No. 23-484

In the Supreme Court of the United States

JOSE TREVINO, ET AL.,

PETITIONERS,

v.

SUSAN SOTO PALMER, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATE OF WASHINGTON'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI BEFORE JUDGMENT

ROBERT W. FERGUSON
Attorney General

NOAH G. PURCELL
Solicitor General
Counsel of Record

PETER B. GONICK
CRISTINA SEPE
Deputy Solicitors General

ANDREW R.W. HUGHES
Assistant Attorney General

1125 Washington Street SE
Olympia, WA 98504-0100
noah.purcell@atg.wa.gov
360-753-6200

Attorneys for State of Washington

QUESTIONS PRESENTED

After a trial, the district court here found that Legislative District 15 in Washington's redistricting plan violated Section 2 of the Voting Rights Act by denying Hispanic voters an equal opportunity to elect candidates of their choice. Although the State of Washington initially defended against this claim, it ultimately conceded—based on its expert's report and recent VRA decisions in the same region—that the plaintiffs had met the three *Gingles* preconditions and shown that the totality of circumstances weighed in their favor. The State did not appeal. Three people who were granted permissive intervention in the district court, however, filed this petition for certiorari before judgment. The questions presented are:

1. Whether petitioners have standing to appeal when they have no role in the enforcement or implementation of Legislative District 15.

2. Whether a fact-bound appeal regarding a single state legislative district meets this Court's strict criteria for granting certiorari before judgment.

3. Whether, contrary to precedent and longstanding practice, courts are required to decide constitutional challenges to redistricting plans before deciding statutory challenges.

4. Whether, contrary to text, precedent, and longstanding practice, a three-judge panel is required under 28 U.S.C. § 2284 to decide a Voting Rights Act challenge to a legislative district.

5. Whether the district court clearly erred in its fact-bound determination that Legislative District 15 violated Section 2 of the Voting Rights Act.

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INTRODUCTION

Petitioners ask this Court to take the extraordinary step of granting certiorari before judgment, but they come nowhere close to meeting the high standard necessary to warrant that rare relief. The Court should deny their petition.

After Washington adopted its 2020 legislative redistricting plan, a group of plaintiffs filed suit, arguing that Legislative District 15 in the plan violated Section 2 of the Voting Rights Act by denying Hispanic voters an equal opportunity to elect candidates of their choice. Three individuals—Petitioners here—sought to intervene to defend LD 15. The district court denied mandatory intervention, finding that they had no special interest in the district's boundaries that differed from that of any other voter, but allowed permissive intervention. The State initially defended against the plaintiffs' claim, but after the State's expert concluded that the three *Gingles* preconditions were met, and in light of multiple recent lawsuits in the same area that found VRA violations, the State ultimately conceded that the plaintiffs should prevail under Section 2.

Following a trial and careful review of the evidence, the district court ruled for the plaintiffs and ordered that a remedial map be drawn. That process is underway, and all parties have stipulated that a map must be in place by March 25, 2024, to be used in Washington's 2024 elections. The State chose not to appeal the district court's ruling, but Petitioners ask this Court to grant certiorari before judgment. Their request fails on multiple grounds.

First, Petitioners lack standing to appeal. This Court has held that private parties lack standing to appeal a judgment invalidating a state law that they have no role in enforcing or implementing. Petitioners have no such role as to LD 15, so they have no interest in the district's boundaries that differs from that of any other resident. They cannot appeal.

Second, even if Petitioners had standing, this case could not conceivably warrant certiorari before judgment. That extraordinary relief is available only "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Rule 11. But this case is not of "imperative public importance"—it involves a single state legislative district. And it does not require "immediate determination" by this Court; as detailed below, no ruling by this Court could come in time to impact the 2024 election map.

Third, even under normal certiorari standards, the petition falls woefully short. Petitioners allege no circuit split or conflict with precedent on any issue. Instead, they raise two baseless arguments of legal error. They say that 28 U.S.C. § 2284 required that a three-judge panel resolve the VRA claim, but every court to consider that argument has rejected it. They also claim that the lower court erred by deciding the VRA question before a constitutional claim, but they cite no authority for their view. This Court and lower courts routinely decide statutory questions before constitutional ones.

Petitioners' remaining hodgepodge of arguments amount to meritless fact-bound disagreements with the district court, reviewed for clear error. The crux of their factual argument is that LD 15 is already majority Hispanic and recently elected a Hispanic candidate, so it must satisfy the VRA. But courts uniformly agree that majority-minority districts do not automatically comply with the VRA—results matter. And here, the district court found, based on extensive evidence, that candidates preferred by Hispanic voters would usually lose in LD 15. The recent election of one Hispanic candidate did not contradict that finding because all of the evidence—*including Petitioners' own expert report*—showed that the Hispanic candidate was *not* preferred by Hispanic voters in LD 15. Contrary to Petitioners' implication, just because a candidate belongs to a racial group does not mean that they are preferred by that group.

In short, Petitioners lack standing, they allege no conflict in the lower courts, their legal and factual arguments are meritless, and there is nothing urgent or imperatively important about this case. The Court should deny certiorari before judgment.[1]

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[1] Consistent with his position throughout this litigation, Washington Secretary of State Steve Hobbs takes no position on the merits of the Section 2 claim. The Secretary's interest in this litigation is to ensure that election officials can meet election deadlines. If new maps are to be implemented for the 2024 election cycle, those maps must be finalized and transmitted to counties by March 25, 2024, as all parties have stipulated. *See* ECF No. 191, at 20, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL (W.D. Wash. May 24, 2023). The Secretary takes no further position on the State's Brief in Opposition.

STATEMENT

A. The Washington Redistricting Commission and Adoption of Legislative District 15

Washington's Constitution provides for a bipartisan Redistricting Commission to draw state legislative and congressional districts. The Commission consists of four voting members and one non-voting chairperson. *See* Wash. Const. art. II, § 43(2). The voting members are appointed by the leaders of the two largest political parties in each house of the Legislature. Wash. Const. art. II, § 43(2). For the 2021 redistricting cycle, the four voting Commissioners were April Sims (appointed by House Democrats), Brady Piñero Walkinshaw (appointed by Senate Democrats), Paul Graves (appointed by House Republicans), and Joe Fain (appointed by Senate Republicans).

Under Washington law, the Commission must agree, by majority vote, to a redistricting plan by November 15 of the redistricting year, and then transmit the plan to the Legislature. Wash. Rev. Code § 44.05.100(1); Wash. Const. art. II, § 43(2). Thus, the Commission cannot propose a plan without bipartisan agreement amongst the Commissioners. The Legislature then has 30 days to amend the plan. Wash. Rev. Code § 44.05.100(2). The redistricting plan becomes final upon the Legislature's approval of any amendment or after expiration of the 30-day window for amending the plan, whichever occurs sooner. Wash. Rev. Code § 44.05.100(3).

