

In the Supreme Court of the United States

JOSE TREVINO, ISMAEL G. CAMPOS, AND STATE REPRESENTATIVE ALEX
YBARRA,

Applicants,

v.

SUSAN SOTO PALMER ET AL.,

Respondents.

**Addendum to Applicants' Emergency Application to the Honorable
Elena Kagan, Associate Justice of the Supreme Court of the United
States and Circuit Justice for the Ninth Circuit, For A Stay of
Judgment and Injunction**

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

Drew C. Ensign
Dallin B. Holt
Brennan A.R. Bowen
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK,
PLLC
2575 E Camelback Road, Ste 860
Phoenix, AZ 85016
Phone: (602) 388-1262

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

Counsel for Applicants

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

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

MEMORANDUM OF DECISION

Plaintiffs, five registered Latino¹ voters in Legislative Districts 14 and 15 in the Yakima Valley region of Washington State,² brought suit seeking to stop the Secretary of State from conducting elections under a redistricting plan adopted by the Washington State Legislature on February 8, 2022. Plaintiffs argue that the redistricting plan cracks the Latino vote and is therefore invalid under Section 2 of the Voting Rights Act of 1965

¹ Latino refers to individuals who identify as Hispanic or Latino, as defined by the U.S. Census. References to white voters herein refer to non-Hispanic white voters.

² The Court uses the terms “Yakima Valley region” as a shorthand for the geographic region on and around the Yakima and Columbia Rivers, including parts of Adams, Benton, Franklin, Grant, and Yakima counties. These counties feature in the versions of LD 14 and 15 considered by the bipartisan commission tasked with redistricting state legislative and congressional districts in Washington.

(“VRA”), 52 U.S.C. § 10301. “Cracking” is a type of vote dilution that involves splitting up a group of voters “among multiple districts so that they fall short of a majority in each one.” *Portugal v. Franklin Cnty.*, __ Wn.3d __, 530 P.3d 994, 1001 (2023) (quoting *Gill v. Whitford*, __ U.S. __, 138 S.Ct. 1916, 1924 (2018)). Intervenors, three registered Latino voters from legislative districts whose boundaries may be impacted if plaintiffs prevail in this litigation, were permitted to intervene to oppose plaintiffs’ Section 2 claim because, at the time, there were no other truly adverse parties.³

In a parallel litigation, Benancio Garcia III challenged legislative district (“LD”) 15 as an illegal racial gerrymander that violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Garcia v. Hobbs*, C22-5152-RSL-DGE-LJCV (W.D. Wash.). Pursuant to 28 U.S.C. § 2284, a three-judge district court was empaneled to hear that claim. The trial of the Section 2 results claim asserted in *Soto Palmer* began on June 2, 2023, before the undersigned: the Court heard the testimony of Faviola Lopez, Dr. Loren Collingwood, Dr. Josue Estrada, and Senator Rebecca Saldaña on that first day. The remainder of the evidence was presented before a panel comprised of the undersigned, Chief Judge David E. Estudillo, and Circuit Judge Lawrence J.C. VanDyke between June 5th and June 7th. This Memorandum of Decision deals only with

³ The State of Washington was subsequently joined as a defendant to ensure that, if plaintiffs were able to prove their claims, the Court would have the power to provide all of the relief requested, particularly the development and adoption of a VRA-compliant redistricting plan. After retaining its own voting rights expert and reviewing the evidence in the case, the State concluded that the existing legislative plan dilutes the Latino vote in the Yakima Valley region in violation of Section 2, but strenuously opposed plaintiffs’ claim that it intended to crack Latino voters.

1 the Section 2 claim. A separate order will be issued in *Garcia* regarding the Equal
2 Protection claim.

3
4 Over the course of the *Soto Palmer* trial, the Court heard live testimony from 15
5 witnesses, accepted the deposition testimony of another 18 witnesses, considered as
6 substantive evidence the reports of the parties' experts, admitted 548 exhibits into
7 evidence, and reviewed the parties' excellent closing statements. Having heard the
8 testimony and considered the extensive record, the Court concludes that LD 15 violates
9 Section 2's prohibition on discriminatory results. The redistricting plan for the Yakima
10 Valley region is therefore invalid, and the Court need not decide plaintiffs' discriminatory
11 intent claim.
12

13 **A. Redistricting Process**

14
15 Article I, § 2, of the United States Constitution requires that Members of the House
16 of Representatives "be apportioned among the several States ... according to their
17 respective Numbers." Each state's population is counted every ten years in a national
18 census, and states rely on census data to apportion their congressional seats into districts.
19 In Washington, the state constitution provides for a bipartisan commission ("the
20 Commission") tasked with redistricting state legislative and congressional districts. Wash.
21 Const. art. II, § 43. The Commission consists of four voting members and one non-voting
22 member who serves as the chairperson. Wash. Const. art. II, § 43(2). The voting members
23 are appointed by the legislative leaders of the two largest political parties in each house of
24 the Legislature. *Id.* A state statute sets forth specific requirements for the redistricting plan:
25
26

1 (1) Districts shall have a population as nearly equal as is practicable,
2 excluding nonresident military personnel, based on the population reported
3 in the federal decennial census as adjusted by RCW 44.05.140.

4 (2) To the extent consistent with subsection (1) of this section the
5 commission plan should, insofar as practical, accomplish the following:

6 (a) District lines should be drawn so as to coincide with the
7 boundaries of local political subdivisions and areas recognized as
8 communities of interest. The number of counties and municipalities
9 divided among more than one district should be as small as possible;

10 (b) Districts should be composed of convenient, contiguous, and
11 compact territory. Land areas may be deemed contiguous if they share
12 a common land border or are connected by a ferry, highway, bridge,
13 or tunnel. Areas separated by geographical boundaries or artificial
14 barriers that prevent transportation within a district should not be
15 deemed contiguous; and

16 (c) Whenever practicable, a precinct shall be wholly within a single
17 legislative district.

18 (3) The commission's plan and any plan adopted by the supreme court under
19 RCW 44.05.100(4) shall provide for forty-nine legislative districts.

20 (4) The house of representatives shall consist of ninety-eight members, two
21 of whom shall be elected from and run at large within each legislative
22 district. The senate shall consist of forty-nine members, one of whom shall
23 be elected from each legislative district.

24 (5) The commission shall exercise its powers to provide fair and effective
25 representation and to encourage electoral competition. The commission's
26 plan shall not be drawn purposely to favor or discriminate against any
political party or group.

RCW 44.05.090.

1 The Commission must agree, by majority vote, to a redistricting plan by November
 2 15 of the relevant year,⁴ at which point the Commission transmits the plan to the
 3 Legislature. RCW 44.05.100(1); Wash. Const. art. II, § 43(2). If the Commission fails to
 4 agree upon a redistricting plan within the time allowed, the task falls to the state Supreme
 5 Court. RCW 44.05.100(4). Following submission of the plan by the Commission, the
 6 Legislature has 30 days during a regular or special session to amend the plan by an
 7 affirmative two-thirds vote, but the amendment may not include more than two percent of
 8 the population of any legislative or congressional district. RCW 44.05.100(2). The
 9 redistricting plan becomes final upon the Legislature’s approval of any amendment or after
 10 the expiration of the 30-day window for amending the plan, whichever occurs sooner.
 11 RCW 44.05.100(3).

12 The redistricting plan as enacted in February 2022 contains a legislative district in
 13 the Yakima Valley region, LD 15, that has a Hispanic citizen voting age population
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 19 ⁴ Though not relevant to the results analysis which ultimately resolves this case, the evidence at trial showed that
 20 the Commission faced and overcame a set of challenges unlike anything any prior Commission had ever faced. Not
 21 only did the COVID-19 pandemic prevent the Commissioners from meeting face-to-face, but the Commission’s
 22 schedule was compressed by several months as a result of a delay in receiving the census data and a statutory change
 23 in the deadline for submission of the redistricting plan to the Legislature. In addition, the Commission was the first in
 24 Washington history to address the serious possibility that the VRA imposed redistricting requirements that had to be
 25 accommodated along with the traditional redistricting criteria laid out in Washington’s constitution and statutes.

26 In addressing these challenges, the Commissioners pored over countless iterations of various maps and
 spreadsheets, held 17 public outreach meetings, consulted with Washington’s 29 federally-recognized tribes,
 conducted 22 regular business meetings, reviewed VRA litigation from the Yakima Valley region, obtained VRA
 analyses, and considered thousands of public comments. Throughout the process, the Commissioners endeavored to
 reach a bipartisan consensus on maps which not only divided up a diverse and geographically complex state into 49
 reasonably compact districts of roughly 157,000, but also promoted competitiveness in elections. The Court
 commends the Commissioners for their diligence, determination, and commitment to the various legal requirements
 that guided their deliberations, particularly the requirement that the redistricting “plan shall not be drawn purposely to
 favor or discriminate against any political party or group.” Wash. Const. art. II, § 43(5); *see also* RCW 44.05.090(5).

(“HCVAP”) of approximately 51.5%. Plaintiffs argue that, although Latinos form a slim majority of voting-age citizens in LD 15, the district nevertheless fails to afford Latinos equal opportunity to elect candidates of their choice given the totality of the circumstances, including voter turnout, the degree of racial polarized voting in the area, a history of voter suppression and discrimination, and socio-economic disparities that chill Latino political activity. Plaintiffs request that the redistricting map of the Yakima Valley region be invalidated under Section 2 of the VRA and redrawn to include a majority-HCVAP district in which Latinos have a real opportunity to elect candidates of their choice.

B. Three-Part *Gingles* Framework

The Supreme Court evaluates claims brought under Section 2 using the so-called *Gingles* framework developed in *Thornburg v. Gingles*, 478 U.S. 30 (1986).⁵ To prove a violation of Section 2, plaintiffs must satisfy three “preconditions.” *Id.* at 50. First, the “minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district.” *Wisconsin Legislature v. Wisconsin Elections Comm’n*, 595 U.S. ___, 142 S.Ct. 1245, 1248 (2022) (per curiam) (citing *Gingles*, 478 U.S. at 46–51). A district is reasonably configured if it comports with traditional districting criteria. *See Milligan*, 143 S.Ct. at 1503 (citing *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015)). “Second, the minority group must be able to show

⁵ While voting rights advocates and many legal scholars feared that the Supreme Court would alter, if not invalidate, the existing analytical framework for Section 2 cases when it decided *Allen v. Milligan* in June 2023, the majority instead “decline[d] to recast our § 2 case law” and reaffirmed the *Gingles* inquiry “that has been the baseline of our § 2 jurisprudence for nearly forty years.” 599 U.S. ___, 143 S.Ct. 1487, 1507, 1508 (2023) (internal quotation marks and citation omitted).

that it is politically cohesive,” such that it could, in fact, elect a representative of its choice. *Gingles*, 478 U.S. at 51. The first two preconditions “are needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district.” *Grove v. Emison*, 507 U.S. 25, 40 (1993). Third, “the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51. “[T]he ‘minority political cohesion’ and ‘majority bloc voting’ showings are needed to establish that the challenged districting thwarts a distinctive minority vote by submerging it in a larger white voting population.” *Grove*, 507 U.S. at 40.

If a plaintiff fails to establish the three preconditions “there neither has been a wrong nor can be a remedy.” *Id.* at 40–41. If, however, a plaintiff demonstrates the three preconditions, he or she must also show that under the “totality of circumstances” the political process is not “equally open” to minority voters in that they “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301. Factors to be considered when evaluating the totality of circumstances include:

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[;]

[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. at 36–37 (the “Senate Factors”) (quoting S. Rep. 97-417, 28–29, 1982 U.S.C.C.A.N. 177, 206–07).

In applying Section 2, the Court must keep in mind the ill the statute is designed to redress. In 1986 and again in 2023, the Supreme Court explained that “[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives.” *Id.* at 47; *see also Milligan*, 143 S.Ct. at 1503. Where an electoral structure, such as the boundary lines of a legislative district,

“operates to minimize or cancel out” minority voters’ “ability to elect their preferred candidates,” relief under Section 2 may be available. *Gingles*, 478 U.S. at 48; *Milligan*, 143 S.Ct. at 1503. “Such a risk is greatest ‘where minority and majority voters consistently prefer different candidates’ and where minority voters are submerged in a majority voting population that ‘regularly defeat[s]’ their choices.” *Milligan*, 143 S.Ct. at 1503 (quoting *Gingles*, 478 U.S. at 48). Before courts can find a violation of Section 2, they must conduct “an intensely local appraisal” of the electoral structure at issue, as well as a “searching practical evaluation of the ‘past and present reality.’” *Milligan*, 143 S.Ct. at 1503 (quoting *Gingles*, 478 U.S. at 79).⁶

C. Numerosity and Geographic Compactness

It is undisputed that Latino voters in the Yakima Valley region are numerous enough that they could have a realistic chance of electing their preferred candidates if a legislative district were drawn with that goal in mind. Plaintiffs have shown that such a district could be reasonably configured. Dr. Loren Collingwood, plaintiffs’ 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

⁶ In writing the majority opinion in *Milligan*, Chief Justice Roberts provides the historical context out of which the Voting Rights Act arose, starting from the end of the Civil War and going through the 1982 amendments to the statute. The primer chronicles the “parchment promise” of the Fifteenth Amendment, the unchecked proliferation of literacy tests, poll taxes, and “good-morals” requirements, the statutory effort to “banish the blight of racial discrimination in voting,” the judiciary’s narrow interpretation of the original VRA, and the corrective amendment proposed by Senator Bob Dole that reinvigorated the fight against electoral schemes that have a disparate impact on minorities even if there was no discriminatory intent. 143 S.Ct. at 1498–1501 (citation omitted). The summary is a forceful reminder that ferreting out racial discrimination in voting does not merely involve ensuring that minority voters can register to vote and go to the polls without hindrance, but also requires an evaluation of facially neutral electoral practices that have the effect of keeping minority voters from the polls and/or their preferred candidates from office.

1 adherence to traditional redistricting criteria. The Commissioners and Dr. Matthew
2 Barreto, an expert on Latino voting patterns with whom some of the Commissioners
3 consulted, also created maps that would unify Latino communities in the Yakima Valley
4 region in a single legislative district without the kind of “tentacles, appendages, bizarre
5 shapes, or any other obvious irregularities that would make it difficult to find’ them
6 sufficiently compact.” *Milligan*, 143 S.Ct. at 1504 (quoting *Singleton v. Merrill*, 582 F.
7 Supp.3d 924, 1011 (N.D. Ala. 2022)). The State’s redistricting and voting rights expert,
8 Dr. John Alford, testified that plaintiffs’ examples are “among the more compact
9 demonstration districts [he’s] seen” in thirty years. Tr. 857:11-14.

12 Intervenor’s take issue with the length and breadth of the demonstrative districts,
13 arguing that because Yakima is 80+ miles away from Pasco, the Latino populations of
14 those cities are “farflung segments of a racial group with disparate interests.” Dkt. # 215 at
15 16 (quoting *LULAC v. Perry*, 548 U.S. 399, 433 (2006)). But the evidence in the case
16 shows that Yakima and Pasco are geographically connected by other, smaller, Latino
17 population centers and that the community as a whole largely shares a rural, agricultural
18 environment, performs similar jobs in similar industries, has common concerns regarding
19 housing and labor protections, uses the same languages, participates in the same religious
20 and cultural practices, and has significant immigrant populations. The Court finds that
21 Latinos in the Yakima Valley region form a community of interest based on more than just
22 race. While the community is by no means uniform or monolithic, its members share many
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1 of the same experiences and concerns regardless of whether they live in Yakima, Pasco, or
 2 along the highways and rivers in between.⁷

3
 4 Plaintiffs have the burden under the first *Gingles* precondition to “adduce[] at least
 5 one illustrative map” that shows a reasonably configured district in which Latino voters
 6 have an equal opportunity to elect their preferred representatives. *Milligan*, 143 S.Ct. at
 7 1512. They have done so.

8 **D. Political Cohesiveness**

9
 10 The second *Gingles* precondition focuses on whether the Latino community in the
 11 relevant area is politically cohesive, such that it would rally around a preferred candidate.
 12 *Milligan*, 143 S.Ct. at 1503. Each of the experts who addressed this issue, including
 13 Intervenors’ expert, testified that Latino voters overwhelmingly favored the same
 14 candidate in the vast majority of the elections studied. The one exception to this
 15 unanimous opinion was the 2022 State Senate race pitting a Latina Republican against a
 16 white Democrat. With regards to that election, Dr. Owens’ analysis showed a 52/48 split in
 17 the Latino vote, which he interpreted as a lack of cohesion. Dr. Collingwood, on the other
 18 hand, calculated that between 60-68% of the Latino vote went to the white Democrat, a
 19 showing of moderate cohesion that was consistent with the overall pattern of racially
 20 polarized voting.⁸ Despite this one point of disagreement in the expert testimony, the
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 25 ⁷ Intervenors’ political science expert, Dr. Mark Owens, raised the issue of disparate and therefore distinct Latino
 populations but acknowledged at trial that he does not know anything about the communities in the Yakima Valley
 region other than what the maps and data show.

26 ⁸ Dr. Owens also identified the 2020 Superintendent of Public Institutions race as something of an anomaly, noting
 that the Latino vote in the Yakima Valley region did not coalesce around the Democratic candidate, but rather around

1 statistical evidence shows that Latino voter cohesion is stable in the 70% range across
 2 election types and election cycles over the last decade.

3 **E. Impact of the Majority Vote**

4
 5 The third *Gingles* precondition focuses on whether the challenged district
 6 boundaries allow the non-Hispanic white majority to thwart the cohesive minority vote.
 7 *Milligan*, 143 S.Ct. at 1503. In order to have a chance at succeeding on their Section 2
 8 claim, plaintiffs must show not only that the relevant minority and majority communities
 9 are politically cohesive, but also that they are in opposition such that the majority
 10 overwhelms the choice of the minority. Dr. Collingwood concluded, and Dr. Alford
 11 confirmed, that white voters in the Yakima Valley region vote cohesively to block the
 12 Latino-preferred candidates in the majority of elections (approximately 70%). Intervenors
 13 do not dispute the data or the opinions offered by Drs. Collingwood and Alford, but argue
 14 that because the margins by which the white-preferred candidates win are, in some
 15 instances, quite small, relief is unavailable under Section 2. Plaintiffs have shown “that the
 16 white majority votes sufficient as a bloc to enable it – in the absence of special
 17 circumstances, such as the minority candidate running unopposed . . . – usually to defeat
 18 the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51. A defeat is a defeat,
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 24 his Republican opponent. The question under the second *Gingles* precondition is whether Latino voters in the relevant
 25 area exhibit sufficient political cohesiveness to elect their preferred candidate – of any party or no party – if given the
 26 chance. As Dr. Barreto explained, a Latino preferred candidate is not necessarily the same thing as a Democratic
 candidate. In southern Florida, for example, an opportunity district for Latinos would have to perform well for
 Republicans rather than for Democrats. The evidence in this case shows that Latino voters have cohesively preferred a
 particular candidate in almost every election in the last decade, but that their preference can vary based on the
 ethnicity of the candidates and/or the policies they champion.

1 regardless of the vote count. Intervenors provide no support for the assertion that losses by
2 a small margin are somehow excluded from the tally when determining whether there is
3 legally significant bloc voting or whether the majority “usually” votes to defeat the
4 minority’s preferred candidate. White bloc voting is “legally significant” when white
5 voters “normally . . . defeat the combined strength of minority support plus white
6 ‘crossover’ votes.” *Gingles*, 478 at 56. Such is the case here.⁹

8
9 Finally Intervenors argue that because the Latino community in the Yakima Valley
10 region generally prefers Democratic candidates, its choices are partisan and, therefore, the
11 community’s losses at the polls are not “on account of race or color” as required for a
12 successful claim under Section 2(a). While the Court will certainly have to determine
13 whether the totality of the circumstances in the Yakima Valley region shows that Latino
14 voters have less opportunity than white voters to elect representatives of their choice on
15 account of their ethnicity (as opposed to their partisan preferences), that question does not
16 inform the political cohesiveness or bloc voting analyses. *See Milligan*, 143 S.Ct. at 1503
17 (describing the second and third *Gingles* preconditions without reference to the cause of
18 the bloc voting); *Gingles*, 478 U.S. at 100 (O’Connor, J., concurring) (finding that
19 defendants cannot rebut statistical evidence of divergent racial voting patterns by offering
20 evidence that the patterns may be explained by causes other than race, although the
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25 ⁹ Although small margins of defeat do not impact the cohesiveness and/or bloc voting analyses, the closeness of the
26 elections is not irrelevant. As Dr. Alford suggests, it goes to the extent of the map alterations that may be necessary to
remedy the Section 2 violation. It does not, however, go to whether there is or is not a Section 2 violation in the first
place.

evidence may be relevant to the overall voter dilution inquiry); *Solomon v. Liberty Cnty. Comm'rs*, 221 F.3d 1218, 1225 (11th Cir. 2000) (noting that *Gingles* establishes preconditions, but they are not necessarily dispositive if other circumstances, such as political or personal affiliations of the different racial groups with different candidates, explain the election losses); *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 359, 361 (7th Cir. 1992) (assuming that plaintiffs can prove the three *Gingles* preconditions before considering as part of the totality of the circumstances whether electoral losses had more to do with party than with race); *but see LULAC v. Clements*, 999 F.2d 831, 856 (5th Cir. 1993) (finding that a white majority that votes sufficiently as a bloc to enable it to usually defeat the minority's preferred candidate is legally significant under the third *Gingles* precondition only if based on the race of the candidate).

F. Totality of the Circumstances

“[A] plaintiff who demonstrates the three preconditions must also show, under the ‘totality of circumstances,’ that the political process is not ‘equally open’ to minority voters.” *Milligan*, 143 S.Ct. at 1503 (quoting *Gingles*, 478 U.S. at 45–46). Proof that the contested electoral practice – here, the drawing of the boundaries of LD 15 – was adopted with an intent to discriminate against Latino voters is not required. Rather, the correct question “is whether ‘as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.’” *Gingles*, 478 U.S. at 44 (quoting S. Rep. 97-417 at 28, 1982 U.S.C.C.A.N. at 206). In enacting Section 2, Congress recognized that “voting practices and procedures

that have discriminatory results perpetuate the effects of past purposeful discrimination.” *Gingles*, 478 U.S. at 44 n.9 (quoting S. Rep. 97-417 at 40, 1982 U.S.C.C.A.N. at 218). The Court “must assess the impact of the contested structure or practice on minority electoral opportunities ‘on the basis of objective factors,’” *i.e.*, the Senate Factors, *Gingles*, 478 U.S. at 44 (quoting S. Rep. 97–417, at 27, 1982 U.S.C.C.A.N. at 205), in order to determine whether the structure or practice is causally connected to the observed statistical disparities between Latino and white voters in the Yakima Valley region, *Gonzalez v. Arizona*, 677 F.3d 383, 405 (9th Cir. 2012)). “[T]here is no requirement that any particular number of [the Senate Factors] be proved, or that a majority of them point one way or the other.” *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97–417 at 29, 1982 U.S.C.C.A.N. at 209) (internal quotation marks omitted).

1. History of Official Discrimination

The first Senate Factor requires an evaluation of the history of official discrimination in the state or political subdivision that impacted the right of Latinos to register, to vote, or otherwise to participate in the democratic process. Plaintiffs provided ample historical evidence of discriminatory English literacy tests, English-only election materials, and at-large systems of election that prevented or suppressed Latino voting. In addition, plaintiffs identified official election practices and procedures that have prevented Latino voters in the Yakima Valley region from electing candidates of their choice as recently as the last few years. *See Aguilar v. Yakima Cnty.*, No. 20-2-0018019 (Kittitas Cnty. Super. Ct.); *Glatt v. City of Pasco*, 4:16-cv-05108-LRS (E.D. Wash.); *Montes v. City*

1 *of Yakima*, 40 F. Supp.3d 1377 (E.D. Wash. 2014). *See also Portugal*, 530 P.3d at 1006.

2 While progress has been made towards making registration and voting more accessible to
3 all Washington voters, those advances have been hard won, following decades of
4 community organizing and multiple lawsuits designed to undo a half century of blatant
5 anti-Latino discrimination.
6

7 Intervenor's do not dispute this evidence, but argue that plaintiffs have failed to
8 show that the "litany of past miscarriages of justice . . . work to deny Hispanics equal
9 opportunity to participate in the political process today." Dkt. # 215 at 26. The Court
10 disagrees. State Senator Rebecca Saldaña explained that historic barriers to voting have
11 continuing effects on the Latino population. Seemingly small, everyday municipal
12 decisions, like which neighborhoods would get sidewalks, as well as larger decisions about
13 who could vote, were for decades decided by people who owned property.
14
15

16 And so the people that are renters, the people that are living in labor camps,
17 would not be allowed to have a say in those circumstances. So there's a bias
18 towards land ownership, historically, and how lines are drawn, who gets to
19 vote, who gets to have a say in their democracy. If you don't feel like you
20 can even have a say about sidewalks, it creates a barrier for you to actually
21 believe that your vote would matter, even if you could vote.

