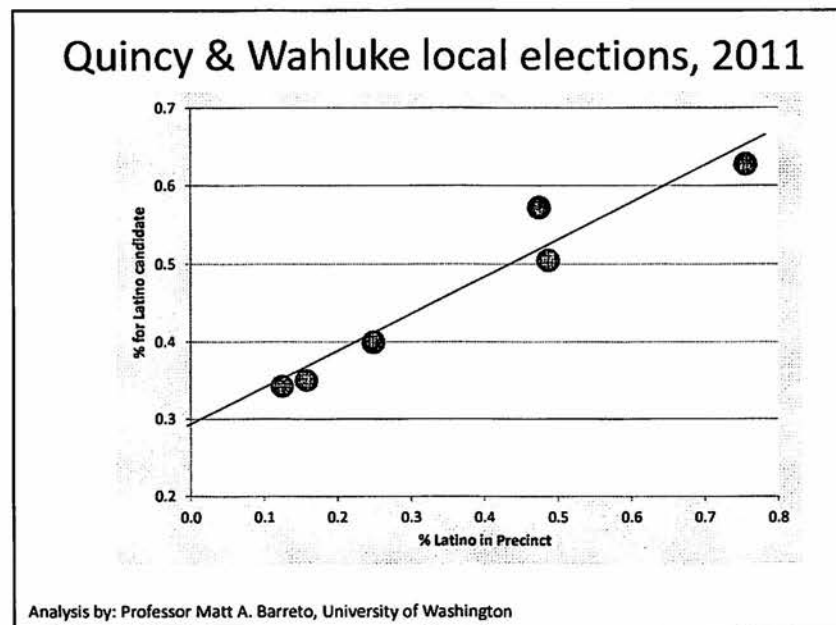
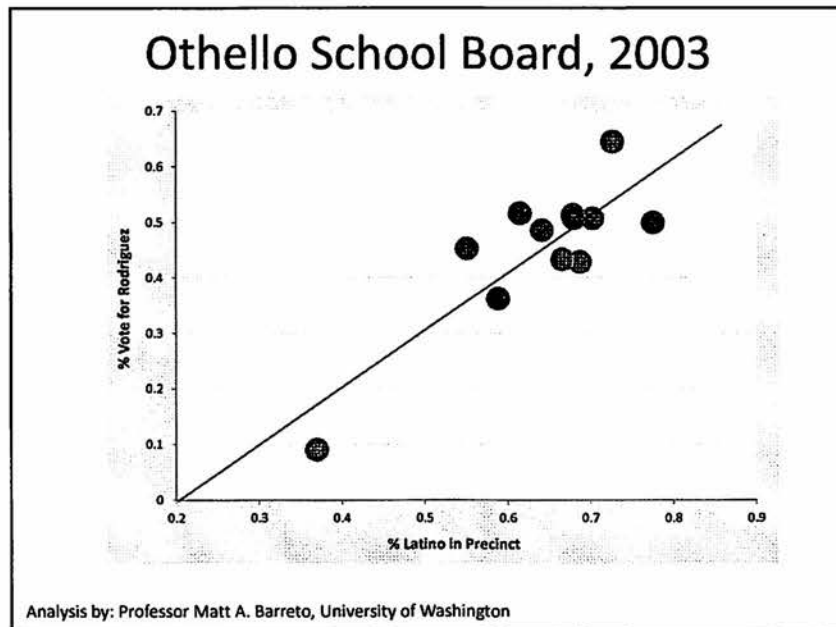
Analysis by: Professor Matt A. Barreto, University of Washington

Adams County Sup Ct Primary 2012

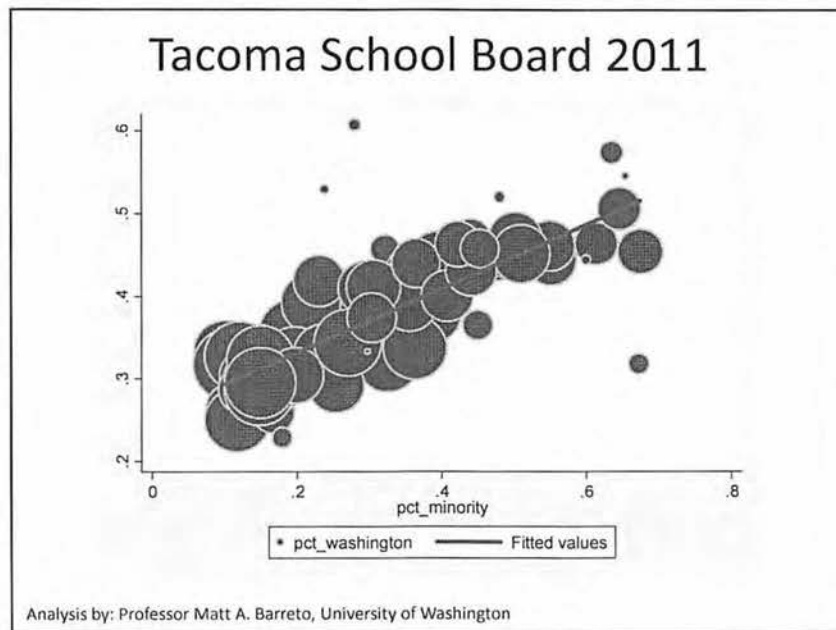


Analysis by: Professor Matt A. Barreto, University of Washington

2/6/2013



2/6/2013



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

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

Plaintiffs,

v.

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

Defendants.

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

EXHIBIT 2: COMMISSIONER
APRIL SIMS - PROPOSED
LEGISLATIVE DISTRICT MAP,
SEPT. 21, 2021

Judge: Robert S. Lasnik

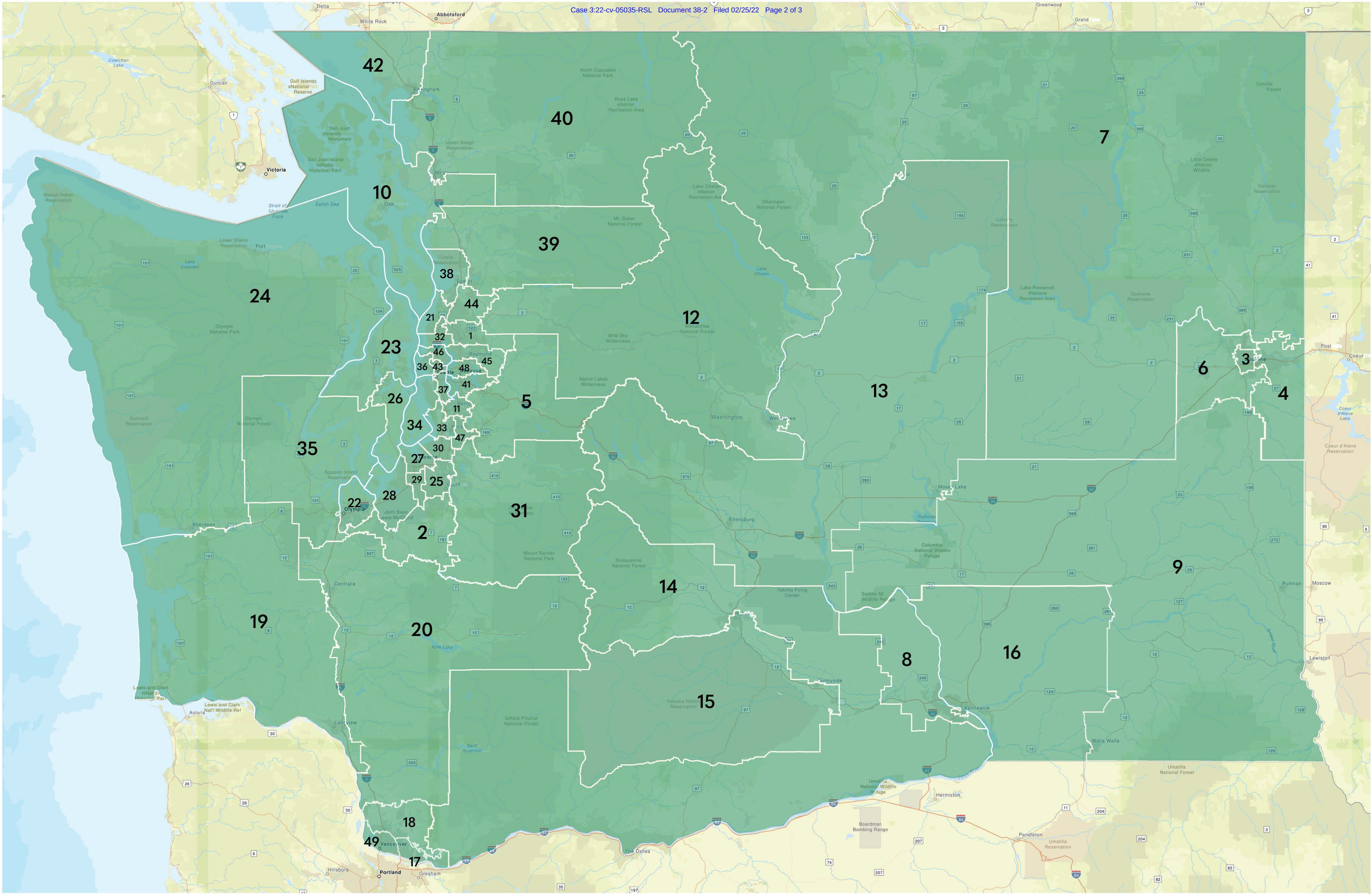
Date Action filed: January 19, 2022

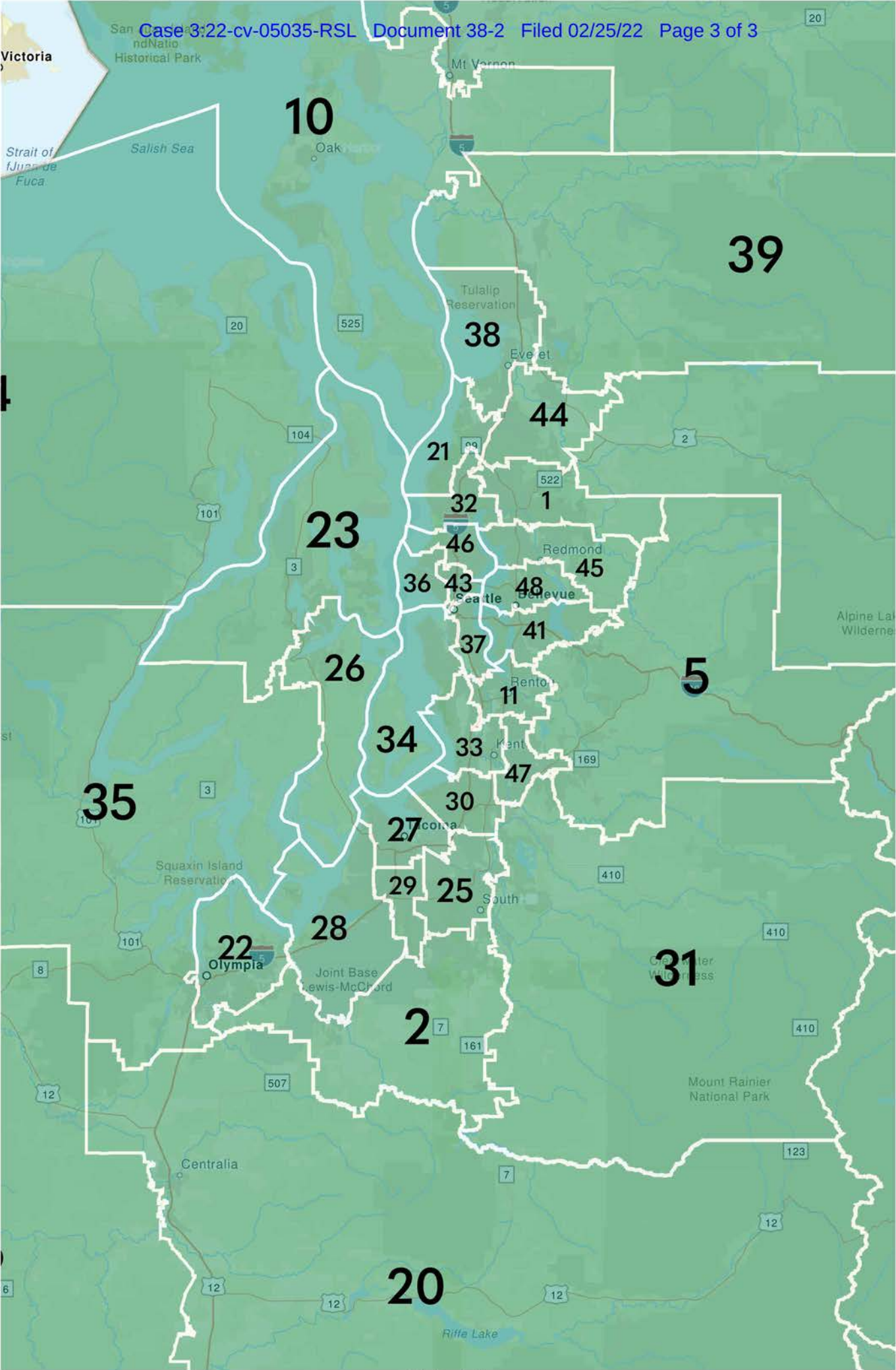
Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

PLAINTIFF'S
EXHIBIT

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

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

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Defendants.

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

EXHIBIT 3: COMMISSIONER
BRADY PIÑERO
WALKINSHAW - PROPOSED
LEGISLATIVE DISTRICT MAP,
SEPT. 21, 2021

Judge: Robert S. Lasnik

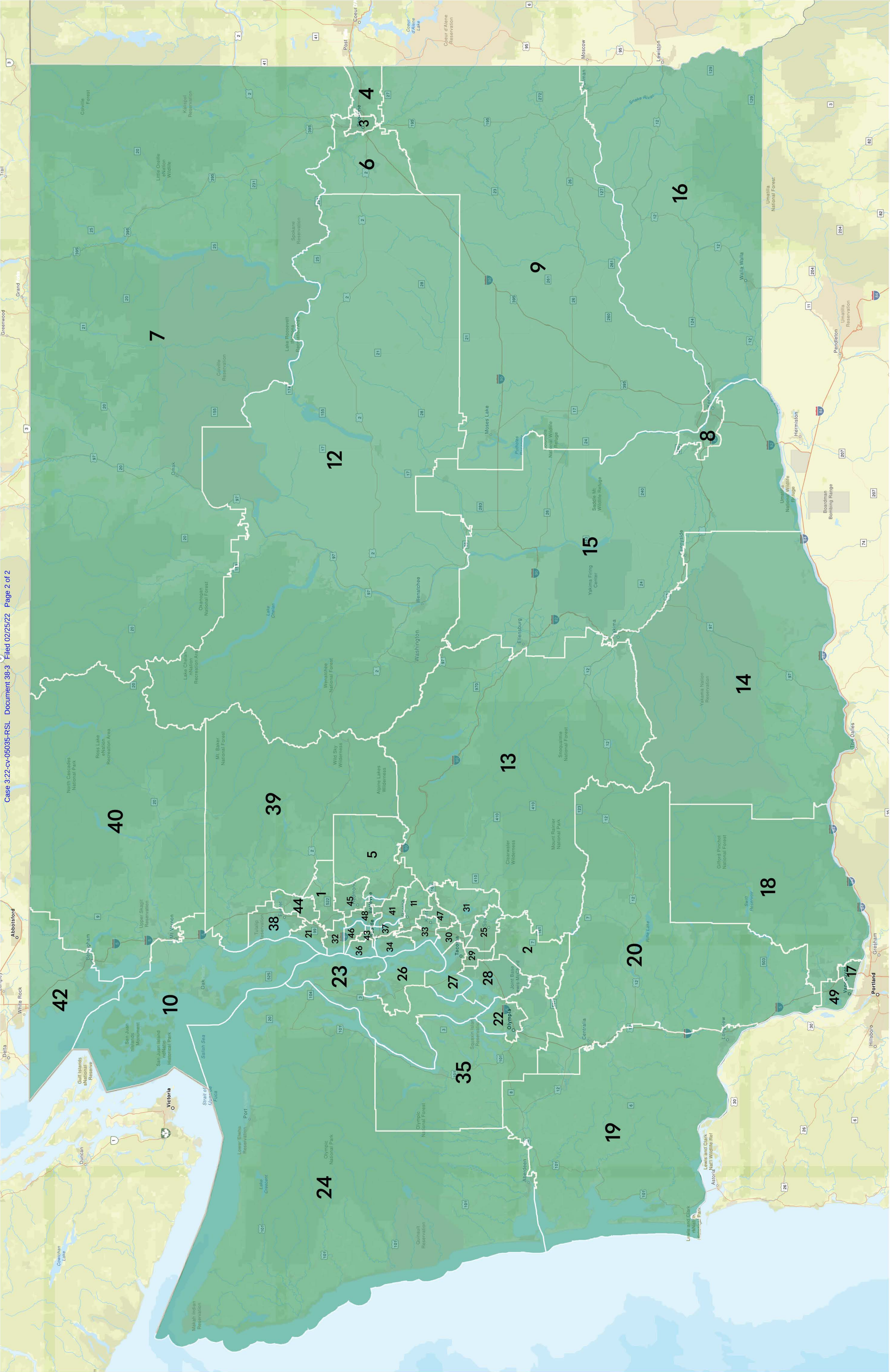
Date Action filed: January 19, 2022

Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

PLAINTIFF'S
EXHIBIT

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

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

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Defendants.

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

EXHIBIT 4: COMMISSIONER JOE FAIN - PROPOSED LEGISLATIVE DISTRICT MAP, SEPT. 21, 2021

Judge: Robert S. Lasnik

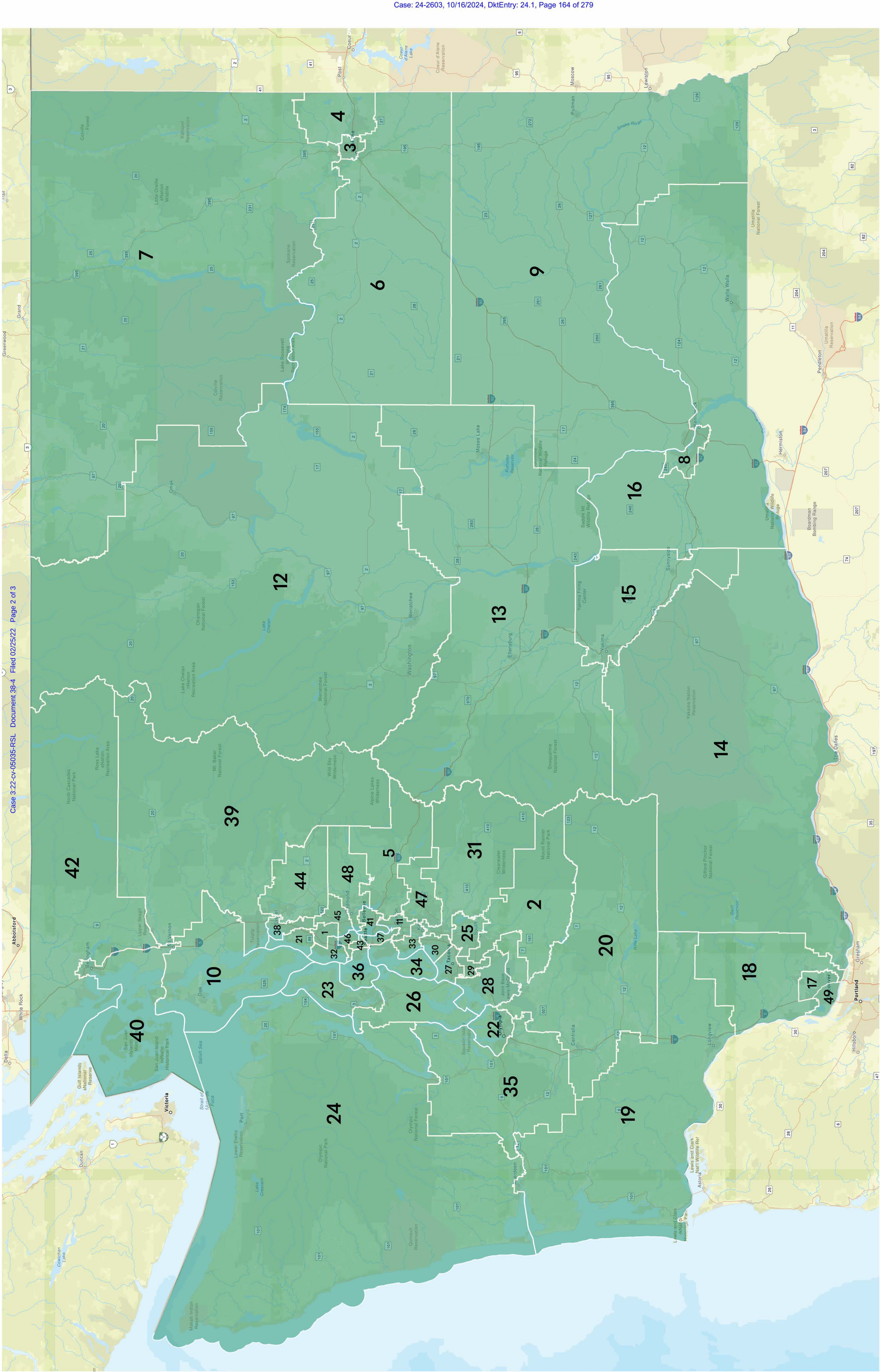
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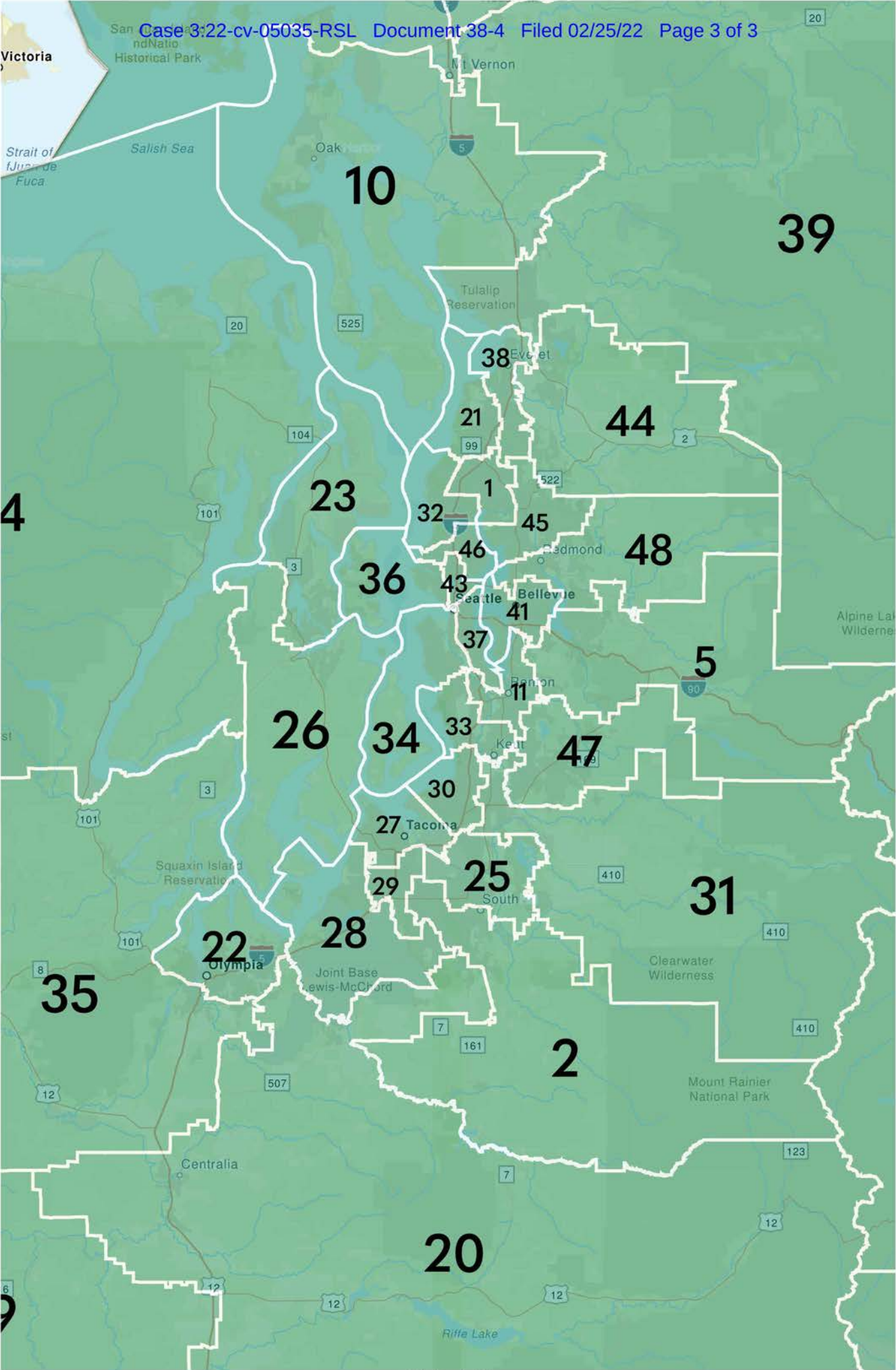
Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

PLAINTIFF'S
EXHIBIT

157





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

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

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Defendants.