The 2021 Commission was the first in State history to grapple with Section 2 of the Voting Rights Act. The 2020 Census showed dramatic growth of Washington's Hispanic population, centered in the Yakima Valley region in central Washington. ECF No. 191, at 5-7, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL (May 24, 2023).[2] In the years leading up to 2021, three separate cases found violations of the federal Voting Rights Act or Washington Voting Rights Act related to local elections in that region. In *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014), a federal district court concluded that Yakima's at-large voting system for city council elections violated Section 2 of the VRA. The court reviewed evidence regarding the three *Gingles* factors and concluded that each was satisfied with respect to Latino voters in Yakima. *Id.* at 1390-1407. The court also found that the totality of the circumstances demonstrated that the City's electoral process was not equally open to Latino voters. *Id.* at 1408-14. In *Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS (E.D. Wash. 2016), a challenge to Pasco's at-large voting system, a federal district court entered a consent decree in which the parties stipulated to each *Gingles* factor as well as a finding that the totality of the circumstances showed an exclusion of Latinos from meaningfully participating in the political process. *See id.*, ECF No. 16 ¶¶ 15-22, Partial Consent Decree (Sep. 2, 2016);

[2] Filings from the *Soto Palmer* district court docket will be short cited as *Soto Palmer*, ECF No. __.

see also ECF No. 40, at 29, Mem. Op. and Order, *Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS, (E.D. Wash. Jan. 27, 2017). And in *Aguilar v. Yakima County,* No. 20-2-001819 (Kittitas Cnty. Super. Ct. 2020), a challenge to the at-large voting system used in Yakima County, the court approved a settlement agreement finding that the conditions for a violation of the Washington Voting Rights Act, including a showing of racially polarized voting, had been met in Yakima County. *See Soto Palmer*, ECF No. 191, at 18-19.

On September 21, 2021, shortly after the Commission received Census data, the four voting Commissioners released their first proposed legislative maps. *Soto Palmer*, ECF No. 191, at 5, 11-12. Soon thereafter, the Senate Democratic Caucus retained Dr. Matt Barreto of the UCLA Voting Rights Project to evaluate the extent of racially polarized voting in the Yakima Valley and assess the proposed maps' compliance with the VRA. App. A94. In his analysis, Dr. Barreto concluded there was "clear" evidence "of racially polarized voting" in the Yakima Valley. App. A110. He opined that to comply with the VRA, the Commission needed to include a district with a majority-Hispanic citizen voting age population (CVAP) that allowed Latino voters to elect candidates of their choice. App. A111-A117.

Following this report, Commissioners Sims and Walkinshaw released new proposed maps designed to better comply with the VRA by increasing the Hispanic CVAP in the Yakima Valley district that eventually became Legislative District (LD) 15, while

also improving on the previous maps in other respects. *See* Trial Exs. 196, 197; *see also Soto Palmer*, ECF No. 207 (Trial Tr.), at 272:17–273:13; Trial Exs. 200, 195. Meanwhile, Commissioners Fain and Graves obtained a legal opinion arguing that a majority-minority district in the Yakima Valley was not legally necessary. App. A119. The opinion noted that it was primarily a legal analysis and that the authors had not "conduct[ed] factual research regarding demographic trends, voting behavior, [or] election results[.]" App. A119.

The Commissioners negotiated extensively in an effort to reach bipartisan compromise. At trial, each voting Commissioner testified as to their priorities in negotiating and drafting maps. Commissioner Sims' priorities included "comply[ing] with the law . . . regarding how districts were drawn," and "draw[ing] maps that reflected the political realities of our state, that increased civic engagement and voter participation, [and] that respected communities of interest[] and tribal sovereignty." *Soto Palmer*, ECF No. 207 (Trial Tr.), at 257:2–12. Commissioner Walkinshaw was "guided by a principle of keeping communities together." *Id.* at 339:15–18. He sought to "divid[e] as few communities as possible," promote "community interest[s], minimize[] city and county split[s] . . . create[] the most opportunity for communities to have fair representation of their choosing[,]" "respect[] the needs of tribal nations," and preserve "transportation corridors in communities that are economically and geographically connected." *Id.* at 339:13–340:20; Trial Ex. 144. Commissioner Fain prioritized partisan

competitiveness and keeping communities of interest together, including school districts and tribes. *Soto Palmer*, ECF No. 208 (Trial Tr.), at 482:12–21, 486:5–487:3. He also sought to increase the number of majority-minority districts and comply with all statutory and constitutional requirements. *Id.* at 486:1–4, 479:14–480:23. Commissioner Graves prioritized "encourag[ing] electoral competition" and keeping communities of interest together. *Soto Palmer*, ECF No. 209 (Trial Tr.), at 756:3–19. Each Commissioner prioritized complying with the Voting Rights Act, though as trial made clear, they differed in their understanding of what that meant. *Soto Palmer*, ECF No. 207 (Trial Tr.), at 343:9–11 (Walkinshaw); Trial Ex. 200 (Sims); *Soto Palmer*, ECF No. 209 (Trial Tr.), at 757:24–758:1 (Graves); *Soto Palmer*, ECF No. 208 (Trial Tr.), at 434:16–435:1 (Fain). And finally, befitting a bipartisan negotiation, the Commissioners sought to gain (or at least not lose) partisan advantage through the negotiations. *Soto Palmer*, ECF No. 209 (Trial Tr.), at 707:20–23 (Commissioner Graves testifying that exchange of "partisan performance . . . was kind of the meat and potatoes of our negotiation").

As the deadline approached, each Commissioner remained committed to their overarching goals, and the sticking points, including with respect to LD 15, primarily centered on partisan performance. *Soto Palmer*, ECF No. 209 (Trial Tr.), at 702:12–704:19. The racial makeup of the district was just one of several factors in the negotiations over LD 15. Commissioner Graves, for example, said that he viewed ethnicity as an important consideration in negotiating LD 15—perhaps "on par with" partisan

performance—but he also testified that he would not, and did not, vote for any version of LD 15 that violated the traditional redistricting criteria laid out in statute and Washington's constitution. *Soto Palmer*, ECF No. 209 (Trial Tr.), at 756:20–757:18. Commissioner Sims testified that ethnic demographics were just one element she considered, along with "[t]otal population, geography, communities of interest, cities and towns, natural borders, highways," and partisan performance. *Soto Palmer*, ECF No, 207 (Trial Tr.), at 282:4–21. And Commissioner Walkinshaw testified that the negotiations were shaped by "a lot of different pieces[,]" with the primary concerns being partisan competitiveness, creating a Hispanic CVAP majority, "unif[ying] city and county lines, [and] unifying . . . the ancestral lands of the Yakima [Nation.]" *Soto Palmer*, ECF No, 207 (Trial Tr.), at 333:1–14; *see also* App. A6 n.4 (summarizing Commissioners' testimony).