22 Trial Tr. at 181. This problem is compounded by the significant percentage of the
23 community that is ineligible to vote because of their immigration status or who face
24 literacy and language barriers that prevent full access to the electoral process. "[A]ll of
25 these are barriers that make it harder for Latino voters to be able to believe that their vote
26 counts [or that they] have access to vote." Trial Tr. at 182. In addition, both Senator

1 Saldaña and plaintiff Susan Soto Palmer testified that the historic and continuing lack of
2 candidates and representatives who truly represent Latino voters – those who are aligned
3 with their interests, their perspectives, and their experiences – continues to suppress the
4 community’s voter turnout. Trial Tr. at 182 and 296. There is ample evidence to support
5 the conclusion that Latino voters in the Yakima Valley region faced official discrimination
6 that impacted and continues to impact their rights to participate in the democratic process.
7

8 **2. Extent of Racially Polarized Voting**

9
10 As discussed above, voting in the Yakima Valley region is racially polarized. The
11 Intervenors do not separately address Senate Factor 2, which the Supreme Court has
12 indicated is one of the most important of the factors bearing on the Section 2 analysis.
13

14 **3. Voting Practices That May Enhance the Opportunity for 15 Discrimination**

16 Three of the experts who testified at trial opined that there are voting practices,
17 separate and apart from the drawing of LD 15’s boundaries, that may hinder Latino voters’
18 ability to fully participate in the electoral process in the Yakima Valley region. First, LD
19 15 holds its senate election in a non-presidential (off) election year. Drs. Collingwood,
20 Estrada, and Barreto opined that Latino voter turnout is at its lowest in off-year elections,
21 enlarging the turnout gap between Latino and white voters in the area. Second, Dr. Barreto
22 indicated that Washington uses at-large, nested districts to elect state house
23 representatives, a system that may further dilute minority voting strength. *See Gingles*, 478
24 U.S. at 47. Third, Dr. Estrada testified that the ballots of Latino voters in Yakima and
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26

1 Franklin Counties are rejected at a disproportionately high rate during the signature
2 verification process, a procedure that is currently being challenged in the United States
3 District Court for the Eastern District of Washington in *Reyes v. Chilton*, No. 4:21-cv-
4 05075-MKD.
5

6 Intervenor generally ignore this testimony and the experts' reports, baldly asserting
7 that there is "no evidence" of other voting practices or procedures that discriminate against
8 Latino voters in the Yakima Valley region. Dkt. # 215 at 27. The State, for its part,
9 challenges only the signature verification argument. It appears that Dr. Estrada's opinion
10 that Latino voters are disproportionately impacted by the process is based entirely on an
11 article published on Crosscut.com which summarized two other articles from a non-profit
12 organization called Investigate West. While it may be that experts in the fields of history
13 and Latino voter suppression would rely on facts asserted in secondary articles when
14 developing their opinions, the Court need not decide the admissibility of this opinion under
15 Fed. R. Ev. 703. Even without considering the possibility that the State's signature
16 verification process, as implemented in Yakima and Franklin Counties, suppresses the
17 Latino vote, plaintiffs have produced un rebutted evidence of other electoral practices that
18 may enhance the opportunity for discrimination against the minority group.
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22 **4. Access to Candidate Slating Process**

23 There is no evidence that there is a candidate slating process or that members of the
24 minority group have been denied access to that process.
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5. Continuing Effects of Discrimination

Senate Factor 5 evaluates “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.” *Gingles*, 478 U.S. at 37. Intervenor’s do not dispute plaintiffs’ evidence of significant socioeconomic disparities between Latino and white residents of the Yakima Valley region, but they assert that there is no evidence of a causal connection between these disparities and Latino political participation. The assertion is belied by the record. Dr. Estrada opined that decades of discrimination against Latinos in the area has had lingering effects, as evidenced by present-day disparities with regard to income, unemployment, poverty, voter participation, education, housing, health, and criminal justice. He also opined that the observed disparities hinder and limit the ability of Latino voters to participate fully in the electoral process. Trial Tr. at 142 (“And all these barriers compounded, they limit, they hinder Latinos’ ability to participate in the political process. If an individual is already struggling to find a job, if they don’t have a bachelor’s degree, can’t find employment, maybe are also having to deal with finding child care, registering to vote, voting is not necessarily one of their priorities.”); *see also* Trial Tr. at 182 (Senator Saldaña noting that the language and educational barriers Latino voters face makes it hard for them to access the vote); Trial Tr. at 834-86 (Mr. Portugal describing the need for decades of advocacy work to educate Latino voters about the legal and electoral processes and to help them navigate through the systems). In addition, there is evidence that the

1 unequal power structure between white land owners and Latino agricultural workers
2 suppresses the Latino community's participation in the electoral process out of a concern
3 that they could jeopardize their jobs and, in some cases, their homes if they get involved in
4 politics or vote against their employers' wishes. Senate Factor 5 weighs heavily in
5 plaintiffs' favor.
6

7 **6. Overt or Subtle Racial Appeals in Political Campaigns**

8 Assertions that "non-citizens" are voting in and affecting the outcome of elections,
9 that white voters will soon be outnumbered and disenfranchised, and that the Democratic
10 Party is promoting immigration as a means of winning elections are all race-based appeals
11 that have been put forward by candidates in the Yakima Valley region during the past
12 decade. Plaintiffs have also provided evidence that a candidate campaigned against the
13 Fourteenth Amendment's guarantee that "[a]ll persons born or naturalized in the United
14 States . . . are citizens of the United States," a part of U.S. law since 1868. Political
15 messages such as this that avoid naming race directly but manipulate racial concepts and
16 stereotypes to invoke negative reactions in and garner support from the audience are
17 commonly referred to as dog-whistles. The impact of these appeals is heightened by the
18 speakers' tendencies to equate "immigrant" or "non-citizen" with the derogatory term
19 "illegal" and then use those terms to describe the entire Latino community without regard
20 to actual facts regarding citizenship and/or immigration status.
21

22 Intervenor's take the position that illegal immigration is a fair topic for political
23 debate, and it is. But the Senate Factors are designed to guide the determination of whether
24
25
26

1 “the political processes leading to nomination or election in the . . . political subdivision
2 are not equally open to participation by members of” the Latino community. *Gingles*, 478
3 U.S. at 36 (quoting Section 2). If candidates are making race an issue on the campaign trail
4 – especially in a way that demonizes the minority community and stokes fear and/or anger
5 in the majority – the possibility of inequality in electoral opportunities increases. As
6 recognized by the Senate when enacting Section 2, such appeals are clearly a circumstance
7 that should be considered.
8

9 10 **7. Success of Latino Candidates**

11 This Senate Factor evaluates the extent to which members of the minority group
12 have been elected to public office in the jurisdiction, a calculation made more difficult in
13 this case by the fact that the boundaries of the “jurisdiction” have moved over time. The
14 parties agree, however, that in the history of Washington State, only three Latinos were
15 elected to the state Legislature from legislative districts that included parts of the Yakima
16 Valley region. That is a “very, very small number” compared to the number of
17 representatives elected over time and considering the large Latino population in the area.
18 Trial Tr. at 145 (Dr. Estrada testifying). Even when the boundaries of the “jurisdiction” are
19 reduced to county lines, Latino candidates have not fared well in countywide elections: as
20 of the time of trial, only one Latino had ever been elected to the three-member Board of
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1 Yakima County Commissioners, and no Latino had ever been elected to the Franklin
2 County Board of Commissioners.¹⁰

3
4 The Court finds two other facts in the record to be relevant when evaluating the
5 electoral success of Latino candidates in the Yakima Valley region. First, State Senator
6 Nikki Torres, one of the three Latino candidates elected to the state legislature, was elected
7 from LD 15 under the challenged map. Her election is a welcome sign that the race-based
8 bloc voting that prevails in the Yakima Valley region is not insurmountable. The other
9 factor is not so hopeful, however. Plaintiff Soto Palmer testified to experiencing blatant
10 and explicit racial animosity while campaigning for a Latino candidate in LD 15. Her
11 testimony suggests not only the existence of white voter antipathy toward Latino
12 candidates, but also that Latino candidates may be at a disadvantage in their efforts to
13 participate in the political process if, as Ms. Soto Palmer did, they fear to campaign in
14 areas that are predominately white because of safety concerns.
15
16

17 **8. Responsiveness of Elected Officials**

18 Senate Factor 8 considers whether there is a significant lack of responsiveness on
19 the part of elected officials to the particularized needs of Latinos in the Yakima Valley
20 region. Members of the Latino community in the area testified that their statewide
21 representatives have not supported their community events (such as May Day and
22
23

24 ¹⁰ Intervenors criticize Dr. Estrada for disregarding municipal elections, but the Section 2 claim is based on
25 allegations that the boundaries of LD 15 were drawn in such a way that it cracked the Latino vote, a practice that is
26 virtually impossible in a single polity with defined borders and a sizeable majority. That Latino candidates are
successful in municipal elections where they make up a significant majority of an electorate that cannot be cracked
has little relevance to the Section 2 claim asserted here.

1 Citizenship Day), have failed to support legislation that is important to the community
2 (such as the Washington Voting Rights Act, healthcare funding for undocumented
3 individuals, and the Dream Act), do not support unions and farmworker rights, and were
4 dismissive of safety concerns that arose following the anti-Latino rhetoric of the 2016
5 presidential election. Ms. Lopez and Ms. Soto Palmer have concluded that their
6 representatives in the Legislature simply do not care about Latinos and often vote against
7 the statutes and resources that would help them.
8

9
10 Senator Saldaña, who represents LD 37 on the west side of the state, considers
11 herself a “very unique voice” in the Legislature, one that she uses to help her fellow
12 legislators understand how their work impacts the people of Washington. Trial Tr. 173.
13 When she first went to Olympia as a student advocating for farmworker housing, she
14 realized that the then-senator from LD 15 was not supportive of or advocating for the
15 issues she was hearing were important to the Yakima Valley Latino community, things like
16 farmworker housing, education, dual-language education, access to healthcare, access to
17 counsel, and access to state IDs. Senator Saldaña testified that Latinos from around the
18 state, including the Yakima Valley, seek meetings with her, rather than their own
19 representatives, to discuss issues that are important to them.
20
21

22 Plaintiffs also presented expert testimony on this point. Dr. Estrada compared the
23 2022 legislative priorities of Washington’s Latino Civic Alliance (“LCA”) to the voting
24 records of the legislators from the Yakima Valley region. LCA sent the list of bills the
25 community supported to the legislators ahead of the Legislative Day held in February
26

1 2022. The voting records of elected officials in LD 14, LD 15, and LD 16 on these bills are
2 set forth in Trial Exhibit 4 at 75-76. Of the forty-eight votes cast, only eight of them were
3 in favor of legislation that LCA supported.
4

5 The Intervenor point out that the Washington State Legislature has required an
6 investigation into racially-restrictive covenants, has funded a Spanish-language radio
7 station in the Yakima Valley, and has enacted a law making undocumented students
8 eligible for state college financial aid programs. Even if one assumes that the elected
9 officials from the Yakima Valley region voted for these successful initiatives, Intervenor
10 do not acknowledge the years of community effort it took to bring the bills to the floor or
11 that these three initiatives reflect only a few of the bills that the Latino community
12 supports.
13
14

15 **9. Justification for Challenged Electoral Practice**

16 The ninth Senate Factor asks whether the reasons given for the redrawn boundaries
17 of LD 15 are tenuous. They are not. The four voting members of the redistricting
18 Commission testified at trial that they each cared deeply about doing their jobs in a fair and
19 principled manner and tried to comply with the law as they understood it to the best of
20 their abilities. The boundaries that were drawn by the bipartisan and independent
21 commission reflected a difficult balance of many competing factors and could be justified
22 in any number of rational, nondiscriminatory ways.
23
24
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10. Proportionality

Section 2(b) specifies that courts can consider the extent to which members of a protected class have been elected to office in the jurisdiction (an evaluation performed under Senate Factor 7), but expressly rejects any right “to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. § 10301(b). The Supreme Court recently made clear that application of the *Gingles* preconditions, in particular the geographically compact and reasonably configured requirements of the first precondition, will guard against any sort of proportionality requirement. *Milligan*, 143 S.Ct. at 1518.

Other Supreme Court cases evaluate proportionality in a different way, however, comparing the percentage of districts in which the minority has an equal opportunity to elect candidates of its choice with the minority’s share of the CVAP. It is, after all, possible that despite having shown racial bloc voting and continuing impacts of discrimination, a minority group may nevertheless hold the power to elect candidates of its choice in numbers that mirror its share of the voting population, thereby preventing a finding of voter dilution. *See Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994). In *De Grandy*, the Supreme Court acknowledged the district court’s *Gingles* analysis and conclusions in favor of the minority population, but found that the Hispanics of Dade County, Florida, nevertheless enjoyed equal political opportunity where they constituted 50% of the voting-age population and would make up supermajorities in 9 of the 18 new legislative districts in the county. In those circumstances, the Court could “not see how

1 these district lines, apparently providing political effectiveness in proportion to voting-age
 2 numbers, deny equal political opportunity.” *De Grandy*, 512 U.S. at 1014. The Supreme
 3 Court subsequently held that the proportionality check should look at equality of
 4 opportunity across the entire state as part of the analysis of whether the redistricting at
 5 issue dilutes the voting strength of minority voters in a particular legislative district.
 6
 7 *LULAC v. Perry*, 548 U.S. 399, 437 (2006).¹¹

8
 9 The proportionality inquiry supports plaintiffs’ claim for relief under Section 2 even
 10 if evaluated on a statewide basis. Although Latino voters make up between 8 and 9% of
 11 Washington’s CVAP, they hold a bare majority in only one legislative district out of 49, or
 12 2%. Given the low voter turnout rate among Latino voters in the bare-majority district,
 13 Latinos do not have an effective majority anywhere in the State. They do not, therefore,
 14 enjoy roughly proportional opportunity in Washington.

15
 16 Intervenor’s argue that the proportionality inquiry must focus on how many
 17 legislative districts are represented by at least one Democrat, whom Latino voters are
 18 presumed to prefer. From that number, Intervenor’s calculate that 63% of Washington’s
 19 legislative districts are Latino “opportunity districts” as defined in *Bartlett v. Strickland*,
 20

21
 22 ¹¹ The Court notes that the record in *Perry* showed “the presence of racially polarized voting – and the possible
 23 submergence of minority votes – throughout Texas,” and it therefore made “sense to use the entire State in assessing
 24 proportionality.” 548 U.S. at 438. There is nothing in the record to suggest the presence of racially polarized voting
 25 throughout Washington, and almost all of the testimony and evidence at trial focused on the totality of the
 26 circumstances in the Yakima Valley region. A statewide assessment of proportionality seems particularly
 inappropriate here where the interests and representation of Latinos in the rural and agricultural Yakima Valley region
 may diverge significantly from those who live in the more urban King and Pierce Counties. Applying a statewide
 proportionality check in these circumstances “would ratify ‘an unexplored premise of highly suspect validity: that in
 any given voting jurisdiction ..., the rights of some minority voters under § 2 may be traded off against the rights of
 other members of the same minority class.’” *Perry*, 548 U.S. at 436 (quoting *De Grandy*, 512 U.S. at 1019).

556 U.S. 1, 13 (2009). The cited discussion defines “majority-minority districts,” “influence districts,” and “crossover districts,” however, and ultimately concludes that a district in which minority voters have the potential to elect representatives of their own choice – the key to the Section 2 analysis – qualifies as a majority-minority district. *Bartlett*, 556 U.S. at 15. As discussed in *Perry*, then, the proper inquiry is “whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area.” 548 U.S. at 426. *See also Old Person v. Cooney*, 230 F.3d 1113, 1129 (9th Cir. 2000) (describing “proportionality” as “the relation of the number of majority-Indian voting districts to the American Indians’ share of the relevant population). The fact that Democrats are elected to statewide offices by other voters in other parts of the state is not relevant to the proportionality evaluation.¹²

Regardless, the Court finds that, in the circumstances of this case, the proportionality check does not overcome the other evidence of Latino vote dilution in LD 15. The totality of the circumstances factors “are not to be applied woodenly,” *Old Person*, 230 F.3d at 1129, and “the degree of probative value assigned to proportionality may vary with other facts,” *De Grandy*, 512 U.S. at 1020. In this case, the distinct history of and economic/social conditions facing Latino voters in the Yakima Valley region make it particularly inappropriate to trade off their rights in favor of opportunity or representation enjoyed by others across the state. The intensely local appraisal set forth in the preceding

¹² Intervenors also suggest that a comparison of the statewide Latino CVAP with the number of Latino members of the state Legislature is the appropriate way to evaluate proportionality. No case law supports this evaluative method.

sections shows that the enactment of LD 15 has diluted the Latino vote in the Yakima Valley region in violation of plaintiffs’ rights under Section 2. “[B]ecause the right to an undiluted vote does not belong to the minority as a group, but rather to its individual members,” the wrong plaintiffs have suffered is remediable under Section 2. *Perry*, 548 U.S. at 437.

* * *

The question in this case is whether the state has engaged in line-drawing which, in combination with the social and historical conditions in the Yakima Valley region, impairs the ability of Latino voters in that area to elect their candidate of choice on an equal basis with other voters. The answer is yes. The three *Gingles* preconditions are satisfied, and Senate Factors 1, 2, 3, 5, 6, 7, and 8 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. While a detailed evaluation of the situation in the Yakima Valley region suggests that 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,¹³ 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.

¹³ As Ms. Soto Palmer eloquently put it in response to the Court’s questioning:

So I agree with you, there is progress being made. But I believe that many in my community would like to get to a day where we don’t have to advocate so hard for the Latino and Hispanic communities to be able to fairly and equitably elect someone of their preference, so that we can work on other things that will benefit all of us, such as healthcare for all, and other things that are really important, like income inequality, and so forth. . . . So it is my hope that every little step of the way, anything I can do to help us get there, that is why I’m here.

Intervenors make two additional arguments that are not squarely addressed through application of the *Gingles* analysis. The first is that the analysis is inapplicable where the challenged district already contains a majority Latino CVAP, and the Court should “simply hold that, as a matter of sound logic, Hispanic voters have equal opportunity to participate in the democratic process and elect candidates as they choose.” Dkt. # 215 at 13. The Supreme Court has recognized, however, that “it may be possible for a citizen voting-age majority to lack real electoral opportunity,” *Perry*, 548 U.S at 428, and the evidence shows that that is the case here. 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. Plaintiffs have shown that a geographically and reasonably configured district could be drawn in which the Latino CVAP constitutes an effective majority that would actually enable Latinos to have a fair and equal opportunity to obtain representatives of their choice. That is the purpose of Section 2, and creating a bare, ineffective majority in the Yakima Valley region does not immunize the redistricting plan from its mandates.

Trial Tr. at 307-08. Mr. Portugal similarly pointed out that while incremental improvement in political representation is possible, it will not come without continued effort on the part of the community:

I think with advocacy and being able to continue organizing, and not give up, because it’s a lot of things that we still have, in a lot of areas that are affecting our community, to get to the point where we can have some great representation. So, yes, [things can slowly improve] – they will continue, but we need to – we cannot let the foot off the gas

Trial Tr. at 842.

MEMORANDUM OF DECISION - 29

Intervenors' second argument is that plaintiffs have not been denied an equal opportunity to elect candidates of their choice because of their race or color, but rather because they prefer candidates from the Democratic Party, which, as a matter of partisan politics, is a losing proposition in the Yakima Valley region. Party labels help identify candidates that favor a certain bundle of policy prescriptions and choices, and the Democratic platform is apparently better aligned with the economic and social preferences of Latinos in the Yakima Valley region than is the Republican platform. Intervenors are essentially arguing that Latino voters should change the things they care about and embrace Republican policies (at least some of the time) if they hope to enjoy electoral success.¹⁴ But Section 2 prohibits electoral laws, practices, or structures that operate to minimize or cancel out minority voters' ability to elect their preferred candidates: the focus of the analysis is the impact of electoral practices on a minority, not discriminatory intent towards the minority. *Milligan*, 143 S.Ct. at 1503; *Gingles*, 478 at 47-48 and 87. There is no indication in Section 2 or the Supreme Court's decisions that a minority waives its statutory protections simply because its needs and interests align with one partisan party over another.

Intervenors make much of the fact that Justice Brennan was joined by only three other justices when opining that "[i]t is the difference between the choices made by blacks and white – not the reasons for that difference – that results in blacks having less

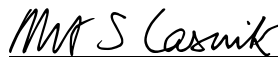
¹⁴ As noted above in n.8, there is evidence in the record that Latino voters in the Yakima Valley region did coalesce around a Republican candidate in the 2020 Superintendent of Public Institutions race. Intervenors do not acknowledge this divergence from the normal pattern, nor do they explain how it would impact their partisanship argument.

1 opportunity than whites to elect their preferred representatives.” *Gingles*, 478 U.S. at 63.
2 But Justice O’Connor disagreed with Justice Brennan on this point only because she could
3 imagine a very specific situation in which the reason for the divergence between white and
4 minority voters could be relevant to evaluating a claim for voter dilution. Such would be
5 the case, she explained, if the “candidate preferred by the minority group in a particular
6 election was rejected by white voters for reasons other than those which made the
7 candidate the preferred choice of the minority group.” *Gingles*, 478 U.S. at 100. In that
8 situation, the oddity that made the candidate unpalatable to the white majority would
9 presumably not apply to another minority-preferred candidate who might then “be able to
10 attract greater white support in future elections,” reducing any inference of systemic vote
11 dilution. *Gingles*, 478 U.S. at 100. There is no evidence that Latino-preferred candidates in
12 the Yakima Valley region are rejected by white voters for any reason other than the
13 policy/platform reasons which made those candidates the preferred choice, and there is no
14 reason to suspect that future elections will see more white support for candidates who
15 support unions, farmworker rights, expanded healthcare, education, and housing options,
16 *etc.* Especially in light of the evidence showing significant past discrimination against
17 Latinos, on-going impacts of that discrimination, racial appeals in campaigns, and a lack of
18 responsiveness on the part of elected officials, plaintiffs have shown inequality in electoral
19 opportunities in the Yakima Valley region: they prefer candidates who are responsive to
20 the needs of the Latino community whereas their white neighbors do not. The fact that the
21 candidates identify with certain partisan labels does not detract from this finding.
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1 For all of the foregoing reasons, the Court finds that the boundaries of LD 15, in
2 combination with the social, economic, and historical conditions in the Yakima Valley
3 region, results in an inequality in the electoral opportunities enjoyed by white and Latino
4 voters in the area. The Clerk of Court is directed to enter judgment in plaintiffs' favor on
5 their Section 2 claim. The State of Washington will be given an opportunity to adopt
6 revised legislative district maps for the Yakima Valley region pursuant to the process set
7 forth in the Washington State Constitution and state statutes, with the caveat that the
8 revised maps must be fully adopted and enacted by February 7, 2024.
9

10
11 The parties shall file a joint status report on January 8, 2024, notifying the Court
12 whether a reconvened Commission was able to redraw and transmit to the Legislature a
13 revised map by that date. If the Commission was unable to do so, the parties shall present
14 proposed maps (jointly or separately) with supporting memoranda and exhibits for the
15 Court's consideration on or before January 15, 2024. Regardless whether the State or the
16 Court adopts the new redistricting plan, it will be transmitted to the Secretary of State on
17 or before March 25, 2024, so that it will be in effect for the 2024 elections.
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21 Dated this 10th day of August, 2023.

22
23 

24 Robert S. Lasnik
25 United States District Judge
26

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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 SUSAN SOTO PALMER, *et al.*,

9 Plaintiffs,

10 v.