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

EXHIBIT 5: COMMISSIONER PAUL GRAVES - PROPOSED LEGISLATIVE DISTRICT MAP, SEPT. 21, 2021

Judge: Robert S. Lasnik

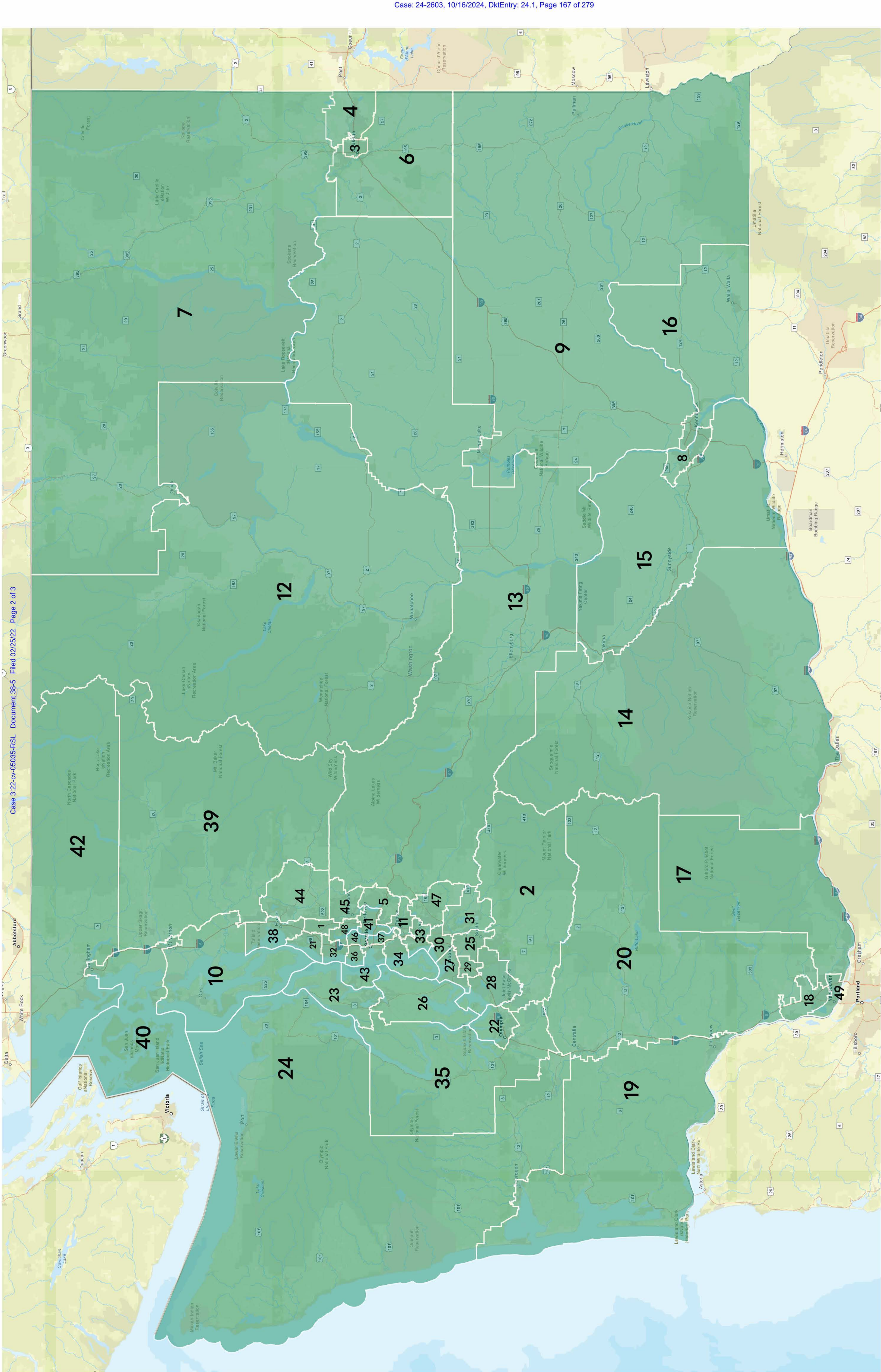
Date Action filed: January 19, 2022

Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

PLAINTIFF'S
EXHIBIT

158







From: [O'Neil, Ali](#) on behalf of [Walkinshaw, Brady](#)
Subject: RELEASE: Commissioner Walkinshaw Releases New VRA-Compliant Legislative District Map
Date: Monday, October 25, 2021 4:09:55 PM
Attachments: [Analysis of 9.21 Commissioner Proposed Leg Maps.pdf](#)

Following New Analysis, Commissioner Walkinshaw Releases New Legislative Map Compliant with Voting Rights Act

Commissioner Walkinshaw Encourages All Four Commissioners to Release VRA-Compliant Maps

WASHINGTON – Today, SDC appointee Commissioner Brady Piñero Walkinshaw [released an updated proposal](#) for Washington’s new legislative district map. This new map follows definitive [analysis](#) released last week that the final adopted map must include a majority-Hispanic district in the Yakima Valley or face a likely successful lawsuit in federal court for non-compliance with the federal Voting Rights Act (VRA).

[Commissioner Walkinshaw’s new map](#) includes a VRA-compliant 14th Legislative District centered in the Yakima Valley in accordance with analysis provided by Dr. Matt A. Barreto, Faculty Director of the UCLA Voting Rights Project. In addition to being majority-Hispanic by Citizen Voting Age Population (CVAP), this district must have the demonstrated ability to allow Latino voters to elect their candidates of choice to the Washington State Legislature.

This map incorporates public feedback received at the [October 5th Public Outreach Meeting](#), where more than 100 members of the public testified about their communities, as well as the hundreds of comments received in the last month since the September 21st map release. Commissioner Walkinshaw’s map also increases the number of majority-minority districts from 8 to 10 (by Voting Age Population) and reduces the number of split cities and counties, in accordance with [our state’s redistricting statute](#). See below for a more detailed list of changes.

Commissioner Walkinshaw released the following statement:

“Last week’s analysis revealing the impacts of the Voting Rights Act on our state legislative map was eye-opening – and I am proud to release a new map today that follows our state’s redistricting criteria, keeps communities together, responds to public feedback, and undoubtedly complies with federal law. This new map not only respects the will of the voters in the Yakima Valley but also will avoid a costly legal challenge.

“Now that we have this information, we as commissioners should not consider legislative district maps that don’t comply with the VRA. It is irresponsible to the historically underrepresented communities in the Yakima Valley to entertain any proposals that undermine their rights under federal law, and irresponsible to the people of Washington state to do anything that might leave the state so blatantly vulnerable to litigation. I look forward to seeing new proposals from all commissioners so that negotiations can continue, and progress can be made.”

Both Democratic commissioners minimized city splits and population deviation in their 9/21



proposals (see attached analysis for details). Commissioner Walkinshaw's map released today even further reduces city splits, population deviation, and county splits. It also increases the number of single county LDs and majority-minority LDs (by VAP).

This new proposal:

1. Has a VRA-compliant majority-Hispanic 14th legislative district in the Yakima Valley that includes the entire Yakama Nation reservation.
2. Adds two new majority-minority LDs by VAP, to reach a total of 10 across the map (14, 37, 33, 30, 11, 9, 45, 29, 47, and 41).
 - a. The two new additions are the 45th (East King County) and the 9th (Eastern WA)
 - b. The 21st and 28th are both above 40% POC in this proposal. While reducing city and county splits and being responsive to public comment in these areas, this map also creates opportunities for even more districts to become majority-minority in the near future.
3. Unites majority-minority cities of Burien, Redmond, and Pasco (which were split in Walkinshaw's initial proposed map).
4. Adds Skyway to the 37th with Southeast Seattle, per public comment.
5. Keeps the Nooksack and Lummi tribes together in same LD, as they have requested. This configuration also creates a compact Bellingham/suburban Whatcom district as supported by public comment, while keeping the more rural areas in Whatcom and Skagit together in the 40th.
6. Puts San Juan County back in the 40th, per public comment.
7. No longer splits the Methow Valley community. Most of Okanogan county is in the 12th LD with Chelan and Douglas Counties. The split in the Colville Reservation is maintained as the current boundary, as they have requested.
8. Returns Vashon Island to the 34th with West Seattle, per public comment.
9. Unites Mason county and reduces multi-county LDs in the Kitsap peninsula.
10. Puts Gig Harbor back in the 26th and moves the 27th back east of the Tacoma Narrows.
11. Moves the 49th LD south and east, so that it includes more of Vancouver and no longer includes Salmon Creek, Mount Vista, or Barberton. The eastern border with the 17th is now I-205, per public comment. The 17th now also includes the entire cities of Camas and Washougal.
12. Puts the West Central neighborhood of Spokane into the 3rd LD, per public comment.

13. Keeps together cities in the Snoqualmie Valley, per public comment and tribal consultation with the Snoqualmie Indian Tribe.
14. Unites Whitman county.
15. Unifies South Thurston communities, in particular Tenino, Yelm, and Rainier.

	Walkinshaw 9/21 Proposal	Walkinshaw 10/25 Proposal	Comparison
Cities Split	20	19	-1
Whole Counties	19	20	1
Split Counties	20	19	-1
Single County LDs	27	29	2
Majority Minority VAP LDs	8	10	2
Population Deviation	23	14	-9

For reference, attached is an analysis of all four commissioner-proposed maps that were released on September 21st.

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[illegible]

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

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

Plaintiffs,

v.

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

Defendants.

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

EXHIBIT 9: COMMISSIONER
APRIL SIMS - REVISED
LEGISLATIVE DISTRICT MAP,
OCT. 25, 2021

Judge: Robert S. Lasnik

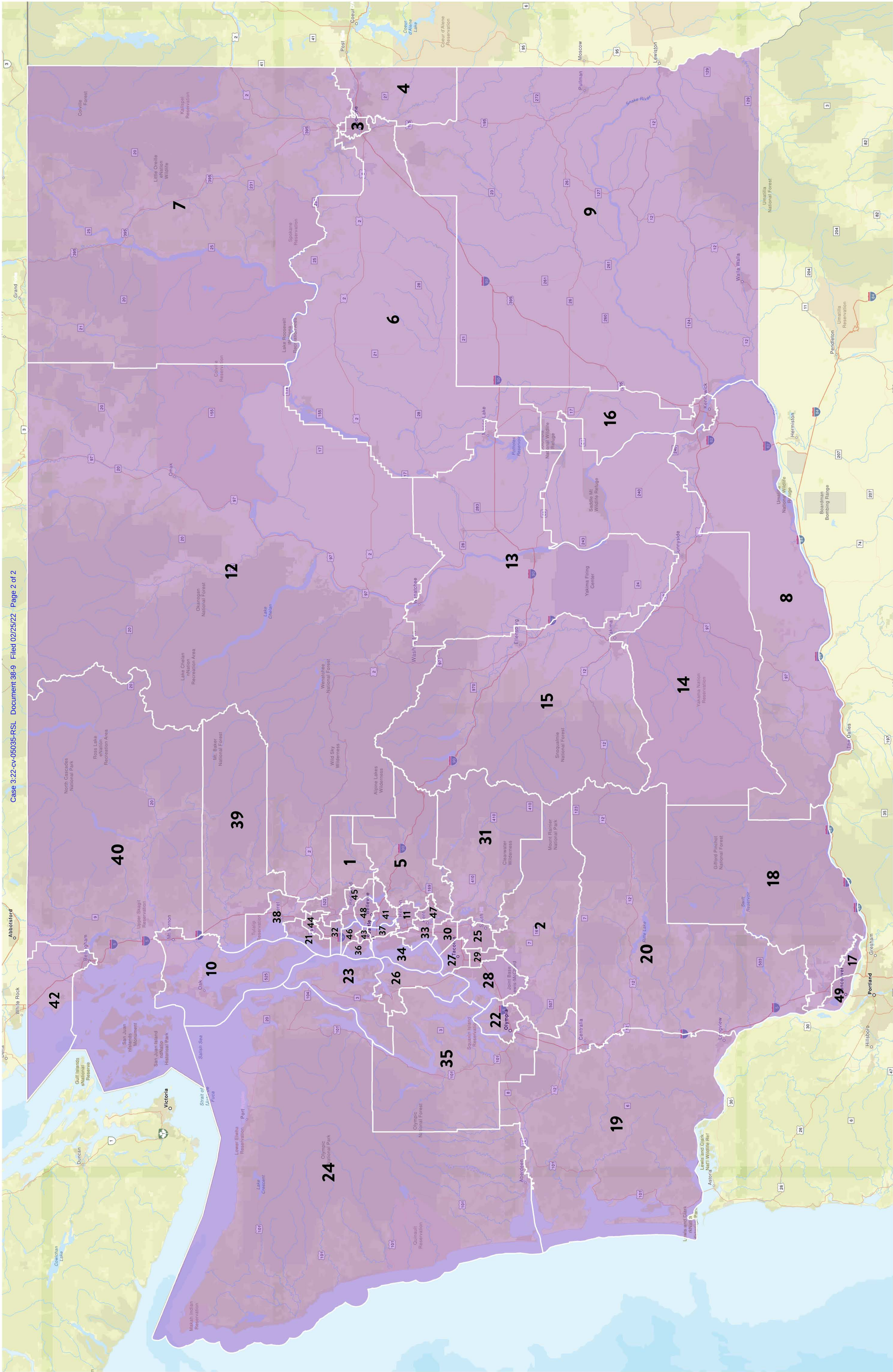
Date Action filed: January 19, 2022

Date set for trial:

Noted for: March 25, 2022
ORAL ARGUMENT REQUESTED

PLAINTIFF'S
EXHIBIT

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Commissioner April Sims - Revised Legislative District Map, October 25, 2021



April Sims she/her
@aprilr_sims

...

My 2nd draft map is a continued commitment to communities across our state, responsive to hours of public input, consultations with Tribal Councils, and to the needs of underrepresented communities. The following values guided my decisions:

washington.mydistricting.com/legdistricting...

9:13 PM · Oct 25, 2021

6 Retweets · 1 Quote · 13 Likes



April Sims she/her @aprilr_sims · Oct 25, 2021

...

- Protecting fair and effective representation
- Maintaining and creating communities of interest
- Respecting Tribal sovereignty and the government-to-government relationship w/Tribal partners
- Centering and engaging communities that have been historically underrepresented



April Sims she/her @aprilr_sims · Oct 25, 2021

...

Values in Action: The Voting Rights Act
The VRA represents protections to ensure that discrimination has no place in our democracy. Recent analysis highlights the presence of racially polarized voting in the Yakima Valley region and provides the Commission with a clear directive:



April Sims she/her @aprilr_sims · Oct 25, 2021

...

Draw a district that allows the Latino community in Yakima Valley to elect their candidate of choice. My map responds to this directive by creating a majority Latino district based on citizen voting age population and unites Yakama Nation.



April Sims she/her @aprilr_sims · Oct 25, 2021

...

Values in Action: Centering and engaging historically underrepresented communities

My map establishes 10 majority POC legislative districts based on voting age population and creates a historic first ever majority Minority legislative district in Snohomish County.



PLAINTIFF'S
EXHIBIT

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Suite 3300
920 Fifth Avenue
Seattle, WA 98104-1610

Robert J Maguire
Harry JF Korrell
David Nordlinger

MEMORANDUM

To: Commissioners Graves and Fain, Washington Redistricting Commission
From: Rob Maguire, Harry Korrell, and David Nordlinger
Date: November 4, 2021
Subject: Legal Analysis of Arguments Regarding Creation of a Majority-Minority District

I. INTRODUCTION

You asked us to evaluate Dr. Matt Barreto's Assessment of Voting Patterns in Central / Eastern Washington and Review of Federal Voting Rights Act, Section 2 Issue ("the Assessment"), dated October 19, 2021, proposing a majority-minority district be drawn in a five-county region. Since then, both Democratic Commissioners have proposed revised maps including the "Yakama Reservation" district suggested by the Assessment. This memorandum responds to the arguments pressed by the Assessment, summarizes the law regarding the creation of majority-minority districts, and discusses some of the evidence courts have considered in evaluating to majority-minority districts under the Equal Protection Clause of the U.S. Constitution. As we discussed, our analysis is predominantly legal, rather than factual, and we have not endeavored to conduct factual research regarding demographic trends, voting behavior, election results, or the other factual assertions in the Assessment.

II. SUMMARY

§ 2 does not require the creation of the majority-minority district advocated by the Assessment. The Assessment advocates creation of a new majority-minority legislative district spread across a five-county region in Central and Eastern Washington, arguing that doing so is required by § 2 of the Voting Rights Act, 42 U.S.C. § 1973 ("§ 2"). As explained below, the Assessment's arguments have fundamental flaws. Contrary to the Assessment's assertions, § 2 does not require the creation of the proposed majority-minority district.

If this district is challenged under the Equal Protection Clause of the Constitution, a court will likely review the State's decision to draw this district with strict scrutiny. While creation of a majority-minority district is not required, § 2 and the Equal Protection Clause of the U.S. Constitution allow states to create majority-minority districts, provided that traditional, race-

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neutral districting criteria are not “subordinated” to race. Courts adjudicating Equal Protection Clause challenges to the creation of majority-minority districts look at several categories of evidence in deciding whether a redistricting plan is so predominantly race-based that it triggers “strict scrutiny” under the Equal Protection Clause: the shape of the district, direct evidence (testimony and contemporaneous communications) of legislative intent, and the data used to evaluate and draw potential districts. In this case, there is strong direct evidence that race is the predominant motivating factor for this proposed district, and so a court will likely adjudicate an Equal Protection Clause challenge to this district by applying strict scrutiny. There has been no critical analysis of the Assessment despite members of the Commission redrawing their maps on the basis of race. For example, both districts proposed by the Assessment set an approximate 60% minority CVAP threshold, yet the Commissions has not asked whether approximately 60% CVAP is needed to give Latino voters a functional majority. This lack of questioning of the Assessment will not survive strict scrutiny.

The Commission lacks a strong basis in evidence to believe the State would be in violation of § 2 unless it draws a district on the basis of race. The Assessment does not establish violations of the three *Gingles* preconditions. As an initial matter, both the “Yakima-Columbia River Valley” and the “Yakama Reservation” districts are not compact. The districts take slices from four and five counties respectively. They both have tortured shapes that include finger-like extensions into certain Latino-communities, and they divide communities of interest, particularly the Hanford Site from the Tri-Cities. As to the second *Gingles* precondition, the Assessment has not made a sufficient showing that Latino voters at the precinct level across the five-county region will form a coalition when voting for a state representative. Additionally, as the “Yakama Reservation” district intends to form a coalition of Latino and Native American voters, there must be a heightened level of scrutiny. Again, no such analysis of the proposed coalition has been conducted by the Commission. Finally, the third *Gingles* precondition is not met because a race-neutral, Democrat-leaning district can readily be created in Yakima County. There can be no § 2 liability where a race-neutral district can prevent legally significant racial bloc voting. The Assessment shows that the Democratic Commissioners have already proposed race-neutral, Democrat-leaning districts; and the Republican Commissioners contend that their proposed maps similarly create competitive districts in the region. Because § 2 does not require these proposed majority-minority districts, if one of the two districts is drawn in the final map it should not survive strict scrutiny.

III. THE PROPOSED MAJORITY-MINORITY DISTRICT

The Assessment advocates the creation of a majority-minority legislative district spanning at least four counties across Central and Eastern Washington. The Assessment argues that there is a growing, concentrated Latino population in a five-county region of Central Washington, that a sufficiently large and contiguous majority-minority Latino district can be drawn, and that there is racially polarized voting in this five-county region. Therefore, the Assessment states that § 2 of the Voting Rights Act compels a minority-majority district and the only way to comply with this requirement is to draw a district that has a Latino citizen voting age population (CVAP) over 50%. It proposes an option of two majority-minority Latino districts: (1) “Yakima-Columbia River Valley” with a 60% Latino CVAP; and (2) “Yakama Reservation” with a 52% Latino CVAP plus a 7.8% Native American CVAP. Both Democratic Commissioners revised their

proposed maps to include the “Yakama Reservation” district without any changes. There are fundamental flaws with the Assessment’s arguments as well as strong concerns regarding the swift manner in which the Assessment’s map was adopted without critical questioning.

The fact that it is possible to create the proposed district does not mean it is required by § 2. *See Johnson v. DeGrandy*, 512 U.S. 997 (1994) (maximization of majority-minority districts not required by VRA). For § 2 to require the creation of a majority-minority district, it must be the case that Washington would violate § 2 if it failed to create such a district. *See Bartlett v. Strickland*, 556 U.S. 1, 129 S. Ct. 1231 (2009) (plurality opinion) (rejecting state’s claim that creation of minority crossover district was justified where state could not demonstrate violation of § 2 in absence of such a district). The analytical framework for such a claim is well-established, *see, e.g.*, NAT’L CONFERENCE OF STATE LEGISLATURES, REDISTRICTING LAW 2010, 54-64 (Nov. 2009); BRUCE M. CLARKE & ROBERT TIMOTHY REAGAN, REDISTRICTING LITIGATION: AN OVERVIEW OF LEGAL, STATISTICAL, AND CASE-MANAGEMENT ISSUES, 14-18 (2002), and the Assessment has not demonstrated that creation of either one of its proposed districts is necessary to avoid a violation of § 2.