The Commissioners ultimately voted unanimously to approve a legislative redistricting plan consisting primarily of an agreed set of partisan metrics, which was then translated by staff into a map. *Soto Palmer*, ECF No. 207 (Trial Tr.), at 225:20–226:22, 326:11–21; *Soto Palmer*, ECF No. 208 (Trial Tr.), at 495:10–16; *Soto Palmer*, ECF No. 209 (Trial Tr.), at 714:9–715:8. In the final map, LD 15 is 73% Hispanic and, according to estimates based on the 2020 American Community Survey, approximately 51.5% Hispanic by CVAP. *Soto Palmer*, ECF No. 191, at 14.

The Legislature exercised its statutory prerogative to make minor amendments to the Plan. The Legislature made changes to LD 15 without

altering its demographic make-up. *Soto Palmer*, ECF No. 191, at 11-12. On February 8, 2022, the Legislature passed House Concurrent Resolution 4407, adopting the amended redistricting plan. H. Con. Res. 4407, 67th Leg., Reg. Sess. (Wash. Feb. 2, 2022) (enacted). Upon passage, the Legislature's amended redistricting plan became State law. Wash. Rev. Code § 44.05.100.

B. The *Soto Palmer* and *Garcia* Lawsuits

In January 2022, plaintiffs filed this suit, alleging that LD 15 diluted Hispanic voting strength in violation of Section 2 of the Voting Rights Act. *Soto Palmer*, ECF No. 1. The case was assigned to Judge Robert Lasnik of the Western District of Washington.

Nearly two months later, in March 2022, a different plaintiff, Benancio Garcia, filed his own lawsuit alleging that LD 15 was a racial gerrymander in violation of the Fourteenth Amendment. ECF No. 1, *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV (W.D. Wash. Mar. 15, 2022).[3] That case was assigned to a panel of Judge Lasnik and Chief Judge David Estudillo of the Western District of Washington, and Judge Lawrence VanDyke of the Ninth Circuit.

Two weeks after *Garcia* was filed, three individuals—represented by the same counsel as Mr. Garcia—moved to intervene in *Soto Palmer* to defend LD 15 against the Section 2 claim. *Soto Palmer*, ECF No. 57. The district court denied their request for intervention as of right, finding that

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[3] Filings from the *Garcia v. Hobbs* district court docket will be short cited as *Garcia*, ECF No. __.

Intervenors failed to "identif[y] any direct and concrete injury that has befallen or is likely to befall them if plaintiffs' Section 2 claim is successful." *Soto Palmer*, ECF No. 69, at 5. Nonetheless, the court granted permissive intervention. *Id.* at 10. At the same time, the court ordered the State of Washington joined as a party "to ensure that the Court has the power to provide the relief plaintiffs request[.]" *Soto Palmer*, ECF No. 68, at 5.

The two cases then proceeded in tandem as essentially a single dispute with three parties: (1) the *Soto Palmer* Plaintiffs, challenging LD 15 under Section 2; (2) the State of Washington; and (3) the *Soto Palmer* Intervenors/*Garcia* Plaintiff, challenging LD 15 under the Fourteenth Amendment and simultaneously/alternatively arguing that LD 15 complied with Section 2.

The State of Washington prepared to defend against both challenges to LD 15. To that end, the State sought out a highly respected expert, Dr. John Alford, with a history primarily of working for government defendants in VRA cases, including as an expert witness in recent challenges to Texas's congressional and state legislative maps, Louisiana's congressional map, Georgia's congressional map, and Kansas's congressional map. *See* Trial Ex. 601.

After carefully reviewing the evidence, Dr. Alford submitted an expert report concluding that the three *Gingles* preconditions appeared to be met. Trial Ex. 601.[4] He concluded that the first *Gingles*

[4] Expert reports were admitted as the direct testimony of experts. *Soto Palmer*, ECF No. 187.

precondition was met because "the Hispanic Citizen Voting Age Population (HCVAP) exceeds 50%, both in the current Legislative District 15 as enacted, and in the alternative demonstrative configurations" propounded by *Soto Palmer* Plaintiffs. Trial Ex. 601, at 4. He noted that these districts are compact both in terms of their "visual appearance" and "by the summary indicators for compactness" highlighted by *Soto Palmer* Plaintiffs' expert, Dr. Loren Collingwood. *Id.* Under the second *Gingles* precondition, Dr. Alford concluded that Hispanic "voter cohesion is stable in the 70 percent range across election types, suggesting consistent moderate cohesion." *Id.* at 17-18. And under the third *Gingles* factor, Dr. Alford concluded that "non-Hispanic White voters demonstrate cohesive opposition to" Hispanic-preferred candidates in partisan elections, and that this "opposition is modestly elevated when those [Hispanic-preferred] candidates are also Hispanic," although he also noted that "in contests without a party cue, non-Hispanic White voters do not exhibit cohesive opposition to Hispanic candidates[.]" *Id.* at 18. Finally, in examining electoral performance, Dr. Alford concluded Hispanic-preferred candidates would usually lose in LD 15, although they would sometimes prevail. *Id.* In short, Dr. Alford concluded that for partisan elections, racially polarized voting exists such that white voters in LD 15 will generally vote as a bloc to defeat the candidates preferred by Hispanic voters.

Based on Dr. Alford's conclusions, the factual findings in other recent federal and state VRA cases in the Yakima area, and other record evidence, the State notified the parties and Court that it had

concluded that it could no longer "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[,]" or "that the totality of the evidence test likewise favors the *Soto Palmer* Plaintiffs[.]" *Soto Palmer*, ECF No. 194, at 10.[5] However, the State vigorously disputed that the Redistricting Commission either intentionally diluted the Hispanic vote in violation of Section 2 or racially gerrymandered LD 15 in violation of the Fourteenth Amendment. The State presented evidence and argument opposing both claims at trial.