11 STEVEN HOBBS, *et al.*,

12 Defendants,

13 and

14 JOSE TREVINO, *et al.*,

15 Intervenor.

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

ORDER REGARDING REMEDY

16
17 **BACKGROUND**

18 On August 10, 2023, the Court found that the boundaries of Legislative District 15
19 (“LD 15”), as drawn by the Redistricting Commission and enacted in February 2022 (“the
20 enacted map”), worked in combination with the social, economic, and historical conditions
21 in the Yakima Valley region to impair the ability of Latino voters to elect candidates of
22 their choice on an equal basis with other voters. Dkt. # 218. The State of Washington was
23 given an opportunity to revise and adopt the legislative district maps pursuant to the
24 process set forth in the Washington State Constitution and statutes, but it declined to do so.
25
26

1 The parties were therefore directed to meet and confer with the goal of reaching a
2 consensus on a remedial map. When they were not able to reach an agreement, plaintiffs
3 presented five remedial map options for consideration by the deadline established by the
4 Court, and the parties nominated redistricting experts who could assist the Court in the
5 assessment and modification of the proposed remedial maps. The Court selected Karin
6 Mac Donald from the nominees.¹

7
8 In response to criticisms levied by intervenors, plaintiffs revised their five remedial
9 maps to avoid incumbent displacement and/or incumbent pairing where possible. Dkt.
10 # 254. After reviewing the ten alternative maps that had been provided, the written
11 submissions of the parties, and the competing expert reports, and after conferring with Ms.
12 Mac Donald, the Court developed a preference for what was called Remedial Map 3A.
13 Dkt. # 254-1 at 31-33.² The Court heard oral argument regarding the remedial proposals on
14 February 9, 2023, and informed the parties that it was leaning towards adopting Remedial
15 Map 3A. At Intervenors' request, the Court scheduled an evidentiary hearing and invited
16 the parties to submit supplemental expert reports focusing on any problems or concerns
17 with Remedial Map 3A. The Court also reached out to the Confederated Tribes and Bands
18 of the Yakama Nation ("Yakama Nation"), soliciting their written input and participation
19 at the March 8th evidentiary hearing. Having reviewed the submissions of the parties³ and
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24 ¹ The documents provided and the instructions given to Ms. Mac Donald are set forth in Dkt. # 246.

25 ² The Court and Ms. Mac Donald independently gravitated towards Remedial Map 3A as the best of the ten options
26 presented.

³ Although untimely submitted, the intervenors' proposed remedial map, Dkt. # 273 at 8, was considered.

1 the Yakama Nation and having heard from the parties' experts, one of the named plaintiffs,
2 and a representative of the Yakama Nation, the Court requested that plaintiffs and
3 intervenors each make changes to their proposed maps to address short-comings identified
4 in the record.⁴ This matter is again before the Court for the adoption of a redistricting plan
5 that remedies the racially discriminatory vote dilution in the Yakima Valley region.
6

7 **CHOICE OF REMEDIAL MAP**

8 The Court hereby adopts Remedial Map 3B, described in the CSV data and map
9 submitted by plaintiffs on March 14, 2023, as exhibits to Dkt. # 288,⁵ with the following
10 adjustments to be made by the Secretary of State in implementing the map:
11

12 (1) Reassign that portion of Census Block 530770018013012 annexed by the
13 City of Grandview (Ordinance 2022-12, effective Aug. 29, 2022) from
14 Legislative District ("LD") 15 to LD14;

15 (2) Reassign that portion of Census Block 530770018012077 annexed by the
16 City of Grandview (Ordinance 2021-13, effective Oct. 4, 2021) from LD15
to LD14;

17 (3) Reassign that portion of Census Blocks 530770020042004 and
18 530770020042005 annexed by the City of Sunnyside (Ordinance 2020-06A,
19 effective Aug. 10, 2020) from LD15 to LD14; and

20 (4) Reassign that portion of Census Block 530770018011075 annexed by the
21 City of Sunnyside (Ordinance 2021-06, effective June 21, 2021) from LD15
to LD14.

22 (hereinafter "the adopted map.")
23

24 ⁴ Through this process, Remedial Map 3A was replaced with Remedial Map 3B.

25 ⁵ The CSV data in the record identifies every census block in the State and the legislative district to which it is
26 assigned. The data was originally submitted to the Court via email on March 13, 2024. Because the CSV file could not
be uploaded into our CM/ECF system, the data had to be converted into a pdf. The Secretary of State may use the
CSV file when implementing the new district boundaries.

1 The adopted map starts with, and avoids gratuitous changes to, the enacted map
2 while remedying the Voting Rights Act violation at issue. The Latino community of
3 interest that stretches from East Yakima, through the smaller Latino population centers
4 along the Yakima River, to Pasco is unified in a single legislative district. Although the
5 Latino citizen voting age population of LD 14 in the adopted map is less than that of the
6 enacted district, the new configuration provides Latino voters with an equal opportunity to
7 elect candidates of their choice to the state legislature, especially with the shift into an
8 even-numbered district, which ensures that state Senate elections will fall on a presidential
9 year when Latino voter turnout is generally higher.
10
11

12 The adopted map also keeps the vast majority of the lands that are of interest to the
13 Yakama Nation together and has the highest proportion of Native American citizen voting
14 age population when compared to the enacted map or the map proposed by intervenors.
15

16 Finally, the adopted map is consistent with the other state law and traditional
17 redistricting criteria. It has a negligible total population deviation from the target
18 population of 157,251. LD 14 and the surrounding districts of the adopted map are
19 reasonably shaped and compact, and the districts consist of contiguous territory that is
20 traversable and minimizes county, city, and precinct splits.⁶ Plaintiffs' expert, Dr. Kassra
21
22

23
24 ⁶ With the able (and much appreciated) assistance of the Secretary of State's staff and the Yakama
25 Nation, plaintiffs have made a number of small boundary adjustments to ensure that areas of land are not
26 "trapped" between county boundaries, congressional districts, legislative districts, county council or
commissioner districts, and city or town limits and that three parcels identified as MV-72, 1026, and 1025
are included in LD 14.

1 Oskooii, drew the adopted map without reference to political or partisan criteria, seeking
2 only to rectify the dilution of Latino voters that is at the center of this case.

3 4 **INTERVENORS' OBJECTIONS**

5 Intervenor object to the adopted map on a number of grounds, primarily (1) that
6 LD 14 does not include all off-Reservation trust land, associated Yakama communities of
7 interest, and traditional hunting and fishing lands of the Yakama Nation, (2) that the
8 adopted map requires boundary adjustments for too many districts, and (3) that it disrupts
9 the political lean of Washington's legislative districts outside of LD 14.
10

11 **1. Yakama Nation**

12 The first issue appears to be a non-starter. As described at the evidentiary hearing,
13 the lands in which the Yakama Nation has an interest expand across much of the central
14 part of the State: all of those lands cannot possibly be included in a single legislative
15 district. The adopted map does, however, preserve the integrity of the Reservation and all
16 off-Reservation trust lands designated by the U.S. Census. It also increases the Native
17 American citizen voting age population of LD 14, thereby increasing the communities'
18 electoral opportunities. While the White Salmon River basin and a portion of Klickitat
19 County south of the Reservation are excluded, significant portions of the Yakima,
20 Klickitat, and Columbia watersheds are included in LD 14. The area that was shifted to LD
21 17 has a significant population (approximately 15,750) and its exclusion from LD 14 was
22 essential to satisfying the statutory requirement of population parity. Importantly, the
23 Native American population in that area is only 662, with a white population of over
24
25
26

1 12,200. To retain this area in LD 14 of the adopted map would not only overpopulate the
2 district in violation of the equal population criterion, but would also skew the
3 demographics and perpetuate the vote dilution at issue in this lawsuit.
4

5 **2. Scope of Boundary Adjustments**

6 Intervenor's argue that the adopted map disrupts too many districts and that
7 population shifts in thirteen legislative districts are not needed to remedy the Voting Rights
8 Act violation at issue. In doing so, they overstate the magnitude of the shifts, they fail to
9 explain why the changes are of any real import, and they offer no viable alternative that
10 would both remedy the Voting Rights Act violation found by the Court and comport with
11 traditional redistricting criteria.
12

13 **a. Magnitude of Population Shifts**

14 Intervenor's expert, Dr. Sean Trende, presents figures and maps showing the
15 number of individuals and the size of the geographic areas moving from one district to
16 another under the adopted map. Dkt. # 273 at 12-13. The percentage of individuals shifted
17 out of and into LD 8, LD 13, LD 14, LD 15, and LD 16 are significant, with core
18 population retention percentages ranging from 47.8% to 80.4%. Dkt. # 254-1 at 45; Dkt.
19 # 273 at 13. But shifts of that magnitude are necessary to unite the Latino community of
20 interest in the region.⁷ Despite these significant movements and the ripple effect they
21 cause, the adopted plan impacts only 5.5% of the State's population overall.
22
23
24
25

26 ⁷ As discussed below, intervenor's proposed map (Dkt. # 289) does not accomplish this fundamental goal of the remedial process. The only other map Dr. Trende regards as suitably limited in its geographic scope, Remedial Map

1 With regards to Dr. Trende’s map, Dkt. # 273 at 12, its large, red splotches, while
2 striking, are misleading as a representation of population movement. The red portions
3 represent acreage which, as anyone familiar with central Washington knows, is often a
4 poor substitute for population. Depending on the population density, an area representing
5 the same number of people (approximately 15,600) could be represented by a small red dot
6 or a large red block. A more apt representation of the magnitude of the population shift
7 would compare apples to apples (total population of the district compared to the population
8 shifted), as reflected in Dr. Oskooii’s core retention figures.

11 **b. Importance of Population Shifts**

12 Intervenor presume that the consistency of legislative boundaries over time is a
13 goal of redistricting and/or this remedial process. Dkt. # 273 at 9 n.3 and 14 n.4. It is not.
14 The constitutional and statutory requirements for legislative districts do not compel the
15 Redistricting Commission to consider, much less safeguard, existing boundaries.
16 Moreover, the boundaries at issue were put in place for the 2022 election cycle: there is no
17 evidence or reason to presume that the population within any particular legislative district
18 has developed a familiarity with or an affinity for the recently-enacted borders.
19
20

21 Under Washington law, population parity is a primary consideration in the
22 redistricting process, with other traditional redistricting criteria (such as keeping precincts
23 and communities of interest together) accomplished only “[t]o the extent consistent with”
24

25
26 5A, fails to respect the Yakama Nation community of interest and involves shifts in LD 13, LD 14, LD 15, and LD 16 that have core population retention percentages ranging from 51.3% to 90%.

1 population parity. RCW 44.05.090(1) and (2). Thus, when making a change in the center
2 of the state to unify a particular community of interest – in this case, by moving over
3 100,000 individuals into LD 14 – a nearly identical number of individuals must move out
4 of LD 14 and into neighboring districts which must, in turn, lose some portion of their
5 population to their neighbors. Where population parity is paramount, making a substantial
6 change in the population of one legislative district is like dropping a stone into the middle
7 of a lake: the ripple effect reaches beyond the immediate area in a way that is neither
8 unexpected nor necessarily problematic.

11 The ripple in the adopted map appears to be a normal redistricting occurrence,
12 especially common when one centrally-located district must be redrawn. The majority of
13 the 100,000+ individuals moved into LD 14 are offset by a swap with LD 15, but Dr.
14 Oskooii still had to lower LD 14's population by approximately 15,600 individuals to meet
15 the population parity requirement. These 15,600 persons are what caused the ripple effect,
16 and Dr. Oskooii was diligent in moving this population through the neighboring districts
17 while adhering to state law, traditional redistricting criteria, and public input. As has been
18 made abundantly clear throughout the trial and the remedial process, there is no perfect
19 map. Redistricting is a system of constraints where the various criteria often pull the map
20 maker in different directions. His or her choices are further restricted by the requirements
21 of the Voting Rights Act. The question for the Court is, as between the maps generated by
22 the Commission, plaintiffs, and intervenors, which is most consistent with the applicable,
23 and sometimes competing, legal demands.

1 **c. Viable Alternatives**

2 For the reasons discussed above, the Court approves of the choices Dr. Oskooii
3 made when generating the adopted map. The downside to this particular map is that it
4 affects thirteen legislative districts to some extent. Dr. Trende, in contrast, focuses his
5 map-making efforts on creating smaller shifts in population that emulate the boundaries of
6 the enacted map to the greatest extent possible. This focus is not compelled by governing
7 law. And, more importantly, achieving static boundaries comes at a cost: intervenors' final
8 map (Dkt. # 289), fails to unify the Latino community of interest that was identified at trial
9 (*see* Dkt. # 218 at 10-11) and described by Caty Padilla during the evidentiary hearing. It
10 also retains an artifact of the enacted map that cuts off a bit of the Yakama Reservation in
11 Union Gap from the remainder. Both of these problems are resolved in the adopted map.
12 Intervenor's map cannot be considered proof that limited disruption is achievable where it
13 fails to satisfy mandatory state and federal requirements.

14 **3. Political Lean**

15 Intervenor's argue that the adopted map is somehow faulty because it impacts "the
16 political lean of Washington's legislative districts beyond those found in the Yakima River
17 valley." Dkt. # 273 at 17. State law required the Redistricting Commission to "exercise its
18 powers to provide fair and effective representation and to encourage electoral competition.
19 The [C]ommission's plan shall not be drawn purposely to favor or discriminate against any
20 political party or group." RCW 44.05.090(5). Neither Dr. Oskooii nor the undersigned has
21 any interest in the partisan performance of the adopted map: the map was not drawn or
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26

1 adopted to favor or discriminate against either political party, but rather to unite the Latino
2 community of interest in the Yakima Valley region. Dr. Trende does not explain what
3 aspect of state or federal law is at stake here, but his data suggests that the adopted map
4 generally increases the competitiveness of the impacted districts, in keeping with the
5 dictates of RCW 44.05.090(5). *See* Dkt. # 273 at 18. The one glaring exception is LD 14,
6 which is made substantially more Democratic than its LD 15 predecessor given the
7 requirement of creating a Latino opportunity district. Dr. Trende acknowledges that this
8 shift cannot be avoided. Overall, the adopted map retains the slight Republican bias of the
9 enacted map. The Court finds that the adopted map does not meaningfully shift the
10 partisan balance of the State and that it was not drawn (or adopted) purposely to favor one
11 political party over the other.
12
13
14

15 CONCLUSION

16 The task of fashioning a remedy for a Voting Rights Act violation is not one that
17 falls within the Court's normal duties. It is only because the State declined to reconvene
18 the Redistricting Commission – with its expertise, staff, and ability to solicit public
19 comments – that the Court was compelled to step in. Nevertheless, with the comprehensive
20 and extensive presentations from the parties, the participation of the Yakama Nation, and
21 the able assistance of Ms. Mac Donald, the Court is confident that the adopted map best
22 achieves the many goals of the remedial process.
23
24

25 //

1 The Secretary of State is hereby ORDERED to conduct future elections according
2 to Remedial Map 3B (Dkt. # 288), with the following adjustments:


3 (1) Reassign that portion of Census Block 530770018013012 annexed by the
4 City of Grandview (Ordinance 2022-12, effective Aug. 29, 2022) from
5 Legislative District ("LD") 15 to LD14;

6 (2) Reassign that portion of Census Block 530770018012077 annexed by the
7 City of Grandview (Ordinance 2021-13, effective Oct. 4, 2021) from LD15
8 to LD14;

9 (3) Reassign that portion of Census Blocks 530770020042004 and
10 530770020042005 annexed by the City of Sunnyside (Ordinance 2020-06A,
11 effective Aug. 10, 2020) from LD15 to LD14; and

12 (4) Reassign that portion of Census Block 530770018011075 annexed by the
13 City of Sunnyside (Ordinance 2021-06, effective June 21, 2021) from LD15
14 to LD14.

15 Dated this 15th day of March, 2024.

16 

17 Robert S. Lasnik

18 United States District Judge
19
20
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25
26

United States District Court

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants.

and

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 3:22-cv-05035-RSL

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

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

THE COURT HAS ORDERED THAT:

Judgment is entered in favor of Plaintiffs on their Section 2 claim. The Court retains jurisdiction over the adoption of the new redistricting plan as set forth in the Memorandum of Decision.

DATED this 11th day of August, 2023.

RAVI SUBRAMANIAN,
Clerk of the Court

By: /s/ Victoria Ericksen
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Susan Soto Palmer, et al.,

Plaintiff(s),

v.

Jose Trevino, et al.,

Intervenor Defendants,

and

Steven Hobbs, et al.,

Defendant(s).

NOTICE OF CIVIL APPEAL

Case No 3:22-cv-05035-RSL

District Court Judge

Robert S. Lasnik

Notice is hereby given that Jose Trevino, Alex Ybarra and Ismael Campos
(Name of Appellant)

appeals to the United States Court of Appeals for the Ninth Circuit from

Judgment in a Civil Case

(Name of Order/Judgment)

entered in this action on 08/11/2023
(Date of Order)

Dated: 09/08/2023

Andrew R. Stokesbary
Chalmers, Adams, Backer & Kaufman LLC
701 Fifth Avenue, Suite 4200
Seattle, WA 98104
(206) 813-9322

Name, Address and Phone Number of Counsel for
Appellant or Appellant/*Pro Se*

/s/ Andrew R. Stokesbary

Signature of Counsel for Appellant or
Appellant/*Pro Se*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Susan Soto Palmer, et al.,

Plaintiff(s),

v.

Jose Trevino, et al.,

Intervenor Defendants,

and

Steven Hobbs, et al.,

Defendant(s).

NOTICE OF CIVIL APPEAL

Case No 3:22-cv-05035-RSL

District Court Judge

Robert S. Lasnik

Notice is hereby given that Jose Trevino, Alex Ybarra and Ismael Campos
(Name of Appellant)

appeals to the United States Court of Appeals for the Ninth Circuit from

Injunction and Final Decision in a Civil Case
(Name of Order/Judgment)

entered in this action on 03/15/2024
(Date of Order)

Dated: 03/15/2024

Andrew R. Stokesbary
Chalmers, Adams, Backer & Kaufman LLC
701 Fifth Avenue, Suite 4200
Seattle, WA 98104
(206) 813-9322

Name, Address and Phone Number of Counsel for
Appellant or Appellant/*Pro Se*

/s/ Andrew R. Stokesbary

Signature of Counsel for Appellant or
Appellant/*Pro Se*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 25 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SUSAN SOTO PALMER; et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellees,

JOSE A. TREVINO; et al.,

Intervenor-Defendants-
Appellants.

No. 23-35595

D.C. No. 3:22-cv-05035-RSL
Western District of Washington,
Tacoma

ORDER

The motion to hold briefing in this appeal in abeyance pending the district court's order adopting a remedial map (Docket Entry No. 48) is granted.

Within 60 days after the date of this order, or within 14 days after the district court's order adopting the new map, whichever occurs first, the parties must file a report on the status of district court proceedings, which may include any motion for appropriate relief.

The motion for an extension of time to file the opening brief (Docket Entry No. 50) is denied as moot.

Briefing is stayed pending further court order.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN SOTO PALMER, et al.,)	
)	CASE NO. C22-5035-RSL
Plaintiffs,)	
v.)	Seattle, Washington
)	
STEVEN HOBBS, et al.,)	February 9, 2024
)	9:30 a.m.
Defendants.)	
and)	ORAL ARGUMENT ON
)	REMEDIAL ISSUES
JOSE TREVINO, et al.,)	
)	
Intervenor-Defendants.)	
)	

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

APPEARANCES:

For the Plaintiffs:	SONNI WAKNIN UCLA Voting Rights Project 3250 Public Affairs Building Los Angeles, CA 90095
	ERNEST ISRAEL HERRERA Mexican American Legal Defense and Educational Fund 634 S Spring Street, 11th Floor Los Angeles, CA 90014
	EDUARDO MORFIN Morfin Law Firm PLLC 2602 North Proctor Street, Suite 205 Tacoma, WA 98407
	ASEEM MULJI Campaign Legal Center 1101 14th Street NW, Suite 400 Washington, DC 20005

For the Plaintiffs: CHAD W. DUNN
Brazil & Dunn
1900 Pearl Street
Austin, TX 78705

For the Defendant
State of Washington: ANDREW R.W. HUGHES
State Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

CRISTINA SEPE
State Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

For the
Intervenor-Defendants: ANDREW R. STOKESBARY
Chalmers Adams Backer & Kaufman LLC
701 Fifth Avenue, Suite 4200
Seattle, WA 98104

DALLIN HOLT
Holtzman Vogel Baran Torchinsky &
Josefiak PLLC
2575 E Camelback Road, Suite 860
Esplanade Tower IV
Phoenix, AZ 85016

For Defendant Hobbs: KARL DAVID SMITH
State Attorney General's Office
PO Box 40100
1125 Washington Street, SE
Olympia, WA 98504-0100

Reported by: NANCY L. BAUER, CCR, RPR
Federal Court Reporter
700 Stewart Street, Suite 17205
Seattle, WA 98101
nancy_bauer@wawd.uscourts.gov

1 think it would be wiser for the court to order new elections in
2 both of those affected senate districts in 2024, if the court
3 moves forward.

4 But my last request, Your Honor, is that if the court does
5 move forward with the remedial map, intervenors request that
6 either the court stay implementation until the 2026 elections,
7 or order the maps don't go into effect until the 2026 elections.

8 THE COURT: Okay. Thanks, Mr. Stokesbary.

9 I want you to know, my first legal job, in the summer of
10 1976, was as a deputy prosecuting attorney assigned to Aukeen
11 District Court, which doesn't exist anymore, but it was Auburn,
12 Kent, Enumclaw, A-u-k-e-e-n. We were in a place in Auburn that
13 looked a little bit like a barn. It was the courthouse. And
14 once a month we would -- the judge, the public defender, and
15 I -- would drive out to Enumclaw and hold court out there.

16 It was very interesting for a kid from New York City to go
17 out there and prosecute my very first case, which was 17 cattle
18 trespassing on a neighbor's property.

19 MR. STOKESBARY: We still have some problems with cows
20 out there, Your Honor.

21 THE COURT: I want you to know I have some familiarity
22 with your district.

23 These were the days when the district court was not a court
24 of record, and you could get a complete trial de novo in
25 superior court. So some of the hotshot lawyers, like Tony

1 many individuals beyond the 14th District result in too many
2 extraneous parcel changes. And I think, you know, many more
3 changes to Map 3A would be required at that point, if the court
4 wanted that to be the starting point.

5 And, you know, again, we'll reiterate, it gets a little bit
6 simpler to make some of these arguments if the court can, sort
7 of, narrow down what we're looking at.

8 But with respect to Map 3A, the incumbent senator in
9 Legislative District 14 would be drawn into Legislative District
10 15. Legislative 14 has a senate race in 2024. Legislative
11 District 15 doesn't have a senate race until 2026.

12 So if the court were to order Map 3A or some close variant
13 of that for 2024, and I'll repeat our request that we wish the
14 court to either delay implementation until 2026, or stay
15 implementation until 2026.

16 But if the court goes forward and orders implementation of
17 Map 3A or a version of that in 2024, we would request that the
18 court order a new election to fill the remainder of the current
19 LD 15 senate term in 2024 so that the ballot would have both
20 LDs' 14 and 15 senate races on the November ballot. The
21 Legislative District 14 senate race, that would be on a normal
22 schedule, that would be a normal, full election term. The LD 15
23 senate race would be for a partial two-year term. It would be,
24 sort of, what happens if a senator passes away or retires or
25 moves along in the middle of his or her term.

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER et al.,

Plaintiffs,

v.

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

Defendants,

and

JOSE TREVINO et al.,

Intervenor-Defendants.

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

**INTERVENOR-DEFENDANTS'
NOTICE OF MOTION FOR STAY
BASED ON CONSTRUCTIVE DENIAL**

Intervenor-Defendants respectfully provide notice that they intend to move for a stay pending appeal of this Court's March 15 order in the Ninth Circuit on Monday, March 18. Intervenor-Defendants made an oral motion for such a stay at the hearing on February 9, 2024. Although this Court's order today does not address that request specifically, Intervenor-Defendants view the order as constructively denying that request for stay pending appeal. If this Court intended to leave open that issue, Intervenor-Defendants request that this Court clarify that the motion remains pending.

1 DATED this 15th day of March, 2024.

2 Respectfully submitted,

3 s/ Andrew R. Stokesbary

4 Andrew R. Stokesbary, WSBA No. 46097
5 CHALMERS, ADAMS, BACKER & KAUFMAN, LLC
6 701 Fifth Avenue, Suite 4200
7 Seattle, WA 98104
8 T: (206) 813-9322
9 dstokesbary@chalmersadams.com

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

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

Counsel for Intervenor-Defendants

I certify that this memorandum contains 88 words, in compliance with the Local Civil Rules.

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 15th day of March, 2024.