To establish that §2 would be violated in the absence of a new majority-minority district, a party must show (1) that the minority group is sufficiently large and geographically compact to constitute a majority in the district, (2) that the minority group is politically cohesive, and (3) that bloc voting by the white majority usually defeats the minority’s preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S. Ct. 2752 (1986). If these three necessary preconditions are not satisfied, there is no violation of § 2. *Bartlett*, 55 U.S. at 10, 129 S. Ct. 1231 (“only when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances”). If a plaintiff challenging under §2 meets its burden as to all three *Gingles* preconditions, then a court will look at the totality of the circumstances to determine if “as a result of the challenged practice or structure, [the minorities at issue] do not have an equal opportunity to participate in the political process and to elect candidates of their choice.” *Gingles*, 478 U.S. at 44, 106 S. Ct. 2752. Only then would a court determine that there has been a violation of § 2. *E.g., Grove v. Emison*, 507 U.S. 25, 40, 113 S. Ct. 1075 (1993).

The Assessment calls for the creation of a district predominantly motivated by race, and as such a court should review with strict scrutiny if a plaintiff makes an Equal Protection Clause challenge. It lacks the deep, fact-specific analysis required to assess § 2 violation claims and is wrong that the three *Gingles* preconditions are satisfied.

- (1) Race is the Predominant Motivating Factor in Drawing this District and A Court will Likely Review the Decision to Draw this District with Strict Scrutiny

The Equal Protection Clause bars redistricting on the basis of race without sufficient justification. *Abbott v. Perez*, 138 S. Ct. 2305, 2314, 201 L. Ed. 2d 714 (2018) (citing *Shaw v. Reno*, 509 U.S. 630, 641, 113 S. Ct. 2816 (1993)). Given that the Voting Rights Act often compels the consideration of race in redistricting, the intentional creation of majority-minority districts does not necessarily violate the Equal Protection Clause. *Bush v. Vera*, 517 U.S. 952, 958, 116 S. Ct. 1941 (1996); *DeWitt v. Wilson*, 856 F. Supp. 1409 (E.D. Cal. 1994), *aff’d in part*,

appeal dismissed in part, 515 U.S. 1170, 115 S. Ct. 2637 (1995). However, “[r]acial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination” *Miller v. Johnson*, 515 U.S. 900, 904, 115 S. Ct. 2475 (1995) (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 291, 98 S. Ct. 2733 (1978) (opinion of Powell, J.)).

In reviewing an Equal Protection Clause challenge to a redistricting decision, courts will apply a two-step analysis. First, a plaintiff challenging under the Equal Protection Clause bears the burden of proving that race was the predominant motivating factor in drawing the district. *Vera*, 517 U.S. at 959, 116 S. Ct. 1941; *Hunt v. Cromartie*, 526 U.S. 541, 547, 119 S. Ct. 1545 (1999). There are three principal categories of evidence at a plaintiff’s disposal to make this showing: (1) district shape and demographics, (2) testimony and correspondence stating the legislative motives, and (3) the nature of the data used. *See Shaw v. Hunt*, 517 U.S. 899, 905, 116 S. Ct. 1894 (1996); *Vera*, 517 U.S. at 961-63, 116 S. Ct. 1941; *Miller*, 515 U.S. at 916, 115 S. Ct. 2475.

Second, if a court finds that race was the predominant motivating factor in drawing the district, the burden shifts to the state to prove that the proposed district serves a compelling interest and is narrowly tailored. *Cooper v. Harris*, 137 S. Ct. 1455, 1464, 197 L. Ed. 2d 837 (2017). Simply put, the state’s decision to draw district lines predominantly on the basis of race must withstand strict scrutiny. It is well established that compliance with § 2 is a compelling state interest. *Abbott*, 138 S. Ct. at 2315, 201 L. Ed. 2d 714 (citing *Bethune-Hill v. Virginia State Bd. Of Election*, 137 S. Ct. 788, 800-01, 197 L. Ed. 2d 85 (2017); *Shaw II*, 517 U.S. at 915, 116 S. Ct. 1894). However, that does not relieve a state of its burden of showing its decision was narrowly tailored. For a state to meet its burden, it must show that it had a “strong basis in evidence” to conclude that § 2 required its action. *Cooper*, 137 S. Ct. at 1464, 197 L. Ed. 2d 837 (quoting *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278, 135 S. Ct. 1257, 1274 (2015)). A district drawn predominantly based on race is not narrowly tailored if a state does not carefully evaluate whether a §2 plaintiff could establish the *Gingles* preconditions in a new district created without race-based sorting. *Id.* at 1471. Additionally, a state’s action must be narrowly tailored to remedy the anticipated harm and not go beyond that goal. *See Shaw I*, 509 U.S. at 655, 113 S. Ct. 2816 (stating that a reapportionment plan would not be narrowly tailored if it went beyond the goal of avoiding retrogression).

There is overwhelming, likely undisputed, direct evidence that race is the predominant motivating factor in drawing this district. On September 21, 2021, in anticipation of their November 15, 2021, deadline, all four Commissioners proposed legislative district maps. Not a single map contained either district proposed by the Assessment. On October 19, 2021, Dr Matt Barreto released the Assessment. Three days later, both the Democratic Commissioners stated their intent to provide new maps in response to the Assessment. Commissioner Walkinshaw stated, “I think for me, as the first ever Latino commissioner, it has been extremely important for me to lift up and elevate Hispanic voters, and undo patterns of racially polarized voting, particularly in the Yakima Valley.” Melissa Santos, *Proposed WA redistricting maps may violate Voting Rights Act*, Crosscut (Oct. 21, 2021, 11:16 AM), <https://crosscut.com/politics/2021/10/proposed-wa-redistricting-maps-may-violate-voting-rights-act>. Both Commissioners proposed revised maps on October 25, 2021, including the Assessment’s “Yakama Reservation” district without any major alterations to its boundaries.

Upon issuing revised maps, the Washington State Senate Democrats publicly stated that any new map “must include a majority-Hispanic district in the Yakima Valley or face a likely successful lawsuit in federal court for non-compliance with the federal Voting Rights Act[.]” Senate Democrats, *Walkinshaw releases new VRA-Compliant Legislative map*, (Oct. 26. 21), <https://senatedemocrats.wa.gov/blog/2021/10/26/following-new-analysis-commissioner-walkinshaw-releases-new-legislative-map-compliant-with-voting-rights-act/>. Because race is the predominant motivating factor for this district, a Court will likely review the decision to draw this district with strict scrutiny.

As an initial matter, the speed with which Commissioners moved to draw a district solely on the basis of race is concerning. The Commissioners have not asked any questions of the Assessment’s assertions, data, or proposals. As Justice Alito stated in *Abbott*, “one group’s demands alone cannot be enough” because that group “may come to have an overly expansive understanding of what § 2 demands.” 138 S. Ct at 2334, 201 L. Ed. 2d 714. It is beyond the purview of this memo to conduct statistical analysis, but there are at least four major question marks that the Commission has not assessed.

First, the approximate 60% minority CVAP threshold for the majority-minority district is unexplained. Both districts presented by the Assessment set an approximate 60% minority CVAP threshold. In the §5 context, the Supreme Court has been skeptical of percentage thresholds. *Compare Bethune-Hill*, 137 S.Ct. at 802, 197 L. Ed. 2d 85 (upholding a percentage threshold for one district where the legislature had a good reason to be fear retrogression if the black voting age population fell below 55%), *with Alabama Legislative Black Caucus*, 575 U.S. at 279, 135 S. Ct. 1257 (holding the legislature’s plan was not narrowly tailored because its goal was to maintain a minority population percentage rather than ask what percentage was needed to maintain a minority’s ability to elect candidates of its choice). The Assessment claims that not drawing this district will violate § 2’s vote dilution prohibition. Yet, there has been no analysis that a 60% minority CVAP is needed to provide Latino voters a functional majority. In fact, Commissioner Walkinshaw’s first proposed district would have voted for President Biden by a 6,299 margin despite a 43.2% Latino CVAP. The adoptions of an approximate 60% minority CVAP threshold without more analysis and questioning is arbitrary and not narrowly tailored.

Second, the “Yakama Reservation” district’s boundaries are explicitly drawn to include both Latino and Native American voters; yet there has been no analysis presented for the combined bloc of Native Americans and Latino voters in the five-county region. The Assessment presented two options for a majority-minority district: (1) “Yakima-Columbia River Valley” with a 60% Latino CVAP; and (2) “Yakama Reservation” with a 52% Latino CVAP plus a 7.8% Native American CVAP. The Democratic Commissioners’ current proposals include the “Yakama Reservation” district: combining Latino and Native American voters to get to that approximate 60% minority CVAP threshold. Even if there is good reason to believe there would be a § 2 violation as to Latino voters, that does not mean that the State can sort Native American voters into the district. Yet, there is no analysis regarding the combination of Latino and Native American voters. And while keeping the Yakama Reservation in one district is laudable, putting the Yakama Reservation in this proposed majority-minority district is neither a race-neutral decision nor a narrowly tailored remedy for any alleged § 2 violation suffered by Latino voters.

Third, the Assessment relied upon data from the 2019 American Community Survey (ACS) 1-year data set instead of the more recent and comprehensive 2020 Census data set. Generally, the ACS's goal is measuring changes in social and economic characteristics; the 2020 Census's goal is to provide counts of people for congressional apportionment. To that end, while the 2020 Census is a comprehensive assessment from all individuals in the United States, the 2019 ACS 1-year data derive from a sample of the population. The two data sets contain differences on highly relevant numbers to the § 2 analysis. Compared to the 2019 ACS 1-year data, 2020 Census data shows a higher Latino, and lower White, population in Yakima County. For example, the 2020 Census shows a Yakima County Latino population of 130,049 compared to 125,816 presented by the 2019 ACS 1-Year survey. The contours of the proposed majority-minority map depend on population numbers, which in turn depend on what dataset is used. But there has been no discussion as to why the "Yakama Reservation" district boundaries were not drawn using the 2020 Census data or what margins of error were accounted for when using the less comprehensive 2019 ACS 1-Year.

Fourth, the Assessment lacks the type of detailed local analysis required to adjudicate fact-dependent § 2 cases. The Assessment analyzes primarily statewide elections, but makes no showing whether those elections are consistent across all five counties in other elections. For example, the "Yakama Reservation" district includes current Legislative District 13, but there is no assessment whether Latino voters in Legislative District 13 vote in a bloc against Representative Ybarra. If Legislative District 13 voters do not suffer a § 2 violation, then it is unclear how including those voters in this district is narrowly tailored. This is just one example of the local analysis that the Commissioners lack to form a good reason to believe the State will face § 2 liability unless this district is drawn. And no doubt an expert could raise a number of additional questions about the assessment's data, or lack thereof; but that critical assessment has not been conducted by the Commission.

(2) The Assessment Does Not Demonstrate the Existence of a Geographically Compact Minority Group

A state cannot remedy a § 2 violation through the creation of a noncompact district. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 431, 126 S. Ct. 2594 (2006) (citing *Shaw II*, 517 U.S. at 916, 116 S. Ct. 1894). The Supreme Court has identified two critical concerns with relaxing the geographic compactness inquiry. First, there would be "serious constitutional concerns" by expanding the geographic area and forcing courts to predict political variables through race-based assumptions. *Bartlett*, 556 U.S. at 13, 129 S. Ct. 1231. Second, relaxing the geographic compactness inquiry creates the risk of substantially increasing the number of mandatory districts drawn predominantly with race in mind. *Id.* at 17 (quotations and citation omitted).

When analyzing whether a § 2 district is compact, a court will ask if "the proposed minority district reasonably comports with traditional districting principles such as contiguousness, population equality, maintaining communities of interest, respecting traditional boundaries, and providing protection to incumbents." *Montes v. City of Yakima*, 40 F.Supp.3d. 1377, 1392-93 (E.D.Wash. 2014). Courts consider the shape of the district in determining compactness. *See Shaw II*, 517 U.S. at 905-06, 116 S. Ct. 1894; *Cf. Kilbury v. Franklin Cty. ex rel. Bd. Of Cty.*

Com'rs, 151 Wash. 2d 552, 564, 90 P.3d 1071 (2004) (“as compact as possible does not mean as small in size as possible, but rather as regular in shape as possible.”).

Both proposed districts have strained, non-compact shapes. The “Yakima-Columbia River Valley” district’s shape is designed to capture three majority Latino populations: Yakima to Grandview along I82, Mattawa, and East Pasco. In order to include these Latino voters and exclude White voters, the district contains contortions on every boundary and contains three finger-like extensions. The shape cannot be explained by natural or artificial boundaries; evidenced by the fact it takes slices of four separate counties. The “Yakama Reservation” district, presently adopted by two Commissioners, is similarly strained. It contains large indents into both its northern and southern borders, such that it is essentially two districts separated by the Hanford Nuclear Site. The district’s western portion is designed to include the Yakama Reservation, Yakima, and communities along I82; the district’s north-east portion is designed to include Mattawa to Othello. Like the “Yakima-Columbia River” district, it contains a number of finger-like extensions into Othello, Wanapum Dam, and Yakima. The district is designed to avoid the most convenient route between Yakima and Mattawa; and instead adjoins the two districts by the Hanford Site. Again, this district’s shape cannot be explained by natural or artificial boundaries: it slices from many separate counties, but fully incorporates no single county.

Both districts’ strained shapes negatively impact surrounding districts. Proposed maps that incorporate the “Yakama Reservation” district show its implications on the Central and Eastern Washington area. For example, to accommodate this district, both Democrat Commissioners proposed maps that split the former Legislative District 13 between five other districts. Whereas Grant County is currently entirely incorporated into Legislative District 13, Commissioner Walkinshaw divides the County between four districts. These changes threaten incumbents in a number of surrounding districts. Yet, there has been no assessment whether a more narrowly tailored district can be drawn to accommodate these traditional districting principles.

Neither the “Yakima-Columbia River Valley” nor “Yakama Reservation” district can claim to maintain communities of interest. The districts divide a number of communities. The most jarring example is how both districts separate the Tri-Cities, especially Richland, from the Hanford Site. Inclusion of the Hanford Site in a majority-minority district does not seem to be necessary to remedy any § 2 violation: the 2020 Census data shows a very few Latino individuals live at the Hanford Site. As is well known, the Hanford Site is undergoing an extensive clean-up operation to remove contamination from its past nuclear operations. The Tri-Cities are located immediately down-river from the Site; and have a strong interest in its clean-up operations because they lay in the path of potential contamination. For decades this interest has been acknowledged and Richland’s legislative district has included the Hanford Site. It defies traditional districting principles to strip Richland’s representative from oversight of the Hanford Site. The only logical explanation for dividing the Hanford Site from Richland is that doing so makes both districts look less bizarre and non-compact. After all, the Hanford site is relatively large and sparsely populated. That cuts against the notion that either district is compact or narrowly tailored to remedy the alleged violation.

The proposed districts are prime examples of the Supreme Court's stated concern with expanding the acceptable geographic area in making a compactness determination. The two districts cross into a number of counties and cover distant rural and urban communities. Such districts will force courts to predict political variables through race-based assumptions and create the risk of substantially increasing the number of mandatory districts drawn with race in mind. *See Bartlett*, 556 U.S. at 13, 129 S. Ct. 1231. Ultimately, there has been no assessment whether the Commission can draw a compact, Democrat-leaning district in Yakima County. It appears that this is entirely possible and it must be explored prior to any decision to draw a majority-minority district.

3) The Assessment Does Not Demonstrate the Existence of a Politically Cohesive Minority Group or a Politically Cohesive Coalition of Minority Groups

The second *Gingles* requirement is the existence of a politically cohesive minority group. Minority political cohesion cannot be assumed but must be specifically proven. *E.g.*, *Grove*, 507 U.S. at 41, 113 S. Ct. 1075; *Gingles*, 478 U.S. at 46, 106 S.Ct. 2752; *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 372 (S.D.N.Y. 2004), *aff'd*, 543 U.S. 997, 125 S. Ct. 627 (2004). That burden is heavier when the proposed minority group is combined with an additional minority group. Assuming without deciding that a minority-coalition can satisfy *Gingles*, the “Supreme Court has instructed that, when voting rights claims are based on a combination of distinct ethnic and language minority groups, ‘proof of minority political cohesion is all the more essential’ and must be held to a ‘higher-than-usual’ standard.” *Rodriguez*, 308 F. Supp. 2d at 443 (quoting *Grove*, 507 U.S. at 41, 113 S. Ct. 1075).

The Assessment's main thrust is that Latino voters form a cohesive group for Democratic Party candidates generally. In making this argument, the Assessment does not analyze local elections, instead it looks at statewide elections in which Latinos voted primarily for winning candidates. While the Assessment points to *Montes* and the 2021 WVRA Yakima County Settlement as evidence that Latino voters form a cohesive group (and that there is racially polarized voting), both proposed districts extend well beyond the Yakima County boundaries. Political cohesion cannot be assumed. There is no questioning whether these statewide elections are representative of local elections. There has been no showing that Latino voters in rural areas share preferences with Latino voters in urban areas in different counties. And there has been no evidence presented that Latino voters in the different legislative districts, including Representative Ybarra's district, all form one cohesive group.

To compound the problem of a lack of analysis, the “Yakama Reservation” district proposes a coalition of Latino and Native Americans to meet an approximate 60% minority CVAP threshold. A district drawn with the intent of combining two different minority groups –Latino and Native American voters – requires a heightened showing that Native American voters will form a cohesive group with Latino voters in the five-county area. *See Rodriguez*, 308 F. Supp. 2d at 421 (“plaintiffs have not proven that Hispanics and blacks in the Bronx have ‘worked together and formed political coalitions’”) (quoting *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. Of Comm'rs*, 906 F.2d 524, 527 (11th Cir. 1990)). The Assessment does not address this coalition. And the Commission has not conducted additional analysis regarding whether Native American voters will form a coalition with Latino voters across the five-county region.

At present there cannot be a good reason to believe the second *Gingles* precondition has been met where the Commission has not conducted analysis, let alone particularized analysis, of the issue.

4) The Analysis Shows That a Democrat-Leaning District Can Be Drawn in the Region Using Traditional Race-Neutral Districting Principles

The Assessment suggests the third *Gingles* precondition is met if there is “racially polarized voting.” However, the appropriate question is not whether there is statistically significant racial bloc voting, but whether there is “legally significant racial bloc voting.” *Covington v. North Carolina*, 316 F.R.D. 117, 170-71 (M.D.N.C. 2016), *aff’d*, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (2017). Legally significant racial bloc voting occurs when the white majority group votes as a bloc “usually to defeat the minority’s preferred candidate.” *Grove*, 507 U.S. at 40, 113 S. Ct. 1075 (quoting *Gingles*, 478 U.S. at 50–51, 106 S. Ct. 2752). This analysis is both forward and backward looking. If either proposed district is drawn, the State will only survive strict scrutiny if it could show legally significant white bloc voting in a new, race-neutral district. *Cooper*, 137 S. Ct. at 1471, 197 L. Ed. 2d 837.

This proposed district will likely not survive strict scrutiny because a race-neutral, Democrat-leaning district can readily be drawn in Yakima County. The Assessment’s message is clear that Latinos’ preferred candidates are Democratic Party candidates generally. There is no indication or analysis that there are specific Latino-preferred candidates within the Democratic Party, or that there are local-preferred candidates that are not making it out of the Democratic Party primaries. Thus, if a new district in Yakima County, drawn by traditional districting principles, leans Democrat then that will negate legally significant racial bloc voting. Both Republican Commissioners believe they have already proposed competitive, race-neutral districts in the region; and, according to the Assessment, both Democrat Commissioners have already proposed race-neutral, Democrat districts. For example, Commissioner Walkinshaw’s district would have had a 6,000 margin in favor of President Biden in the 2020 General election and the Assessment gives it a “Predict Dem” score of 52%. Because a Democratic district can be drawn in a race-neutral fashion, the third *Gingles* precondition cannot be met.

Additionally, the Assessment’s data does not bear on the question of whether there is legally significant racial bloc voting. It references a number of elections, mostly by the Latino-preferred candidates. There is no analysis of legally significant bloc voting across the five-county region. Moreover, the data highlight racially polarized voting in homogenous precincts. There is no analysis at the precinct level, especially whether the homogenous precincts are representative of heterogenous precincts. The Commission cannot have strong reason to believe § 2 will be violated based on this brief analysis.

(5) There Has Been No Analysis of the Totality of the Circumstances Consideration

If a §2 plaintiff meets its burden of showing the presence of all three *Gingles* preconditions, a Court proceeds with a totality of the circumstances analysis. A plaintiff succeeds in making this showing if the evidence shows that “the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . 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.” *Gingles*, 478 U.S. at 36, 106 S. Ct. 2752 (quoting 42 U.S.C. §1973). Courts have looked to a number of factors compiled in the Senate Judiciary Committee Majority Report that accompanied the bill.

“1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

“2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

“3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

“4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

“5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

“6. whether political campaigns have been characterized by overt or subtle racial appeals;

“7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

“Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

“whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

“whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.”

Gingles, 478 U.S. at 36–37, 106 S. Ct. 2752 (quoting S.Rep., at 28–29, U.S.Code Cong. & Admin.News 1982, pp. 206–207.).

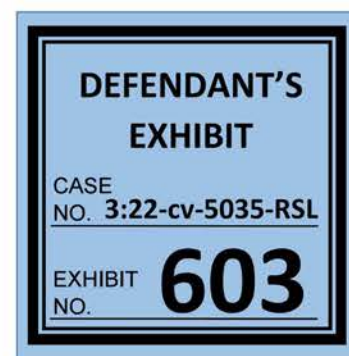
“[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to established a violation of § 2 under the totality of circumstance.” *Nat’l Ass’n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp.3d 368, 378 (S.D.N.Y. 2020), *aff’d sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021). But, § 2 does not “insulate minority candidates from defeat at the polls” and the totality of the circumstances analysis cannot merely be assumed. *Ibid.* There has been no evidence presented regarding the totality of the circumstances analysis. A number of factors weigh against creating this proposed district. For example, the Latino voters’ preferred party has been entrenched in power at the state-level for quite some time. Presently, the Democratic Party controls the House, the Senate, and the Governor’s Office; it also controls the Attorney General’s Office. There should at least be an assessment of these factors before proposing a map based on race alone.

IV. POTENTIAL LIABILITY FROM PARTISAN GERRYMANDERING

If a majority-minority Latino district is drawn, the surrounding districts must be drawn to maintain their present incumbents to avoid engaging in unlawful partisan gerrymandering. Washington Constitution Article II, §42 bans partisan gerrymandering: “[t]he commission’s plan shall not be drawn purposely to favor or discriminate against any political party or group.” Washington State Statute provides the Commissioners with the appropriate factors that they must consider in redistricting, including that “[t]he commission’s plan shall not be drawn purposely to favor or discriminate against any political party or group.” RCW 44.05.090(5). As the Supreme Court stated, partisan gerrymandering “is incompatible with democratic principles.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506, 204 L. Ed. 2d 931 (2019) (quoting *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791, 135 S.Ct. 2652, 2658 (2015)).

Presently, the Democratic Party controls the Washington State House, Senate, and Governor’s Office. Power is firmly entrenched -- Washington State has not been a Republican Governor since 1985. Yet, proposed maps that include the majority-minority district go beyond accommodating the district; they actively seek to weaken surrounding Republican incumbents. Districts in Central Washington are stretched to King County, Vancouver, and Spokane. The majority using redistricting to strip the minority party of a meaningful opportunity to compete in Washington State’s political process is exactly what the Washington Constitution bans. If the Commission or Legislature puts forward such a partisan map, there is a high risk that it will be challenged in Court.

Exhibit A



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BERTHA ARANDA GLATT,

Plaintiff,

v.

CITY OF PASCO, *et al.*,

Defendants.