C. The *Soto Palmer* and *Garcia* Orders

On August 10, 2023, Judge Lasnik issued a Memorandum of Decision in *Soto Palmer*, finding that LD 15 had the effect of discriminating against Hispanic voters by denying them the equal right to elect candidates of their choice. App. A1; *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL, 2023 WL 5125390 (W.D. Wash. Aug. 10, 2023). Following this Court's reaffirmance of the *Gingles* framework in *Allen v. Milligan*, 599 U.S. 1 (2023), Judge Lasnik analyzed the *Gingles* factors and concluded that the *Soto Palmer* Plaintiffs had satisfied them all. *Soto Palmer*, 2023 WL 5125390, at *3-6.

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[5] As explained in more detail below, the election of Senator Nikki Torres from LD 15 did not alter the State's conclusion because the evidence showed that Senator Torres was not the candidate of choice of Hispanic voters in LD 15 and because a single election did not appreciably alter the robust evidence of racially polarized voting highlighted by each party's experts. *Infra* at 33-34.

On the first *Gingles* factor, Judge Lasnik pointed to numerous "reasonably configured" districts presented by Plaintiffs that afforded Hispanic voters "a realistic chance of electing their preferred candidates[.]" *Soto Palmer*, 2023 WL 5125390, at *5. On the second *Gingles* factor, Judge Lasnik noted that "[e]ach of the experts who addressed this issue, including Intervenors' expert, testified that Latino voters overwhelmingly favored the same candidate in the vast majority of the elections studied[,]" with "statistical evidence show[ing] that Latino voter cohesion is stable in the 70% range across election types and election cycles over the last decade." *Id*. And on the third *Gingles* factor, Judge Lasnik highlighted both Plaintiffs' and the State's experts conclusion "that white voters in the Yakima Valley region vote cohesively to block the Latino-preferred candidates in the majority of elections (approximately 70%)[,]" and that "Intervenors d[id] not dispute the data or the opinions offered by" either. *Id.* at *6.

Turning to the totality-of-circumstances analysis, Judge Lasnik found that seven of the nine Senate Factors "support the conclusion that the bare majority of Latino voters in LD 15 fails to afford them equal opportunity to elect their preferred candidates." *Id.* at *11. Thus, the court concluded, although "things are moving in the right direction thanks to aggressive advocacy, voter registration, and litigation efforts that have brought at least some electoral improvements in the area, it remains the case that the candidates preferred by Latino voters in LD 15 usually go down in defeat given the racially polarized voting patterns in the area." *Id.* (footnote omitted). Accordingly,

the court entered judgment for Plaintiffs and ordered a remedial process to adopt a new legislative map. *Soto Palmer*, 2023 WL 5125390, at *13.

After the Washington Legislature declined to adopt a new map, the court directed the parties to propose maps so that the court could oversee a remedial process to adopt a revised map. *Soto Palmer*, ECF No. 230. That process is currently underway. All parties have stipulated that the new map must be adopted by March 25, 2024, in order to be used in the 2024 election, given Washington's statutory deadlines for candidate filing and other aspects of election administration. App. A39; *Soto Palmer*, ECF No. 191, at 20.

The *Garcia* district court issued its opinion on September 8, 2023, dismissing the case as moot in light of Judge Lasnik's order invalidating LD 15. App. A42. The plaintiff in *Garcia* has sought to appeal that ruling directly to this Court, and the State just filed its Motion to Dismiss or Affirm in that case. *See* Motion to Dismiss or Affirm, *Garcia v. Hobbs*, No. 23-467 (U.S. Dec. 22, 2023).

REASONS FOR DENYING THE PETITION

A. Intervenors Lack Standing to Appeal

Intervenors' petition should be denied because they lack standing to appeal an order that does not require them to do anything. As the district court found in denying mandatory intervention and instead granting permissive intervention, "intervenors lack a significant protectable interest in this litigation[.]" *Soto Palmer*, ECF No. 69, at 10. Lacking a concrete

interest in the outcome of this suit, they now lack standing to appeal.

Hollingsworth v. Perry, 570 U.S. 693 (2013), is dispositive. There, two couples challenged California's Proposition 8, which prohibited same-sex couples from marrying. *Id.* at 702. They sued state officials responsible for enforcing the law, but "[t]hose officials refused to defend the law[.]" *Id.* And so "[t]he District Court allowed petitioners—the official proponents of the initiative—to intervene to defend it." *Id.* (citation omitted). Following trial, the district court declared Proposition 8 unconstitutional and enjoined its enforcement.

After the district court judgment, the *Hollingsworth* intervenors were in precisely the same position as Intervenors here. Having lost on the merits, and with state officials electing not to appeal, intervenors sought to continue their defense via an appeal of their own. *Id.* But this Court dismissed the intervenors' appeal, holding that they lacked standing to challenge the injunction enjoining state officials from enforcing Proposition 8. *Id.* at 715.

As this Court explained, "standing 'must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.'" *Id.* at 705 (quoting *Arizonans for Official English v. Arizona,* 520 U.S. 43, 64 (1997)). The district court's order only "enjoined the state officials named as defendants from enforcing" Proposition 8, but did "not order[intervenors] to do or refrain from doing anything." *Hollingsworth*, 570 U.S. at 705. Thus, intervenors "had no 'direct stake' in the outcome

of their appeal." *Hollingsworth*, 570 U.S. at 705-06 (quoting *Arizonans for Official English*, 520 U.S. at 64).

This Court likewise rejected intervenors' effort to claim standing on behalf of the State of California. *Hollingsworth*, 570 U.S. at 709. The Court explained that initiative sponsors had no authority under state law to represent the State in court, and had "participated in this litigation solely as private parties." *Id.* at 709-10 (distinguishing *Karcher v. May*, 484 U.S. 72 (1987)).

This Court reached a similar result in *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1950 (2019), holding that the Virginia House of Delegates, which had previously intervened and defended legislative redistricting, lacked standing to appeal after the state's Attorney General declined to do so. This Court reasoned that the House, as a single chamber of a bicameral legislature, had "no standing to appeal the invalidation of the redistricting plan separately from the State of which it is a part." *Id.*

What was true for the initiative sponsors in *Hollingsworth* and the Virginia House of Delegates in *Bethune-Hill* is even more true for the three voters who intervened in this case. They "have no role—special or otherwise—in [the] enforcement [of LD 15]. They therefore have no 'personal stake' in defending its enforcement that is distinguishable from the general interest of every [] citizen" of Washington. *Hollingsworth*, 570 U.S. at 707 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Nor, as the district court already found, do they have

"standing in [their] own right" to defend the Commission and the Legislature's adoption of legislative maps. *Bethune-Hill*, 139 S Ct. at 1953; *see Soto Palmer*, ECF No. 69, at 5.