Respectfully submitted,

s/ Andrew R. Stokesbary
Andrew R. Stokesbary, WSBA No. 46097

Counsel for Intervenor-Defendants

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

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

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

Defendants,

and,

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

Intervenor-Defendants.

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

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

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1 Expert Qualifications

1.1 Career

I serve as Senior Elections Analyst for Real Clear Politics. I joined Real Clear Politics in January of 2009 after practicing law for eight years. I assumed a fulltime position with Real Clear Politics in March of 2010. Real Clear Politics is a company of approximately 50 employees, with its main offices in Washington D.C. It produces one of the most heavily trafficked political websites in the world, which serves as a one-stop shop for political analysis from all sides of the political spectrum and is recognized as a pioneer in the field of poll aggregation. Real Clear Politics produces original content, including both data analysis and traditional reporting.

My main responsibilities with Real Clear Politics consist of tracking, analyzing, and writing about elections. I collaborate in rating the competitiveness of Presidential, Senate, House, and gubernatorial races. As a part of carrying out these responsibilities, I have studied and written extensively about demographic trends in the country, exit poll data at the state and federal level, public opinion polling, and voter turnout and voting behavior. In particular, understanding the way that districts are drawn and how geography and demographics interact is crucial to predicting United States House of Representatives races, so much of my time is dedicated to that task.

I am currently a Visiting Scholar at the American Enterprise Institute, where my publications focus on the demographic and coalitional aspects of American Politics.

I am also a Lecturer at The Ohio State University.

1.2 Publications and Speaking Engagements

I am the author of the 2012 book *The Lost Majority: Why the Future of Government is up For Grabs and Who Will Take It*. In this book, I explore realignment theory. It argues that realignments are a poor concept that should be abandoned. As part of this analysis, I conducted a thorough analysis of demographic and political trends beginning

in the 1920s and continuing through modern times, noting the fluidity and fragility of the coalitions built by the major political parties and their candidates.

I also co-authored the 2014 Almanac of American Politics. The Almanac is considered the foundational text for understanding congressional districts and the representatives of those districts, as well as the dynamics in play behind the elections. My focus was researching the history of and writing descriptions for many of the 2012 districts, including tracing the history of how and why they were drawn the way that they were drawn. Because the 2014 Almanac covers the 2012 elections, analyzing how redistricting was done was crucial to my work. I have also authored a chapter in Larry Sabato's post-election compendium after every election dating back to 2012.

I have spoken on these subjects before audiences from across the political spectrum, including at the Heritage Foundation, the American Enterprise Institute, the CATO Institute, the Bipartisan Policy Center, and the Brookings Institution. In 2012, I was invited to Brussels to speak about American elections to the European External Action Service, which is the European Union's diplomatic corps. I was selected by the United States Embassy in Sweden to discuss the 2016 elections to a series of audiences there and was selected by the United States Embassy in Spain to fulfill a similar mission in 2018. I was invited to present by the United States Embassy in Italy, but was unable to do so because of my teaching schedule.

1.3 Education

I received my Ph.D. in political science at The Ohio State University in 2023. I passed comprehensive examinations in both methods and American Politics. The first chapter of my dissertation involves voting patterns on the Supreme Court from 1900 to 1945; the second chapter involves the application of integrated nested LaPlace approximations to enable the incorporation of spatial statistical analysis in the study of United States elections. The third chapter of the dissertation involves the use of communities of interest in redistricting simulations. In pursuit of this degree, I also earned a Mas-

ter's Degree in Applied Statistics. My coursework for my Ph.D. and M.A.S. included, among other things, classes on G.I.S. systems, spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests and probability theory. I also earned a B.A. from Yale University in history and political science in 1995, a Juris Doctor from Duke University in 2001, and a Master's Degree in political science from Duke University in 2001.

In the winter of 2018, I taught American Politics and the Mass Media at Ohio Wesleyan University. I taught Introduction to American Politics at The Ohio State University for three semesters from Fall of 2018 to Fall of 2019, and again in Fall of 2021. In the Springs of 2020, 2021, 2022 and 2023, I taught Political Participation and Voting Behavior at The Ohio State University. This course spent several weeks covering all facets of redistricting: how maps are drawn, debates over what constitutes a fair map, measures of redistricting quality, and similar topics. I also taught survey methodology in Fall of 2022 and Spring of 2024.

1.4 Prior Engagements as an Expert

A full copy of all cases in which I have testified or been deposed is included on my c.v, attached as Exhibit 1. In 2021, I served as one of two special masters appointed by the Supreme Court of Virginia to redraw the districts that will elect the Commonwealth's representatives to the House of Delegates, state Senate, and U.S. Congress in the following decade. The Supreme Court of Virginia accepted those maps, which were praised by observers from across the political spectrum. *E.g.*, "New Voting Maps, and a New Day, for Virginia," *The Washington Post* (Jan. 2, 2022), available at <https://www.washingtonpost.com/opinions/2022/01/02/virginia-redistricting-voting-maps-gerrymander/>; Henry Olsen, "Maryland Shows How to do Redistricting Wrong. Virginia Shows How to Do it Right," *The Washington Post* (Dec. 9, 2021), available at <https://www.washingtonpost.com/opinions/2021/12/09/maryland-virginia-redistricting/>; Richard Pildes, "Has VA Created a New Model for a Reasonably Non-Partisan Redistricting

Process,” *Election Law Blog* (Dec. 9, 2021), available at <https://electionlawblog.org/?p=126216>.

In 2019, I was appointed as the court’s expert by the Supreme Court of Belize. In that case I was asked to identify international standards of democracy as they relate to malapportionment claims, to determine whether Belize’s electoral divisions (similar to our congressional districts) conformed with those standards, and to draw alternative maps that would remedy any existing malapportionment.

I served as a Voting Rights Act expert to counsel for the Arizona Independent Redistricting Commission in 2021 and 2022.

2 Introduction

2.1 Scope of Engagement

I have been retained by Intervenor-Defendants in the above-captioned action, to evaluate the remedial maps submitted by Plaintiffs. I have been retained and am being compensated at a rate of \$450.00 per hour to provide my expert analysis.

2.2 Data Utilized

For purposes of this project, I utilized the following data:

- Block Assignment files provided by plaintiffs;
- Election results projected to the census block level, downloaded from the Redistricting Data Hub (<https://redistrictingdatahub.org/>);
- Census data for Citizen Voting Age Population by race, downloaded from <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>

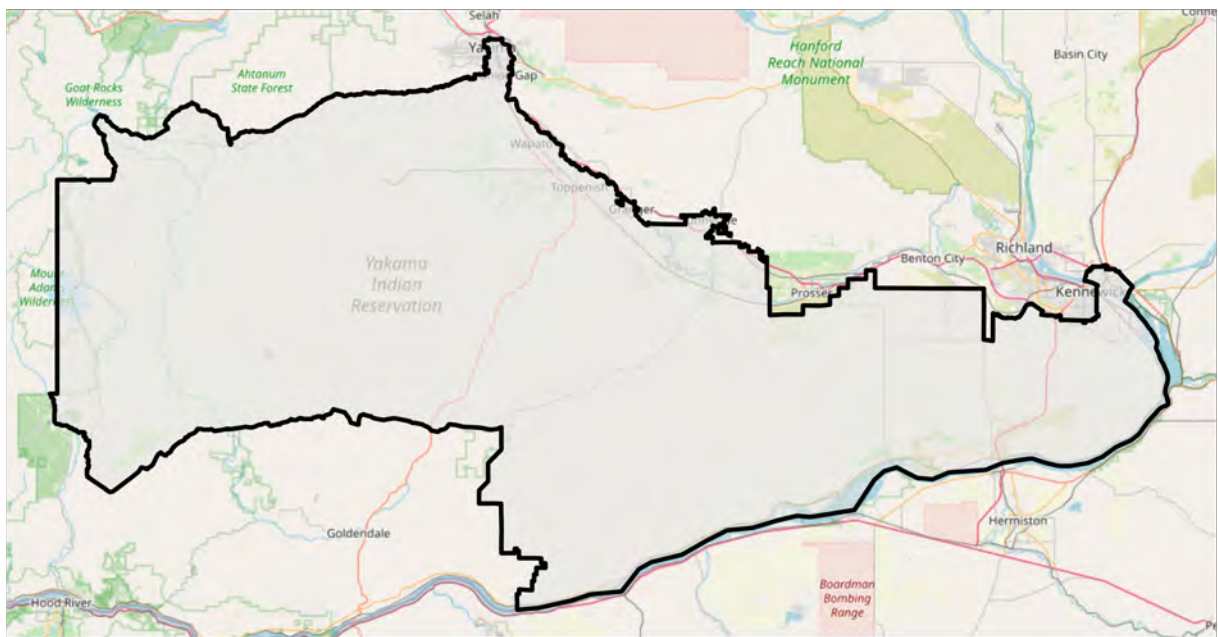
3 Analysis of Remedial Maps 1 and 2

Although five remedial maps have been submitted, there are only three variants of the actual remedial districts, with further variations on how the surrounding districts are treated. I therefore break my analysis into three parts – one for each proposed remedial district. This section covers the first two maps.

3.1 Overview

Maps 1 and 2 both use the configuration depicted in Figure 1 for their remedial VRA district:

Figure 1: Proposed VRA District in Remedial Maps 1 and 2



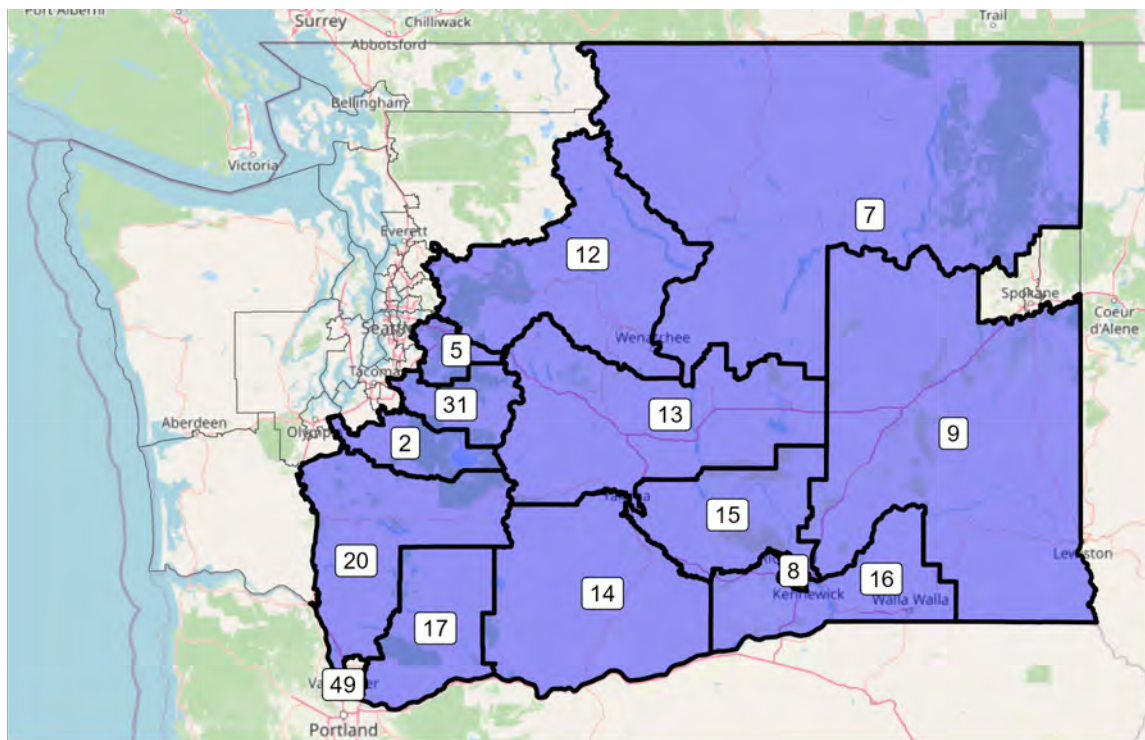
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This district combines populations from Yakima, Pasco, and several small towns along the Yakima River.

3.1.1 Remedial Map 1

Remedial Map 1, however, includes a cascade of changes that extend beyond the borders of the proposed remedial VRA district (which has been renumbered to 14 in all remedial maps). Figure 2, for example, shows which of the districts in the Enacted Map are changed in Remedial Map 1. Overall, 14 districts, or 28.6% of the districts in the state, are changed in Remedial Map 1.

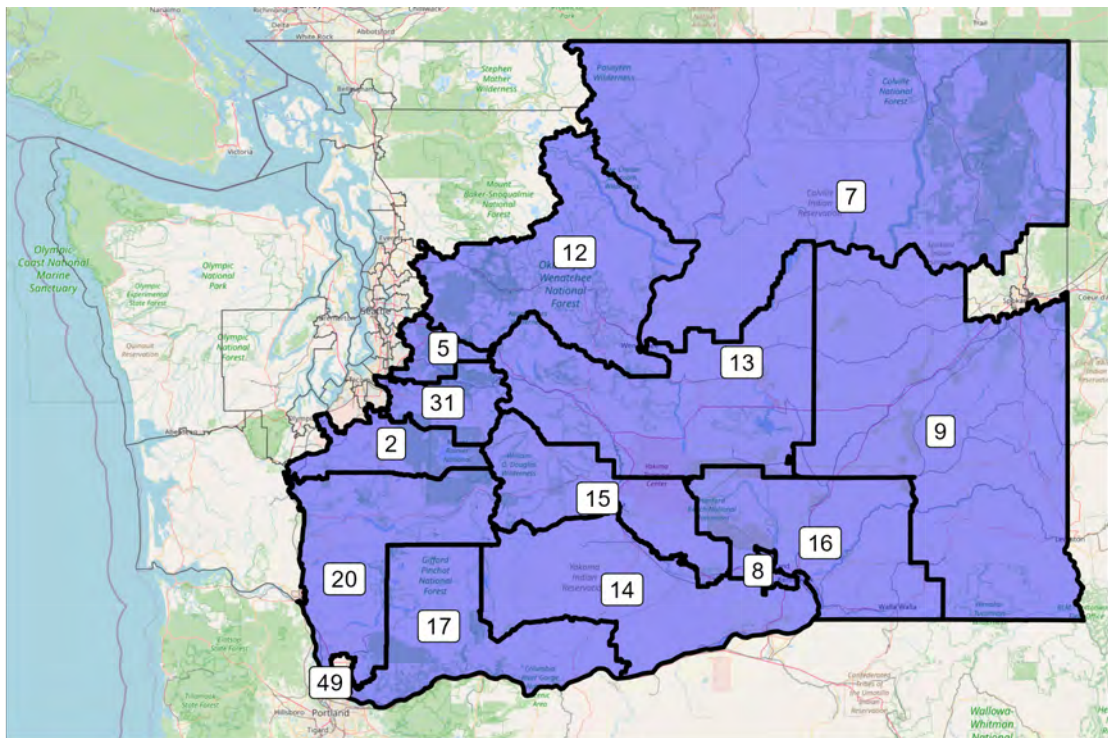
Figure 2: Enacted Map, with Districts Altered in Remedial Map 1 Highlighted



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Similarly, Figure 3 shows the districts in Remedial Map 1 with the districts that were altered from the Enacted Map highlighted.

Figure 3: Remedial Map 1, with Districts Altered from Enacted Map Highlighted

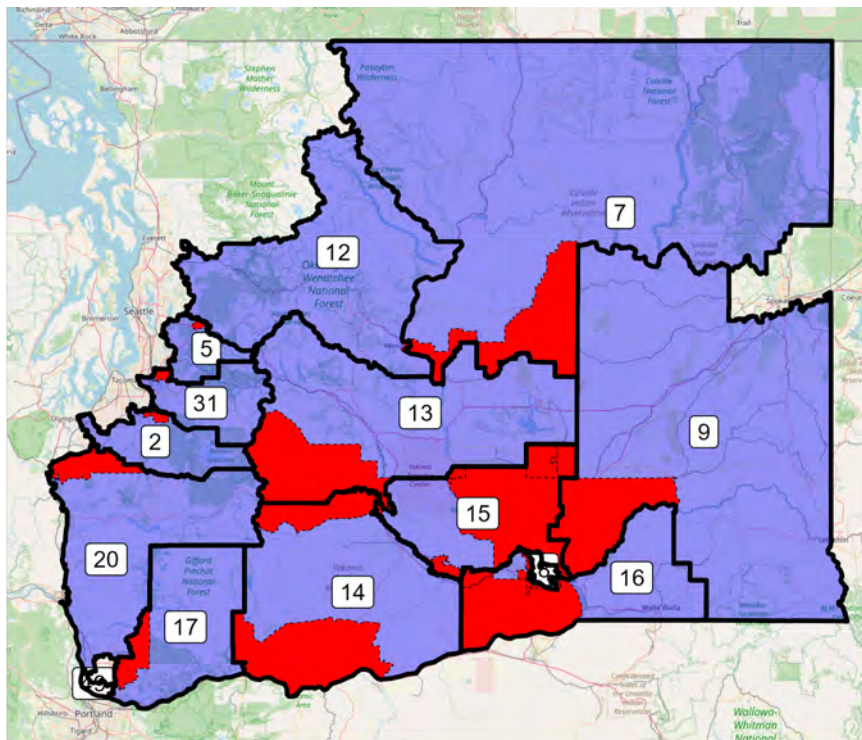


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A final visual aid for understanding what Remedial Map 1 does is found in Figure 4. This highlights the Enacted Plan districts that are changed in Map 1. It also depicts the census blocks¹ that are shifted between districts from the Enacted Plan to the remedial plan by highlighting them in red.

¹The United States Census Bureau Reports the results of the Decennial Census at various levels. The “quarks” of the census data are what are known as census blocks, which are small geographic areas that typically conform to major geographic boundaries or other visible features, such as rivers, roadways, train tracks, and so forth. Census blocks are grouped together to form block groups, which in turn are grouped together to form census tracts, which are large portions of counties.

Figure 4: Enacted Map, with Census Blocks Shifted Into Different Districts in Remedial Map 1 Highlighted in Red



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The following table summarizes these population movements. For each of the Enacted Districts that are changed, it shows to which districts its residents are moved. In other words, 21,098 residents of Enacted District 2 are moved into Remedial District 31; 21,006 residents of Enacted District 5 are moved into Remedial District 12; and so forth.

Movement of Residents, Enacted Plan v. Remedial Plan 1		
Enacted District	Remedial District 1	Total
2	31	21,098
5	12	21,006
7	13	20,961
8	16	59,854
9	16	9,612
12	7	20,938
13	15	30,654
14	15	88,714
14	17	21,311
15	8	0
15	9	9,356
15	13	9,603
15	14	97,346
15	16	16,619
16	8	59,712
16	14	12,374
16	15	12,046
17	20	21,178
20	2	20,989
31	2	0
31	5	20,880
49	17	0

In total, the map shifts 574,251 individuals among the districts, including 247,170 residents who do not reside in Enacted Districts 14, 15 or 16 and 147,050 residents who do not reside in either Enacted Districts 14, 15 or 16 or in Remedial Districts 14, 15 or 16.

Finally, the changes take place over much of the state, with blocks being shifted in 28 of the state's 39 counties, including several in western Washington. Overall, six

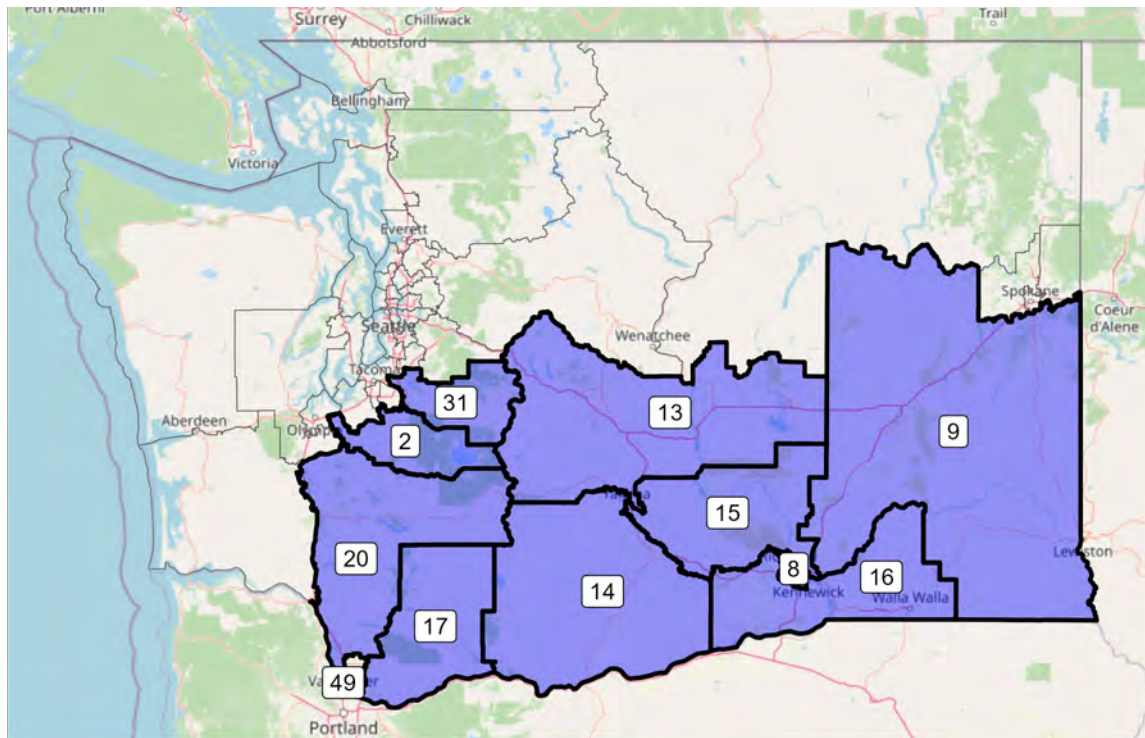
districts are moved entirely out of seven counties, while seven districts are moved into nine counties.

Districts Moved Into and Out of Counties, Enacted vs. Remedial 1			
District Moves Out Of		District Moves Into	
District	County	District	County
8	Franklin	2	Lewis
9	Franklin	5	Pierce
12	Douglas	7	Chelan
13	Yakima	13	Adams
15	Adams	13	Douglas
15	Franklin	14	Benton
15	Grant	14	Franklin
20	Thurston	16	Grant
—	—	17	Klickitat

3.1.2 Remedial Map 2

Remedial Map 2 alters fewer districts than does Remedial Map 1. Figure 5 shows which of the districts in the Enacted Map are changed in Remedial Map 2. Overall, the boundaries of 11 districts, or 22.4% of the districts in the state, are altered in Remedial Map 2.

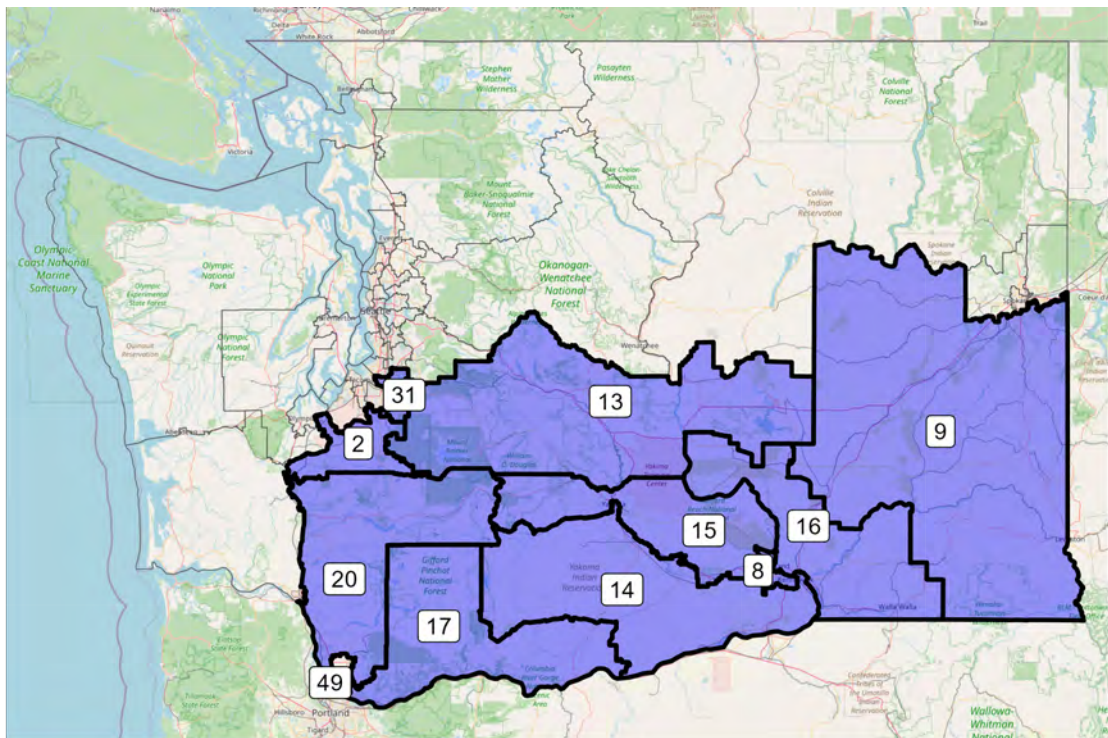
Figure 5: Enacted Map, with Districts Altered in Remedial Map 2 Highlighted



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Similarly, Figure 6 shows the districts in Remedial Map 2 with the districts that were altered from the Enacted Map highlighted.