No. 4:16-CV-05108-LRS

PARTIAL CONSENT DECREE

PARTIAL CONSENT DECREE

A Complaint has been filed by the above Plaintiff alleging that the current at-large method of electing members of the Pasco City Council violates Section 2 of the Federal Voting Right Act by diluting the electoral power of Pasco's Latino voters and thereby depriving Latinos of an opportunity to fully participate in the political process and to elect candidates of their choice to the Pasco City Council.

FACTUAL STIPULATION – LIABILITY

The above-named Plaintiff and Defendants stipulate and agree as follows:

Background

1. Defendant City of Pasco, Washington, is a municipal corporation organized under the laws of the State of Washington as an optional-code city subject to Chapter 35A of the Revised Code of Washington. Defendants Rebecca

PARTIAL CONSENT DECREE - 1

1 Francik, Robert Hoffmann, Thomas Larsen, Saul Martinez, Matthew Watkins, and
2 Al Yenney, are current members of the Pasco City Council. The City Council has
3 statutory authority to set voting districts subject to the state law. The City
4 Councilmembers are each sued in their official capacity only.
5

6 2. The Pasco City Council consists of seven (7) City Councilmembers
7 serving staggered four-year terms. The next municipal election will be in
8 November 2017, at which time four (4) seats on the Pasco City Council will be up
9 for election.
10

11 3. Five (5) City Councilmembers are currently nominated in a non-
12 partisan, top-two primary in five (5) territorial election districts. For territorial
13 election districts, only a resident of that voting district may be a candidate for, or
14 hold office as, a Councilmember of that district, and only voters of the district may
15 vote at the primary election to nominate candidates for the City Councilmember
16 for that district. Candidates for the two (2) at-large City Council positions are
17 determined at the primary election in a non-partisan, top-two primary by residents
18 of the entire City of Pasco.
19

20 4. During the general election, voters of the entire City vote to elect a
21 Councilmember for each of the respective territorial election districts, as well as
22 the two at-large Council positions (*i.e.*, all Councilmembers are elected on an at-
23 large basis).
24
25
26
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1 5. The City has, within the last legislative session, sought a change to the
2 State law to allow for district-based voting. In the absence of a change in the State
3 law, the City, and in anticipation of the 2015 municipal election cycle, sought to
4 amend Pasco Municipal Code (PMC) 1.10.010 to provide for district-based
5 elections. The City requested that the Franklin County Auditor implement district-
6 based voting. The Auditor responded to Pasco's request in a letter dated April 17,
7 2015, claiming that because implementing a district-based election system would
8 violate Wash. Rev. Code 35A.12.180, the Auditor was unable to conduct an
9 election under Pasco's proposed district-based election system.
10

11
12
13 6. On May 4, 2015, the Pasco City Council enacted Resolution No. 3635
14 declaring its intent to pursue a district-based election system for City
15 Councilmembers, and further declaring its continuing intent to provide equal
16 voting opportunities for all of its citizens, and to provide equitable and proportional
17 representation.
18

19
20 7. At the behest of the City of Pasco, Washington State Senator Pam
21 Roach submitted a request to the Washington State Attorney General regarding the
22 authority of cities subject to RCW 35A.12.180 (which includes the City of Pasco)
23 to change their own election systems. On January 28, 2016, the Washington State
24 Attorney General rendered an Opinion which noted that:
25

26 Thus, RCW 35A.12.180 specifically denies to code cities the authority
27 to restrict voting by ward at the general election. Therefore, a local
28 ordinance that provided for general elections by ward would conflict
with RCW 35A.12.180 and be preempted by state law. (Attorney

General Opinion at pg. 5.) In sum, Code cities in Washington that believe they may be in violation of the VRA face difficult decisions and potential legal risk regardless of what course they choose. (Attorney General Opinion at pg. 10).

Violation of Section 2 of the Federal Voting Rights Act

8. This action is for the enforcement of Section 2 of the Federal Voting Rights Act, which provides in part as follows:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section 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) of this section 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.

9. The Federal Voting Rights Act is designed to “help effectuate the Fifteenth Amendment’s guarantee that no citizen’s right to vote shall be denied or abridged . . . on account of race, color, or previous condition of servitude.” *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993).

1 10. A violation of the Voting Rights Act occurs when, based upon the
2 totality of the circumstances, the challenged electoral process is “not equally open
3 to participation by members of a [racial minority group] in that its members have
4 less opportunity than other members of the electorate to participate in the political
5 process and to elect representatives of their choice.” 42 U.S.C. § 1973(b).

6
7
8 11. The City of Pasco is an optional municipal code city subject to Wash.
9 Rev. Code 35A.12.180, the pertinent portion of which states as follow:

10 Wards shall be redrawn as provided in chapter 29.76 RCW. Wards
11 shall be used as follows: (1) Only a resident of the ward may be a
12 candidate for, or hold office as, a councilmember of the ward; and (2)
13 only voters of the ward may vote at a primary to nominate candidates
14 for a councilmember of the ward. Voters of the entire city may vote at
15 the general election to elect a councilmember of a ward, unless the
16 city had prior to January 1, 1994, limited the voting in the general
17 election for any or all council positions to only voters residing within
18 the ward associated with the council positions. If a city had so limited
19 the voting in the general election to only voters residing within the
20 ward, then the city shall be authorized to continue to do so.

21 12. Due to voting trends, the result of the statutorily mandated at-large
22 election has been non-Latino dominance in electing City Council members.
23 Pasco’s large Latino population is sufficiently numerous and compact to form a
24 majority in at least one single-member district, is political cohesive, and the non-
25 Latino majority votes sufficiently as a block to defeat a Latino preferred candidate.

26 *See Thornburg v. Gingles*, 478 U.S. 30 (1986).

27 13. As this court held in *Montes v. Yakima*, “state law must sometimes
28 yield to afford an effective remedy under the Voting Rights Act. The Supremacy

1 Clause requires that state law be abrogated where doing so is necessary to remedy
2 a violation of the Voting Rights Act.” *Montes v. Yakima*, No. 12-CV-3108-TOR,
3 Final Injunction and Remedial Districting Plan, ECF No. 143 (Feb. 17, 2015)
4 (citing *Arizona v. Inter Tribal Council of Ariz. Inc.*, 133 S. Ct. 2247, 2256 (2013)).
5 “Federal legislation so far as it extends and conflicts with the regulations of the
6 State, necessarily supersedes them.” *Ex Parte Siebold*, 100 U.S. 371, 384 (1879).
7 Thus, “[i]n remedial situations under Section 2 where state laws are necessarily
8 abrogated, the Supremacy Clause appropriately works to suspend those laws
9 because they are an unavoidable obstacle to the vindication of the federal right.”
10 *Large v. Fremont Cnty.*, 670 F.3d 1133, 1145 (10th Cir. 2012).

14 14. As such, a number of federal courts have invalidated at-large election
15 systems and approved or given full deference to remedial plans that include single-
16 member districts, even when the adoption of such a plan conflicted with state law.
17 See, e.g., *United States vs. City of Euclid*, 580 F. Supp. 2d 584 (E.D. Ohio 2008);
18 *Tallahassee Branch of NAACP v. Leon County*, 827 F.2d 1436, 1437 (11th Cir.
19 1987), cert. denied, 488 U.S. 960; *United States v. Osceola County*, 474 F. Supp.
20 2d 1254 (M.D. Fla 2006). Similarly here, this Court is specifically authorized to
21 order an election system that conflicts with state law in order to fully remedy the
22 City’s Voting Rights Act violation.

26 15. Since the implementation of Pasco’s current election system in 1978,
27 the population of the City of Pasco has grown dramatically. During that period,
28

1 there has been a substantial increase in the number of Latino residents. Today,
2 Latino residents are estimated to be approximately half of the City's population.
3
4 The Latino population in the City of Pasco is sufficiently numerous and
5 geographically compact to constitute a majority of the citizen voting age
6 population in at least one election district.
7

8 16. Latinos in the City of Pasco are a politically unified group that votes
9 cohesively as a bloc. In contests between Latino and non-Latino candidates for the
10 City Council, statistical analyses show that Latino voters consistently vote for
11 Latino candidates.
12

13 17. The majority of voters in Pasco are white and have historically
14 engaged in bloc voting favoring non-Latino candidates.
15

16 18. There is a pattern of racially polarized voting in the City of Pasco City
17 Council elections. The voting patterns and the presently mandated at-large general
18 election of all City Council candidates make it very difficult for the Latino
19 community to elect candidates of their choice. Although other minority candidates
20 have been elected to the City Council, as a result of racially-polarized bloc voting,
21 no Latino candidate has ever won an opposed election to the Pasco City Council.
22
23 The first Latina to serve on the City Council was Luisa Torres. She was appointed
24 to the Council in 1989. Luisa ran for election in 1989 but was defeated by a non-
25 Latino candidate. The only other Latino to serve on the City Council was also first
26
27
28

1 appointed to the City Council, Saul Martinez. He subsequently ran unopposed,
2 which enabled him to retain his seat.

3
4 19. In 2015, six Latinos ran for two positions on City Council. Despite
5 strong support of Latino voters, the two Latinas who survived the primary election
6 were both defeated in the November 2015 general election.

7
8 20. While there is no evidence of any discriminatory motive or intent by
9 the non-Latino population in exercising their own rights to vote, such intent is not
10 necessary to a violation of Section 2 of the Voting Rights Act. There is no
11 evidence that non-Latinos are deliberately conspiring to outvote Latinos.

12
13 21. The Latino population in the City of Pasco is sufficiently numerous
14 and geographically compact to constitute a majority of the citizen voting age
15 population in at least one election district.

16
17 22. Under the Senate Factors or “the totality of the circumstances”
18 analysis, there is sufficient evidence of disparities to show inequality in
19 opportunities between the white and Latino populations and that the existing at-
20 large election system for the Pasco City Council has excluded Latinos from
21 large election system for the Pasco City Council has excluded Latinos from
22 meaningfully participating in the political process and diluted their vote such that
23 Latinos are unable to elect candidates of their choice to the City Council. Thus, the
24 election system by which Pasco elects its City Councilmembers, which is
25 mandated by state statute, and voting trends in Pasco results in a violation Section
26
27
28 2 of the Voting Rights Act.

1 23. It is in the best interest of the residents of the City of Pasco to enter
2 into this Partial Consent Decree, thus avoiding protracted, costly, and potentially
3 divisive litigation. Defendants have the authority to settle litigation in good faith
4 for further expenditure of public funds and defense thereof is not likely to be in the
5 interest of the public.
6

7
8 NOW, THEREFORE, based upon the stipulated evidence presented in this
9 case and as memorialized above, IT IS HEREBY, ORDERED, ADJUDGED,
10 AND DECREED that:
11

12 1. This Court has jurisdiction over these actions pursuant to 42 U.S.C.
13 1973 and 28 U.S.C. 1345.
14

15 2. Under the Supremacy Clause of Article VI of the Constitution of the
16 United States this Court has the power to impose a remedy otherwise contrary to
17 applicable state statutes. This Court also has the authority to approve a settlement
18 or issue a consent decree that abrogates or modifies state law if doing so is
19 necessary to remedy a violation of Section 2 of the Voting Rights Act. *Perkins v.*
20 *City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995).
21

22 3. Wash. Rev. Code 35A.12.180 mandates that Pasco elect its City
23 Councilmembers in at-large elections. Due to voting trends in Pasco, the City's
24 current election system dilutes the Latino population's voting power in violation of
25 Section 2 of the Voting Rights Act.
26
27
28

1 4. In order to remedy the City of Pasco's Section 2 violation, the City
2 must adopt a new election system. Implementation of the new election system will
3 necessarily abrogate Washington State law, but must do so only as much as
4 necessary to remedy the Section 2 violation. *Large*, 670 F.3d at 1145 (“[I]n
5 remedial situations under Section 2 where State laws are necessarily abrogated, the
6 supremacy clause appropriately works to suspend those laws because they are an
7 *unavoidable obstacle* to the vindication of the Federal right.”).

8
9
10 5. Defendants admit that, due to voting trends, Pasco's current election
11 system results in unlawful dilution of the Latino population's vote in violation of
12 Section 2 of the Voting Rights Act. As such, a new election system must be
13 imposed. Pasco does not have the authority to affirmatively change its election
14 system because Wash. Rev. Code 35A.12.180 bars such alterations. However, this
15 Court has the authority to impose an election system that remedies that violation.

16
17 6. The Court reviewed the Parties' stipulation of facts as reflected in this
18 Partial Consent Decree, and finds that the stipulations are sufficient to support
19 finding that Pasco's current City Council election system unlawfully dilutes the
20 Latino population's vote in violation of Section 2 of the Voting Rights Act, 42
21 U.S.C. § 1973.

22
23 7. Except as inconsistent with or specifically altered by the terms of this
24 Partial Consent Decree or any subsequent orders from this Court, all state laws
25 shall continue to govern elections for the City Council of the City of Pasco.

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PARTIAL CONSENT DECREE -

1 8. Defendants, and their officers, agents, and successors in office, and all
2 persons acting in concert with them, are enjoined from administering,
3 implementing, or conducting future elections for the Pasco City Council under the
4 current at-large election method or any other election method that violates Section
5 2 of the Voting Rights Act.
6

7
8 9. The Court reserves jurisdiction of this matter to determine and impose
9 the appropriate election system to remedy the current violation of Section 2 of the
10 Voting Rights Act.
11

12 10. It is further ordered, that to provide for effective opportunities for full
13 participation in the 2017 municipal election cycle, the Parties shall, in good faith
14 efforts, meet and confer no later than September 15, 2016 to determine whether the
15 Parties can agree upon a remedial option for compliance with Section 2 of the
16 Voting Rights Act. If the Parties cannot reach agreement, the Parties shall each
17 submit their proposed remedial districting plans to the Court on or before October
18 15, 2016. The Parties shall respond to the proposed remedial plans on or before
19 November 1, 2016. The Parties shall present a reply regarding the proposed
20 remedial plans by November 15, 2016. A hearing before this Court on the
21 proposed remedial redistricting plans may be set by the Court.
22
23
24

25 11. No attorney fees or costs are awarded for this liability phase of the
26 case or work performed by Plaintiff prior to the filing of the Complaint; however,
27
28

PARTIAL CONSENT DECREE -

11

1 the Court reserves the award of reasonable attorney fees and costs for the remedial
2 phase of this case.

3
4 ENTERED THIS 2nd day of September, 2016.

5
6 ***Lonny R. Suko***

7
8 _____
9 LONNY R. SUKO
SENIOR U.S. DISTRICT COURT JUDGE

10 Presented by:

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PARTIAL CONSENT DECREE -
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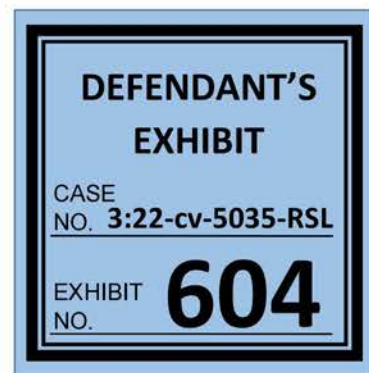
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PARTIAL CONSENT DECREE -
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Exhibit B



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3
4 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

5 BERTHA ARANDA GLATT,
6 Plaintiff,
7 v.
8 CITY OF PASCO, *et al.*,
9 Defendants.

Case No. 4:16-CV-05108-LRS
MEMORANDUM OPINION AND
ORDER

10 **I. INTRODUCTION**

11 On August 4, 2016, Plaintiff, Brenda Glatt, filed a Complaint against the City of
12 Pasco and its City Council members in their official capacities alleging that the
13 City's "at large election method of electing Pasco City Council members violates
14 Section 2 of the Voting Rights Act... 52 U.S.C. § 10301." (ECF No. 1 at 9). Section
15 2 of the Voting Rights Act (VRA) prohibits the imposition of a "voting qualification
16 or prerequisite to voting or standard, practice, or procedure...which results in a denial
17 or abridgement of the right of any citizen...to vote on account of race or color." 52
18 U.S.C. § 10301(a). A violation of § 2 is established if, "based on the totality of
19 circumstances," the challenged electoral process is "not equally open to participation
20 by members of a [racial minority group] in that its members have less opportunity
21 than other members of the electorate to participate in the political process and to
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23
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ORDER- 1

1 elect representatives of their choice.” 52 U.S.C. § 10301(b). The essence of a § 2
2 claim, as set forth in seminal case *Thornburg v. Gingles*, 478 U.S. 30 (1986), is “that
3 a certain electoral law, practice, or structure interacts with social and historical
4 conditions to cause an inequality in the opportunities enjoyed by [minority] and
5 [majority] voters to elect their preferred representatives.” 478 U.S. at 47.

6
7 On September 2, 2016, the court approved entry of the parties’ Partial Consent
8 Decree wherein Pasco admitted liability and consented to the court’s finding that the
9 City’s existing at-large method of electing all its members to the Pasco City Council
10 violated § 2 of the VRA by diluting the electoral power of Pasco’s Latino voters.
11 (ECF No. 16 at 10). The Partial Consent Decree fully resolves the issue of liability.
12 The court enjoined the Defendants from conducting future elections under that
13 system “or any other election method that violates Section 2 of the Voting Rights
14 Act.” (ECF No. 16 at 12). The Partial Consent Decree did not mandate a particular
15 remedy.
16

17 Now pending are the parties’ proposed remedial plans (filed as cross-motions at
18 ECF Nos. 21, 25) after they failed to reach agreement on this aspect of the case. On
19 December 7, 2016, the court held oral argument. Present on behalf of Plaintiff were
20 Brendan Monahan, Emily Chiang, La Rond Baker, Gregory Landis, and Cristin
21 Aragon. Present on behalf of Defendants, City of Pasco were John Safarli, Leland
22 Kerr, and Casey Bruner.
23
24

1 The parties' motions are supported by declarations, reports, and data of highly
2 experienced demographic and redistricting experts: Richard L. Engstrom, Ph.D.
3 (ECF Nos. 23, 29); William S. Cooper (ECF Nos. 24, 28, 32); and Peter A. Morrison,
4 Ph.D. (ECF No. 26, Ex. 13; ECF Nos. 33, Exs. 1 and 2).

5
6 There are three electoral formats commonly used by municipal governments in
7 the United States: at-large systems, single-member district systems, and "mixed" or
8 "hybrid" systems. *See Goosby v. Town Bd. of Town of Hempstead, N.Y.*, 981 F.Supp.
9 751, 757 (E.D.N.Y. 1997). "In an at-large system, all members of the legislative
10 body are elected from a district that includes all members of the electorate. In a
11 single-member district system, the legislators are elected from compact, contiguous
12 and essentially equipopulous districts. In a mixed system, some members of the
13 legislature are elected from single-member districts, while other members, usually a
14 smaller number, are elected at large. In a typical mixed system, the districts cover
15 the entire municipality. Thus, each voter is represented both by one or more
16 legislators elected from a district and one or more legislators elected at large." *Id.*

17
18 In this case, the Pasco City Council has adopted a "mixed" or "hybrid" 6-1
19 remedial plan redrawing its voting districts and utilizing a scheme in which six
20 members are elected from districts and a single position is elected at-large. The
21 primary issue is whether the remedial plan is legally acceptable. If it is, the parties
22 agree deference is owed to the Pasco City Council's legislative judgment. If it is
23
24

1 not, Pasco concedes the court has authority to judicially impose Plaintiff's proposal
2 with seven single-member geographic residency districts. This Memorandum
3 Opinion and Order approves the City's remedial plan, directs its implementation,
4 and denies the Plaintiff's request for permanent injunction, but retains jurisdiction.
5

6 II. BACKGROUND

7 As with all cases under the Voting Rights Act, this one is driven by the facts. The
8 City of Pasco has conceded that its current City Council election scheme violates §
9 2. The key factual conclusions supporting the court's finding of liability are
10 contained in the Partial Consent Decree. (ECF No. 16). Because of their length, the
11 stipulated facts and findings in the Partial Consent Decree are incorporated by
12 reference.
13

14 The parties have decided that the public interest is best served by efforts to settle
15 this litigation thus avoiding "protracted, costly, and potentially divisive litigation."
16 (ECF No. 16 at ¶ 23). The experience of courts applying the Voting Rights Act
17 confirms that it is one the most difficult and intricate responsibilities a district court
18 will confront. *See e.g., Patino v. City of Pasadena*, 2017 WL 68467 (S.D.Tex. Jan.
19 6, 2017) (after rulings on motions to dismiss and for summary judgment, district
20 court held a 7-day trial involving 16 witnesses and 468 exhibits resulting in a 111-
21 page decision). The parties' experts largely rely on the same sources of data, with
22 the exception that the Defendants' expert, Mr. Morrison, has also supplied analysis
23
24

1 based upon recently obtained data from the Franklin County Auditor's Office.¹ (ECF
2 No. 33, Ex. 1). The experts' methodologies differ and variances in their data exists,
3 however these differences are not material to the court's decision. No party has
4 requested a trial or evidentiary hearing on the facts.

5 **A. Pasco's Demographics**

6 **1. Latino Population**

7
8 The City of Pasco, is located in south central Washington and is one of three
9 cities that make up the Tri-Cities region. Its geography encompasses approximately
10 38.7 square miles. (ECF No. 28 at 2). Pasco's population nearly doubled between
11 2000 and 2010. (ECF No. 24 at 4). Its adjusted population based on the 2010
12 decennial U.S. Census is 62,452. *Id.* More recent population estimates of the
13 Washington Office of Financial Management indicate the population is 70,560.
14 (ECF No. 24 at 6). According to the 2010 Census, the City is 54.02%² Latino and
15
16
17

18 ¹ Plaintiff objects to this data on the sole basis that it was submitted for the first
19 time along with Defendants' Reply. (ECF No. 34). The court declines to strike the
20 data or that portion of the Reply relying upon this new information absent evidence
21 of prejudice.

22 ² Defendants' expert indicates more recent estimations of the Latino share of the
23 total population include 45.02% (based upon the 5-year 2010-2014 American
24

1 40.44% non-Hispanic White. (ECF No. 24 at 5). The 2010 Census data adjusted
2 for annexations estimates that Pasco has a population under age 18 that is 66.47%
3 Latino and 25.48% non-Hispanic White. (ECF No. 24 at 5).

4 Mr. Morrison estimates Pasco's Spanish-surnamed voter registration is 31.8% as
5 of October 2016. (ECF No. 33, Ex 1 at 3, ¶9; Ex. 2 at 4-5). This statistic is an
6 estimate of Latino registered voters in Pasco.
7

8 **2. Citywide Latino Citizen Voting-Age Population**

9 The American Community Survey ("ACS"), produced by the U.S. Census
10 Bureau, provides two estimates of the Latino citizen voting-age population
11 ("LCVAP") (residents that are legally able to vote) in Pasco. The first is based upon
12 a five-year survey for 2010-2015 and the second is based on the one-year survey for
13 2015. The one-year estimate accounts for Pasco's city limits as of 2015. (ECF No.
14 33, Ex. 1 at 2). The estimates for LCVAP are 31.9% of the citywide eligible voter
15 population (5-year estimate), 32.09% (5-year estimate adjusted), and 38.5% (2015
16 1-year estimate). The 2015 estimate is most current and includes recent annexations,
17 however, the five-year estimate (which does not take into account the 2014 and 2015
18 annexations) is more statistically reliable.
19
20
21

22 _____
23 Community Survey estimate) and 49.7% (the 2015 1-year American Community
24 Survey estimate). (ECF No. 24 at 7, ¶¶21-22).