Turning to the individual Intervenors, Mr. Trevino is the only one who even lives in LD 15, but he has no role in implementation or enforcement of LD 15. *Hollingsworth*, 570 U.S. at 707. To the extent he might claim to have standing to appeal the Section 2 judgment because the remedy will supposedly result in a racial gerrymander of his district, this argument was correctly rejected by the district court. As the court explained, Intervenors' asserted "interest in ensuring that any plan that comes out of this litigation complies with the Equal Protection Clause, state law, and federal law" no more affected Intervenors "'than it does the public at large[,]'" and thus "'does not state an Article III case or controversy[.]'" *Soto Palmer*, ECF No. 69, at 5 (second alteration ours). Moreover, "it would be premature to litigate a hypothetical constitutional violation (*i.e.*, being subjected to a racial gerrymander through a remedial map established in this action) when no such violative conduct has occurred." *Id.* Intervenors essentially ask this Court to *presume* that the district court's remedy will violate the Fourteenth Amendment, but there is no basis for such a presumption, especially since this Court just reiterated that race may be considered as a factor in remedying a Section 2 violation. *Allen*, 599 U.S. at 41 ("[T]his Court and the lower federal courts have repeatedly applied the effects test of § 2 as interpreted in *Gingles* and, under certain circumstances, have

authorized race-based redistricting as a remedy for state districting maps that violate § 2.").

The next Intervenor, Alex Ybarra, has no connection to LD 15 or its enforcement either. While he does serve in Washington's Legislature from Legislative District 13, Mr. Ybarra "has not identified any legal basis for [his] claimed authority to litigate on the State's behalf." *Bethune-Hill*, 139 S. Ct. at 1951. Nor has Mr. Ybarra ever sought to participate in this litigation in anything but his personal capacity. *Soto Palmer*, ECF No. 57, at 3, 6 (intervention motion describing Mr. Ybarra's interest as an elected official running for re-election in a separate district); *see Hollingsworth*, 570 U.S. at 713 ("When the proponents sought to intervene in this case, they did not purport to be agents of California."); *Bethune-Hill*, 139 S. Ct. at 1952 ("[E]ven if . . . we indulged the assumption that Virginia had authorized the House to represent the State's interests, as a factual matter the House never indicated in the District Court that it was appearing in that capacity."). He also lacks standing.

As for the final Intervenor, Ismael Campos, it is hard even to imagine how Petitioners would claim he has standing. He lives and votes in a different district and has no role in the implementation or enforcement of LD 15.

In short, Intervenors "have no role—special or otherwise—in [the] enforcement [of LD 15]. They therefore have no 'personal stake' in defending its enforcement that is distinguishable from the general interest of every [] citizen" of Washington. *Hollingsworth*, 570 U.S. at 707. They lack standing to appeal.

B. Even if Intervenors Had Standing, This Case Would Not Meet the Stringent Requirements for Certiorari Before Judgment

This Court grants writs of certiorari before judgment only "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Rule 11. As the language of the Rule suggests, a grant of certiorari before judgment is an "extremely rare occurrence." *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 n.* (1976) (Rehnquist, J., in chambers). The Court has thus granted petitions before judgment in such urgent and important circumstances as resolving issues arising out of presidential actions to secure release of hostages held by Iran, *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981); resolving the "disarray among the Federal District Courts" over the constitutionality of the sentencing guidelines statute, *Mistretta v. United States*, 488 U.S. 361, 371 (1989); and resolving an appeal of a presidential order to seize steel mills, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Intervenors make little effort to demonstrate why their petition meets this "very demanding standard[.]" *Mount Soledad Mem'l Ass'n v. Trunk*, 573 U.S. 954 (2014) (Alito, J., statement respecting the denial of certiorari before judgment). And even a cursory review of their petition shows that this case is nothing like the cases of "imperative public importance" that require "immediate determination" by this Court. *See* Rule 11.

First, this case is a challenge to a single legislative district in Washington. It involves only the largely fact-bound appeal of a court's application of the long-settled *Gingles* preconditions and totality-of-circumstances analysis. Such decisions are routinely and effectively handled by circuit courts. *E.g.*, *Clerveaux v. E. Ramapo Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Thomas v. Bryant*, 919 F.3d 298 (5th Cir. 2019); *Ruiz v. City of Santa Maria*, 160 F.3d 543 (9th Cir. 1998), *cert. denied*, 520 U.S. 1022 (1999).

Second, Intervenors do not and cannot claim that this case requires immediate determination by this Court. In fact, Intervenors' requested relief shows just the opposite: they ask that the Court accept certiorari and then hold the case in abeyance pending proceedings in a separate case. Pet. 14, 35. Intervenors cite no case in which this Court has granted certiorari to address an urgent matter, only to park the case to await speculative developments in a second case. The request is particularly bizarre here because even if this Court granted review in both cases, heard argument in April, and issued its opinion quickly, it would still come too late to have any impact on the 2024 election map, which all parties have stipulated must be finalized by the district court by March 25, 2024. *Soto Palmer*, ECF No. 191, at 20. There is no plausible argument that this case requires immediate determination here.

Rather than address Rule 11's requirements, Intervenors appear to rest their argument for certiorari before judgment on the false claim that "'similar . . . issues of importance [are] already pending before the Court and . . . it [is] considered desirable to review simultaneously the questions

posed in the case still pending in the court of appeals.'" Pet. 14 (second ellipsis ours) (quoting Stephen M. Shapiro, Kenneth S. Geller, Timothy S. Bishop, Edward A. Hartnett, & Dan. Himmelfarb, *Supreme Court Practice* § 2.4 (11th ed. 2019)). Intervenors base this argument on the pending Jurisdictional Statement in *Garcia*, in which a separate party, represented by the same counsel representing Intervenors here, asks this Court to determine that it has mandatory jurisdiction to hear an appeal of a constitutional challenge to LD 15 that was dismissed as moot. *See* Jurisdictional Statement, *Garcia v. Hobbs*, No. 23-467 (U.S. Oct. 31, 2023).

Intervenors' argument is doubly wrong. First, it is entirely speculative whether the Court will determine it has jurisdiction in *Garcia*. As explained in the State's Motion to Dismiss or Affirm in that case, Garcia asks this Court to overturn fifty years of precedent holding that jurisdictional dismissals of cases heard by three-judge district courts do not invoke this Court's jurisdiction. Motion to Dismiss or Affirm at 14-23, *Garcia v. Hobbs*, No. 23-467. Second, even if this Court were to overturn its precedent and accept Garcia's appeal, the issue in that case would not be a "similar issue of importance" that could justify certiorari before judgment in this case. The sole issue in that appeal is whether the *Garcia* district court properly dismissed the case as moot. *Garcia* Jurisdictional Statement at 31-32. Unsurprisingly, none of the cases indirectly relied on by Intervenors involved circumstances even remotely similar. *See* Pet. 14 (citing Shapiro, *Supreme Court Practice* § 2.4 (and cases cited therein)).