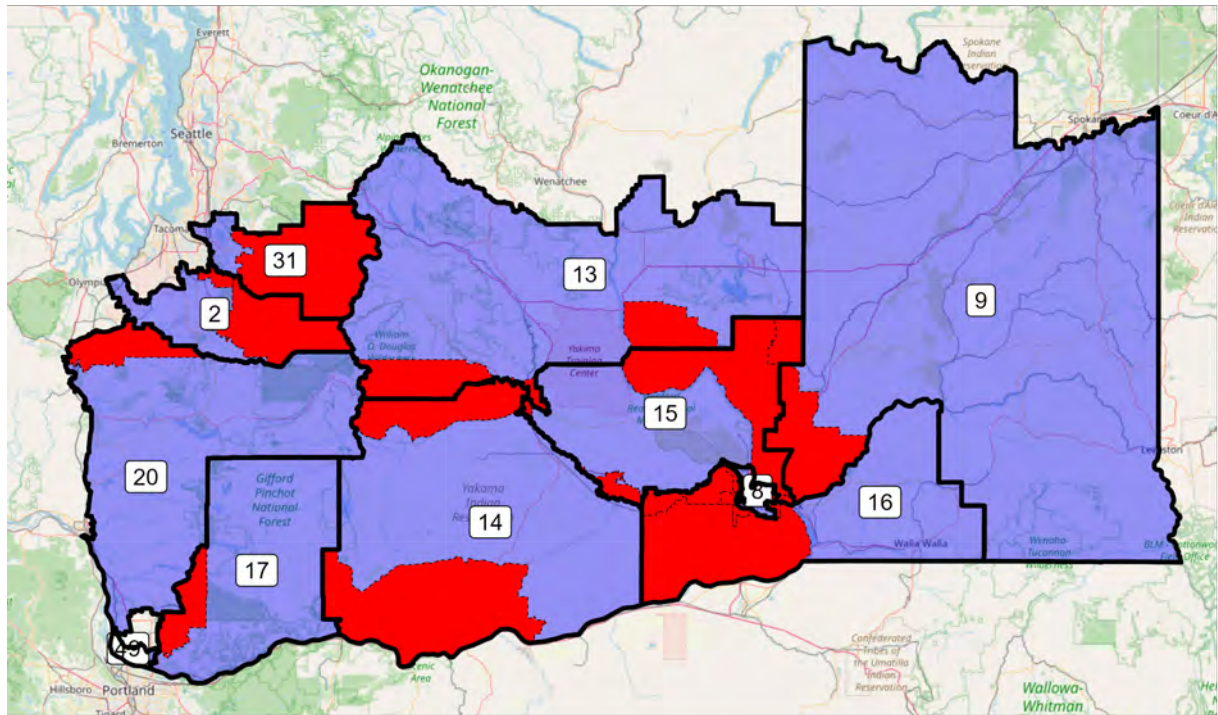
Figure 6: Remedial Map 2, with Districts Altered from Enacted Map Highlighted



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Finally, Fig. 7 highlights the Enacted Plan districts that are changed in Map 2. It also depicts the census blocks that are shifted between districts from the Enacted Plan to the remedial plan by highlighting them in red.

Figure 7: Enacted Map, with Census Blocks Shifted Into Different Districts in Remedial Map 2 Highlighted in Red



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We can once again see the degree to which the Remedial Map disrupts the Enacted Map in the following table:

Movement of Residents, Enacted Plan v. Remedial Plan 2		
Enacted District	Remedial District 1	Total
2	13	127
2	31	21,098
8	16	59,854
9	16	3,261
13	15	17,271
13	16	3,849
14	15	88,714
14	17	21,311
15	8	0
15	9	3,171
15	14	97,346
15	16	31,429
16	8	59,712
16	14	12,374
16	15	24,235
17	20	21,178
20	2	20,989
31	13	21,003
49	17	0

In total, the map shifts 506,922 individuals among the districts, including 168,630 residents who do not reside in Enacted Districts 14, 15 or 16 and 88,244 residents who do not reside in either Enacted Districts 14, 15 or 16 or in Remedial Districts 14, 15 or 16.

Finally, the changes take place over much of the state, with blocks being shifted in 21 of the state's 39 counties, including in several western Washington counties. Overall, six districts are moved entirely out of seven counties, while seven districts are moved into nine counties.

Districts Moved Into and Out of Counties, Enacted vs. Remedial 2			
District Moves Out Of		District Moves Into	
District	County	District	County
8	Franklin	2	Lewis
15	Adams	13	Columbia
15	Franklin	13	Pierce
15	Grant	14	Benton
20	Thurston	14	Franklin
—	—	16	Adams
—	—	16	Grant
—	—	17	Klickitat

3.2 HCVAP

I was asked to identify the Hispanic Citizen Voting Age Population in the district with the highest Hispanic Citizen Voting Age Population in plaintiffs' proposed remedial districts, and to compare it to the HCVAP in the Enacted Plan District 15. Estimating this is a tricky task. Because the census only reports citizen voting age population at the block group level (see *supra* note 1), and because the districts divide block groups, the population estimates must be estimated for the blocks. Those blocks can then be aggregated up to give an estimate of the HCVAP on a district-wide level.

The way that this is typically done is to take the population of the block group, and then apportion it to the blocks according to some known population of the blocks. For example, suppose that you had 1,000 Hispanic citizens of voting age in a block group, and that the block group contains three blocks: Block A, Block B and Block C. These blocks have voting age populations (which are known from the decennial census) of 500, 1500 and 2000, respectively. An analyst might observe that these blocks contain 12.5%, 37.5% and 50% of the voting age population of the block group, respectively, and apportion 125 Hispanic Citizens of Voting Age from the block group to Block A ($1,000 \times 12.5\%$), 375 to Block B ($1,000 \times 37.5\%$) and 500 to Block C ($1,000 \times 50\%$). There are other ways you

could do this. One might use the Hispanic Voting Age Population, or overall Voting Age Population, or other techniques to create the estimates. Most of these techniques will give the same answer, however, within a few tenths of a percentage point.

For purposes of this report, I have weighted the CVAP to the Total Voting Age Population for each block from the 2020 census, and the HCVAP to the Hispanic Voting Age Population for each block. The blocks were then aggregated.

HCVAP Estimates of VRA Districts in Remedial 1 and 2, and Enacted Map

Year	HCVAP% (Rem. Maps 1 and 2)	HCVAP% (Enacted Map)
2021	51.7%	52.6%
2020	51.3%	51.9%
2019	49.8%	50.0%

3.3 Compactness of the District Shapes

I was asked to consider the compactness of the districts in Remedial Maps 1 and 2, compared to the Enacted Map. In particular, I was asked to examine the analysis of Dr. Oskooii. First, and critically, Dr. Oskooii reports the overall compactness for all of the state's 49 districts in the various remedial proposals, and notes that they are similar to the Enacted Map. Oskooii Report at 13.

This is not the whole story. While Dr. Oskooii does change a surprisingly large number of districts to remedy a violation occurring in a single district, he nevertheless leaves many other districts intact in his remedial maps. Since the compactness metrics of most of the districts in the remedial maps are unchanged by definition, even fairly gratuitous decreases in the compactness of the other districts will not change the overall compactness of a remedial map when calculated on a statewide basis.

This report supplements Dr. Oskooii's aggregate analysis by examining the com-

pactness of the individual districts that are altered in each remedial map. While there are hundreds of district compactness metrics available, I focus on the two metrics employed by Dr. Oskooii: Reock and Polsby-Popper. At this stage in the litigation, I suspect that these metrics have been fully defined and explored previously, so I will be brief. The Reock score imagines a circle around the district that touches the district boundary in at least two points but never crosses that boundary. The score reflects the percentage of that circle's area that the district will fill. Thus, the more distended the district becomes, the worse it scores. A circle would have a perfect Reock score of 1; a line would have a Reock score of 0.

The Polsby-Popper score imagines a circle with the same perimeter as the district. The score is the percentage of that circle's area that the district would fill. Thus, as a district grows arms and inlets, its perimeter will increase. This will in turn increase the perimeter of the circle, which will increase the circle's area, decreasing the percentage of the circle that the district will fill, leading to a lower score.

The following table shows the 10 least compact district districts using the Reock scores for the Enacted Plan, and Remedial Plans 1 and 2. The compactness of additional districts could easily be extracted from the accompanying code.

We begin with the Reock Scores. Districts that are changed in either Remedial Plan 1 or Remedial Plan 2 are highlighted.

10 Lowest Reock Scores					
Enacted Map, Remedial 1 and Remedial 2					
Enacted Map		Remedial 1		Remedial 2	
Reock	District	Reock	District	Reock	District
0.133	42	0.133	42	0.133	42
0.180	2	0.166	2	0.174	15
0.222	43	0.219	14	0.199	2
0.243	16	0.220	15	0.202	13
0.258	41	0.222	43	0.216	16
0.279	8	0.234	17	0.219	14
0.291	49	0.256	5	0.222	43
0.295	13	0.258	41	0.234	17
0.304	40	0.281	8	0.258	41
0.308	5	0.291	49	0.281	8

Under all 3 plans, District 42 remains the least compact district. That is unsurprising, as its shape is largely dictated by the elongated shape of county Whatcom County. District 2, located in southern Pierce County and portions of eastern Thurston County, is the second-least compact in both the Enacted Plan and under Remedial Plan 1 (where it is made even less compact). Remedial Plan 2 makes this district slightly more compact.

District 14 would be less compact than all but these two Enacted Plan Districts using the Reock Score in either remedial map. Dr. Oskoi's Remedial Map 1 makes four districts less compact than the third-least compact district in the Enacted Plan, while Remedial Map 2 is even worse, making six districts less compact than the third-least compact district in the Enacted Plan. It makes District 15 less compact than any district in the Enacted Plan, save for District 42 (which again, is likely forced by the shape of Whatcom County to have a low Reock score).

Remedial Map 1 makes Districts 2, 5, 7, 9, 14, 15, 17, 20, and 49 less compact – in some cases, substantially so – while Districts 8, 12, 13, 16 and 31 are made marginally

more compact. Of particular note, the proposed remedial district sees its Reock score drop from 0.531 to 0.219, taking it from one of the most compact districts in the map to one of the least compact districts in the map.

Comparison of Reock Scores, Changed Districts, Remedial 1					
Made Less Compact			Made More Compact		
Enacted District	Reock, Enacted	Reock, Rem. 1	District	Reock, Enacted	Reock, Rem. 2
2	0.180	0.166	8	0.279	0.281
5	0.308	0.256	12	0.343	0.344
7	0.368	0.341	13	0.295	0.302
9	0.498	0.457	16	0.243	0.301
14	0.531	0.219	31	0.310	0.312
15	0.323	0.220	—	—	—
17	0.455	0.234	—	—	—
20	0.387	0.386	—	—	—
49	0.291	0.291	—	—	—

Comparison of Reock Scores, Changed Districts, Remedial 2					
Made Less Compact			Made More Compact		
Enacted District	Reock, Enacted	Reock, Rem. 2	District	Reock, Enacted	Reock, Rem. 2
9	0.498	0.481	2	0.180	0.199
13	0.295	0.202	8	0.279	0.281
14	0.531	0.219	31	0.310	0.457
15	0.323	0.174	—	—	—
16	0.243	0.216	—	—	—
17	0.455	0.234	—	—	—
20	0.387	0.386	—	—	—
49	0.291	0.291	—	—	—

Here, only three districts are made more compact, while nine districts are made less compact. Districts 13, 14, 15 and 17 all see significant reductions in their compactness; only District 31 is made appreciably more compact under this metric.

For Polsby-Popper, the story is much the same. Under the Enacted Map, only three of the districts that Dr. Oskooii changes are among the 10 least compact districts. Under Remedial Map 1 that number is 6 and under Remedial Map 2 that number is 5. Only one district has a Polsby-Popper score under 0.2 in the Enacted Plan – a district that largely follows the irregular boundaries of Renton and Tukwila. Under the two remedial plans that number grows to four.

10 Lowest Polsby-Popper Scores					
Enacted Map, Remedial 1 and Remedial 2					
Enacted Map		Remedial 1		Remedial 2	
Polsby-Popper	District	Polsby-Popper	District	Polsby-Popper	District
0.141	11	0.141	11	0.134	2
0.203	8	0.185	2	0.141	11
0.217	45	0.188	8	0.185	15
0.222	2	0.189	5	0.188	8
0.223	41	0.211	15	0.217	45
0.226	12	0.217	45	0.220	31
0.227	1	0.223	41	0.223	41
0.242	6	0.223	12	0.226	12
0.245	26	0.227	1	0.227	1
0.245	35	0.231	14	0.231	14

Once again, most of the districts that are redrawn under this map are made less compact. Under Remedial Map 1, 11 districts are made less compact, while just three are made more compact. Districts 14 and 17 stand out as having particularly large decreases in their compactness.

Comparison of Polsby-Popper Scores, Changed Districts, Remedial 1					
Made Less Compact			Made More Compact		
Enacted District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 1	District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 2
2	0.222	0.185	7	0.327	0.340
5	0.249	0.189	9	0.351	0.372
8	0.203	0.188	16	0.278	0.352
12	0.226	0.223	—	—	—
13	0.271	0.237	—	—	—
14	0.478	0.231	—	—	—
15	0.255	0.211	—	—	—
17	0.489	0.281	—	—	—
20	0.290	0.252	—	—	—
31	0.330	0.284	—	—	—
49	0.291	0.291	—	—	—

Under Remedial Map 2, every district that is changed is made less compact using the Polsby-Popper score, with the exception of District 9. Districts 14 and 17 once again stand out.

Comparison of Polsby-Popper Scores, Changed Districts, Remedial 2					
Made Less Compact			Made More Compact		
Enacted District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 2	District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 2
2	0.222	0.134	9	0.351	0.378
8	0.203	0.188	—	—	—
13	0.271	0.235	—	—	—
14	0.478	0.231	—	—	—
15	0.255	0.185	—	—	—
16	0.278	0.245	—	—	—
17	0.489	0.281	—	—	—
20	0.290	0.252	—	—	—
31	0.330	0.220	—	—	—
49	0.291	0.291	—	—	—

3.4 Compactness of Population

I was also asked to examine how District 14 in Remedial Maps 1 and 2 are put together. In particular, I was asked to look at whether there was a compact minority

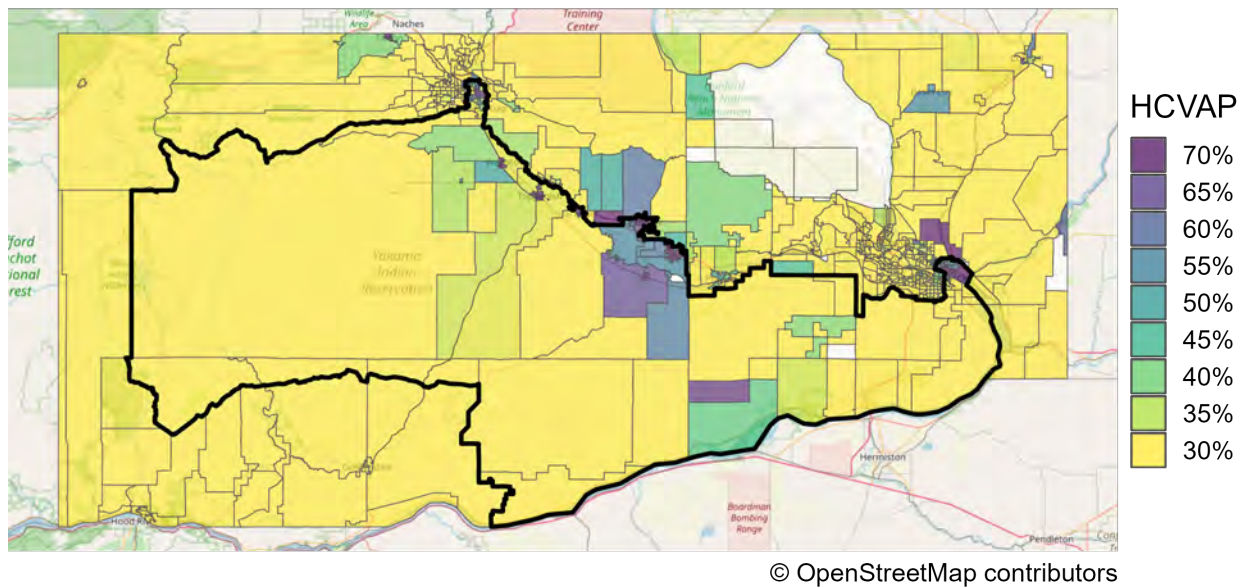
population at the core of the district, or whether the district stitched together discrete clusters of minority groups to achieve the 50% + 1 threshold.

The answer is the latter. Not only do the maps stitch together far-flung Hispanic populations, they do so while weaving in and out of otherwise compact communities that are geographically close to one another. Whatever data were used as the basis for drawing the maps – and I have no particular reason to question Dr. Oskooii’s assurances that he directly consulted neither racial nor political data – the maps nevertheless carve out Hispanic areas and Democratic areas with razor-like accuracy across a wide swath of south-central Washington, creating appendages that wrap into heavily Hispanic and Democratic areas in order to build the district.

We begin with choropleth maps. Choropleth maps are traditional “area-based” maps, where some areal unit (here, voting districts, or VTDs ²) are shaded to correspond with some data (here, percentage Hispanic CVAP). We can first look at the maps on a district-wide basis. Note that white areas have zero population; attempting to calculate a HCVAP here returns a null value.

²VTDs are a census unit that are similar to precincts, although they are not always identical

Figure 8: HCVAP of VTDs, Remedial Map 1 and 2, District 14



These color scales on these maps are truncated at 30% and 70% HCVAP. In my experience, allowing the color scale to run from 0% to 100% risks losing a good deal of data, as differences in the crucial 40% - 60% HCVAP range are blended together. This approach has been accepted in many courts in which I have testified, and has never been challenged by a court.

As you can see, the district begins with a heavy cluster of Hispanic citizens in Pasco, before looping around to the south and covering wide swaths of heavily White precincts. It then picks up a cluster of heavily Hispanic cities along the Yakima River, while ignoring heavily non-Hispanic White neighboring cities.

The following table illustrates this. It shows all of the cities ³ in Benton, Franklin and Yakima counties, the District to which they are assigned, and the Hispanic Citizen Voting Age Population for each. They are then arranged by HCVAP. When a city appears

³Many of these places are not “cities”, in the strictest sense of the term. In the interest of word economy, I use it as a general term for locations ranging from census-designated places to cities

more than once, it means that the city is split; the HCVAP for the portion of the city contained in each district is reported separately.

Rank	District	City	HCVAP	Rank	District	City	HCVAP
1	15	Cliffdell	0.00%	25	14	Parker	26.69%
2	15	Nile	0.92%	26	16	Pasco	29.00%
3	15	Naches	1.06%	27	14	Kennewick	30.87%
4	16	Kahlotus	4.65%	28	15	Donald	33.88%
5	8	West Richland	6.44%	29	14	Union Gap	34.51%
6	8	Richland	8.59%	30	15	Zillah	34.69%
7	15	Gleed	9.77%	31	16	Connell	37.26%
8	16	Richland	9.79%	32	15	Moxee	38.29%
9	15	Summitview	10.00%	33	15	Prosser	38.83%
10	14	Finley	10.04%	34	14	Yakima	47.99%
11	15	Tampico	10.19%	35	14	Harrah	52.95%
12	15	Eschbach	11.42%	36	16	Basin City	58.62%
13	14	White Swan	14.74%	37	14	Pasco	63.38%
14	16	West Pasco	14.78%	38	15	Tieton	68.88%
15	15	Terrace Heights	15.31%	39	14	Grandview	72.77%
16	16	Benton City	16.50%	40	14	Sunnyside	73.27%
17	16	Mesa	16.62%	41	14	Wapato	73.37%
18	8	Kennewick	17.31%	42	14	Toppenish	79.14%
19	15	Selah	18.14%	43	14	Granger	82.74%
20	15	Ahtanum	19.18%	44	15	Outlook	89.47%
21	16	West Richland	20.10%	45	14	Mabton	94.55%
22	15	Yakima	22.34%	46	14	Ahtanum	—
23	15	Cowiche	22.37%	47	14	Tampico	—
24	15	Buena	23.00%	—	—	—	—

As you can see, only two of the 24 cities with the lowest HCVAPs are included

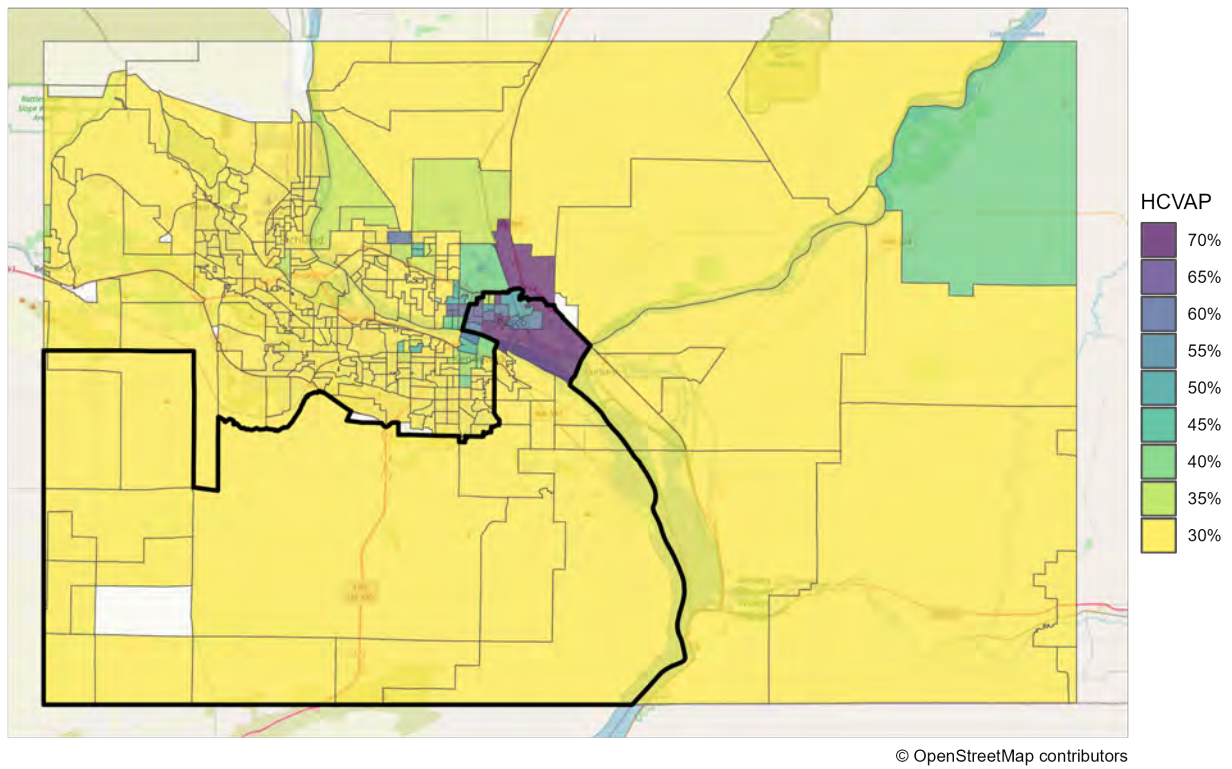
in District 14. Finley is to the South of Pasco; District 14 crosses it in order to reach Pasco. White Swan is located in the heart of the Yakima Indian reservation and is overwhelmingly Native America. On the other hand, the 14th includes every majority-Hispanic city in the three counties, with the exception of Basin City (located well to the north of Pasco) and Tieton (Northwest of Yakima) and Outlook (pop. 184).