1 Given that a significant portion of the City's population is Latino and young,
2 trends show and experts forecast the LCVAP to increase in the coming years. (ECF
3 No. 33, Ex. at 2). Mr. Morrison predicts the LCVAP is likely to exceed 40% by
4 2021. *Id.*

5 **B. Pasco's 5-2 Method of Electing its City Council**

6 Pasco is a non-charter code city with a council-manager form of government.
7 (ECF No. 25 at 3). The Mayor and Mayor Pro Tempore are chosen by
8 councilmembers. (ECF No. 25 at 5). While the Mayor presides over Council
9 meetings, the role is "for ceremonial purposes." *Id.* (quoting Wash.Rev.Code §
10 35A.13.030).
11

12 The Pasco City Council consists of seven members. When the last City Council
13 election was held, the City was utilizing an at-large, numbered "place system" for
14 electing councilmembers to serve staggered four-year terms. (ECF No. 31 at 10).
15 Five of the seven positions (identified as Positions 1 through 5) were tied to
16 geographical residency districts. Candidates for Positions 1 through 5 were required
17 to reside in their respective geographical residency districts. In the August primary,
18 voters narrowed the field of candidates for the district in which they resided. The top
19 two candidates in each district proceeded in the general election, which was
20 conducted at-large and the candidate receiving a majority of votes won. Positions 6
21 and 7 were both at-large positions, in that voters citywide narrowed the field of
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1 candidates for each seat in the primary and then voted for one of two candidates for
2 each position in the general election. Washington state law requires that “all voters
3 of a code city be permitted to vote in each city council race at the general election.”
4 Wash. AGO 2016 NO. 1 (Wash.A.G.), 2016 WL 439289 (Jan. 28, 2016)(discussing
5 Wash.Rev.Code §35A.12.180).³ The key features of Pasco’s election scheme were
6 the combination of: 1) a numbered place system; 2) a top two primary system; and
7 3) at-large general elections for every seat with a majority vote rule. *See* ECF No.
8 23 at ¶ 10.

10 In 2015, Plaintiff Brenda Glatt, a Latina, was a candidate for Pasco City Council
11 at-large Position 6. In the general election, she was defeated decisively by non-
12 Latino candidate Matt Watkins despite her strong support from Latino voters. (ECF
13

15 ³ The statute provides that voters of the “entire city may vote at the general election
16 to elect a councilmember” of a district, “unless the city had prior to January 1, 1994,
17 limited the voting in the general election” to voters residing in the district.
18 Wash.Rev.Code §35A.12.180. The role the Supremacy Clause of Article VI of the
19 U.S. Constitution plays herein is acknowledged by the parties and this court. *See*
20 *Cleveland Cnty. Ass’n for Gov’t by the People v. Cleveland Cnty. Bd. of Comm’rs*,
21 142 F.3d 468, 477 (D.C.Cir.1998) (per curiam) (“[I]f a violation of federal law
22 necessitates a remedy barred by state law, the state law must give way; if no such
23 violation exists, principles of federalism dictate that state law governs.”).

1 No. 23 at ¶ 20).

2 The next municipal election will be in November 2017, at which time four (4) of
3 the seats on the Pasco City Council are presently up for election.

4 **C. Pasco's Efforts Toward Election Change**

5 Four years ago a Voting Rights Act case was filed against the city of Yakima,
6 Washington, a town of 91,000, just 80 miles from Pasco. As in this case, the
7 complaint contended the city's at-large electoral system of electing city
8 councilmembers violated § 2. In August 2014, judgment was entered in favor of
9 Plaintiffs. *Montes v. City of Yakima*, 40 F.Supp.3d 1377 (E.D.Wash., Aug. 22, 2014).

11 The record evidences that since 2014, Pasco has been responsive to the concern
12 that its election system had a disproportionate impact on the Latino vote. In 2014,
13 Pasco hired a demographer. In March 2015, the City Council modified its district
14 boundaries to provide 2 majority-minority districts "with the goal of providing for
15 equal voting opportunity for all citizens" (ECF No. 26, Ex. 2 at 1). In May 2015,
16 the City Council enacted Resolution No. 3635 declaring its intent to pursue a district-
17 based election system and further declaring its continuing intent to provide equal
18 voting opportunities for all its citizens, and to provide equitable and proportional
19 representation. (ECF No. 16 at ¶ 6)(ECF No. 26, Exs. 4-5). However, state law
20 mandating at-large general elections put the City in the proverbial position between
21 a rock and a hard spot. This position was confirmed in the State Attorney General's
22
23
24

1 Office response to the City's query about the legality of modifying the at-large
2 election scheme to avoid a violation of § 2. (ECF No. 26, Ex. 10); Wash. AGO 2016
3 NO. 1 (Wash.A.G.), 2016 WL 439289 (Jan. 28, 2016) ("code cities in
4 Washington...face difficult decisions and potential legal risk regardless of what
5 course they choose...Either course of action, whether to adhere to state law or to
6 depart from it, may be subject to challenge in court."). Pasco continued to seek
7 change by helping draft legislation (Senate Bill 6129) which would have allowed
8 Pasco to avoid the restrictions of Wash.Rev.Code §35A.12.180. (ECF No. 25 at 9)
9 The mayor testified before the state senate in favor of the bill, but the bill did not
10 pass. *Id.* at 9-10.

12 Months prior to filing this lawsuit, the American Civil Liberties Union (ACLU)
13 of Washington notified Pasco that it believed its election system violated federal
14 law. Pasco began consulting with the ACLU. The City felt the lawsuit was
15 necessary "as the only available means to bring the force of federal law to remedy
16 the problem that exists as a result of state law." (ECF No. 26, Ex. 10 at 2).

18 As stated in the Partial Consent Decree, "there is no evidence of any
19 discriminatory motive or intent by the non-Latino population in exercising their own
20 rights to vote." (ECF No. 16 at 8, ¶ 20). There is no evidence in the record of a
21 history of official discrimination against Latinos.

23 **D. Partial Consent Decree Stipulations**

1 The Partial Consent Decree includes key concessions establishing the three
2 *Gingles* preconditions for a violation of § 2, which are: (1) the minority group is
3 sufficiently large and geographically compact to constitute a majority in a single-
4 member district, (2) the minority group is politically cohesive, and (3) the majority
5 group votes sufficiently as a bloc⁴ to enable it, in the absence of special
6 circumstances, “usually to defeat the minority's preferred candidate.” *Thornburg v.*
7 *Gingles*, 478 U.S. 30, 50–51 (1986). Specifically, the Partial Consent Decree states:

9 (12)...Pasco’s large Latino population is sufficiently numerous and compact to
10 form a majority in at least one single-member district, is political[ly] cohesive,
11 and the non-Latino majority votes sufficiently as a block to defeat a Latino
12 preferred candidate.

....

12 (17) The majority of voters in Pasco are white and have historically engaged in
13 bloc voting favoring non-Latino candidates....

13 (18) There is a pattern of racially polarized voting in the City of Pasco City
14 Council elections. The voting patterns and the presently mandated at-large
15 general election of all City Council candidates make it very difficult for the
16 Latino community to elect candidates of their choice. Although other minority
17 candidates have been elected to the City Council, as a result of racially polarized
18 bloc voting, no Latino candidate has ever won an opposed election to the Pasco
19 City Council. The first Latina to serve on the City Council was Luisa Torres. She
20 was appointed to the Council in 1989. Luisa ran for election in 1989 but was
21 defeated by a non-Latina candidate. The only other Latino to serve on the City
22 Council was also first appointed to the City Council, Saul Martinez. He
23 subsequently ran unopposed, which enabled him to retain his seat.

(19) In 2015, six Latinos ran for two positions on [the] City Council. Despite
20 strong support of Latino voters, the two Latinas who survived the primary

21 ⁴ Racially polarized voting means “a consistent relationship between [the] race of
22 the voter and the way in which the voter votes.” *Gingles*, 478 U.S. at 53 n. 21
23 (internal citations and quotations omitted).

1 election were both defeated in the November 2015 general election.

2 (ECF No. 16 at 5-8).

3 In conceding liability, Pasco also concedes there is “sufficient evidence” to
4 conclude that “based on the totality of circumstances,” the challenged electoral
5 process impermissibly impairs the minority group's ability to elect representatives
6 of its choice. *Gingles*, 478 U.S. at 44–45; *see also Ruiz v. City of Santa Maria*, 160
7 F.3d 543, 550 (9th Cir. 1998) (adopting the *Gingles* two-step analysis). Specifically,
8 the Partial Consent Decree states as follows:
9

10 (22)...[T]here is sufficient evidence of disparities to show inequality in
11 opportunities between the white and Latino populations and that the existing at-
12 large election system for the Pasco City Council has excluded Latinos from
13 meaningfully participating in the political process and diluted their vote such that
14 Latinos are unable to elect candidates of their choice to the City Council...In
15 order to remedy the City of Pasco’s Section 2 violation, the City must adopt a
16 new election system.

17 (ECF No. 16 at 8).

18 **E. Council Approval of 6-1 Hybrid Single-Member/At-Large Plan**

19 After entry of the Partial Consent Decree, the City Council held public
20 hearings to evaluate three alternative systems for future elections including
21 alternatives with two, one, and no at-large positions. (ECF No. 26, Ex. 10). On
22 September 19, 2016, the Council voted in favor of an election system comprised of
23 six districts and one at-large seat. (ECF No. 21). On October 10, 2016, the Council
24 approved Ordinance No. 4315 creating the “6-1” redistricting plan. (ECF No. 26,

1 Ex. 10). Under this plan, six of the councilmembers would be elected by the voters
2 in each of the City's six "single-member districts" ("SMD"); a seventh seat would
3 be elected at-large. The geographic residency districts divide the entire territory
4 within Pasco city limits into six instead of five geographic districts. Three districts
5 (Districts 1, 2 and 6) are majority-minority districts in which Latinos constitute more
6 than 50% of that district's eligible and registered voters. (ECF No. 26, Ex. 13 at 2;
7 ECF No. 33 at 5; ECF No. 33, Ex. 1 at 4). The new district boundaries align with
8 58 out of 67 existing precincts. (ECF No. 33, Ex. 2 at 4). The City's map and "Table
9 1" of demographic data (based upon the 2010-2014 5-year ACS estimates) are
10 reproduced in Appendix A attached to this decision.
11

12 The Latino share of eligible voters based upon figures from the 2010-2014 5-
13 year ACS estimate for Position 1 was 54.0%; Position 2, 52.3%; Position 3, 27.3%;
14 Position 4, 23.6%; Position 5, 13.0%; and Position 6, 56.0%. (ECF No. 26, Ex. 13
15 at 5). The parties agree that the City's plan provides three majority-minority
16 "opportunity" districts (Positions 1, 2, and 6), and at least one district in which
17 Latinos are not a majority but have a Latino voting age population exceeding 25%.
18

19 The court notes that Plaintiff has not had the opportunity to respond or offer
20 their own expert analysis of Mr. Morrison's statistical analysis of current registered
21 voters by District contained in "Table 2" at ECF No. 33, Ex. 1, based upon 2016
22 data from the Franklin County Auditor's Office. (ECF No. 33, Ex. 1)(Morrison First
23
24

1 Supplemental Report). Mr. Morrison estimates the Latino share of registered voters
2 district-wide are: Position 1 (58.5%); Position 2 (61.6%); Position 3 (41.4%);
3 Position 4 (40.9%); Position 5 (38.2%); Position 6 (61.7%). *Id.*

4 The City Council's Ordinance states that this alternative was preferred over
5 other proposals due to: 1) "its providing three Latino citizen-voter-age majority
6 districts, the same number as possible under the ACLU's preferred seven district
7 plan;" 2) "the plan providing greater opportunities for voters to influence the number
8 of elections for members of the City Council and for voters to have the opportunity
9 to run for seats on the City Council"; and 3) "the possibility of greater continuity of
10 government and ease in implementation." (ECF No. 26, Ex. 10 at 2). There is no
11 evidence that the adoption of this plan was motivated by racial animus.
12

13 **F. Plaintiff's Proposed 7-0 Plan**

14 Plaintiff opposes the plan passed by Pasco and proposes an alternative
15 dividing the City into seven single-member residency districts and no at-large
16 position. The Plaintiff's map and table of demographic data is reproduced in
17 Appendix B attached to this Order. Like the City's plan, Plaintiff's plan also
18 provides three majority-minority districts and one district, in which the LCVAP
19 exceeds 25%, which Plaintiff characterizes as an "influence district."
20

21 **III. LEGAL STANDARDS**

22 The vote is one of the most critical features of a representative democracy and
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1 therefore one of our most fundamental rights. *See Reynolds v. Sims*, 377 U.S. 533,
 2 562 (1964) (describing the right to exercise the franchise in a free and unimpaired
 3 manner as “preservative of other basic civil and political rights”). Although great
 4 progress has been made, “voting discrimination still exists; no one doubts that,” and
 5 § 2 of the Voting Rights Act remains a crucial “permanent, nationwide ban,” *Shelby*
 6 *Cnty. v. Holder*, 133 S.Ct. 2612, 2619 (2013), on “even the most subtle forms of
 7 discrimination,” *Chisom v. Roemer*, 501 U.S. 380, 406 (1991) (Scalia, J., dissenting).
 8 Federal courts have a vital role in protecting the right “to participate equally in the
 9 political process.” *Gingles*, 478 U.S. at 80. Though vital, this role is limited. The
 10 following key principles guide the court’s analysis and decision.

12 **A. General Remedial Powers under the VRA and the Complete and Full**
 13 **Remedy Standard**

14 Where, as here, a violation of § 2 has been established, “courts should make an
 15 affirmative effort to fashion an appropriate remedy for that violation.” *Monroe v.*
 16 *City of Woodville, Mississippi*, 819 F.2d 507, 511 n. 2 (5th Cir.1987) (per curiam),
 17 *cert. denied*, 484 U.S. 1042 (1988); *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022
 18 (8th Cir. 2006)(the district court’s “first and foremost obligation...is to correct the
 19 Section 2 violation.”). The legislative history of the VRA states:

21 The basic principle of equity that the remedy fashioned must be commensurate
 22 with the right that has been violated provides adequate assurance, without
 23 disturbing the prior case law or prescribing in the statute mechanistic rules for
 24 formulating remedies in cases which necessarily depend upon widely varied
 proof and local circumstances. The court should exercise its traditional equitable

1 powers to fashion the relief so that it completely remedies the prior dilution of
2 minority voting strength and fully provides equal opportunity for minority
citizens to participate and to elect candidates of their choice.

3 S.Rep. No. 417 at 31, 97th Cong., 2d Sess. 44, reprinted in 1982 U.S.Code Cong. &
4 Admin.News at 208 (footnote omitted). In sum, “the [district] court has not merely
5 the power but the duty to render a decree which will so far as possible eliminate the
6 discriminatory effects of the past as well as bar like discrimination in the future.”
7 *Ketchum v. Byrne*, 740 F.2d 1398, 1412 (7th Cir.1984) (quoting *Louisiana v. United*
8 *States*, 380 U.S. 145, 154 (1965)), cert. denied sub nom. *City Council v. Ketchum*,
9 471 U.S. 1135 (1985); see also, *Dillard v. Crenshaw Cnty.*, 831 F.2d 246, 252 (11th
10 Cir.1987)(A court “cannot authorize an element of an election proposal that will not
11 with certitude completely remedy the Section 2 violation.”).

12
13 A complete § 2 remedy does not mean that a remedial plan must guarantee
14 electoral success for Latinos. The plan must provide “a genuine opportunity ‘to
15 exercise an electoral power that is commensurate with its population.’” *U.S. v.*
16 *Village of Port Chester*, 704 F.Supp.2d 411, 449 (S.D.N.Y. 2010) (quoting *LULAC*
17 *v. Perry*, 548 U.S. 399, 428 (2006)); see also *Johnson v. De Grandy*, 512 U.S. 997,
18 1014 n.11 (1994) (“[T]he ultimate right of § 2 is equality of opportunity, not a
19 guarantee of electoral success for minority-preferred candidates of whatever race.”);
20 *Bone Shirt*, 461 F.3d at 1023 (“The defendants’ argument that the remedial plan must
21 provide some sort of guarantee that Indian–preferred candidates will be elected is
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1 not persuasive; all that is required is that the remedy afford Native-Americans a
2 realistic opportunity to elect representatives of their choice.”).

3 Any proposal to remedy a § 2 violation must itself conform to § 2. *United States*
4 *v. Dallas Cnty. Comm'n*, 850 F.2d 1433, 1437 (11th Cir. 1988), *cert. denied*, 490
5 U.S. 1030 (1990). A remedy “should be sufficiently tailored to the circumstances
6 giving rise to the § 2 violation.” *Id.*

7
8 A remedy for a § 2 violation must not itself be enacted with the discriminatory
9 intent of diluting the Latino vote. *Dillard v. Crenshaw Cnty., Ala.*, 831 F.2d 246,
10 249 (11th Cir. 1987); *Edge v. Sumter Cnty. School Dist.*, 775 F.2d 1509, 1510 (11th
11 Cir. 1985). There is no evidence the at-large election scheme here was conceived
12 as a tool of racial discrimination.⁵ *C.f., Patino v. City of Pasadena*, 2017 WL 68467
13 (S.D.Tex., January 6, 2017).

14 **B. Judicial Deference**

15
16 Where the Pasco City Council has exercised its political and policy judgment in
17 preparing and passing the Ordinance behind Defendants’ remedial scheme, the
18 proposal is properly characterized as a “legislative” plan. *See e.g., Wise v. Lipscomb*,

19
20 ⁵ Although proof of discriminatory intent is not dispositive, when it exists, it is not
21 irrelevant in assessing the totality of the circumstances. Plaintiff’s contention that
22 intent is “irrelevant” here acknowledges that there is no “concrete evidence” of
23 discriminatory intent at play in this case. (ECF No. 31 at 10).

1 437 U.S. 535, 538 (1978) (upholding system as a valid legislatively enacted plan,
2 despite the absence of an express grant of legislative power to the City Council to
3 change the election system); *Jenkins v. City of Pensacola*, 638 F.2d 1249, 1252 (5th
4 Cir. 1981)(conceding that on balance, the plan was “better viewed as a legislative
5 plan” rather than court-ordered, where the plan, which called for seven single-
6 member districts and three at-large districts, was formally adopted by ordinance after
7 liability was established and the court directed the parties to submit proposals).
8 Plaintiff makes no argument to the contrary.

10 Federal courts are reluctant to interfere with legislative decisions of governing
11 bodies especially when they concern issues as sensitive as those regarding who
12 votes, how they vote, and what districts they vote in. The Supreme Court has
13 cautioned that “redistricting and reapportioning legislative bodies is a legislative task
14 which the federal courts should make every effort not to pre-empt.” *Wise v.*
15 *Lipscomb*, 437 U.S. 535, 539 (1978) (plurality) (White, J.); *see also*, *Connor v.*
16 *Finch*, 431 U.S. 407, 414–15 (1977); *Chapman v. Meier*, 420 U.S. 1, 27 (1975);
17 *White v. Weiser*, 412 U.S. 783, 794–95 (1973); *Upham v. Seamon*, 456 U.S. 37, 39
18 (1982).

20 The role of the court in fashioning a remedy for a violation of the Constitution
21 was delineated by the Supreme Court in *Wise v. Lipscomb*, where the court said “it
22 is ... appropriate, whenever practicable, to afford a reasonable opportunity for the
23

1 legislature to meet constitutional requirements by adopting a substitute measure
2 rather than for the federal court to devise and order into effect its own plan.” *Wise*,
3 437 U.S. at 540; *see also United States v. Brown*, 561 F.3d 420, 435 (5th Cir. 2009)
4 (“[A]t least in redistricting cases, district courts must offer governing bodies the first
5 pass at devising a remedy.”). This court’s role is similar in fashioning a remedy for
6 a violation of the Voting Rights Act. Where a legislative body proposes a plan which
7 completely remedies the § 2 violation and is not unconstitutional or otherwise illegal,
8 then that plan “will ... be the governing law,” even if it is not the plan the court would
9 have chosen. *Wise*, 437 U.S. at 540; *see also, Upham v. Seamon*, 456 U.S. 37, 39
10 (1982)(“a court must defer to legislative judgments on reapportionment as much as
11 possible”); *Perry v. Perez*, 132 S.Ct. 934, 941 (2012)(the legislative plan “serves as
12 a starting point for the district court.”); *Williams v. City of Texarkana, Ark.*, 32 F.3d
13 1265, 1268 (8th Cir. 1994)(“If an appropriate legislative body offers a remedial plan,
14 the court must defer to the proposed plan unless the plan does not completely remedy
15 the violation or the proposed plan itself constitutes a section two violation.”);
16 *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985)(“Thus, even where a legislative
17 choice of policy is perceived to have been unwise, or simply not the optimum choice,
18 absent a choice that is either unconstitutional or otherwise illegal under federal law,
19 federal courts must defer to that legislative judgment.”); *McGhee v. Granville Cnty.*,
20 *N.C.*, 860 F.2d 110, 115 (4th Cir. 1988) (“[A] reviewing court must ... accord great
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1 deference to legislative judgments about the exact nature and scope of the proposed
2 remedy...”); *Dickinson v. Indiana State Election Bd.*, 933 F.2d 497, 501 n. 5 (7th Cir.
3 1991) (the court “must, wherever practicable, afford the jurisdiction an opportunity
4 to remedy the violation first, ... with deference afforded the jurisdiction's plan if it
5 provides a full, legally acceptable remedy.... But if the jurisdiction fails to remedy
6 completely the violation or if a proposed remedial plan itself constitutes a § 2
7 violation, the court must itself take measures to remedy the violation.”); *Tallahassee*
8 *Branch of NAACP v. Leon Cnty., Fla.*, 827 F.2d 1436, 1438 (11th Cir. 1987)
9 (“[F]ederal courts must defer to the judgment of a state legislative body in the area
10 of reapportionment. Principles of federalism and common sense mandate deference
11 to a plan which has been legislatively enacted.”).