Intervenors also seek to justify their request for certiorari before judgment by arguing that the *Soto Palmer* and *Garcia* cases should be heard together. Pet. 14. But even if that claim were correct,[6] it presupposes that the Court will find jurisdiction in *Garcia* and reverse the mootness finding, neither of which has occurred. In any event, if Intervenors think it is critical that the cases be heard together, that goal could readily be accomplished in the Circuit Court; there is no reason the cases urgently need to be heard together in this Court.

In short, this petition comes nowhere close to satisfying Rule 11's demanding standards.

C. Even Under Ordinary Certiorari Standards, the Questions Presented Do Not Warrant This Court's Review

1. Intervenors Identify No Conflict With This Court's Precedent or Among Circuit Courts On Whether 28 U.S.C. § 2284 Applies to a Section 2 Challenge

Intervenors make an atextual and ahistorical argument that only a three-judge panel may rule on a

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[6] In support of the argument that the VRA claim in *Soto Palmer* should be considered simultaneously with the constitutional claim in *Garcia*, Intervenors cite only one district court case allegedly addressing the "overlap" between two such claims. Pet. 14 (citing *League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147 (W.D. Tex. 2022)). While that case addressed the different standards applicable to the two claims, it involved only a constitutional claim and in no way supports Intervenors' argument that a VRA claim must be subsumed by a separate constitutional challenge.

Section 2 redistricting claim under 28 U.S.C. § 2284. Pet. 20-21. No court has ever so held, and Intervenors identify no conflict among circuit courts or with this Court's precedent on this issue. If their position were correct, it would mean that countless VRA decisions have been handed down by courts who lacked power to render them, and that this Court has repeatedly and recently erred in affirming such judgments. *See, e.g.*, *Allen*, 599 U.S. at 16, 42 (affirming "[t]he judgment[] of the [single-judge] District Court for the Northern District of Alabama"). Nonsense.

Section 2284(a) provides: "A district court of three judges shall be convened when . . . an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." As required by the statute, a three-judge court was empaneled for Mr. Garcia's Fourteenth Amendment challenge, but this case, raising only a statutory challenge, was heard before a single judge.

Intervenors claim this was error, but they cite no case holding that § 2284 requires a three-judge panel for VRA claims. Instead, they rely on a single concurring Circuit Court opinion that argued that "[t]he statute allegedly contains an extra 'the.'" *Thomas v. Reeves*, 961 F.3d 800, 802 (5th Cir. 2020) (Costa, J., concurring).

According to Judge Willett's concurrence in *Thomas*, on which Intervenors primarily rely, the word "'the' . . . sets the last phrase ['the apportionment of any statewide legislative body'] apart" from the modifier "constitutionality of," "indicating that § 2284(a) requires three judges for *all* apportionment

challenges to state maps, not just constitutional challenges." *Thomas*, 961 F.3d at 813 (Willett, J., concurring). But Judge Willett's concurrence is not the law, and certainly does not demonstrate a circuit split. In fact, a greater number of the *Thomas* en banc panel joined a separate concurrence *expressly refuting* Judge Willett's reasoning. *Thomas*, 961 F.3d at 802 (Costa, J., concurring) ("explain[ing] why a plain reading of the three-judge statute as well as its ancestry reject the unprecedented notion that statutory challenges to state legislative districts require a special district court"). And the reason is clear: "Congress . . . does not . . . hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). A plain reading of § 2284 requires three-judge courts *only* for constitutional challenges to legislative apportionment. Intervenors' anemic argument to wipe away nearly forty years of VRA case law, relying on a single concurrence, does not warrant this Court's review.

The ordinary meaning of § 2284 is that three-judge panels are required only for *constitutional challenges* to the apportionment of congressional districts or statewide legislative bodies, as any "person on the street would read it[.]" *Thomas*, 961 F.3d at 802. Courts uniformly read the statute that way. *See, e.g.*, *Rural W. Tenn. African-American Affairs Council v. Sunquist*, 209 F.3d 835, 838 (6th Cir. 2000) ("Because the amended complaint contained no constitutional claims [and only the Section 2 claim remained], the three-judge court disbanded itself."); *Chestnut v. Merrill*, 356 F. Supp. 3d 1351, 1354 (N.D. Ala. 2019) ("A claim solely alleging a Section 2 violation falls outside a plain

reading of § 2284. Such a claim is neither a constitutional challenge nor 'when otherwise required by Act of Congress.'"); *Johnson v. Ardoin*, No. 18-625-SDD-EWD, 2019 WL 2329319, at *3 (M.D. La. May 31, 2019); *Grant v. Raffensperger*, No. 1:22-cv-00122-SCJ, 2022 WL 1516321, at *7 (N.D. Ga. Jan. 28, 2022); *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 980 (D.S.D. 2004). Indeed, this Court has parenthetically described § 2284 as "providing for the convention of [a three-judge] court whenever an action is filed challenging the constitutionality of apportionment of legislative districts[.]" *Harris v. Ariz. Indep. Redistricting Comm'n*, 578 U.S. 253, 257 (2016).

This reading is not only consistent with the plain text, it is also consistent with "the series-qualifier canon of construction," in which "a modifier like 'constitutionality of' usually applies to each term in a series of parallel terms." *Thomas*, 961 F.3d at 803 (Costa, J., concurring) (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012); *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920)).

But "[e]ven if an extra definite article opens the door ever so slightly to some ambiguity, section 2284(a)'s statutory history slams it back shut." *Thomas*, 961 F.3d at 807 (Costa, J., concurring). In enacting the current language of § 2284, "Congress was . . . narrowing the reach of the three-judge statute[,]" which had previously applied to a broader range of cases involving constitutional challenges. *Id.* at 808; *see also* S. Rep. No. 94-204, at 1-2 (1975), 1976

U.S.C.C.A.N. 1988, 2000 ("Subsection (a) . . . continue[s] the requirement for a three-judge court in cases challenging the constitutionality of any statute apportioning congressional district or apportioning any statewide legislative body."). "It is implausible (to put it mildly) that while otherwise contracting the statute, Congress decided to expand it beyond constitutional challenges for the first time." *Thomas*, 961 F.3d at 808 (Costa, J., concurring).

In sum, "[t]he plain meaning of the statute's text, uniform caselaw applying the statute, the statutory history, and the rule that three-judge statutes should be construed narrowly all favor the district court's view that three judges are not required for a suit raising only statutory challenges to state legislative districts." *Id.* at 810 (Costa, J., concurring). The district court's exercise of jurisdiction does not conflict with any decision of this Court or any court of appeals.