We can also confine our inquiry to the cities in Yakima County.

Rank	District	City	HCVAP	Rank	District	City	HCVAP
1	15	Cliffdell	0.00%	17	14	Union Gap	34.51%
2	15	Nile	0.92%	18	15	Zillah	34.69%
3	15	Naches	1.06%	19	15	Moxee	38.29%
4	15	Gleed	9.77%	20	14	Yakima	47.99%
5	15	Summitview	10.00%	21	14	Harrah	52.95%
6	15	Tampico	10.19%	22	15	Tieton	68.88%
7	15	Eschbach	11.42%	23	14	Grandview	72.77%
8	14	White Swan	14.74%	24	14	Sunnyside	73.27%
9	15	Terrace Heights	15.31%	25	14	Wapato	73.37%
10	15	Selah	18.14%	26	14	Toppenish	79.14%
11	15	Ahtanum	19.18%	27	14	Granger	82.74%
12	15	Yakima	22.34%	28	15	Outlook	89.47%
13	15	Cowiche	22.37%	29	14	Mabton	94.55%
14	15	Buena	23.00%	30	14	Ahtanum	—
15	14	Parker	26.69%	31	14	Tampico	—
16	15	Donald	33.88%	—	—	—	—

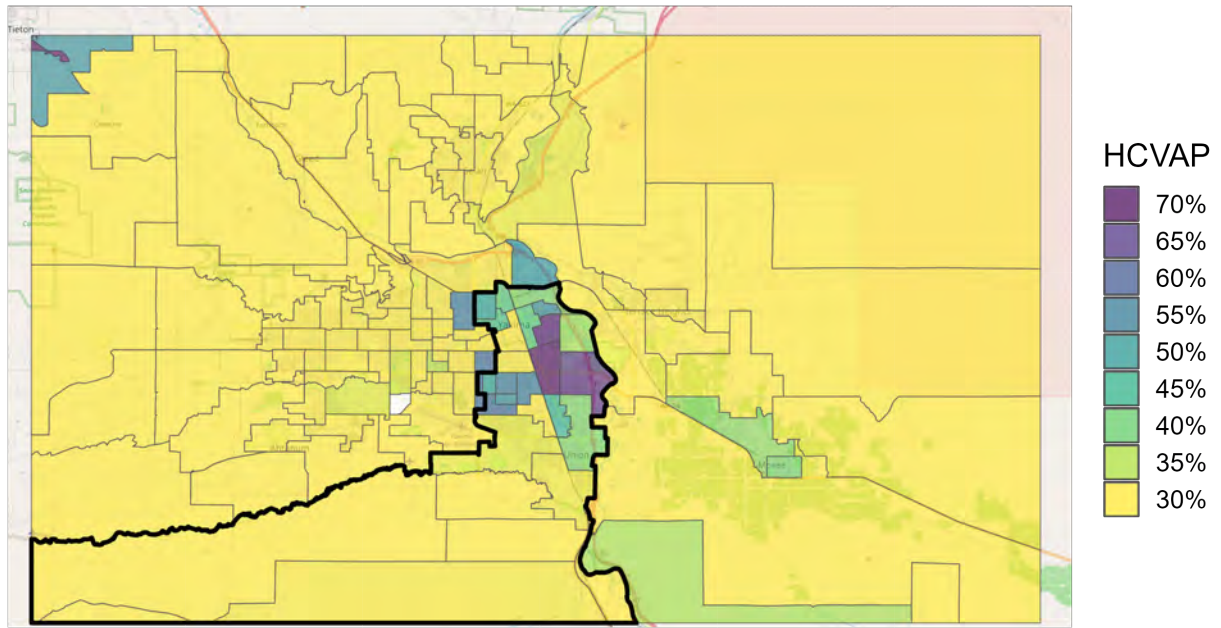
You can see this better in the following maps, which zoom in on Pasco and Yakima:

Figure 9: HCVAP of VTDs, Remedial Map 1 and 2, District 14, Pasco Area



12 of the 18 majority Hispanic VTDs are placed in District 14 in the area depicted above, along with 23 of the 286 non-majority Hispanic VTDs.

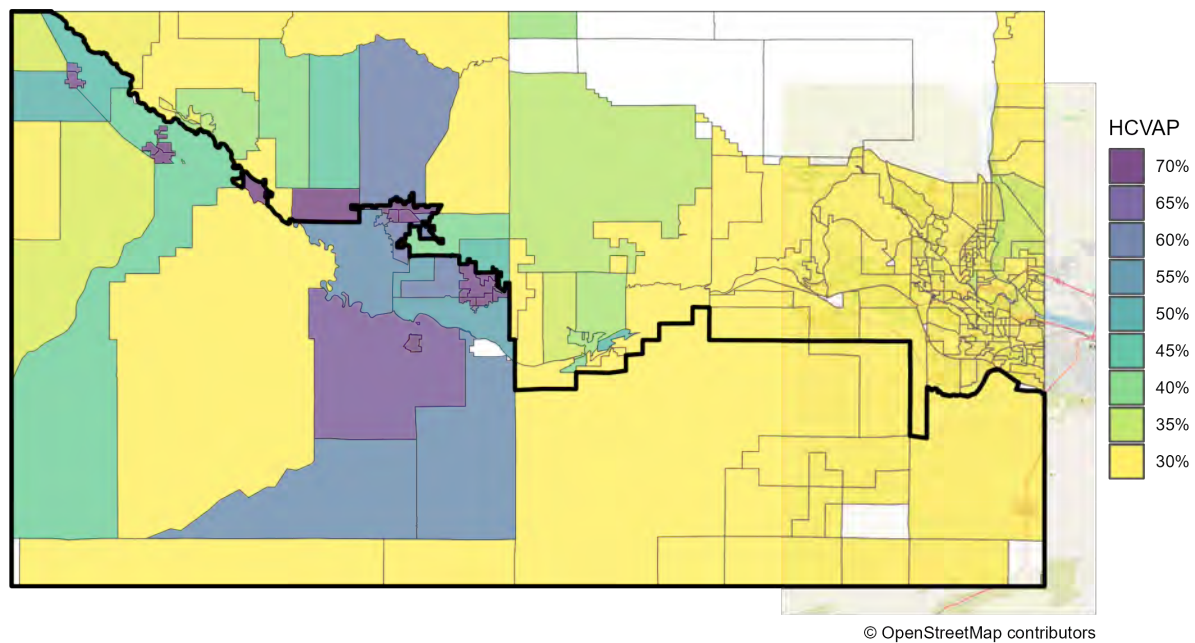
Figure 10: HCVAP of VTDs, Remedial Map 1 and 2, District 14, Yakima Area



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8 of the 14 majority Hispanic VTDs are placed in District 14 in the area depicted above, along with 21 of the 110 non-majority Hispanic VTDs.

Figure 11: HCVAP of VTDs, Remedial Map 1 and 2, District 14, Yakima River



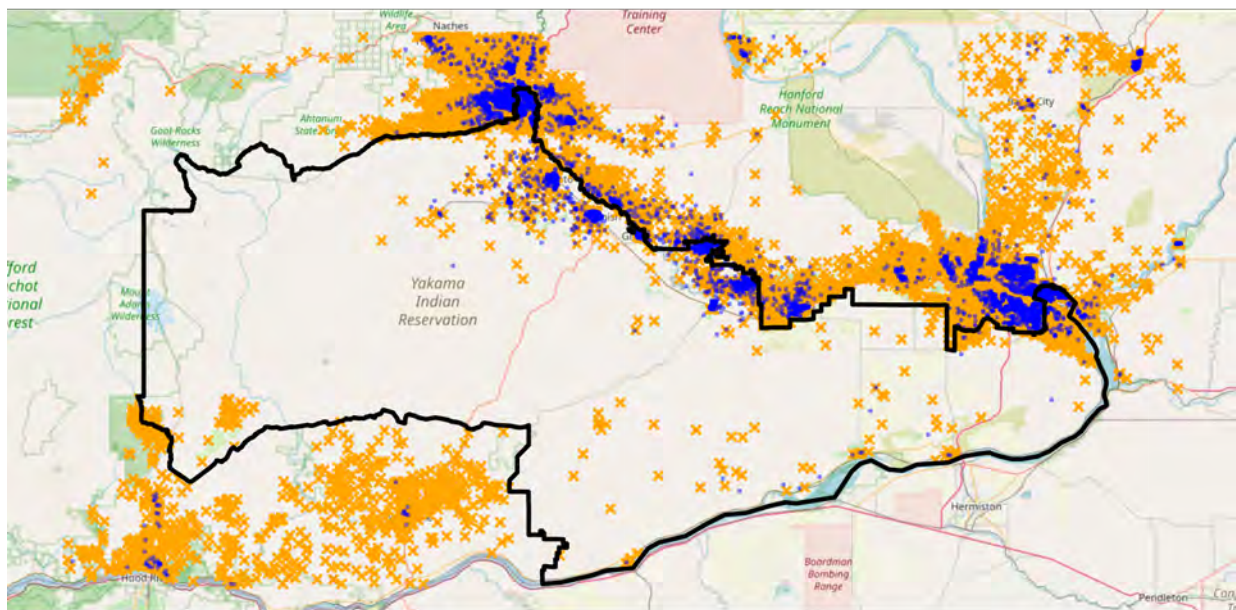
28 of the 31 majority Hispanic VTDs are placed in District 14 in the area depicted above, along with 21 of the 210 non-majority Hispanic VTDs.

One of the limitations of choropleth maps, however, is that they don't reveal populations. A VTD with 10 Hispanic residents and 10 White residents is treated the same as a VTD with 1,000 Hispanic residents and 1,000 White residents. While there may be times where those differences are immaterial, there may also be times where the difference is important.

To account for this, I will typically employ dot density maps. Dot density maps have been utilized in cases at least back to the Bethune-Hill case, where Dr. Rodden employed them to examine the distribution of residents of districts. In a dot density map, census blocks are taken as the basis for the district. In each block, a dot is drawn for every member of a group, or every ten members, or every 100 members, depending on the scale of the map. For these maps, I employ 1 blue dot for 10 Hispanic Citizens of

Voting Age, an orange “x” for 10 White Citizens of Voting Age, and a purple “+” for 10 members of other races. Obviously there is some rounding involved, but in the aggregate that typically does not matter.

Figure 12: Dot Density Map of Population, Remedial Maps 1 and 2, District 14. Here, one blue dot represents 10 Hispanic citizens of voting age, one orange x represents 10 White citizens of voting age, and one purple + represents 10 citizens of voting age of other races.



Most of the district is, in fact, largely uninhabited. You can, however, see how the district carefully avoids crossing over into heavily White areas to reach out and take in geographically dispersed Hispanic communities. In other words, there is no single Hispanic population in the district that is sufficient to constitute 50%+1 of the Citizen Voting Age Population. Rather, there are multiple isolated pockets of Hispanic clustering that are patched together to make this district work.

It is also apparent by examining the dotplots of Pasco, Yakima, and the areas in

between how the district carves out heavily Hispanic areas while avoiding areas that are more densely White.

Figure 13: Dot Density Map of Population, Remedial Maps 1 and 2, District 14, in the Pasco area. Here, one blue dot represents 10 Hispanic citizens of voting age, one orange x represents 10 White citizens of voting age, and one purple + represents 10 citizens of voting age of other races.

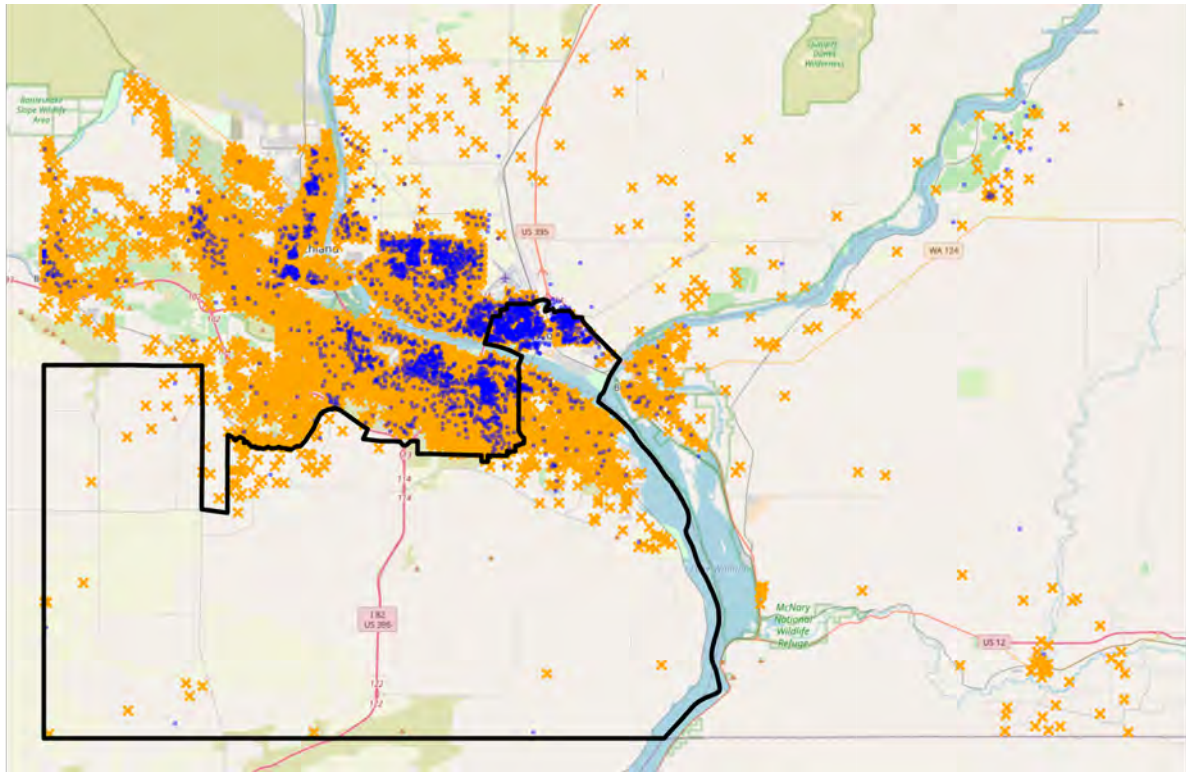


Figure 14: Dot Density Map of Population, Remedial Maps 1 and 2, District 14, in the Yakima area. Here, one blue dot represents 10 Hispanic citizens of voting age, one orange x represents 10 White citizens of voting age, and one purple + represents 10 citizens of voting age of other races.

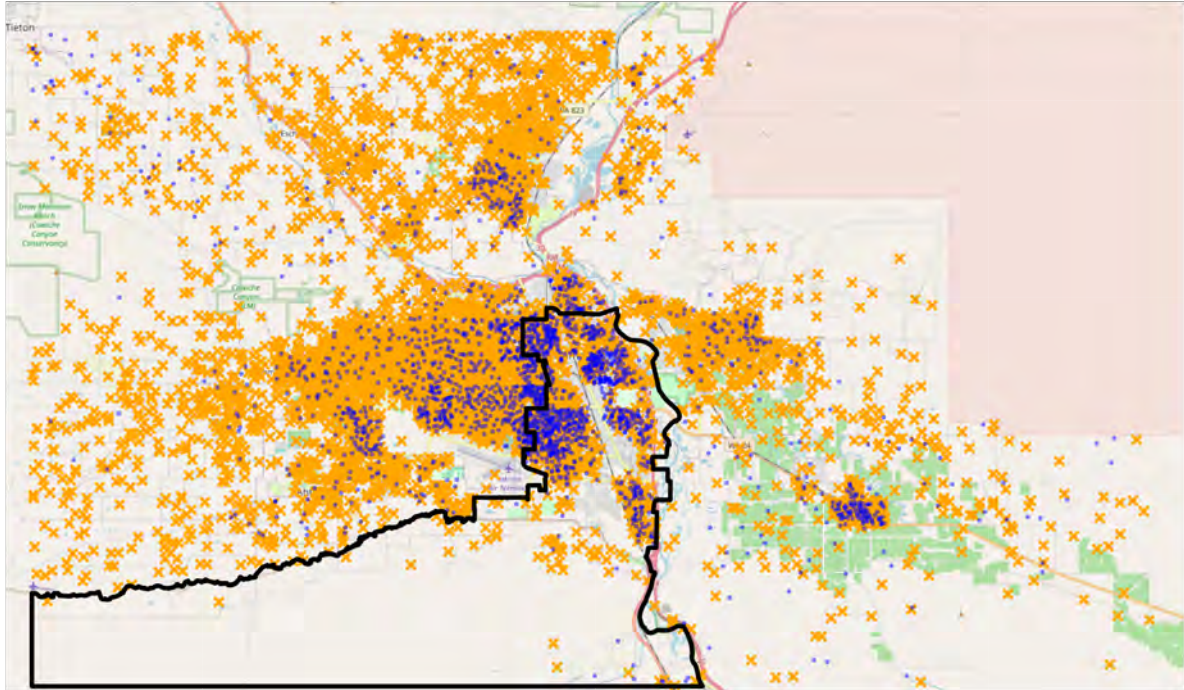
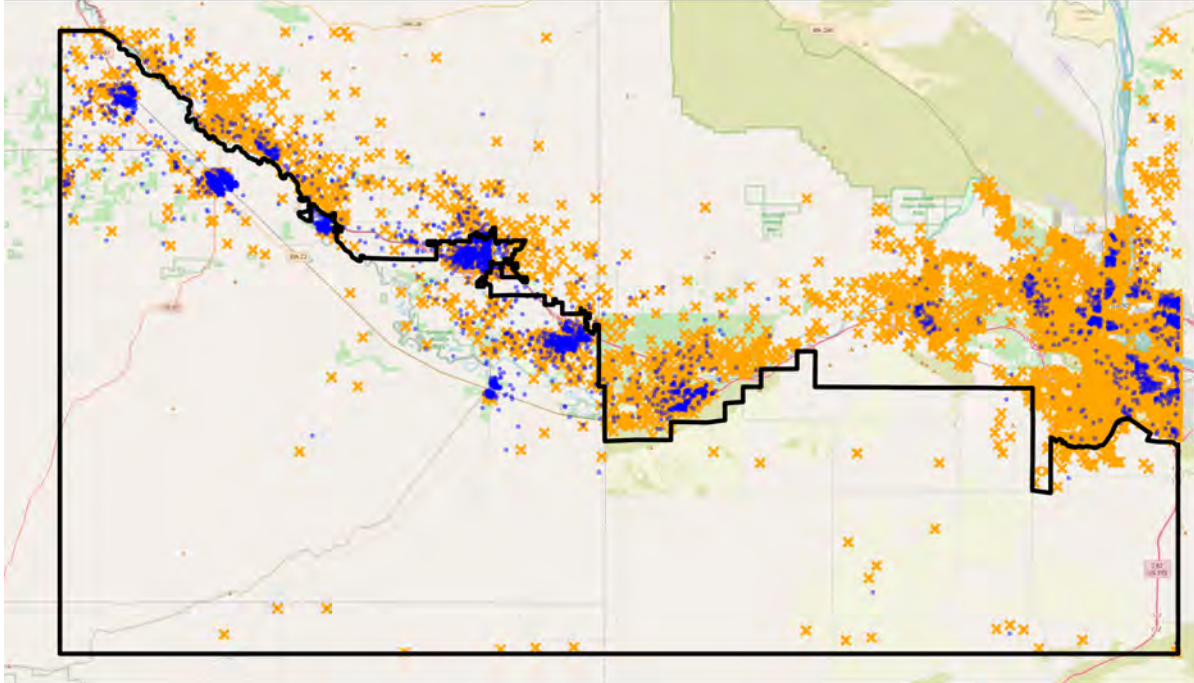


Figure 15: Dot Density Map of Population, Remedial Maps 1 and 2, District 14, in the Yakima River area. Here, one blue dot represents 10 Hispanic citizens of voting age, one orange x represents 10 White citizens of voting age, and one purple + represents 10 citizens of voting age of other races.



3.5 Political Impact

I was also asked to examine the political impact of the maps. Obviously, District 15 is transformed into a Republican-leaning district, while District 14 is made more Democratic. The question is whether other districts were quietly made more Republican or Democratic in meaningful ways.

I've once again examined the districts that were changed in Remedial Map 1, under a variety of specifications. "Total Vote, 2016-2020" examines the vote total for the 2020 Presidential, gubernatorial, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Commissioner of Public Lands and Insurance Commissioner elections, the 2018 Senate election, and the 2016 Presidential, gubernatorial, Lieutenant

Governor, Secretary of State, Treasurer, Auditor, Attorney General, Commissioner of Public Lands and Insurance Commissioner elections. I understand that Dave’s Redistricting App (“DRA”) has been used for some of the Demonstration Maps here. The “Total Vote, DRA” examines the six elections included in the DRA composite score for 2016-2020: the 2020 and 2016 presidential elections, the 2018 and 2020 senate elections, the 2016 gubernatorial election, and the 2020 attorney general election.

The data are displayed as follows: For each race or composite index, the Democratic lead over the Republican in the Enacted District is displayed on the left, while the Democratic lead over the Republican in the Remedial District is displayed on the right. Determining whether a change is electorally meaningful is a tricky endeavor, but in general if a district sees movement in a result within the +/- 10% mark, it is potentially noteworthy.

A larger version of this image is available as a part of Exhibit 2.