12
13 Plaintiff suggests the applicable legal standard in this case is the more stringent
14 one where “[t]he Supreme Court has directed the use of single-member districts to
15 remedy Section 2 violations unless there are compelling reasons not to use them.”⁶
16 (ECF No. 21 at 8-9)(quoting *Montes v. City of Yakima*, 2015 WL 11120964, at *9
17 (E.D.Wash. 2015)). However, the broad reach of the Voting Rights Act supports a
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20 ⁶ The quoted reference from *Montes*, in its entirety, reads as follows: “*When a*
21 *district court is required to fashion a remedy*, the Supreme Court has directed the
22 use of single-member districts unless there are compelling reasons not to use
23 them.” 2015 WL 11120964, at *9 (E.D.Wash. 2015)(emphasis added).
24

1 broad view of permissible remedies. To be clear, the Supreme Court has not
2 mandated single-member districts in all instances. It has stated “a *court drawn plan*
3 should prefer single member districts over multi-member districts, absent persuasive
4 justification to the contrary.” *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)(emphasis
5 added). Supreme Court precedent does not dictate remedial preferences for
6 legislative bodies; it requires deference to them so long as they meet the special
7 standards that are applicable.
8

9 **C. Preemption of State Law**

10 In reviewing a remedial plan, “a district court should not preempt the legislative
11 task nor intrude upon state policy any more than necessary.” *Upham v. Seamon*, 456
12 U.S. 37, 41–42 (1982) (per curiam) (*quoting White v. Weiser*, 412 U.S. 783, 794–
13 795 (1973)). This consideration is relevant here, where, state law proscribes at-large
14 general elections. Accordingly, a legislative remedy entitled to deference must not
15 *unnecessarily* conflict with this legislative judgment of the state of Washington. *See*
16 *e.g., Large v. Fremont Cnty., Wyo*, 670 F.3d 1133 (10th Cir. 2012)(emphasis
17 added)(affirming rejection of deference to locally-devised plan where County’s
18 desired plan unnecessarily conflicted with Wyoming state law).
19

20 **D. Totality of the Circumstances**

21 As stated above, the court must consider whether Defendants’ remedial plan is
22 legally unacceptable because it fails to remedy the particular dilution violation or
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24

1 violates anew constitutional or statutory voting rights. This evaluation requires the
2 court to consider “the totality of circumstances,” 52 U.S.C. § 10301(b), through “a
3 searching practical evaluation of the past and present reality and on a functional view
4 of the political process.” *Gingles*, 478 U.S. at 45 (internal quotations and citation
5 omitted). The typical factors which may be probative of a violation of § 2 are:

- 6 (1) “the extent of any history of official discrimination in the state or political
7 subdivision that touched the right of the members of the minority group to
8 register, to vote, or otherwise to participate in the democratic process;”
- 9 (2) “the extent to which voting in the elections of the state or political
10 subdivision is racially polarized;”
- 11 (3) “the extent to which the state or political subdivision has used unusually
12 large election districts, majority vote requirements, anti-single shot
13 provisions, or other voting practices or procedures that may enhance the
14 opportunity for discrimination against the minority group;”
- 15 (4) “if there is a candidate slating process, whether the members of the
16 minority group have been denied access to that process;”
- 17 (5) “the extent to which members of the minority group in the state or political
18 subdivision bear the effects of discrimination in such areas as education,
19 employment and health, which hinder their ability to participate
20 effectively in the political process;”
- 21 (6) “whether political campaigns have been characterized by overt or subtle
22 racial appeals;”
- 23 (7) “the extent to which members of the minority group have been elected to
24 public office in the jurisdiction;”
- (8) “whether there is a significant lack of responsiveness on the part of elected
officials to the particularized needs of the members of the minority group;”
and
- (9) “whether the policy underlying the state or political subdivision's use of
such voting qualification, prerequisite to voting, or standard, practice or
procedure is tenuous.”

Gingles, 478 U.S. 30, 45 (1986) (quoting Senate Judiciary Committee’s Majority

1 Report contained in bill amending Voting Rights Act).

2 The most relevant of the so-called “Senate Factors” in the liability phase of this
3 litigation were the second and third factors. Where the enacted remedial plan has
4 not been utilized and there is no history by which to analyze the scheme, a
5 mechanical review of these factors does not aid the court in determining whether the
6 proposed plan meets the requirements of § 2. *Hines v. Mayor and Town Council of*
7 *Ahoskie*, 998 F.2d 1266, 1272 (4th Cir. 1993). The pertinent factors are addressed in
8 the Analysis, Section IV, below.

10 **E. At-Large Plans are not Per Se Illegal**

11 Both parties acknowledge that at-large plans are not per se unlawful. *Gingles*,
12 478 U.S. at 46 (“[E]lectoral devices, such as at-large elections, may not be
13 considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality
14 of the circumstances, the devices result in unequal access to the electoral process.”).
15 “At-large procedures that are discriminatory in the context of one election scheme
16 are not necessarily discriminatory under another scheme.” *U.S. v. Dallas Cnty.*
17 *Comm’n, Dallas Cnty., Ala.*, 850 F.2d 1433, 1438-39 (11th Cir. 1988) (citation and
18 quotations omitted).

20 **IV. ANALYSIS – REMEDIAL PLAN**

21 The gravamen of the § 2 violation herein is that the Pasco City Council has until
22 now operated under an at-large “place system” for electing *all seven* City Council
23

1 seats in a place where the voices of minority voters in a racially polarized electorate
2 have been drowned out by the will of majority voters. The City's enacted remedy is
3 the court's starting point.

4 The court begins with a look at how political life in Pasco would structurally
5 differ under the City's hybrid 6-1 remedial plan. First, Pasco's plan provides Latinos
6 with "rough proportionality" in their voting influence, in that it provides for three
7 majority-minority districts, instead of the former two. *See Johnson v. De Grandy*,
8 512 U.S. 997, 1019 (1994)(describing majority-minority districts as remedial
9 devices relying upon a "quintessentially race-conscious calculus aptly described as
10 the 'politics of second best.'"). Next, whereas run-off primaries (district-based for 5
11 position) combined with at-large elections previously determined all *seven* positions,
12 the 6-1 plan provides for six single-member district-based general elections, instead
13 of none. As before, Position 7 remains at-large, untied to any district and elected by
14 the citywide population. Pasco residents would have the opportunity to run or vote
15 for just two positions on the Council, instead of all seven under the former election
16 scheme, or just one under Plaintiff's proposal. Thus, the new election scheme retains
17 its use of numbered positions, a top-two primary, and majority vote general
18 elections, but limits their application to specifically drawn districts for all but one
19 seat.
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23 The court's task is to determine whether, under the totality of the circumstances
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1 present in Pasco, this combination of single district elections and a single at-large
2 position, viewed as a whole (and not simply focusing on the one at-large seat), offers
3 a complete remedy and provides undiluted opportunity for Latino citizens to
4 participate in the political process and to elect candidates of their choice.

5 The Defendants contend the City's 6-1 hybrid plan complies with the law and
6 was the result of a policy judgment, not an arbitrary choice or any intent to continue
7 discriminative past practices. The only aspect of the City's plan Plaintiff contests is
8 its at-large component for Position 7. Plaintiff contends the total elimination of any
9 at-large component in the election system is necessary to "completely" and "fully"
10 remedy the § 2 violation. In Plaintiff's view, the retention of any at-large seat puts
11 that seat currently "functionally off-limits" to Latino voters, ECF No. 27 at 6,
12 whereas her proposed single-member plan would "provide Latinos with *immediate*
13 *influence*" in a fourth district. (ECF No. 31 at 2).

14 The nature of Plaintiff's challenge to Pasco's remedy expands upon its challenge
15 to the former election scheme. Whereas Plaintiff contended the former at-large
16 election scheme impeded the ability of Latino voters to elect representatives of their
17 choice, i.e. their ability to *determine* city council elections, Plaintiff's argument now
18 includes the contention that the remedy is unlawful because the citywide post
19 impairs Latinos' ability to *influence* the outcome of the single position on the
20 Council. This type of "influence dilution" claim is addressed in the totality of
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1 circumstances analysis that follows.

2 **A. Proportionality**

3 Defendants emphasize that the City's remedial plan has reconfigured the
4 residency districts to achieve "rough proportionality," where Latinos are a majority
5 of the registered and eligible voting populations in three districts (or 42.85% of the
6 total seats). This is a higher proportion than the Latino share of the citywide voting
7 age population, 38.5%. The Supreme Court has noted that "[p]roportionality" as
8 the term is used [in the totality of circumstances analysis] links the number of
9 majority-minority voting districts to minority members' share of the relevant
10 population." *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994).
11 Proportionality has evolved from relevant evidence for liability determinations in §
12 2 cases, to a convenient, frequently used redistricting tool aimed to redress vote
13 dilution. Both proposals before the court recognize the creation of three majority-
14 minority districts provides Latinos with a realistic opportunity to elect
15 representatives of their choice. This is "obviously an indication that minority voters
16 have an equal opportunity, in spite of racial polarization, 'to participate in the
17 political process and elect representatives of their choice.'" *De Grandy*, 512 U.S. at
18 1020.
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22 Nevertheless, the Supreme Court has admonished that while proportionality is
23 always a relevant factor in the totality of the circumstances inquiry, the court is not
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1 to place undue emphasis on it. *LULAC v. Perry*, 548 U.S. 399, 436 (2006). This is
2 because there is no general requirement that all remedies include rough
3 proportionality (although the facts may dictate it, as they do here), proportionality
4 may not be used as a safe harbor, and it is “not to be pursued at the cost of fracturing
5 effective coalitional districts.” *Covington v. North Carolina*, 316 F.R.D. 117, 133
6 (M.D.N.C. Aug. 11, 2016)(appeal pending); *see also*, *U.S. v. Euclid City School Bd*,
7 632 F.Supp.2d 740, 753 (N.D.Ohio 2009) (rejecting assertion that a remedy must
8 result in roughly proportional representation, as “[s]uch a contention confuses the
9 use of proportionality as one tool through which a reviewing court determines the
10 possible existence of vote dilution on the one hand, with a guarantee of proportional
11 representation on the other ... [t]he former is common sense, the latter is prohibited
12 by statute.”).

13
14
15 The degree of value assigned to proportionality may vary with the facts.
16 Undoubtedly, Pasco has considered its neighbor’s experience in devising a remedy
17 with proportionality in this case. In *Montes v. City of Yakima*, the mechanism
18 diluting the Latino vote was identical to that in this case: a numbered place system
19 with an at-large “city-wide majority takes all election” for all seven city council
20 seats. 2015 WL 11120964, *2 (E.D.Wash. 2015). The City of Yakima had proposed
21 a remedial electoral system that would include five single-member district positions
22 and two at-large positions. *Id.* at *2. Under the proposal, the two at-large positions
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1 would be filled in a single election by way of “limited voting” and without a primary.
2 “Instead, each candidate who filed for office would appear on a single-ballot at the
3 general election,” and “each voter in the City would cast a single vote for any of the
4 candidates listed.” *Id.* The two candidates garnering the most votes would be
5 elected. *Id.* The court concluded the City’s proposal was not entitled to deference
6 as it was neither “effective” nor a “full” remedy for several reasons. First, Yakima’s
7 proposal posed unnecessary conflicts with state law mandating primaries. *Id.* at *5-
8 *7. Second, it failed to provide rough proportionality.⁷ *Id.* at *8. These facts
9 distinguish this case from *Montes* and other cases⁸ Plaintiff cites in a significant way.
10
11

12 ⁷ The *Montes* decision explains that Yakima had asserted the Latino citizen voting
13 age population in Yakima was 22.97%, which meant “Latinos should,
14 mathematically, hold 1.6 seats [on the seven member council] to be proportional to
15 their share of the CVAP.” *Montes*, 2015 WL 11120964, *8. The city’s plan only
16 provided one majority-minority district. *Id.* The court concluded the City’s plan
17 failed to accord proportionality because “Defendants’ proposal only gives the Latino
18 population an opportunity to attain one of the seven seats.” *Id.* The court concluded
19 proportionality was a “significant indicator of whether an electoral plan provides an
20 adequate remedy...” *Id.*

21 ⁸ Rough proportionality was also absent in both of the rejected legislated hybrid
22 proposals in *Harvell v. Blytheville Sch. Dist. No. 5*, 126 F.3d 1038 (8th Cir. 1997)
23 and *U.S. v. Osceola Cnty, Fla*, 474 F.Supp.2d 1254, 1256 (M.D. Fla. 2006).
24

1 This factor favors Pasco's remedy; however, the analysis must proceed because
2 proportionality is not the end-all be-all test for the remedy of a violation of § 2.

3 **B. Racial Polarization**

4 It has been stipulated and this court has found that voting in Pasco evidences
5 racial polarization. In § 2 cases, racially polarized voting simply means that "the
6 race of voters correlates with the selection of a certain candidate or candidates; that
7 is, it refers to the situation where different races (or minority language groups) vote
8 in blocs for different candidates." *Gingles*, 478 U.S. at 62. It "is the *difference*
9 between choices made by [minorities] and whites – not the reasons for that
10 difference" *Id.* at 63.

12 The court rejects Plaintiff's invitation to hold that the findings on liability,
13 including the existence of racially polarized voting, automatically dictates the
14 eradication of all at-large seats for the Pasco City Council. *See* ECF No. 21 at 10.
15 None of the cases cited by Plaintiff support such a bright-line rule. Such an
16 interpretation would eliminate either court or legislative discretion and simply wrap
17 municipalities and "United States District Judges in a 'single-member strait jacket.'" *Paige v. Gray*, 437 F.Supp. 137, 171 (M.D.Ga. 1977); *see also, U.S. v. Marengo*
18 *Cnty. Comm'n*, 643 F.Supp. 232 (S.D.Ala. 1986), *aff'd*, 811 F.2d 610 (11th
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1 Cir.1987)(stating this interpretation “would annihilate a court’s ability to examine
2 on an ad hoc basis the totality of the circumstances presented and thereby to fashion
3 an equitable remedy which does not intrude upon state policy more than necessary
4 to meet the specific constitutional violations involved.”).

5 The impressive body of voting rights jurisprudence confirms that relief against
6 racially polarized bloc voting can utilize a hybrid election scheme without violating
7 § 2. See e.g., *Solomon v. Liberty Cnty. Comm’rs*, 221 F.3d 1218, 1225 (11th Cir.
8 2000)(en banc)(finding no clear error in district court’s decision holding that
9 county’s use of at-large election scheme did not violate § 2, despite high degree of
10 racially polarized voting and “vestiges of official discrimination” in the county);
11 *Tallahassee Branch of NAACP v. Leon Cnty., Fla.*, 827 F.2d 1436 (11th Cir. 1987),
12 *cert. denied*, 488 U.S. 960 (1988) (affirming deference to legislatively adopted
13 mixed plan consisting of five single-member districts and two at large); *Calderon v.*
14 *Ross*, 584 F.2d 66 (5th Cir. 1978), *modified on rehearing*, 589 F.2d 909 (1979)
15 (approving 5-2 plan); *Paige v. Gray*, 473 F.Supp. 137, 158 (M.D.Ga.
16 1977)(approving court-devised 6-1 hybrid remedial plan for city commissioners of
17 the city of Albany, Georgia, allowing retention of a single at-large position slotted
18 for the mayor); *U.S. v. Euclid City School Bd.*, 632 F.Supp.2d. 740 (N.D.Ohio
19 2009)(approving city school board’s limited voting proposal and retention of at-large
20 elections as remedy for § 2 violation); *U.S. v. City of Euclid*, 523 F.Supp.2d 641
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1 (N.D.Ohio 2007)(remedying the §2 violation by replacing multi-seat at-large contest
2 with hybrid 8-1 remedial plan providing eight single-member districts while
3 retaining at-large council president position) ; *N.A.A.C.P. v. Kershaw Cnty., S.C.*,
4 838 F.Supp. 237 (D.S.C. 1993)(accepting hybrid remedial plan arising out of at-
5 large method of electing members of city council with six single member districts
6 and at-large election of chair of county council); *East Jefferson Coalition for*
7 *Leadership and Development v. Parish of Jefferson*, 703 F.Supp. 28 (E.D.La.
8 1989)(approving 7-member council with six single-district members and one at-
9 large member was sufficient to give voters a “realistic ability to influence the
10 outcome of...elections,” despite the fact none of the single-member districts created
11 by the defendants' plan had a majority of African-Americans); *James v. City of*
12 *Sarasota, Fla.*, 611 F.Supp. 25 (M.D. Fla. 1985) (approving mixed plan submitted
13 by city with two commissioners elected at-large by plurality vote); *N.A.A.C.P. v.*
14 *City of Statesville, N.C.*, 606 F. Supp. 569 (W.D.N.C. 1985) (approving jointly
15 proposed replacement for at-large method of election with hybrid 6-2 plan,
16 combining six district and two at-large voting methods); *Vecinos DeBarrio Uno et*
17 *al., v. City of Holyoke et al*, 960 F.Supp. 515 (D.Mass. 1997)(holding that totality of
18 circumstances established that city’s hybrid ward and at-large voting system for city
19 council did not deny Hispanics meaningful access on account of race and
20 recognizing favorable policy underlying at-large component insuring representation
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1 on behalf of the community as a whole).

2 Though legally and statistically significant evidence of racial bloc voting exists
3 in this case, voting is rarely, completely polarized. Dr. Engstrom analyzed eight
4 primary and general election City Council contests from 2005, 2009, and 2015, the
5 last three election cycles that presented voters with a choice between or among
6 Latino and non-Latino candidates. (ECF No. 23 at ¶ 6). Racially polarized bloc
7 voting existed in five of the contests, where Hispanic candidates received support
8 from an estimated 58.3% to 86% of Latino voters compared to only 7.1% to 39.5%
9 of non-Latino voters. Racially polarized voting occurred in *both* the district-based
10 primaries and in the 2015 at-large general elections.
11

12 Five futile elections is enough to establish legally significant evidence of racially
13 polarized voting in Pasco. However, minority cohesion and polarized voting was
14 not present in the three contests in 2005. For example, that year, Joe Cruz was the
15 Latino candidate for at-large Position 7. In the primary, he received 48.2% of the
16 Latino and 33.7% of the non-Latino vote. He lost the general election by just 53
17 votes, and received an estimated 40.7% of the Latino vote and 49.7% of the non-
18 Latino vote. (ECF No. 23 at ¶¶23-24). Other election evidence that non-Latino
19 voters are willing to support Latino candidates exists, including in the 2015 primary
20 election, where Latino candidates received 39.5% of the non-Latino vote. (ECF No.
21 23, Table).
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ORDER- 32

1 Though isolated election observations do not undermine § 2 liability, the
2 evidence pertaining to polarization involves patterns that are not consistently
3 extreme (such as 90% favoring one candidate and 90% favoring another). The
4 evidence also does not suggest there are insurmountable barriers to coalition
5 building. Expert evidence on citywide and district crossover voting is somewhat
6 sparse,⁹ however, at oral argument both parties acknowledged crossover voting and
7 the potential for coalition building exists.
8

9 The evidence that voting in Pasco tends to be racially polarized, the degree of
10 political cohesion, and the evidence of crossover voting factor into the court's
11 totality of the circumstances analysis and decision.
12

13 **C. Compact vs. At-large; Size of the District and Influence**

14 In both Defendants' and Plaintiff's plans, Latinos are in the minority in four out
15 of seven positions and their "political fortunes remain tied to the interests of other
16 voters."¹⁰ *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004). Plaintiff contends the
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18 ⁹ Defendants' expert does indicate that the rationale for the 6-1 plan includes that
19 "current and anticipated future numbers assure Latinos across the city the increasing
20 prospect of forming useful coalitions with non-Latino voters to elect a fourth favored
21 candidate of choice." (ECF No. 26, Ex. 3 at ¶ 11).

22 ¹⁰ The court notes that in the three districts where Latinos are not a majority, the
23 Latino voter demographics are not insignificant fractions. *See Appendix A*. Using
24

1 “one difference” between the two proposals is that the City’s at-large position denies
2 Latinos the “meaningful opportunity to win election now” (ECF No. 31 at 9) whereas
3 a compact district would provide for the “immediate removal of dilutive effect.”
4 (ECF No. 31 at 7). If Plaintiff’s argument is that the very existence of one at-large
5 position will enable the white majority voters of Pasco to control four Council seats
6 instead of three, this proposition is akin to arguing Latino votes will be diluted unless
7 their effect is maximized. But the law does not require such a result. Dilution cannot
8 be inferred from the mere failure to guarantee minority voters maximum political
9 influence. *Johnson v. De Grandy*, 512 U.S. 997, 1017 (1994). Nothing in the Voting
10 Rights Act requires maximizing possible voting strength.
11

12 Indeed, there are no legal benchmarks for this court to compare and determine
13 how much influence a minority group should have. Even if having a smaller
14 residency district could increase a minority group's influence, it is difficult to discern
15 when an at-large component causes legal injury by diluting the minority group's
16 influence and when the minority group is merely seeking more influence than is
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19 the 2010-2014 5-year ACS estimates, which do not account for Pasco’s city limits,
20 Defendants’ expert estimates the LCVAP as: 27.3% (District 3); 23.6% (District 4);
21 and 13.0% (District 5)). Defendants estimates the current percentage of Latino
22 registered voters (based upon 2016 data) for these districts are: 41.4% (District 3),
23 40.9% (District 4), and 38.2% (District 5), (ECF No. 33, Ex. 1)
24

1 legally guaranteed. The Supreme Court has repeatedly avoided ruling on the
2 viability of influence dilution claims.

3 The goal of § 2 is not to guarantee success at the polls for minority-preferred
4 candidates but to provide assurances of fairness in the electoral process. *De Grandy*,
5 512 U.S. at 1014; *see also, Nevett v. Sides*, 571 F.2d 209, 236 (5th Cir. 1978) (“the
6 equality involved is the equal opportunity to elect representatives. It is an effective
7 equality, although not a guarantee of equality of result after all, the right to vote was
8 protected, not the right to vote for the winning candidate.”). The guarantee of § 2 is
9 that a minority group will not be denied, on account of race or color, the ability “to
10 elect its candidate of choice on an equal basis with other voters.” *Voinovich v.*
11 *Quilter*, 507 U.S. 146, 153 (1993). As a result, the question here is not whether the
12 Latino-preferred candidate will be elected to the at-large position, but whether the
13 at-large component would give Latinos less opportunity than others in the electorate
14 to form a majority and participate in the political process.

17 A minority group that is too small to form a majority may be able to join with
18 other voters to elect a candidate it supports. However, such groups will be obliged
19 “to pull, haul, and trade to find common political ground” with other voters in the
20 district. *De Grandy*, 512 U.S. at 1020. At this moment in time, this dynamic exists
21 in both Pasco’s at-large position and Plaintiff’s proposed “influence district”
22 (Position 5), where the Latino population is in the minority. Whereas, the citywide
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1 Latino share of registered voting population is approximately 30% (*compare* ECF
2 No. 21-2 at 3 (29.81%) with ECF No. 33-1 at 4 (31.8%)), the LCVAP in Plaintiff's
3 proposed residency district is estimated to be 27.25%, which Plaintiff concedes is at
4 least "comparable" (ECF No. 31 at 8) to the citywide statistic. Based upon trends
5 showing an ever increasing Latino voting age population, both parties predict these
6 levels of influence increasing and shifting over the next decade. The court cannot
7 and need not decide which seat (Defendants' Position 7 or Plaintiff's Position 5) will
8 most quickly accommodate favorable change for Latinos in Pasco.

10 Plaintiff contends more difficult coalition-building, socioeconomics and cost are
11 the reasons Latinos do not "have an opportunity to influence or win elections...in an
12 at-large setting." (ECF No. 31 at 8). A socioeconomic disparity between Latinos
13 and non-Latinos exists in Pasco. (ECF No. 24, Ex. B). This disparity also presents
14 itself geographically "between predominantly Latino east Pasco and predominantly
15 White west Pasco." (ECF No. 24 at 21, ¶59).

17 Plaintiff's expert Mr. Cooper opines that "the geographic and socio-economic
18 divide would disadvantage campaign funding and get-out-the vote efforts for Latino
19 candidates in an at-large election compared to an election in a geographically smaller
20 and less populous single-member district." (ECF No. 24 at 21, ¶ 60). *See also*, ECF
21 No. 27 at 10-11, ECF No. 28 at ¶ 19. These contentions are commonly made in
22 voting rights cases. Generally speaking, many features of our political system, such
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1 as majority vote requirements and the high costs of campaigning, combined with
2 socio-economic disparities, often affect access to the political process.