2. Intervenors Identify No Conflict With This Court's Precedent or Among Circuit Courts Regarding the District Court Reaching the Section 2 Claim

Intervenors claim that the district court erred by deciding the Section 2 challenge before the *Garcia* district court decided the Equal Protection challenge, but that claim is untenable. The decision followed the "fundamental and longstanding principle of judicial restraint" "that courts avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988); *see Gulf Oil Co. v. Bernard*,

452 U.S. 89, 99 (1981) ("[P]rior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision."). There is no exception to this principle for redistricting challenges, and Intervenors cite no case where courts decided a "process-oriented" racial gerrymandering claim before a "results-focused" Section 2 claim. Pet. 16.

As the district court did here, this Court has decided VRA claims while declining to reach constitutional ones. In *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 442 (2006), for example, this Court concluded that a Texas district violated Section 2, and, in light of that holding, declined to address appellants' constitutional claims. The Court further declined to address an equal protection challenge to a second district, reasoning that the second district would need "to be redrawn to remedy the violation" in the first district, meaning the Court had "no cause to pass on the legitimacy of a district that must be changed." *Id.* at 443.

Likewise, lower courts routinely decline to decide Equal Protection claims when cases can instead be resolved under the Voting Rights Act. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 38 (1986) (noting that the district court held North Carolina's legislative redistricting plan violated Section 2 and thus did not reach the challengers' constitutional claims); *Caster v. Merrill*, No. 2:21-cv-1536-AMM, 2022 WL 264819, at *84 (N.D. Ala. Jan. 24, 2022), *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023) (declining to decide the constitutional claims after deciding the Section 2 claims based on constitutional avoidance canon).

This is exactly how it is supposed to work. Here, because the *Soto Palmer* court decided the Section 2 claim and ordered LD 15 redrawn, the *Garcia* court had no reason to reach Garcia's constitutional claim.

Intervenors try to overcome this "fundamental" principle of restraint by arguing the merits of *Garcia* in *this* petition. Pet. 18. But their counsel have already argued perceived errors of the *Garcia* district court order in *Garcia*'s Jurisdictional Statement. Their arguments are further unsupported by the record. As the majority of the *Garcia* three-judge panel observed, the Redistricting Commissioners' testimony "weigh[ed] heavily against finding that race predominated in the drawing of LD 15 and against finding an Equal Protection violation." App. A46-A47 (citing Commissioner testimony). The Commissioners uniformly testified that race was just one of several factors they considered in drawing LD 15. App. A46 n.4; *see also supra* at 7-8.

The Commissioners' testimony regarding consideration of race is strikingly similar to the testimony this Court cited in *Allen* in rejecting Alabama's argument of racial predominance. When asked about the development of illustrative maps, Plaintiffs' expert testified "that while it was necessary for him to *consider* race, he [] took several other factors into account, such as compactness, contiguity, and population equality" and gave all those factors equal weight. *Allen*, 599 U.S. at 31. And when asked whether race predominated in the development of the illustrative plans, the expert answered, "No. It was a

consideration. This is a Section 2 lawsuit, after all. But it did not predominate or dominate." *Allen*, 599 U.S. at 31. Like in *Allen*, the line between racial consciousness and racial predominance "was not breached" by the Commissioners' consideration of race and intent to comply with the VRA. *Id.*

In short, the district court here followed precedent, rather than deviating from it, in deciding the Section 2 claim. This was not error.

3. Intervenors' Remaining Claims Seek Fact-Bound Error Correction Where There is No Error

What remains of Intervenors' petition is a passel of alleged factual errors unique to this case and subject to clear error review. None of these alleged errors is accurate or merits review.

After receiving the findings of a renowned expert and reviewing the outcomes of other recent VRA litigation in the Yakima area, the State acknowledged before trial that it had no basis to dispute that Plaintiffs satisfied the *Gingles* preconditions and the totality-of-circumstances inquiry, as the district court ultimately found. *Soto Palmer*, ECF No. 194, at 10. The State will leave it to Plaintiffs-Respondents to argue the evidence here as they deem fit.

Nonetheless, the State emphasizes a few points to highlight both the flaws in Intervenors' assertions of error and the extent to which their alleged errors do not require this Court's review.

First, although Intervenors acknowledge that "it may be possible for a citizen voting-age majority to lack real electoral opportunity," Pet. 25 (quoting *League of United Latin Am. Citizens*, 548 U.S. at 428), they argue the district court erred in finding so here. But the district court's finding was based on its detailed analysis of the totality-of-circumstances factors. In particular, the district court concluded that "Senate Factors 1, 2, 3, 5, 6, 7, and 8"—that is: (1) a history of official discrimination in the Yakima region, (2) the extent of racially polarized voting, (3) voting practices that enhance the opportunity for discrimination, including off-year elections and nested districts, (5) the continuing effects of anti-Hispanic discrimination, (6) the use of racial appeals in political campaigns in the Yakima area, (7) the lack of success of Hispanic candidates in the Yakima area, and (8) the demonstrated lack of responsiveness of elected officials to Hispanic constituents—"all support the conclusion that the bare majority of Latino voters in LD 15 fails to afford them equal opportunity to elect their preferred candidates." *Soto Palmer*, 2023 WL 5125390, at *11. Intervenors make no effort to show why this conclusion was clearly erroneous, nor why it bears review by this Court.

Like other litigants in the same situation, Intervenors "attempt to avoid the clear-error standard" by "fram[ing] their . . . challenge to liability as a legal one." *Thomas*, 919 F.3d at 308. They suggest it was improper for the district court to find a Section 2 violation because LD 15 is majority-Hispanic by CVAP. Pet. 24. But they don't cite any case for their proposed rule, and they simply ignore case law to the

contrary. *See, e.g.*, *Perez v. Abbott*, 253 F. Supp. 3d 864, 880 (W.D. Tex. 2017); *Moore v. Leflore Cnty. Bd. of Election Comm'rs*, 502 F.2d 621, 624 (5th Cir. 1974)); *Thomas*, 919 F.3d at 309 ("Given the statutory mandate to focus on the 'totality of circumstances' . . . it is not surprising that numerous courts have found dilution of the voting power of a racial group in districts where they make up a majority of the voting population."). "This per se rule [Intervenors] advocate—a bar on vote dilution claims whenever the racial group crosses the 50% threshold," *Thomas*, 919 F.3d at 308—has been repeatedly rejected by courts, including this one. *League of United Latin Am. Citizens*, 548 U.S. at 428; *see also Salas v. Sw. Texas Jr. Coll. Dist.*, 964 F.2d 1542, 1550 (5th Cir. 1992) ("[W]e hold that a protected class that is also a registered voter majority is not foreclosed, as a matter of law, from raising a vote dilution claim."); *Pope v. County of Albany*, 687 F.3d 565, 575 n.8 (2d Cir. 2012); *Kingman Park Civic Ass'n v. Williams*, 348 F.3d 1033, 1041 (D.C. Cir. 2003); *Missouri State Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 934 (8th Cir. 2018).