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 1																				
	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
District	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-21.1%	-22.8%	-23.7%	-14.7%	-15.7%	-21.2%	-22.2%	-16.2%	-17.0%	-18.9%	-18.6%	-16.0%	-16.8%	-8.1%	-7.9%	-13.9%	-14.3%	-17.0%	-17.7%
5	11.3%	9.4%	14.3%	12.0%	22.9%	20.2%	3.9%	2.4%	13.9%	12.1%	-1.0%	-2.0%	17.1%	14.9%	11.0%	9.7%	8.2%	6.9%	13.9%	11.9%
7	-33.8%	-31.7%	-38.0%	-36.0%	-31.5%	-29.4%	-36.8%	-34.8%	-27.9%	-26.1%	-29.0%	-27.4%	-33.7%	-31.7%	-20.6%	-18.8%	-27.2%	-25.6%	-31.9%	-29.9%
8	-20.4%	-24.2%	-22.2%	-26.2%	-15.8%	-19.7%	-30.0%	-34.0%	-20.4%	-24.2%	-21.8%	-23.6%	-21.7%	-25.4%	-10.5%	-12.5%	-20.0%	-22.9%	-20.3%	-23.9%
9	-20.1%	-18.7%	-21.8%	-20.6%	-16.0%	-14.8%	-26.3%	-25.2%	-14.6%	-13.2%	-20.0%	-18.7%	-19.8%	-18.5%	-11.7%	-10.4%	-17.9%	-16.8%	-18.6%	-17.4%
12	-10.2%	-6.1%	-11.3%	-6.2%	-2.0%	3.4%	-14.1%	-10.4%	-7.2%	-2.8%	-14.8%	-12.1%	-8.1%	-2.8%	-4.2%	-1.3%	-8.4%	-5.1%	-7.9%	-3.4%
13	-29.7%	-28.7%	-34.0%	-33.2%	-26.0%	-24.9%	-34.3%	-33.2%	-29.8%	-28.2%	-29.0%	-28.3%	-30.1%	-28.6%	-21.5%	-20.2%	-25.5%	-24.5%	-29.6%	-28.4%
14	-9.3%	15.2%	-12.1%	10.9%	-6.0%	16.2%	-15.4%	10.2%	-13.3%	9.6%	-10.6%	16.2%	-12.8%	14.0%	-3.5%	24.2%	-9.4%	12.5%	-10.5%	14.1%
15	-1.1%	-24.1%	-5.2%	-26.8%	0.3%	-20.6%	-6.6%	-30.6%	-7.2%	-28.2%	-0.3%	-23.1%	-1.6%	-27.1%	7.7%	-17.0%	-1.8%	-21.8%	-2.2%	-25.1%
16	-23.7%	-20.3%	-26.4%	-22.4%	-20.3%	-16.6%	-32.0%	-27.9%	-20.6%	-17.4%	-22.6%	-22.1%	-25.0%	-21.6%	-10.8%	-9.9%	-21.5%	-19.1%	-22.9%	-19.6%
17	-1.3%	1.2%	-0.0%	2.0%	3.6%	5.8%	-7.6%	-5.3%	2.5%	4.7%	-7.7%	-5.5%	-2.1%	-0.4%	-1.4%	1.5%	-2.6%	-0.6%	-0.9%	1.4%
20	-31.4%	-30.5%	-33.8%	-32.4%	-27.9%	-26.9%	-33.8%	-33.4%	-25.7%	-25.0%	-29.4%	-30.3%	-28.7%	-28.6%	-18.7%	-20.3%	-24.4%	-24.5%	-28.6%	-28.2%
31	-14.3%	-17.4%	-15.4%	-19.0%	-5.7%	-9.0%	-16.1%	-18.6%	-9.5%	-12.4%	-15.4%	-17.7%	-8.5%	-11.6%	-4.8%	-6.9%	-9.1%	-11.5%	-10.3%	-13.3%
49	20.1%	20.1%	20.6%	20.6%	22.4%	22.4%	13.2%	13.2%	24.9%	24.9%	14.9%	14.9%	16.4%	16.4%	21.0%	21.0%	15.9%	15.9%	19.6%	19.6%

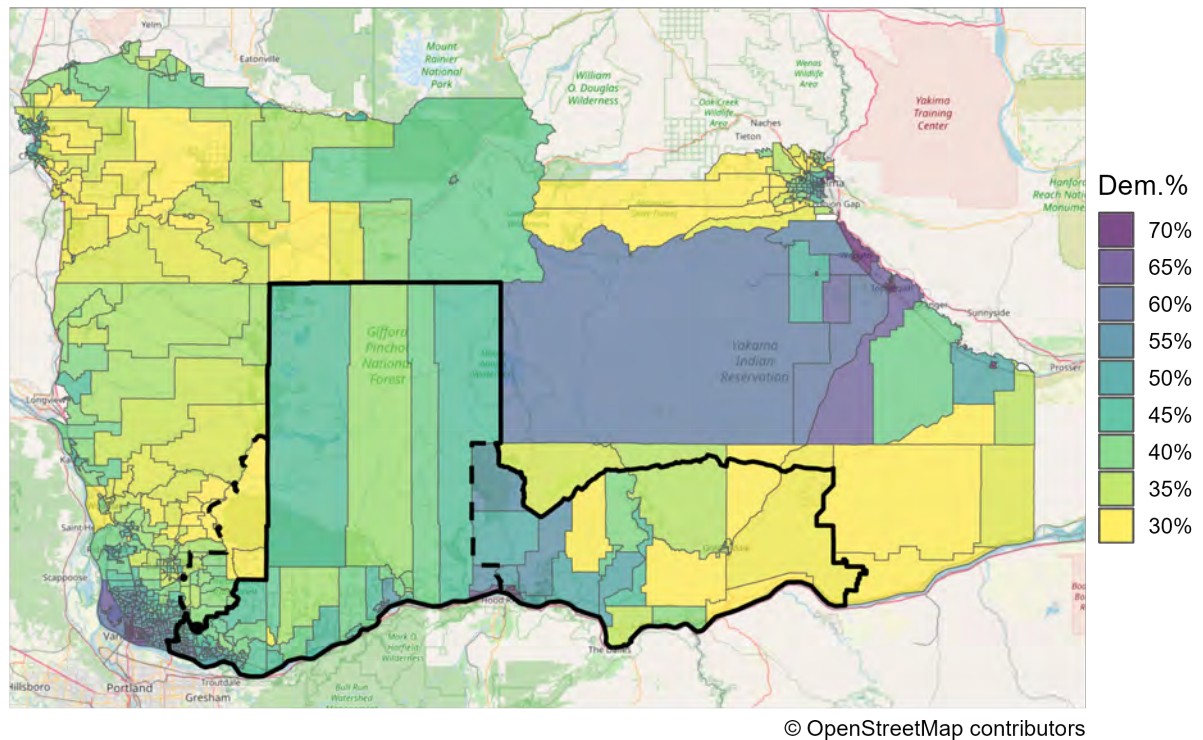
As you can see, the map creates effects beyond simply transforming District 14 into a more Democratic district (and District 15 into a more reliably Republican one). District 12, which always voted for the Republican candidate under the Enacted Map, is transformed into a district where the Republican candidate sometimes loses, and frequently has close calls. The district moves from one where, from 2016-2020, the statewide

candidate has won on average by 8.4 points to one where the candidate wins by 5.1 points. Using the DRA composite, it moves from one the Republican typically wins by 7.9 points to one where the Republican wins by 3.4 points.

More dramatically, District 17 moves from a district where the average statewide Republican candidate has won, on average, by 2.6 points to one where that candidate has won by 0.6% on average. Using the DRA elections, it flips from one where the Republican has won by 0.9% on average to one where the Democrat has won by 1.4% on average.

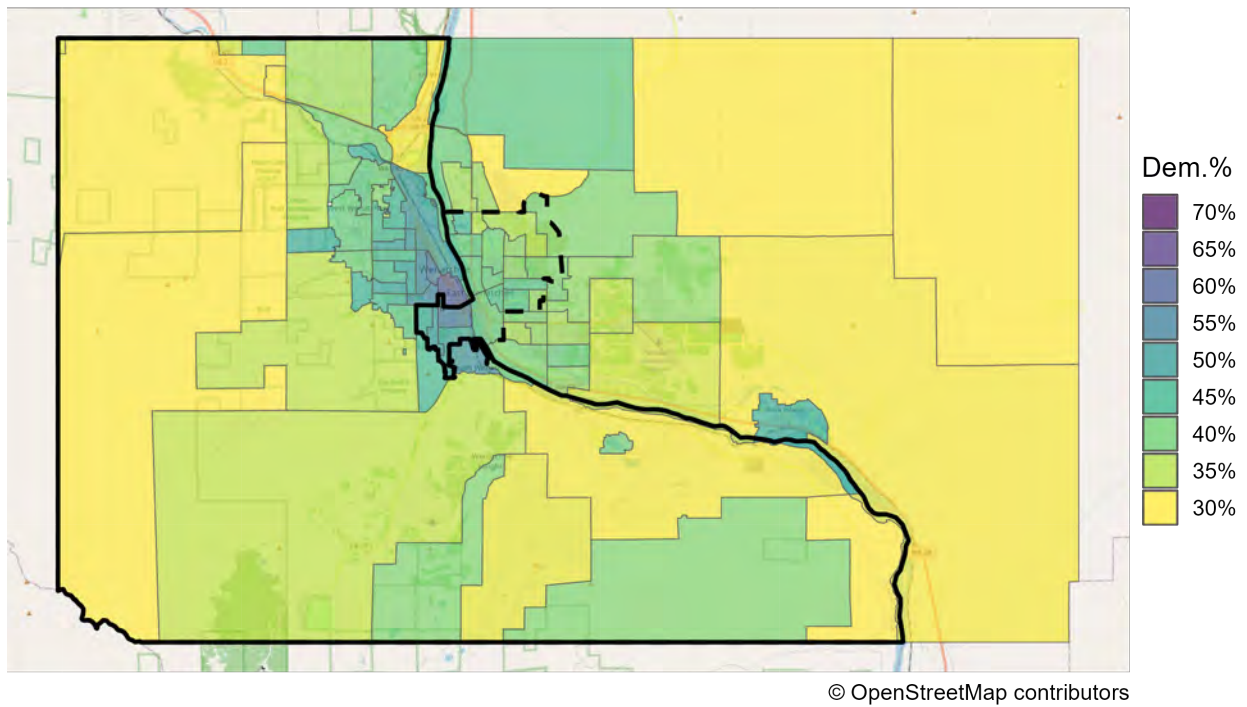
Both of these districts are presently represented by Republicans. There do not appear to be any examples of countervailing shifts that would make a Democratic incumbent appreciably more vulnerable. This could have been avoided rather easily. As you can see from below, District 17 expands into slightly Republican areas of Klickitat County under both Remedial Maps 1 and 2. However, the district gives up heavily Republican areas of Clark County to the already-heavily Republican District 20. Had the mapmaker decided instead to place parts of southeastern Vancouver into District 49, Republican incumbents would not have been endangered.

Figure 16: Democratic Percentage in VTDs, Enacted and Remedial Maps 1 and 2, District 17



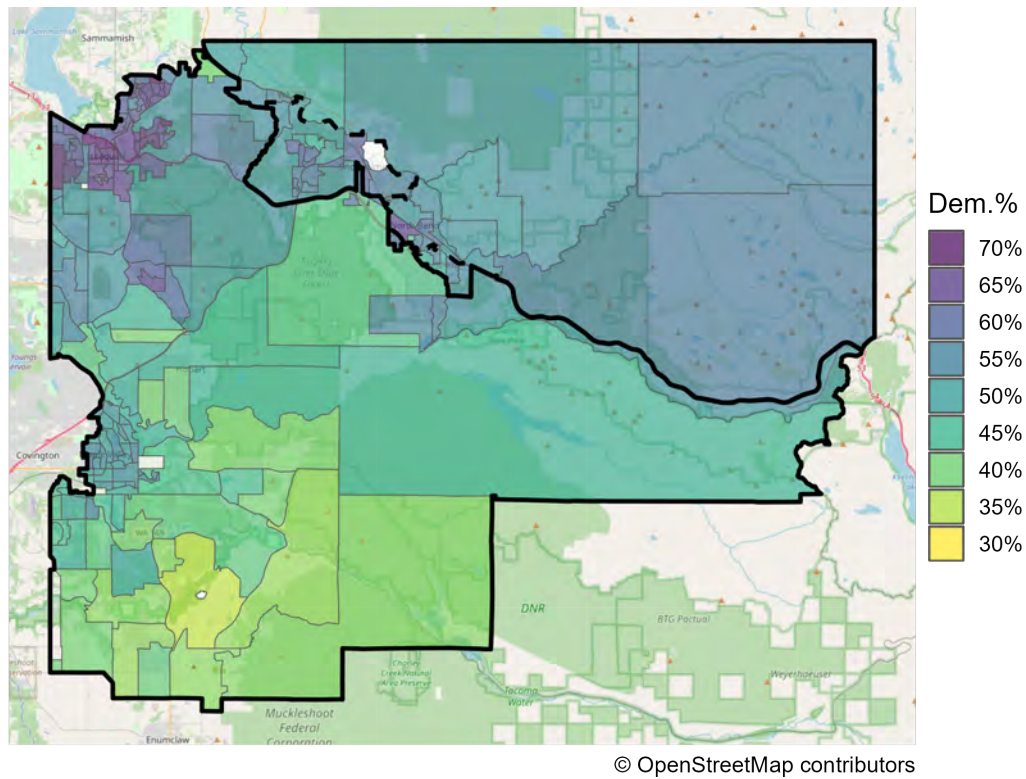
Likewise, District 12 is shifted leftward by excising from District 12 Republican-leaning East Wenatchee (60.4% Republican, using DRA's composite), where incumbent Republican Senator Brad Hawkins lives, along with two marginally Republican precincts and a Democratic precinct from Wenatchee itself; the most heavily Democratic precincts in Wenatchee are left within District 12.

Figure 17: Democratic Percentage in VTDs, Enacted and Remedial Maps 1 and 2, District 12



Likewise, rather than pushing into the eastern portions, more heavily Republican areas of District 5, Remedial Map 1 adds Snoqualmie (61.1% Democratic, using DRA's composite), helping push District 5 leftward.

Figure 18: Democratic Percentage in VTDs, Enacted and Remedial Maps 1 and 2, Districts 12 and 5



Because Remedial Map 2 changes fewer districts, does not alter District 12, and uses the same version of District 17, examining its effects provide no new information.

A larger version of this image is available as a part of Exhibit 2.

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 2																				
	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
District	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-21.1%	-22.8%	-23.7%	-14.7%	-15.7%	-21.2%	-22.2%	-16.2%	-17.0%	-18.9%	-18.6%	-16.0%	-16.8%	-8.1%	-7.9%	-13.9%	-14.3%	-17.0%	-17.7%
8	-20.4%	-24.2%	-22.2%	-26.2%	-15.8%	-19.7%	-30.0%	-34.0%	-20.4%	-24.2%	-21.8%	-23.6%	-21.7%	-25.4%	-10.5%	-12.5%	-20.0%	-22.9%	-20.3%	-23.9%
9	-20.1%	-19.6%	-21.8%	-21.4%	-16.0%	-15.6%	-26.3%	-26.0%	-14.6%	-14.0%	-20.0%	-19.5%	-19.8%	-19.3%	-11.7%	-11.1%	-17.9%	-17.5%	-18.6%	-18.2%
13	-29.7%	-28.8%	-34.0%	-33.3%	-26.0%	-24.5%	-34.3%	-32.9%	-29.8%	-27.7%	-29.0%	-27.7%	-30.1%	-27.8%	-21.5%	-19.5%	-25.5%	-24.1%	-29.6%	-27.9%
14	-9.3%	15.2%	-12.1%	10.9%	-6.0%	16.2%	-15.4%	10.2%	-13.3%	9.6%	-10.6%	16.2%	-12.8%	14.0%	-3.5%	24.2%	-9.4%	12.5%	-10.5%	14.1%
15	-1.1%	-23.3%	-5.2%	-25.9%	0.3%	-19.8%	-6.6%	-30.0%	-7.2%	-27.1%	-0.3%	-22.2%	-1.6%	-25.9%	7.7%	-15.8%	-1.8%	-21.1%	-2.2%	-24.1%
16	-23.7%	-17.5%	-26.4%	-19.8%	-20.3%	-13.9%	-32.0%	-25.2%	-20.6%	-14.8%	-22.6%	-20.3%	-25.0%	-19.2%	-10.8%	-7.9%	-21.5%	-16.9%	-22.9%	-17.1%
17	-1.3%	1.2%	-0.0%	2.0%	3.6%	5.8%	-7.6%	-5.3%	2.5%	4.7%	-7.7%	-5.5%	-2.1%	-0.4%	-1.4%	1.5%	-2.6%	-0.6%	-0.9%	1.4%
20	-31.4%	-30.5%	-33.8%	-32.4%	-27.9%	-26.9%	-33.8%	-33.4%	-25.7%	-25.0%	-29.4%	-30.3%	-28.7%	-28.6%	-18.7%	-20.3%	-24.4%	-24.5%	-28.6%	-28.2%
31	-14.3%	-14.5%	-15.4%	-15.5%	-5.7%	-6.0%	-16.1%	-16.0%	-9.5%	-9.6%	-15.4%	-15.8%	-8.5%	-8.8%	-4.8%	-5.1%	-9.1%	-9.3%	-10.3%	-10.5%
49	20.1%	20.1%	20.6%	20.6%	22.4%	22.4%	13.2%	13.2%	24.9%	24.9%	14.9%	14.9%	16.4%	16.4%	21.0%	21.0%	15.9%	15.9%	19.6%	19.6%

Overall, these maps do not merely create a new, more heavily Democratic district

in southern Washington. They do so by weakening several Republican incumbents in unrelated portions of the map.

3.6 Incumbency

I was also asked to examine the effect of the proposed remedial maps on incumbency. That is to say, I was asked to examine whether the districts pair incumbents together in the same district, or move them into new districts.

Counsel provided me with a spreadsheet containing the names, addresses, and party labels of 147 Washington state legislators. Using R, a statistical programming language commonly used in statistics and the social sciences, I was able to obtain the latitude and longitude coordinates for the addresses for incumbent senators and representatives in districts that were being changed. Using this “geocoded” data, I was able to place the candidates’ addresses in the district in which they reside.

The following table describes incumbents who are paired together under the Enacted Map and under Remedial Maps 1 and 2. Each District should have three members – a senator and two representatives – but these districts have more.

First	Last	Party	Chamber
District 5			
Lisa	Callan	D	House
Bill	Ramos	D	House
Mark	Mullet	D	Senate
Drew	Stokesbary	R	House
Phil	Fortunato	R	Senate
District 7			
Joel	Kretz	R	House
Jacquelin	Maycumber	R	House
Shelly	Short	R	Senate
Brad	Hawkins	R	Senate
District 15			
Chris	Corry	R	House
Curtis	King	R	Senate
Bruce	Chandler	R	House
Bryan	Sandlin	R	House
District 16			
Stephanie	Barnard	R	House
Nikki	Torres	R	Senate
Mark	Klicker	R	House
Skyler	Rude	R	House
Perry	Dozier	R	Senate
District 17			
Gina	Mosbrucker	R	House
Paul	Harris	R	House
Kevin	Waters	R	House
Lynda	Wilson	R	Senate

Under Remedial Map 1, Mark Mullet and Phil Fortunato are paired together in a district that, as described above, is fairly Democratic. House Minority Leader Drew

Stokesbury is drawn into the same district, along with Democratic Representatives Bill Ramos and Lisa Callan. In District 7, two Republican Senators are paired together. In District 15, three Republican House members are paired together. In District 17, three Republican House members are paired together in a district that, as described above, will become appreciably more Democratic.

In District 16, Sen. Nikki Torres is paired with Sen. Perry Dozier. Only 9.9% of the voting age population of her new district would come from her current district.

Remedial Map two will have a similar impact, albeit limited to districts 15, 16 and 17.

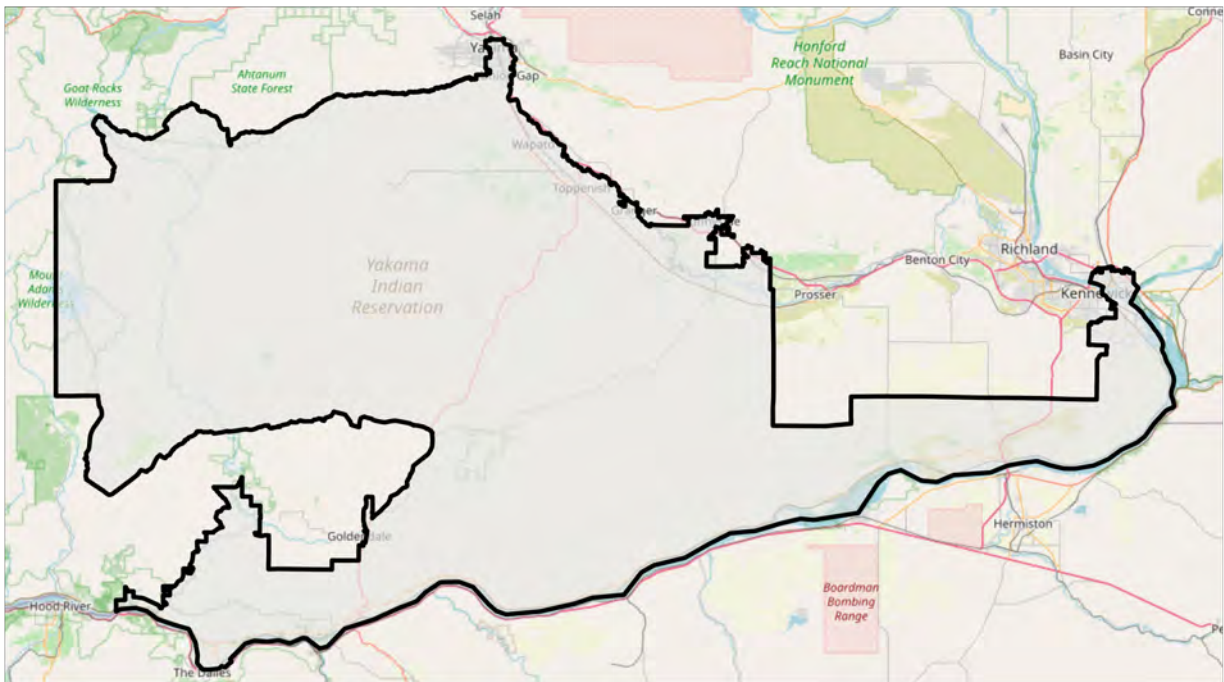
4 Analysis of Remedial Maps 3 and 4

The analysis that follows largely follows the structure of the analysis in the preceding section, and thus assumes reader familiarity with it. Given the length of the report, this section will not repeat the explanations of the maps and figures from the previous section.

4.1 Overview

Maps 3 and 4 both use the following district for as their remedial VRA district:

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

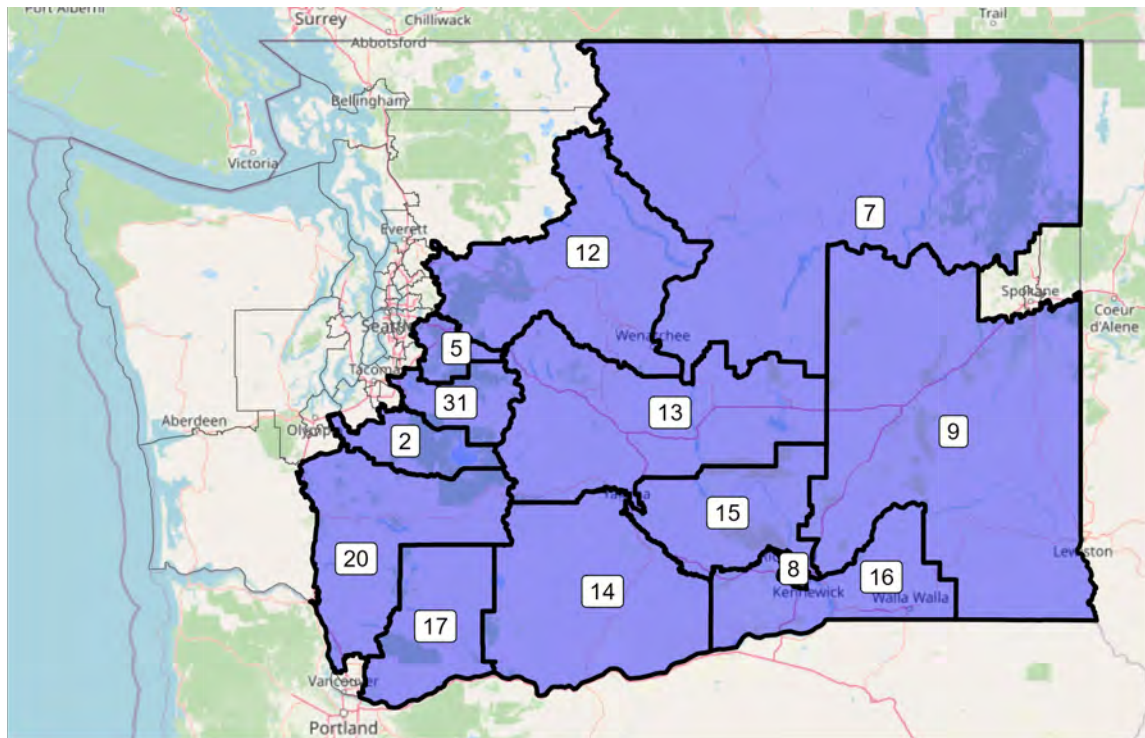


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Like the remedial district from Remedial Maps 1 and 2, this district combines populations from Yakima, Pasco, and several small towns along the Yakima River. It differs from that configuration in that it drops some of the VTDs between Pasco and Prosser,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

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

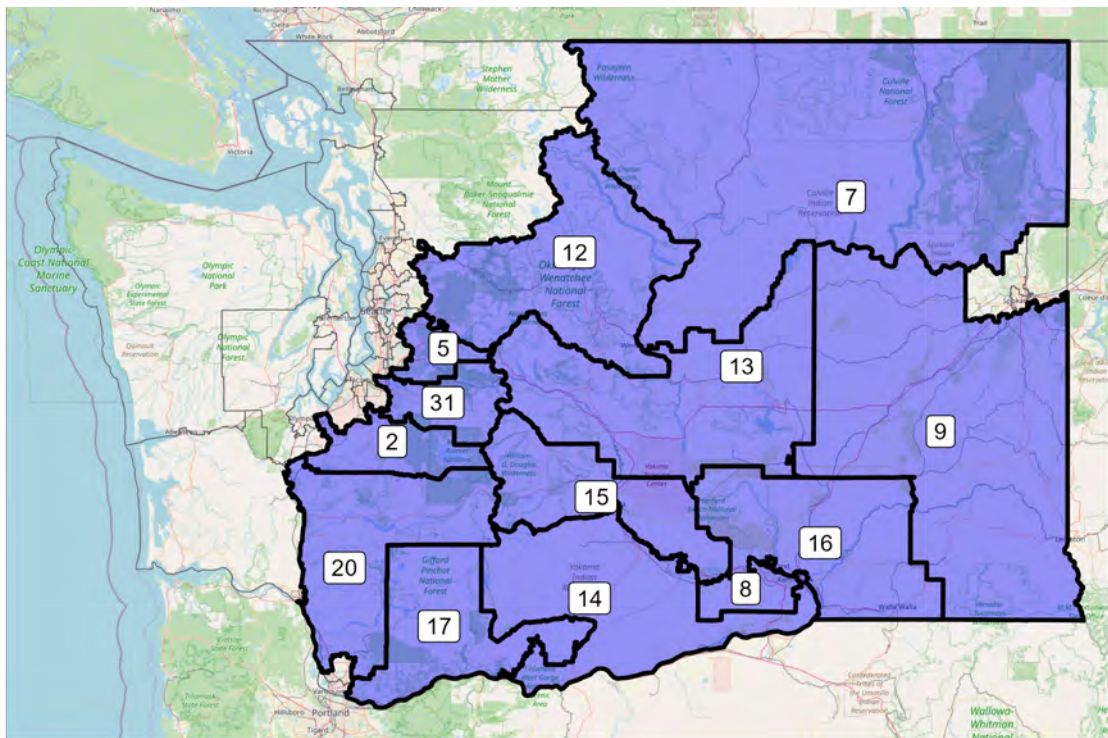
Figure 20: Enacted Map, with Districts Altered in Remedial Map 3 Highlighted



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The boundaries of 13 districts are changed, or 26.5% of the districts in the state. The changed districts ultimately look like this:

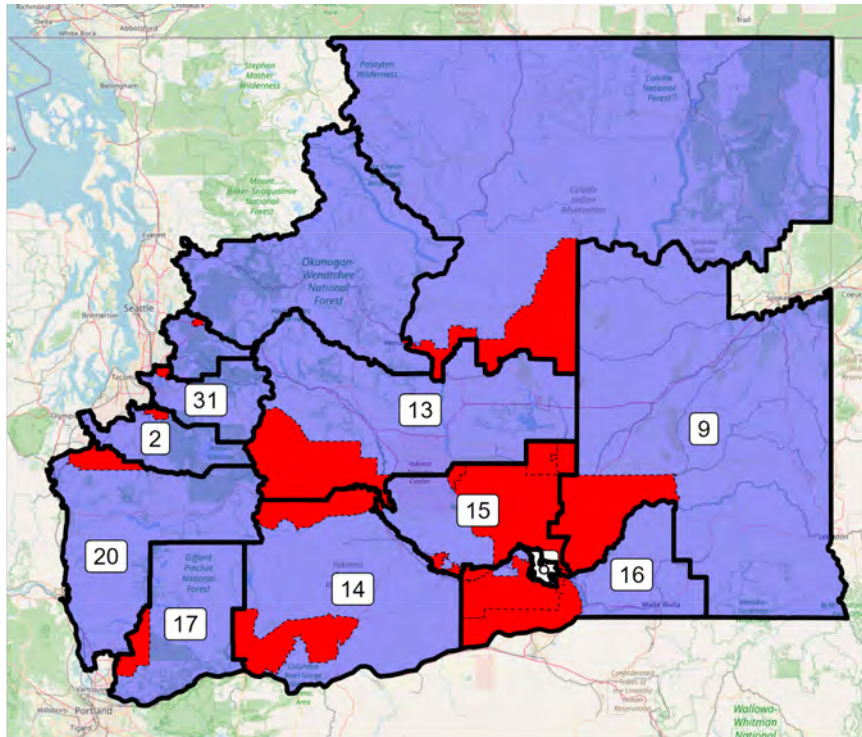
Figure 21: Remedial Map 3, with Districts Altered from Enacted Map Highlighted



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We can see this in the following figure, which highlights the census blocks that were moved from district-to-district by shading them red and placing a dashed line outlining them.