3 Socioeconomic disparities alone do not show that minorities do not have equal
4 access to the political process. *Veasey v. Abbott*, 830 F.3d 216, 275 (5th Cir. 2016).
5 Evidence that might suggest socioeconomic disparities impede electoral
6 participation include reduced levels of voter registration, lower voter turnout among
7 minority voters, costly campaign financial expenditures for at-large elections,
8 evidence of minorities being discouraged from running for office because of the cost
9 of an at-large campaign, or evidence minority voters are hindered in registering,
10 casting ballots, qualifying to run, and campaigning for public office. The parties
11 have not offered this evidence. Instead, the record suggests that Latinos have run
12 for political office in Pasco and, as Plaintiff indicates, "...the Latino
13 community...has repeatedly *produced and supported* candidates for office." (ECF
14 No. 21 at 3 (emphasis added)). This does not suggest a lack of access to the political
15 process. Though socioeconomic impediments no doubt exist, the court finds there
16 is an insufficient basis to conclude that socio-economics and cost would be
17 significant impediments to Latino participation in the single at-large election
18 provided for in the City's remedial plan.
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22 As for the potential for coalition building, there is plenty of room for
23 disagreement. Plaintiff contends coalitions are more likely to occur and to assist
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1 Latino voting strength in a compact district where voters are “more likely to find
2 common ground” because “they share common interests driven by geography: their
3 children attend the same schools and play in the same parks they use the same
4 libraries and roads, and they walk under the same streetlights.” (ECF No. 31 at 8).
5 However, critics of pure district-based election forms cite the fact they can produce
6 a balkanizing effect, splintering communities and having the unintended effect of
7 increasing racial divides. The Supreme Court has warned about these social and
8 political costs of dividing communities along racial lines in the name of improving
9 electoral systems. *See, e.g., Shaw v. Reno*, 509 U.S. 630, 657 (1993) (observing that
10 “[r]acial gerrymandering, even for remedial purposes, may balkanize us into
11 competing racial factions; it threatens to carry us further from the goal of a political
12 system in which race no longer matters...”). Considering the shape of Plaintiff’s
13 District 5 (Appendix B and ECF No. 24 at 13), it is reasonable to question how the
14 shape and size of that geographic unit would encourage a greater sense of cohesion
15 or shared identity over that of the city at-large. *See discussion*, Lani Guinier, Groups,
16 Representation, and Race-Conscious Districting: A Case of the Emperor’s Clothes,
17 71 TEX. L.REV. 1589, 1603 (1993).

20 Defendants counter that the proposed single at-large position is “the next-best
21 electoral opportunity” for Latinos in Pasco. They contend the inclusion of the at-
22 large district: 1) provides “city-wide representation and accountability”; 2) avoids
23

1 the “political ‘balkanization’ that can occur in exclusively single-member district
2 cities and provide greater city-wide unity”; 3) gives “candidates the option to run for
3 one of two seats”; 4) “double[s] the number of times a given citizen could vote for
4 representation on the council”; 5) gives “Latinos who reside in non-majority-
5 minority districts an eventual opportunity to elect their candidate of choice, whereas
6 Latinos in an exclusively SMD plan may never have that opportunity if they reside
7 in a non-majority-minority district”; and 6) provides “more flexibility to address the
8 City’s changing demographics during periods in between redistricting.” (ECF No.
9 30 at 7-8). Defendants’ expert also explains that “[s]cholarly studies suggest that
10 these new prospects – three ‘opportunity districts’ plus a fourth citywide ‘influence’
11 opportunity – might energize Latinos to register and turn out to vote in future
12 elections” as competitiveness has been shown to be “among the strongest correlations
13 of voter turnout.” (ECF No. 26, Ex. 13 at ¶ 12).

14
15
16 These competing contentions are an inescapable part of redistricting
17 controversies. While vote dilution is a comparative inquiry, the court must be
18 cautious not “pre-empt” the legislative task. *Wise v. Lipscomb*, 437 U.S. 535, 539
19 (1978) (plurality) (White, J.). The essence of Plaintiff’s attack on the single at-large
20 position is that it fails to maximize Latino influence for purposes of forging an
21 advantageous coalition. *Given the facts herein*, most importantly the redesign of the
22 election scheme for the other six districts, the court is not persuaded that the size or
23
24

1 at-large nature of Position 7 adversely affects Latino potential to form a majority any
2 more or less than a seventh compact district would.

3 **D. Majority Vote Requirement and Anti-single Shot Provisions**

4 Dr. Engstrom identifies the majority vote requirement and inability to engage in
5 “bullet” or “single shot” voting¹¹ as “two features of the at-large arrangement which
6 enhance the ability of a majority of voters to dilute the votes of the Latino minority
7 in Pasco.” (ECF No. 23 at ¶ 10). These features persist in both proposals whether
8 the election is district-based or includes an at-large component. However, the
9 dilutive effects of these features are minimized where there is only a single at-large
10 position, compared to an at-large election for every seat (the arrangement Dr.
11 Engstrom was referring to in his report). In a majority rule system there will always
12 be an inherent disadvantage to the minority struggling for political power.
13

14 **E. Tiebreaks**

15 Plaintiff contends the problem with the retention of an at-large position is
16

17
18 ¹¹ With single-shot voting, “a group of voters can cast[] one vote, if they wish, for
19 the candidate favored by the group, and not cast[] any of their remaining votes for
20 any other candidate. By withholding their remaining votes from the candidates
21 competing with their preferred choice, minority voters have a better chance to
22 finish among the top...candidates and win one of the...seats.” (ECF No. 23 at ¶
23 26).
24

1 compounded by the fact that geographic districts are evenly split between three
2 majority-Latino and three majority-White districts. Plaintiff speculates that with this
3 even split, the at-large position will become a “critical” “swing vote” or “decisive
4 vote” on issues “on which the two populations are divided.” (ECF No. 27 at 11-12).
5 This court is unwilling to make a speculative assessment on the outcome of political
6 events based upon the odd number of seats and number of majority-minority
7 districts, especially considering the court’s analysis is focused upon ensuring
8 opportunity, not control. There is no evidence that any member of the City Council,
9 including the selected mayor, has more power or authority than any other member.
10 Unlike in the case cited by Plaintiff, *Harper v. City of Chicago Heights*, 223 F.3d
11 593, 600 (7th Cir. 2000), the position of mayor is not slotted for the at-large position
12 and there is no evidence of the frequent needed for a tie-breaking vote. Nor can the
13 court anticipate there will be tie votes where there is no evidence suggesting that
14 elected officials are unresponsive to the needs of the minority community or that
15 representatives are politically unresponsive to Latino voter interests. Here, there
16 simply is no risk of the “*unacceptable* gravitation of power” to any single position.
17 *Dillard v. Crenshaw Cnty.*, 831 F.2d 246 (11th Cir. 1987)(emphasis added)(rejecting
18 at-large chairperson position on the Council given the possibility of an unacceptable
19 gravitation of enhanced power to the position and ultimately agreeing upon a rotation
20 feature).
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1 **F. Policy**

2 Policy considerations certainly counsel restraint in this case.

3 There is no evidence that the policy behind Pasco's remedial plan is tenuous. The
4 court has carefully considered the stated rationale underlying the legislative
5 provision for the City's plan, to wit: 1) "its providing three Latino citizen-voter-age
6 majority districts, the same number as possible under the ACLU's preferred seven
7 district plan;" 2) "the plan providing greater opportunities for voters to influence the
8 number of elections for members of the City Council and for voters to have the
9 opportunity to run for seats on the City Council"; and 3) "the possibility of greater
10 continuity of government and ease in implementation." (ECF No. 26, Ex. 10 at 2).
11 There is no basis for this court to question the reasonableness of these stated interests
12 and indeed, these are considerations that one would expect to give guidance in a
13 remedial election scheme.
14

15 Municipal election systems with at least one at-large component are extremely
16 common nationwide and used in nearly all of Washington's code cities for their city
17 councils. (ECF No. 25 at 22, n. 20, citing [http://mrsc.org/getdoc/c86e1df6-57ae-
18 407e-ac6a-be4d0f0b28c1/Council-Election-by-Wards-or-Districts.aspx](http://mrsc.org/getdoc/c86e1df6-57ae-407e-ac6a-be4d0f0b28c1/Council-Election-by-Wards-or-Districts.aspx)). State law,
19 as it applies to Pasco, expresses a clear preference for at-large city councilmember
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1 elections. The flexibility in election forms that many other states¹² have long
2 accorded their municipalities, supports the obvious fact that one form does not suit
3 all. Each form has possible advantages and disadvantages. *See City of Tucson v.*
4 *State*, 229 Ariz. 172, 174 (2012) (Arizona Supreme Court recognizing that “although
5 at-large members are responsible to electors in the entire city, this may diminish
6 attention to the interests of particular neighborhoods or groups; district-based
7 elections, in contrast, assure representation from different geographic areas but may
8 elevate particular interests over citywide ones.”). The fact Washington State has
9 maintained laws imposing an at-large electoral scheme on municipalities is a factor
10 this court considers in the calculus here. *Houston Lawyers Ass’n v. Attorney General*
11 *of Texas*, 501 U.S. 419, 426-427 (1991)(“[T]he State’s interest in maintaining an
12 electoral system...is a legitimate factor to be considered by courts among the totality
13 of circumstances...”).

16 **G. Totality of the Circumstances**

17 Changes in an election system invariably bring about results that cannot be
18 predicted with any degree of accuracy. When placed in the position of reviewing a
19 legislatively enacted remedial plan which has yet to be locally tested, the court must
20

21 ¹² *See e.g.*, Ariz.Rev.Statutes §§ 9–232.04, 9–273 (allowing non-charter cities and
22 towns to choose between at-large and district-based council elections); Fla. Stat., §
23 124.011.

1 be wary of making predictions, involving itself unnecessarily in political judgments,
2 or directing unnecessary change. All precedent cautions judicial restraint in this area.

3 Vote dilution cases are circumstantial evidence cases often challenging at-large
4 voting schemes. While case law offers some direction, it is nearly impossible to
5 locate analogous cases when the test is so heavily fact-driven. For this reason, the
6 court is unable to “follow in the footsteps of” the six representative cases Plaintiff
7 suggests. They are all inapposite because they involved different legal standards
8 applicable to judicially ordered plans,¹³ or involved legislative proposals lacking
9 proportionality,¹⁴ or occurred in places with significantly more deplorable histories
10 of “open and unabashed” discrimination in all areas including the voting laws
11
12
13
14
15

16 ¹³ See e.g., *U.S. v. Dallas Cnty Comm’n, Dallas Cnty., Ala*, 850 F.2d 1433, 1438-39
17 (11th Cir. 1988) (judicially created plan imposed remedy creating five single-
18 member districts, including one “swing” district, where there was strong evidence
19 African American candidates would not be able to compete for an at-large seat);
20 *Chapman v. Meier*, 420 U.S. 1 (1975) (striking down court-ordered reapportionment
21 that had a total deviation of 20.14%).

22 ¹⁴ *Montes v. City of Yakima*, 2015 WL 11120965 (E.D.Wash. 2015); *U.S. v. Osceola*
23 *Cnty, Fla*, 474 F.Supp.2d 1254, 1256 (M.D. Fla. 2006).
24

1 themselves, economics and social life.¹⁵ Even in the case of *Williams v. City of*
2 *Texarkana, Ark.*, 861 F.Supp. 771 (W.D.Ark. 1993), where it was agreed the remedy
3 would be judicially imposed, the court did *not* hold that the City’s proposed 6-1 plan
4 was unlawful or would not remedy the Voting Rights Act violation. 861 F.Supp. at
5 772 (W.D.Ark. 1993)(deciding the 7-0 plan was the plan “more prudent” because it
6 presented the “greatest potential for” proportionate representation and “less potential
7 for provoking continuing dispute, which would not be in the best interests of the
8 citizens...”); *see also, Williams v. City of Texarkana, Ark.*, 32 F.3d 1265 (8th Cir.
9 1994)(leaving validity of the 6-1 plan, chosen by the electorate after the court
10 imposed the 7-0 plan, for future determination of the district court should a challenge
11 be mounted).

12
13 The case law illustrates the fact there is no single “correct” way to design a
14 government; sometimes there are competing interests which can’t be reconciled;
15 there is no clear formula as to how much voting strength an individual citizen should
16 have; and it is not the role of the court to “calibrate democracy in the vain search for
17 an optimum solution.” *Evenwel v. Abbott*, 136 S.Ct. 1120, 1140 (2016). The “full”
18 and “complete” remedy standard is not a standard that lends itself to application with
19
20
21

22 ¹⁵ *Dillard v. Crenshaw Cnty.*, 649 F.Supp. 289 (M.D.AL. 1986)(class action lawsuit
23 involving challenge to at-large systems in nine counties).
24

1 mathematical exactitude.

2 In reviewing Pasco's remedial plan the court has considered on one side of the
3 scale lies a history of not a single Latino ever having electoral success in a contested
4 Council election, the presence of racially polarized elections, and a socio-economic
5 divide. On the other side of the scale is proportionality, the absence of discriminatory
6 voting practices and intent, viable policies underlying the 6-1 plan, the participation
7 of Latinos in elections, crossover voting, demographics in a state of flux, and
8 officials' responsiveness. The court concludes the totality of the circumstances,
9 judged by the record before this court, make it possible to reconcile the retention of
10 a single at-large seat. Under Pasco's remedial plan, Latinos possess an equal
11 opportunity to elect representatives and to participate in the political process, which
12 was previously denied to them under the all at-large election scheme.
13

14
15 The City's plan complies with the "full and complete" remedy standard and does
16 not violate the Constitution or Voting Rights Act anew. Accordingly, the court defers
17 to the City's plan.

18 V. IMPLEMENTATION

19 The Pasco City Council did not vote on how the proposal should be
20 implemented, leaving this decision to the court. The court orders immediate
21 implementation and orders that every seat be up for election in 2017, with four
22 positions (Positions 1, 3, 4 and 6) elected to a 4-year term, and for this election only,
23
24

1 3 positions (Positions 2, 5 and 7) elected to a 2-year term of office. Prompt
2 implementation is required for an effective remedy. This was recognized by the
3 parties in the Partial Consent Decree and briefing schedule in this case. This option
4 assures citizens will have their voices heard now.

5 **VI. INJUNCTION**

6 Plaintiff has proposed that the court order that the “City of Pasco is permanently
7 enjoined from administering, implementing or conducting any future elections for
8 the Pasco City Council in which members of the City Council are elected on an at-
9 large basis, whether in a primary, general, or special election.” The court denies
10 this request. Future redistricting shall be done in a manner that complies with the
11 terms and intent of this Judgment and the Partial Consent Decree entered on
12 September 2, 2016, and otherwise complies with the provisions and requirements of
13 the Voting Rights Act, 52 U.S.C. § 10301 et seq.
14

15 **VII. CONCLUSION**

16 The task before the court is not one it has taken lightly. These issues do not
17 lend themselves to easy analysis and no court has devised a formula to resolve the
18 question of where the ideal solution lies for Pasco. Complicating the analysis, the
19 facts are in a constant state of change. Legislative apportionment is an issue which
20 justifies ongoing evaluation and adjustment by the executive and legislative
21 branches of government, if necessary. Washington state law makes these
22
23
24

1 adjustments more difficult and less likely to occur voluntarily. For some concerns,
2 a judicial remedy is absent and “relief must come through an aroused popular
3 conscience that sears the conscience of the people’s representatives.” *Baker v. Carr*,
4 369 U.S. 186, 269 (1962).

5 As a final note, the court commends the parties and the ACLU for their
6 collaboration prior to and subsequent to the filing of this lawsuit. Through their
7 sincere cooperation, most importantly, this case has been decided in time to
8 effectuate change before the next election.
9

10 **ACCORDINGLY, IT IS HEREBY FINALLY ADJUDGED AND**
11 **ORDERED:**

12 1. Plaintiff’s Motion for Entry of Plaintiff’s Proposed Remedial Plan (**ECF**
13 **No. 21**) is **DENIED**. Defendants’ Motion for Entry of Proposed Remedial Plan and
14 Final Injunction (**ECF No. 25**) is **GRANTED**.
15

16 2. The court herein approves, as a remedy for the § 2 violation, the City’s
17 remedial plan and the map reproduced in Appendix A.

18 3. The City of Pasco is ordered to take all steps necessary to implement the
19 plan in order to place all seven positions up for election in 2017 and thereafter,
20 provided, however, that the City may revise the districts based on annexations,
21 deannexations, and population changes reflected in the decennial census and at
22 appropriate times in the future when necessary to conform to the law.
23
24

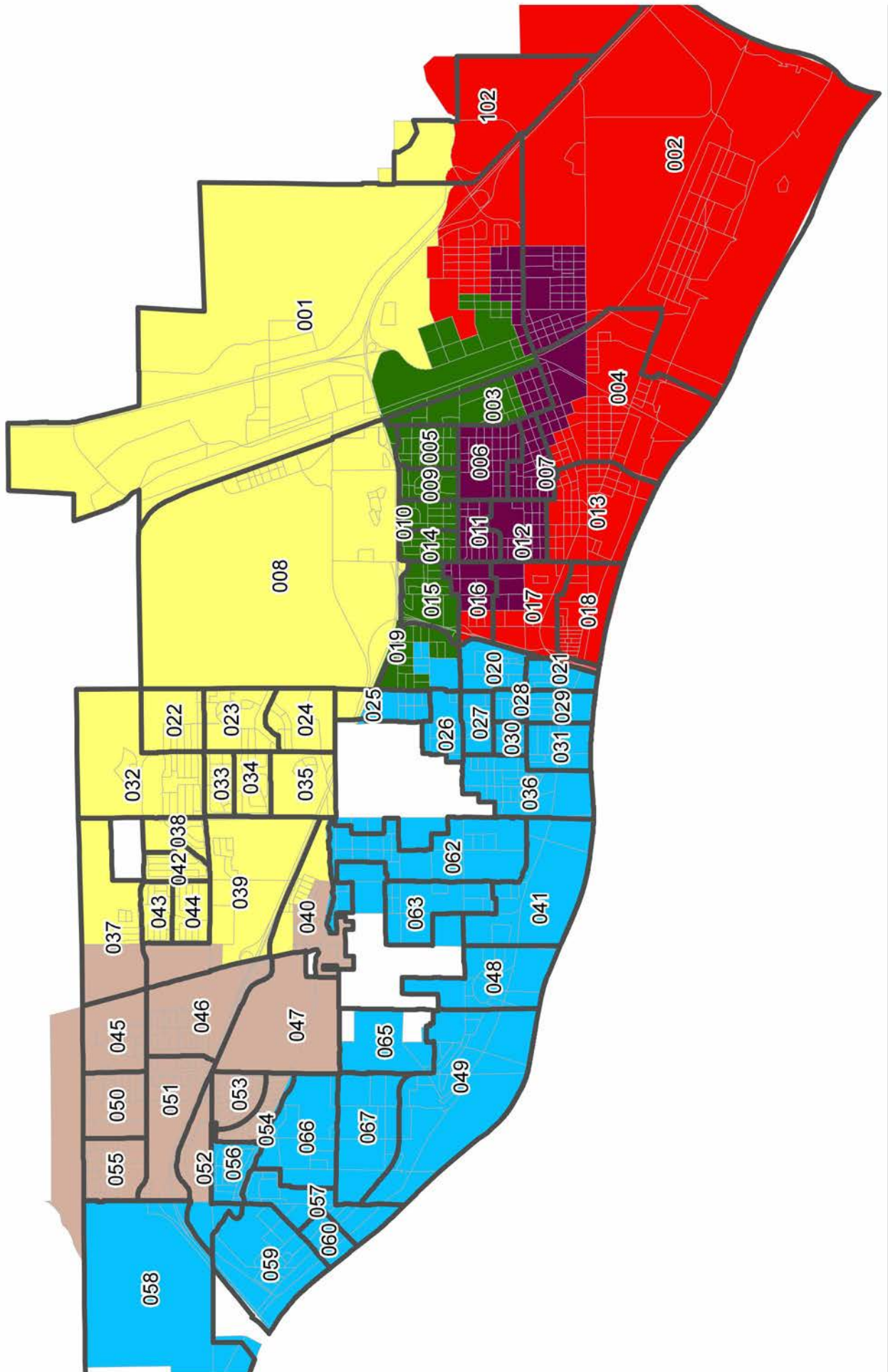
ORDER- 48

LONNY R. SUKO
SENIOR U.S. DISTRICT COURT JUDGE

Case 4:16-cv-05108-LRS ECF No. 40 filed 01/27/17 PageID.684 Page 50 of 55

APPENDIX A

City's Proposed Plan

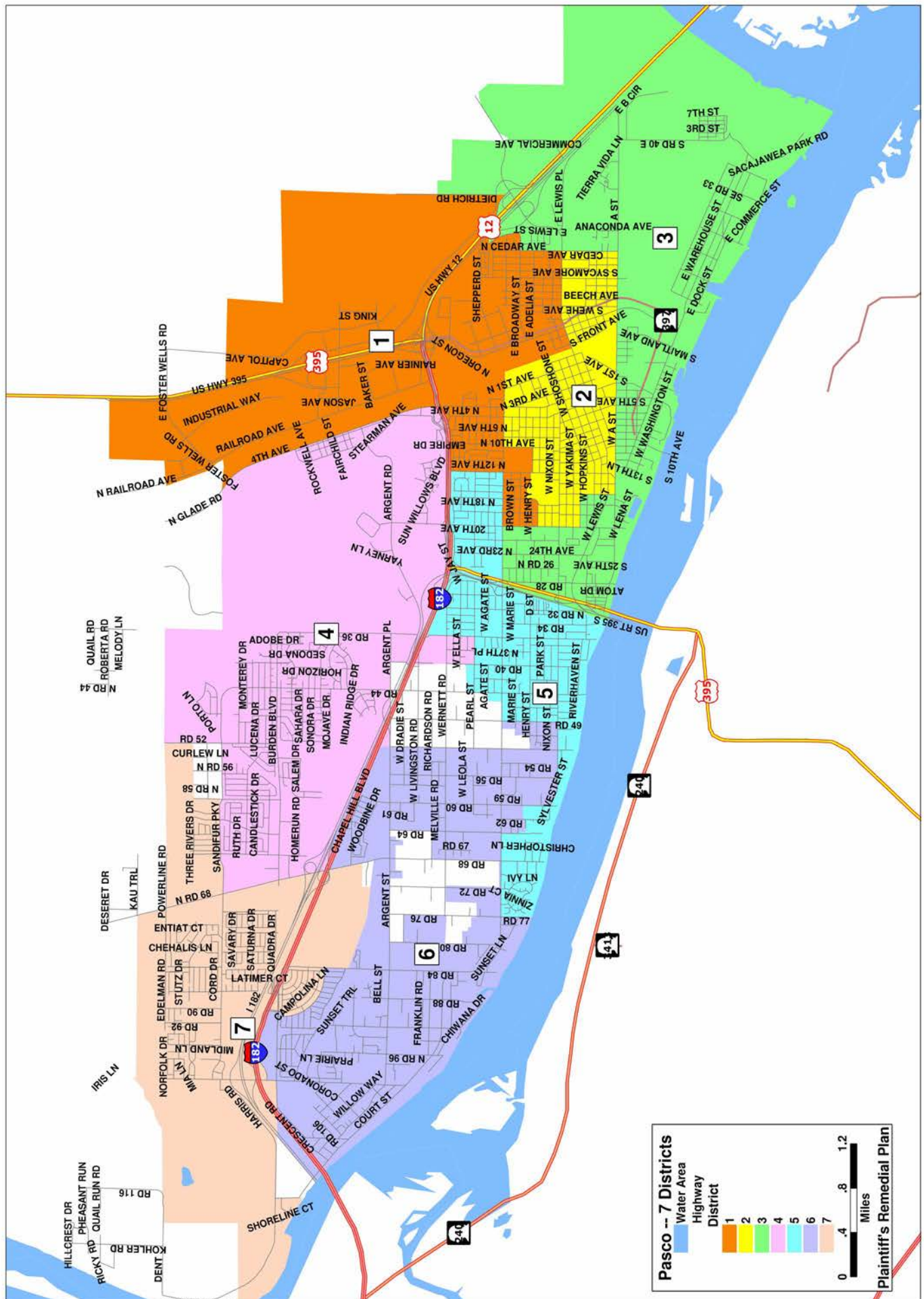


Case 4:16-cv-05108-LRS ECF No. 40 filed 01/27/17 PageID.686 Page 52 of 55

Plan M8				
District	Total CVAP (2010-14)	Hispanic CVAP	Total Pop (2010)	% Hispanic CVAP
1	3,148	1,701	10,048	54.0%
2	3,488	1,825	10,009	52.3%
3	7,828	2,136	10,532	27.3%
4	6,535	1,542	10,062	23.6%
5	7,744	1,007	11,003	13.0%
6	3,998	2,239	10,798	56.0%
Total	32,742	10,450	62,452	31.9%
<i>Total deviation from ideal:</i>				9.55%
Note: Equalizes 2010 population (census enumerated) within 2016 city limits.				