In other words, Intervenors do not and cannot show that the district court misapplied any precedent or created conflict with another circuit decision. Intervenors merely disagree with how the district court weighed the evidence in evaluating the Senate Factors. *See Soto Palmer*, 2023 WL 5125390, at *12 ("[T]he evidence shows that . . . [a] majority Latino CVAP of slightly more than 50% is insufficient to provide equal electoral opportunity where past discrimination, current social/economic conditions,

and a sense of hopelessness keep Latino voters from the polls in numbers significantly greater than white voters."). This factual dispute does not merit this Court's review.

Second, Intervenors contend the district court misapplied the second and third *Gingles* factors by failing to treat it as essentially dispositive that "[i]n the only contested election held in LD-15, a Hispanic candidate, Nikki Torres, won her race by a 35-point margin." Pet. 2; *see also* Pet. 3.

But the Voting Rights Act guarantees the right of minority voters "to elect representatives *of their choice*." 52 U.S.C. § 10301(b) (emphasis added). It does not mean, as Intervenors suggest, that any Hispanic elected official is good enough for Hispanic voters, regardless of the voters' actual preferences. *See League of United Latin Am. Citizens*, 548 U.S. at 423-29, 442 (finding dilution of Hispanic vote in a district designed to protect Hispanic Republican incumbent who was not the candidate of choice of Hispanic voters).

Every *Gingles* expert in this case, *including Intervenors' own expert*, "testified that Latino voters [in LD 15] overwhelmingly favored the same candidate in the vast majority of the elections studied." *Soto Palmer*, 2023 WL 5125390, at *5. But, because of white bloc voting in the other direction, Hispanic voters' preferred candidates rarely win. *Id.* at *6.

Senator Torres's election did not singlehandedly repudiate that trend. Rather, there was sufficient evidence for the Court to conclude that Senator Torres was not the candidate of choice of

Hispanic voters, but was elected *in spite of* Hispanic voter preferences. Intervenors concede as much, noting that Plaintiffs' expert found that only 32% of Hispanic voters voted for Senator Torres—meaning Hispanic voters preferred her opponent by a margin of *over two-to-one*. Pet. 4, 31. Even Intervenors' own expert concluded that a majority of Hispanic voters in LD 15—52%—voted *against* Senator Torres. *Soto Palmer*, 2023 WL 5125390, at *6.

Another reason not to base a *Gingles* analysis on the single election involving Senator Torres, while ignoring all other elections, is that it was not a typical one. Senator Torres's opponent was a political novice, ran as a write-in candidate in the primary, and spent less than five percent of what Senator Torres spent. *Soto Palmer*, ECF No. 208 (Trial Tr.), at 604:6–605:19. In light of the evidence, the district court did not clearly err in finding that the 2022 election demonstrated "moderate cohesion that was consistent with the overall pattern of racially polarized voting." *Soto Palmer*, 2023 WL 5125390, at *5; *see also League of United Latin Am. Citizens*, 548 U.S. at 427 ("The District Court's determination whether the § 2 requirements are satisfied must be upheld unless clearly erroneous.").

Third, Intervenors take issue with the district court's conclusion that Plaintiffs demonstrated compactness under *Gingles* I, but utterly fail to address the evidence considered by the district court. *See, e.g.*, *Soto Palmer*, 2023 WL 5125390, at *5 ("[P]laintiffs' expert on the statistical and demographic analysis of political data[] presented three proposed maps that perform similarly or better than the enacted map when evaluated for

compactness and adherence to traditional redistricting criteria. . . . The State's redistricting and voting rights expert, Dr. John Alford, testified that plaintiffs' examples are 'among the more compact demonstration districts [he's] seen' in thirty years." (last alteration in original) (quoting Trial Tr. 857:11–14). Remarkably, Intervenors do not even mention Plaintiffs' demonstration districts, let alone attempt to argue they are non-compact. Pet. 26-27. There is no reason for this Court to do what Intervenors could not.

Fourth, Intervenors fault the district court for purportedly not considering whether partisanship, as opposed to race, was driving outcomes in local elections. Pet. 27-29. But even leaving aside the legal merits of this argument—which the district court addressed, *Soto Palmer*, 2023 WL 5125390, at *6—Intervenors' argument ignores that the district court explicitly considered partisanship as part of its totality-of-circumstances analysis. *Id.* at *12 ("Especially in light of the evidence showing significant past discrimination against Latinos, on-going impacts of that discrimination, racial appeals in campaigns, and a lack of responsiveness on the part of elected officials, plaintiffs have shown inequality in electoral opportunities in the Yakima Valley region: they prefer candidates who are responsive to the needs of the Latino community whereas their white neighbors do not. The fact that the candidates identify with certain partisan labels does not detract from this finding.").

Fifth, Intervenors carp that the district court's "*Gingles* II analysis runs a grand total of one paragraph[.]" Pet. 27. But because every expert agreed that Hispanic voters cohesively preferred the same candidates, *Soto Palmer*, 2023 WL 5125390,

at *5, there was no meaningful dispute on this point, and so no reason for the Court to write a treatise. *Cf. League of United Latin Am. Citizens*, 548 U.S. at 427 (addressing *Gingles* II and III for a congressional district in a single paragraph).

Finally, Intervenors nitpick the district court's weighing of the evidence under the totality-of-circumstances test, accusing the court of overemphasizing certain facts and relying in part on supposed hearsay (to which they did not object at trial). Pet. 31-35. But Intervenors' quibbles around the margins come nowhere near showing that the district court clearly erred. And they certainly do not demonstrate an issue meriting this Court's attention.

CONCLUSION

The Court should deny this petition for an extraordinary writ of certiorari before judgment.

RESPECTFULLY SUBMITTED.

ROBERT W. FERGUSON
Attorney General

NOAH G. PURCELL
Solicitor General
Counsel of Record

PETER B. GONICK
CRISTINA SEPE
Deputy Solicitors General

ANDREW R.W. HUGHES
Assistant Attorney General

1125 Washington Street SE
Olympia, WA 98504-0100
noah.purcell@atg.wa.gov
360-753-6200

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