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APPENDIX B



Population Summary Report

Pasco City Council --Plaintiff's Remedial Plan -- 7 districts

District	Population	Deviation	% Deviation	Latino	% Latino	NH White	% NH White	% Latino of all citizens
1	8724	-198	-2.22%	7292	83.59%	1074	12.31%	74.86%
2	8865	-57	-0.64%	7289	82.22%	1214	13.69%	72.78%
3	8587	-335	-3.75%	7161	83.39%	1195	13.92%	69.99%
4	9026	104	1.17%	2495	27.64%	5936	65.77%	30.88%
5	8980	58	0.65%	4697	52.31%	3816	42.49%	46.11%
6	9102	180	2.02%	2175	23.90%	6291	69.12%	19.85%
7	9168	246	2.76%	2626	28.64%	5731	62.51%	31.05%
Total	62452			33735	54.02%	25257	40.44%	45.02%
Ideal district size = 8,922								
Total Deviation			6.51%					

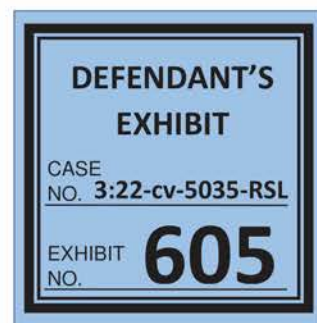
District	18+_Pop	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White	% Latino CVAP	% Latino of Registered Voters
1	5165	4062	78.64%	859	16.63%	54.78%	65.76%
2	5596	4301	76.86%	1013	18.10%	56.29%	65.33%
3	5187	4031	77.71%	995	19.18%	54.08%	61.73%
4	6090	1403	23.04%	4318	70.90%	27.37%	19.25%
5	6108	2661	43.57%	3091	50.61%	28.98%	27.25%
6	6365	1242	19.51%	4703	73.89%	14.24%	15.45%
7	6047	1483	24.52%	4043	66.86%	24.04%	20.36%
Total	40558	19183	47.30%	19022	46.90%	32.02%	29.81%

Note:

(1)% LCVAP calculated by disaggregating 2010-2014 ACS block group estimates for 18+ citizen Hispanics and Non-Hispanics to 2010 census blocks.

(3) Surname match of registered voters as of Nov. 30, 2015

Exhibit D



FILED
21 Oct 21 PM03:46
KITITAS COUNTY
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KITITAS COUNTY

EVANGELINA AGUILAR, SUSAN SOTO
PALMER, ROGELIO MONTES, CANDY
GUTIERREZ, and ONE AMERICA, a
Washington nonprofit corporation,

Plaintiffs,

v.

YAKIMA COUNTY, a Washington municipal
entity; AMANDA MCKINNEY, LADON
LINDE, and RON ANDERSON, in their
official capacities as members of the Yakima
County Board of Commissioners,

Defendants.

No. 20-2.00180-19

DECLARATION OF ANNABELLE
HARLESS IN SUPPORT OF PLAINTIFFS'
MOTION TO APPROVE SETTLEMENT
AND ENTER FINAL JUDGMENT

I, Annabelle Harless, declare as follows:

1. I am one of the attorneys representing Plaintiffs Evangelina Aguilar, Susan Soto Palmer, Rogelio Montes, Candy Gutierrez, and OneAmerica in this action. I am over the age of 18 and competent to testify as to the matters set forth in this affidavit based upon my own personal knowledge.
2. A true and correct copy of the parties' fully executed CR2A agreement (settlement agreement) in the above-captioned case is attached hereto as Exhibit 1.
3. A true and correct copy of the remedial district plan for the Yakima County Board of Commissioners incorporated into the parties' settlement agreement ("Map 3") is attached hereto as Exhibit 2.

DECLARATION OF ANNABELLE E. HARLESS IN SUPPORT OF
MOTION TO APPROVE SETTLEMENT AND ENTER FINAL
JUDGMENT - 1

ny190102

MACDONALD HOAGUE & BAYLESS
705 Second Avenue, Suite 1500
Seattle, Washington 98104
Tel 206.622.1604 Fax 206.343.3961

4. A true and correct copy of the Block Assignment File for Map 3 is attached hereto as Exhibit 3. The Block Assignment File provides a list of the Census Blocks assigned to each of the three districts in Map 3. The parties also submitted a true and correct copy of the native version of this file to the Court via email.
5. A true and correct copy of the Precinct Assignment File for Map 3 is attached hereto as Exhibit 4. The Precinct Assignment File provides a list of the precincts assigned to each of the three districts in Map 3. The parties also submitted a true and correct copy of the native version of this file to the Court via email.
6. A placeholder exhibit for the Shapefile (.geojson file extension) for Map 3 is attached hereto as Exhibit 5. A shapefile, commonly used in redistricting and geospatial analysis, is a vector data file that contains the geometric location information for Map 3 and its district boundaries. A true and correct copy of the native version of the shapefile for Map 3 was submitted to the Court via email.
7. The native files provided to the Court via email may be used to view the proposed map in the "Dave's Redistricting" application, a free online tool available at <https://davesredistricting.org>.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of October, 2021.

/s/ Annabelle Harless
 Annabelle E. Harless*
 CAMPAIGN LEGAL CENTER
 55 W. Monroe Ste., Ste. 1925
 Chicago, IL 60603
 Tel: (312) 312-2885
 aharless@campaignlegal.org
 Attorney for Plaintiffs

* admitted *pro hac vice*

DECLARATION OF ANNABELLE E. HARLESS IN SUPPORT OF
 MOTION TO APPROVE SETTLEMENT AND ENTER FINAL
 JUDGMENT - 2

nyl90102

MACDONALD HOAGUE & BAYLESS
 705 Second Avenue, Suite 1500
 Seattle, Washington 98104
 Tel 206.622.1604 Fax 206.343.3961

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **Declaration of Annabelle Harless in Support of Motion to Approve Settlement and Enter Final Judgment** on the following individual(s):

Attorneys for Defendants:

Floyd, Pflueger & Ringer, P.S.
Francis S. Floyd, WSBA No. 10642
Brittany C. Ward, WSBA No. 51355
200 W. Thomas St. Ste. 500
Seattle, WA 98119
Telephone: (206) 441-4455
Fax: (206) 441-8484
Email: ffloyd@floyd-ringer.com
bward@floyd-ringer.com

And to: skatinas@floyd-ringer.com

- ☐ Via Facsimile
☐ Via First Class Mail
☒ Via Email
☐ Via Messenger
☐ Via Overnight Delivery

DATED this 21st day of October, 2021, at Seattle, Washington.

/s/Chris Bascom
Chris Bascom, Legal Assistant

DECLARATION OF ANNABELLE E. HARLESS IN SUPPORT OF
MOTION TO APPROVE SETTLEMENT AND ENTER FINAL
JUDGMENT - 3

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Seattle, Washington 98104
Tel 206.622.1604 Fax 206.343.3961

ny190102

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

EVANGELINA AGUILAR, SUSAN SOTO
PALMER, ROGELIO MONTES, CANDY
GUTIERREZ, and ONEAMERICA, a
Washington nonprofit corporation,

Plaintiffs,

v.

YAKIMA COUNTY, a Washington municipal
entity, AMANDA MCKINNEY, LADON
LINDE, RON ANDERSON, in their official
capacities as members of the Yakima County
Board of Commissioners,

Defendants.

No. 20-2.00180-19

MOTION TO APPROVE SETTLEMENT
AND ENTER FINAL JUDGMENT

EXHIBIT 1

Parties' Fully Executed CR2A Agreement

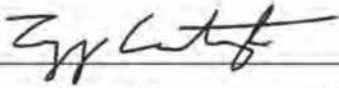
Evangelina Aguilar et al. v. Yakima County et al., Case No. 20-2.00180-19

CR2A Agreement

Plaintiffs Evangelina Aguilar, Susan Soto Palmer, Rogelio Montes, Candy Gutierrez, and OneAmerica, and defendants Yakima County, Amanda McKinney, LaDon Linde, and Ron Anderson, by and through their attorneys, hereby agree to the following pursuant to Washington Superior Court Civil Rule 2A. Although the parties anticipate potentially executing further documents to effect the terms of this settlement and formalize the agreement, this writing nonetheless constitutes a full and complete agreement between the parties in settlement of this action. Through the signatures of their counsel below, the parties recognize that this is a legally enforceable settlement agreement under the court rules, applicable statutes, and contract law.

1. On January 15, 2020, the above-named plaintiffs provided a notice letter pursuant to RCW 29A.92.060 to Yakima County alleging that the current electoral system for the Yakima County Commission violates the Washington Voting Rights Act.
2. On July 13, 2020, the above-named plaintiffs filed suit in Kittitas County Superior Court pursuant to RCW 29A.92.080 under the above-captioned case number.
3. The parties stipulate that there is sufficient evidence from which the court could find a violation of the Washington Voting Rights Act and that the court should order a remedy that satisfies RCW 29A.92.020.
4. The parties agree to work in good faith to present a joint proposed remedy to the court consisting of single-member districts that are substantially similar to the illustrative map provided by plaintiffs' counsel to defense counsel on the evening of August 29, 2021 ("Map 3") and incorporated into this agreement as Exhibit A.
5. The parties will work in good faith to adopt a final map materially the same as Map 3 following review of the illustrative map by the parties' respective demographers and receipt of applicable 2020 census data.
6. Should the parties be unable to reach agreement on a map to present as a joint proposed remedy, each party will submit a proposed map and accompanying briefing to the court for decision. Any proposed map shall be materially the same as Map 3.
7. The parties agree that the proposed remedy will also include the following terms:
 - a. The commissioner representing each district must run in a district-based nonpartisan blanket primary and district-based top-two runoff general;
 - b. Each candidate for county commissioner must reside in the district in which they are running for a county commissioner's seat;

- c. The remedial map will take effect for the 2022 election cycle;
 - d. All three commissioner seats will stand for election in 2022 with the remedial map in place;
 - e. Following the 2022 election cycle, District 1 will stand for election in 2026 and every four years thereafter, and Districts 2 and 3 will stand for election in 2024 and every four years thereafter.
8. The parties agree that plaintiffs are prevailing parties for the purpose of an award of fees pursuant to RCW 29A.92.130 and that the amount of reasonable fees and costs will be determined by the court.
9. The parties agree that the proposed remedy will be submitted to the court no later than 15 days following the County's receipt of the necessary 2020 census data.
10. The parties agree that Kittitas County Superior Court Judge Candace Hooper will retain jurisdiction over any disputes arising from the settlement agreement.



Tiffany Cartwright, MacDonald Hoague & Bayless

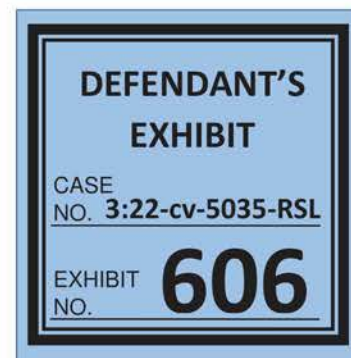
Counsel for Plaintiffs



Francis Floyd, Floyd Pflueger & Ringer

Counsel for Defendants

Exhibit E





* Civil *

FILED

2021 OCT 29 PM 2:45

KITTITAS COUNTY
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

EVANGELINA AGUILAR, SUSAN SOTO
PALMER, ROGELIO MONTES, CANDY
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Plaintiffs,

v

YAKIMA COUNTY, a Washington municipal
entity, AMANDA MCKINNEY, LADON
LINDE, RON ANDERSON, in their official
capacities as members of the Yakima County
Board of Commissioners,

Defendants.

No 20-2.00180-19

~~[PROPOSED]~~ ORDER APPROVING
SETTLEMENT AND ENTERING
JUDGMENT

Having considered Plaintiffs' Motion to Approve Settlement and Enter Remedy, the Court's previous orders, the hearing held in this case on October 29, 2021, and the file in this case, the Court hereby approves the settlement agreement between the parties, and ORDERS and ADJUDGES as follows

1. There is sufficient evidence from which the Court could find that the at-large system of electing Yakima County Commissioners violates the Washington Voting Rights Act.

2. To remedy this violation, Yakima County will adopt a district-based system of election for both primary and general elections for seats on the Yakima County Board of Commissioners. Each candidate for county commission under the district-based system must reside in the district in which they are running for a county commissioner's seat.

3. Yakima County will adopt the district map attached hereto as Exhibits 1-5 to the Harless Declaration. This map will first take effect in the 2022 electoral cycle.

[PROPOSED] ORDER APPROVING SETTLEMENT AND
ENTERING JUDGMENT - 1

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5 Following the 2022 election cycle, District 1 will stand for election in 2026 and
3 every four years thereafter, and Districts 2 and 3 will stand for election in 2024 and every four
4 years thereafter


6 This remedy complies with Washington's constitutional and statutory standards for
6 districting and will provide the Latino community with an equal opportunity to elect their
7 candidate(s) of choice to the Yakima County Board of Commissioners, thereby satisfying the
8 Washington Voting Rights Act, RCW 29A.92.020 The remedial map also complies with Section
9 2 of the Federal Voting Rights Act. 52 U.S.C. §10301

10 6 The Court shall retain jurisdiction over any disputes arising from the settlement agreement.

7 The Plaintiffs are prevailing parties for the purposes of an award of fees pursuant
to RCW 29A.92.130 Plaintiffs shall submit their fee petition to the Court within 10 days of entry
of this order and judgment.

8 The forgoing constitutes final judgment in this case. A supplemental judgment will
be entered for any award of reasonable attorneys' fees and costs.

DATED this 29 day of October, 2021


Hon. L. Candace Hooper
Kittitas County Superior Court Judge

25 /s/ Tiffany Cartwright
26 Tiffany M. Cartwright, WSBA #43564
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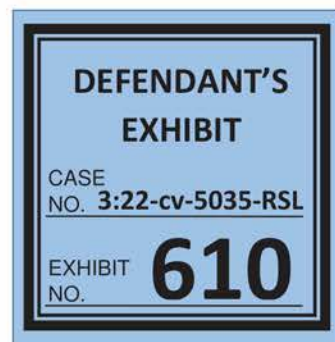
14 Attorneys for Plaintiffs
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[PROPOSED] ORDER APPROVING SETTLEMENT AND
ENTERING JUDGMENT - 3

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Exhibit Q



NO. 25700-B-675

SUPREME COURT OF THE STATE OF WASHINGTON

ORDER REGARDING THE
WASHINGTON STATE
REDISTRICTING
COMMISSION’S LETTER TO
THE SUPREME COURT ON
NOVEMBER 16, 2021.

SWORN
DECLARATION OF
SARAH AUGUSTINE,
CHAIR OF THE
WASHINGTON
STATE
REDISTRICTING
COMMISSION

I, Sarah Augustine, declare as follows:

1. I am over eighteen years of age and competent to testify as to the matters herein, and I make this declaration based on my personal knowledge. I serve as Chair of the Washington State Redistricting Commission, a position I have held since February 5, 2021.
2. I submit this declaration in response to the Court’s Order of November 18, 2021, requesting a detailed timeline of the events of November 15, 2021, and November 16, 2021, relevant to the Commission’s compliance with its constitutional and statutory obligations.

3. Regretfully, the Commission failed to deliver redistricting plans to the Legislature by the statutory deadline of 11:59 p.m. on Monday, November 15, 2021. I sent a letter to this Court on Tuesday, November 16, handing over the work of the Commission and humbly requesting that it be given this Court's consideration, since it was based on a bipartisan consensus and historic level of public input.

4. Between public commentary at the Commission's 17 public outreach meetings and 22 regular business meetings, more than 400 state residents delivered live public testimony about maps or about the Commission's process. Commissioners received more than 2,750 comments on their draft maps or on the 2010 redistricting maps. The Commission received more than 3,000 emails, website comments, letters, and voicemails. The public created 1,300 maps, of which 12 were formally submitted as third-party maps. And after adopting the first-ever Tribal Consultation Policy for a redistricting commission, commissioners and staff communicated with individual Tribes to

learn about their interests in the redistricting process. I am proud of this historic level of public involvement.

5. I am also proud of the bipartisan nature of the Commission's work. Washington is unique among states in that I, as the Commission-appointed nonpartisan chair, do not vote on the plan. Rather, the four legislatively-appointed Commissioners must come to a bipartisan agreement to adopt a plan. I am thankful for the work, mutual respect, and dedication of all four Commissioners.

6. I will provide a short explanation of the Commission and caucus staff referred to in the remainder of my declaration. The Commission employs its own non-partisan staff, including Executive Director Lisa McLean and others under her supervision. I also refer below to caucus staff. These are individuals who are not employed by the Commission and over whom I have no authority. Rather, they are affiliated with the House and Senate Democratic and Republican Caucuses and assisted the voting Commissioners in their roles. Caucus staff

were responsible for creating maps based on the Commissioners' instructions. I did not have any role in creating the maps and did not see the maps until they were uploaded onto the Commission's website on November 16. My knowledge of events occurring subsequent to the Commission's November 15 meeting comes from my communications with Commission staff, who were in turn communicating with caucus staff as these tasks were completed.

7. As part of the Commission's redistricting work, the Commission licensed redistricting software called EDGE Professional Desktop Redistricting as the primary tool for the formal creation of final maps and associated data. Caucus staff also used Dave's Redistricting, which is public access districting software, for the creation of preliminary maps. With the caveat that this is not my area of expertise or responsibility, it is my understanding that the Commission used EDGE for final maps because it had more capability, such as exportation to shapefile

format and other granular analyses, while Dave's was a quicker and more accessible tool.

8. The Commission held a regular business meeting on November 15, 2021, which was the date on which the statutory deadline fell for transmitting the plan to the Legislature. The meeting began at 7:00 p.m.

9. At 11:59:28 p.m., the Commission voted to approve a congressional districting plan. It is my understanding that the congressional districting plan that the Commission voted to approve constituted a final agreement resolving all areas of dispute.

10. At 11:59:47 p.m., the Commission voted to approve a legislative districting plan. It is my understanding that the legislative districting plan that the Commission voted to approve constituted a final agreement resolving all areas of dispute. My understanding is that when the meeting began at 7:00 p.m., there were three outstanding issues of dispute: the composition of

legislative districts 28, 44, and 47. The Commission's vote on the final agreement resolved these outstanding issues.

11. At 12:00:08 a.m., the Commission voted to approve a formal resolution adopting the redistricting plan. The Commission had previously discussed the resolution at public meetings on September 20, 2021, at which Commissioners discussed and proposed changes to the wording of a draft resolution, and on October 18, 2021, at which Commissioners discussed an updated version of the resolution substantially identical to the version approved on November 15, except that the November 15 version included designations of electronic files referenced in the text. At the October 18 meeting, the Commissioners had no objections to the updated language, but agreed that they would reserve final approval until the meeting on November 15. The resolution was signed by myself prior to transmittal and was also signed by the voting Commissioners at the following times: by Paul Graves at 11:51 p.m., by Joe Fain at

11:59 p.m., by April Sims at 12:02 a.m., and by Brady Piñero Walkinshaw at 12:04 a.m.

12. At 12:01:21 a.m., the Commission voted to approve a transmittal letter, which is the cover letter to the Senate and House Majority and Minority Leaders enclosing the Commission's redistricting plan. The Commission had previously discussed the transmittal letter at a public meeting on September 20, 2021. The letter approved on November 15 was modified from the draft discussed on September 20 in accordance with the Commission's discussion of equivalent language in the resolution at the September 20 and October 18 public meetings. The letter was signed by myself prior to transmittal and was also signed by the voting Commissioners at the following times: by Paul Graves at 11:52 p.m., by Joe Fain at 12:01 p.m., by April Sims at 12:01 a.m., and by Brady Piñero Walkinshaw at 12:11 a.m.

13. At 12:01:36 a.m., I adjourned the meeting.

14. At 12:13 a.m. on Tuesday, November 16, 2021, the Commission's Executive Director, Lisa McLean, transmitted by email the transmittal letter and resolution to the Secretary of the Senate and the Chief Clerk of the House.

15. Ms. McLean's email did not attach final maps, or the written legal description of each district, because the maps had not yet been finalized at that time.

16. It is my understanding that, after the public meeting ended, caucus staff finalized the congressional district map in accordance with the Commissioners' agreement, which included converting it from Dave's Redistricting to the EDGE software. At 4:37 a.m. on November 16, caucus staff sent the congressional map as an EDGE file to the Commission's Geographic Information Systems (GIS) Analyst, Executive Director, and Public Outreach Coordinator. The GIS Analyst created text descriptions of each district on the basis of this data. That process was completed, and the GIS Analyst sent the map and data to the Commission's web developer, at 5:46 a.m. on November 16. My

understanding is that Commission staff then posted the congressional map on the Commission's website for a short period of time, but took the map down and instead waited to upload both the congressional and legislative maps simultaneously when both were ready.

17. It is my understanding that, after the public meeting ended, caucus staff finalized the legislative district map to conform to the Commission's agreement, which involved finalizing the boundaries of the three districts referenced in paragraph 10. During this process, caucus staff took a short break to rest. Caucus staff sent the completed map as a Dave's Redistricting export to the Commission's GIS Analyst at 4:01 p.m. on November 16, but there were technical errors with the data transfer requiring caucus staff to resend the map at 6:36 p.m. in the EDGE format. The GIS Analyst created text descriptions of each district on the basis of this data. The GIS analyst then sent the map and data to the Commission's web developer at 8:29 p.m. on November 16.

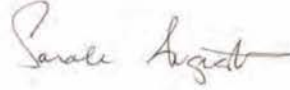
18. At 8:34 p.m. on November 16, Ms. McLean transmitted to this Court, via email, my letter to Chief Justice González, the transmittal letter to legislative leaders, the resolution, the congressional and legislative maps and associated data, and text descriptions of the districts.

19. At approximately 9:15 p.m. on November 16, Commission staff uploaded the legislative and congressional maps to the Commission's website, along with Shapefiles. These maps are available at: <https://www.redistricting.wa.gov/final-maps>.

20. To the best of my knowledge, no negotiation occurred between the Commissioners after our meeting was adjourned. My understanding is that caucus staff were empowered to implement the technical tasks remaining in accordance with the plans approved by the Commissioners.

I swear under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my

own knowledge, and that I executed this declaration at Yakima,
Washington on November 21, 2021.

A handwritten signature in dark ink, appearing to read "Sarah Augustine", is positioned above a horizontal line.

Sarah Augustine, Chair
Washington State
Redistricting Commission