Figure 22: Enacted Map, with Census Blocks Shifted Into Different Districts in Remedial Map 3 Highlighted in Red



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The following table summarizes the population movements. It takes all of the census blocks shifted between districts, groups them by the Enacted District and Remedial District in which they are placed, and then summarizes the total population. In other words, 15,545 residents of Enacted District 2 are moved into Remedial District 31; 15,697 residents of Enacted District 5 are moved into Remedial District 12; and so forth.

Movement of Residents, Enacted Plan v. Remedial Plan 3		
Enacted District	Remedial District 3	Total
2	31	15,545
5	12	15,697
7	13	15,543
8	16	64,033
9	16	9,612
12	5	123
12	7	15,600
13	15	30,654
14	15	87,551
14	17	15,726
15	9	9,356
15	13	15,236
15	14	94,742
15	16	12,040
16	8	63,797
16	14	8,379
16	15	11,374
17	20	15,639
20	2	15,508
31	5	15,396

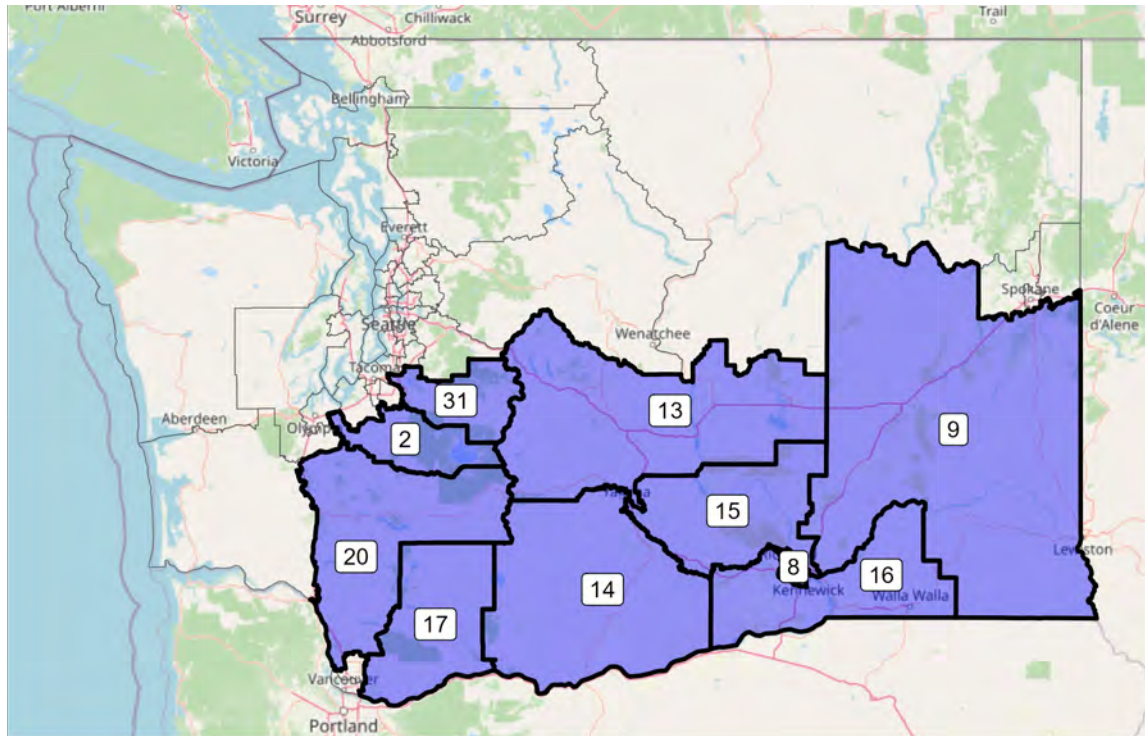
In total, the map moves 531,551 individuals around, including 213,350 residents who do not reside in Enacted Districts 14, 15 or 16 and 113,230 residents who do not reside in either Enacted Districts 14, 15 or 16 or in Remedial Districts 14, 15 or 16.

Finally, the changes take place over much of the state, with blocks being moved in 28 of the state's 39 counties, including several in western Washington. Overall, six districts are moved entirely out of six counties, while six districts are moved into eight counties.

With Remedial Map 4, fewer districts are changed, although the impact is still

notable. The Enacted Districts that are changed in Remedial Map 4 are highlighted below:

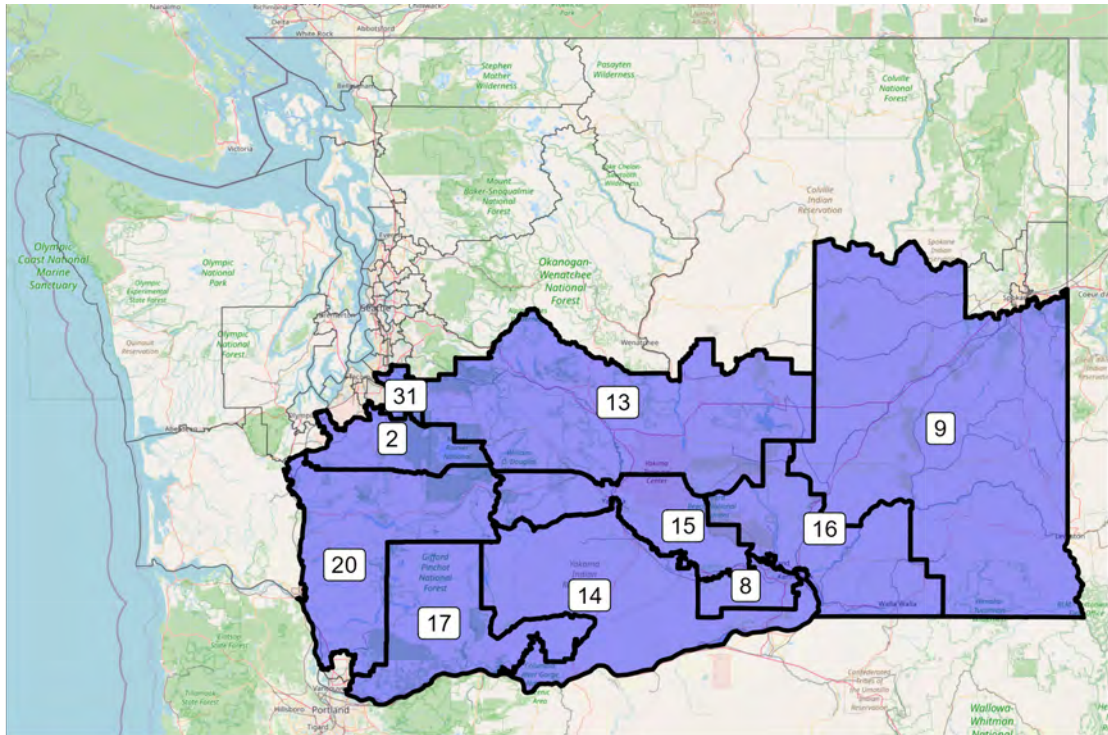
Figure 23: Enacted Map, with Districts Altered in Remedial Map 4 Highlighted



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The boundaries of 10 districts are changed, or 20.4% of the districts in the state. The changed districts ultimately look like this:

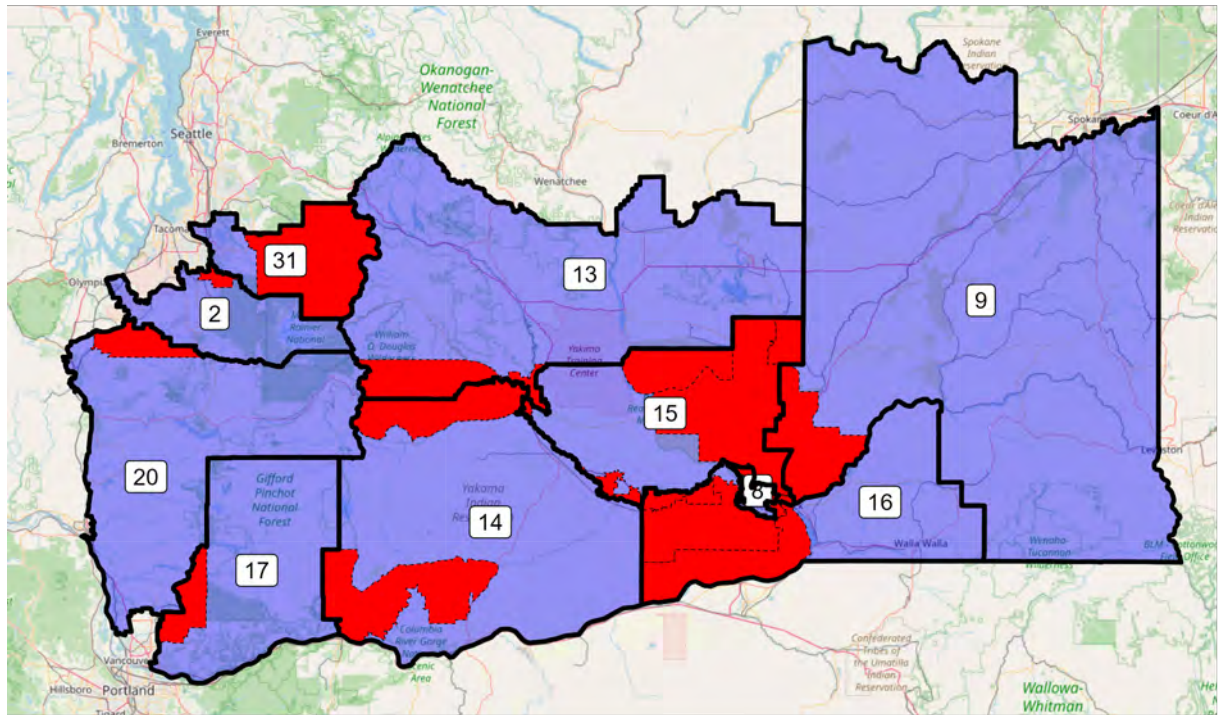
Figure 24: Remedial Map 4, with Districts Altered from Enacted Map Highlighted



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We can see this in the following figure, which highlights the census blocks that were moved from district-to-district by shading them red and placing a dashed line outlining them.

Figure 25: Enacted Map, with Census Blocks Shifted Into Different Districts in Remedial Map 4 Highlighted in Red



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Notably, District 13 is substantially reconfigured, as it is pushed over the Cascades, past Mount Rainier, and into the Seattle Metropolitan Area, in both King and Pierce counties, stretching from Ephrata to Enumclaw.

The following table summarizes the population movements.

Movement of Residents, Enacted Plan v. Remedial Plan 4		
Enacted District	Remedial District 4	Total
2	31	15,545
8	16	64,033
9	16	3,261
13	15	23,379
14	15	87,551
14	17	15,726
15	9	3,171
15	13	7,942
15	14	94,742
15	16	24,590
16	8	63,797
16	14	8,379
16	15	17,656
17	20	15,639
20	2	15,508
31	13	15,521

In total, the map moves 476,440 individuals around, including 152,886 residents who do not reside in Enacted Districts 14, 15 or 16 and 66,392 residents who do not reside in either Enacted Districts 14, 15 or 16 or in Remedial Districts 14, 15 or 16.

Finally, the changes take place over much of the state, with blocks being moved in 21 of the state's 39 counties, including in several western Washington counties. Overall, two districts are moved entirely out of three counties, while four districts are moved into six different counties.

Districts Moved Into and Out of Counties, Enacted vs. Remedial 4			
District Moves Out Of		District Moves Into	
District	County	District	County
8	Franklin	13	King
15	Adams	13	Pierce
15	Franklin	14	Benton
15	Grant	14	Franklin
—	—	16	Adams
—	—	17	Klickitat

4.2 HCVAP

I was asked to identify the Hispanic Citizen Voting Age Population in the district with the highest Hispanic Citizen Voting Age Population among the Yakima Valley districts, and to compare it to the HCVAP in the Enacted Plan District 15. The results are reported below:

HCVAP Estimates of VRA Districts in Remedial 3 and 4, and Enacted Map

Year	HCVAP% (Rem. 3 and 4)	HCVAP% (Enacted Map)
2021	50.2%	52.6%
2020	50.1%	51.9%
2019	48.0%	50.0%

4.3 Compactness

I was asked to consider the compactness of the districts in Remedial Maps 3 and 4, compared to the Enacted Map, in the same way as I did above for Remedial Maps 1 and 2.

The following table shows the 10 least compact district districts using the Reock scores for the Enacted Plan, and Remedial Plans 3 and 4. Once again, compactness scores for additional districts could easily be extracted from the accompanying code.

We begin with the Reock Scores. Districts that are changed in either Remedial Plan 3 or Remedial Plan 4 are highlighted.

10 Lowest Reock Scores					
Enacted Map, Remedial 3 and Remedial 4					
Enacted Map		Remedial 3		Remedial 4	
Reock	District	Reock	District	Reock	District
0.133	42	0.133	42	0.133	42
0.180	2	0.186	2	0.162	15
0.222	43	0.221	15	0.186	2
0.243	16	0.222	43	0.222	43
0.258	41	0.223	14	0.223	14
0.279	8	0.249	17	0.231	13
0.291	49	0.258	41	0.249	17
0.295	13	0.272	5	0.258	41
0.304	40	0.291	49	0.276	16
0.308	5	0.298	8	0.291	49

Under all 3 plans, District 42 again remains the least compact district, which is unsurprising given Whatcom County. District 2, located in southern Pierce County and portions of eastern Thurston County, is the second-least compact in both the Enacted Plan and under Remedial Plan 3.

Remedial Map 3 makes Districts 5, 7, 9, 14, 15 and 17 less compact – in some cases, substantially so – while Districts 2, 8, 12, 13, 16, 20 and 31 are made more compact. Of particular note, the proposed remedial district sees its Reock score drop from 0.323 (as District 15 in the Enacted Plan) to 0.223 (As District 14 in the Remedial Plan), making it one of the least compact districts in the map.

Comparison of Reock Scores, Changed Districts, Remedial 3					
Made Less Compact			Made More Compact		
Enacted District	Reock, Enacted	Reock, Rem. 3	District	Reock, Enacted	Reock, Rem. 3
5	0.308	0.272	2	0.180	0.186
7	0.368	0.342	8	0.279	0.298
9	0.498	0.457	12	0.343	0.343
14	0.531	0.223	13	0.295	0.302
15	0.323	0.221	16	0.243	0.312
17	0.455	0.249	20	0.387	0.387
—	—	—	31	0.310	0.312

The same is largely true for Remedial Map 4:

Comparison of Reock Scores, Changed Districts, Remedial 4					
Made Less Compact			Made More Compact		
Enacted District	Reock, Enacted	Reock, Rem. 4	District	Reock, Enacted	Reock, Rem. 4
9	0.498	0.481	2	0.180	0.186
13	0.295	0.231	8	0.279	0.298
14	0.531	0.223	16	0.243	0.276
15	0.323	0.162	20	0.387	0.387
17	0.455	0.249	31	0.310	0.325

For Polsby-Popper, the story is much the same. Under the Enacted Map, only three of the districts that Dr. Oskooii changes are among the 10 least compact districts. Under Remedial Map 3 that number is 6 and under Remedial Map 4 that number is 3. Only one district has a Polsby-Popper score under 0.2 in the Enacted Plan – a district that largely follows the irregular boundaries of Renton and Tukwila. Under the two remedial plans that number grows to three.

10 Lowest Polsby-Popper Scores					
Enacted Map, Remedial 3 and Remedial 4					
Enacted Map		Remedial 3		Remedial 4	
Polsby-Popper	District	Polsby-Popper	District	Polsby-Popper	District
0.141	11	0.141	11	0.141	11
0.203	8	0.145	14	0.145	14
0.217	45	0.190	5	0.171	15
0.222	2	0.203	15	0.208	2
0.223	41	0.208	2	0.217	45
0.226	12	0.217	45	0.223	41
0.227	1	0.219	12	0.226	12
0.242	6	0.223	41	0.227	1
0.245	26	0.227	1	0.242	6
0.245	35	0.238	13	0.245	26

Once again, most of the districts that are redrawn under this map are made less compact. Under Remedial Map 3, 9 districts are made less compact, while just four are made more compact. Districts 14 and 17 stand out as having particularly large decreases in their compactness. Using Polsby-Popper scores, the remedial district is the second-least compact district on the map, save for a district whose compactness is driven by municipal boundaries.

Comparison of Polsby-Popper Scores, Changed Districts, Remedial 3					
Made Less Compact			Made More Compact		
Enacted District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 3	District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 3
2	0.222	0.208	7	0.327	0.344
5	0.249	0.190	8	0.203	0.273
12	0.226	0.219	9	0.351	0.372
13	0.271	0.238	16	0.278	0.356
14	0.478	0.145	—	—	—
15	0.255	0.203	—	—	—
17	0.489	0.258	—	—	—
20	0.290	0.270	—	—	—
31	0.330	0.299	—	—	—

Under Remedial Map 4, seven districts are made less compact, while just three are made more compact, using Polsby-Popper as the metric.

Comparison of Polsby-Popper Scores, Changed Districts, Remedial 4					
Made Less Compact			Made More Compact		
Enacted District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 4	District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 4
2	0.222	0.208	8	0.203	0.273
14	0.478	0.145	9	0.351	0.378
15	0.255	0.171	13	0.271	0.297
16	0.278	0.266	—	—	—
17	0.489	0.258	—	—	—
20	0.290	0.270	—	—	—
31	0.330	0.246	—	—	—

4.4 Population Distribution

The changes in this map occur as a result of removing some precincts between Pasco and Grandview, and then adding some additional precincts in western Klickitat County. The maps in Pasco, Yakima, and the area between Grandview and Yakima, are only changed by a few precincts. Therefore, the same analysis from Maps 1 and 2 applies here.

4.5 Political Impact

I was also asked to examine the political impact of the maps. Once again, District 15 is transformed into a Democratic-leaning district, while District 14 is made more Republican. The question is whether other districts were quietly made more Republican or Democratic in meaningful ways.

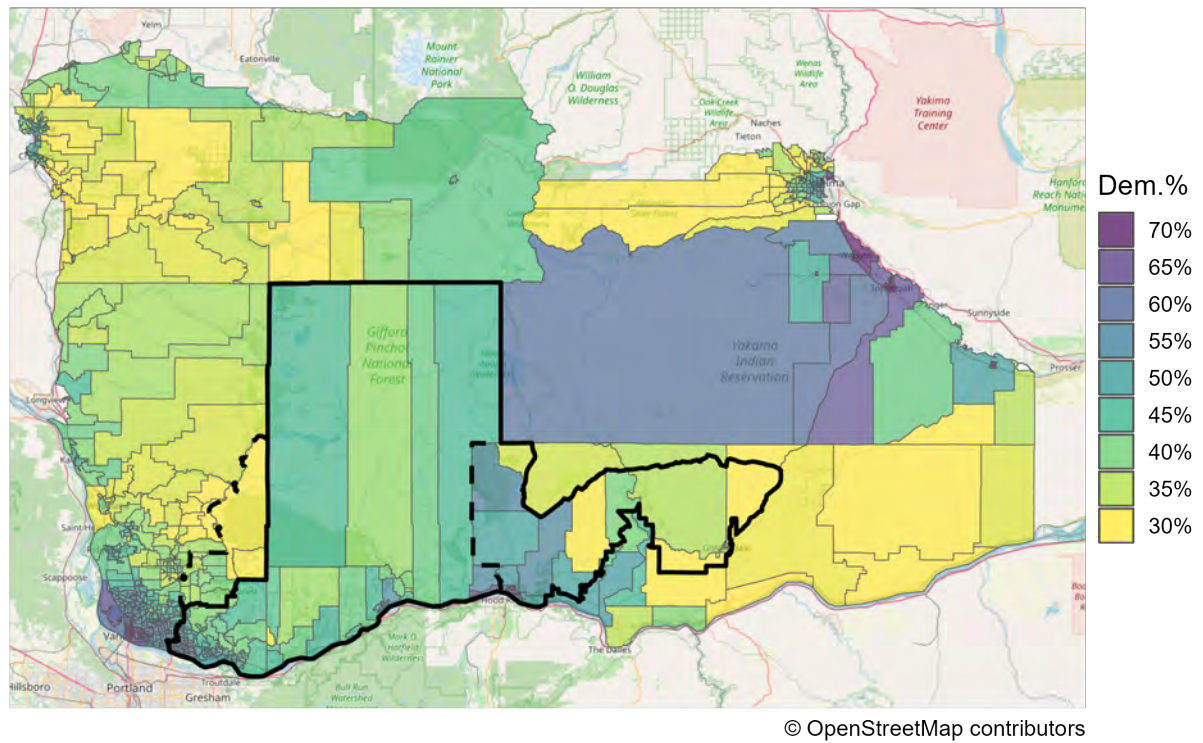
I've once again examined the districts that were changed in Remedial Map 3, under a variety of specifications.

A larger version of this image is available as a part of Exhibit 2.

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 3																				
	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
District	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.0%	-22.8%	-22.6%	-14.7%	-14.6%	-21.2%	-21.0%	-16.2%	-15.9%	-18.9%	-17.8%	-16.0%	-15.7%	-8.1%	-7.1%	-13.9%	-13.4%	-17.0%	-16.6%
5	11.3%	9.7%	14.3%	12.3%	22.9%	20.6%	3.9%	2.7%	13.9%	12.5%	-1.0%	-1.5%	17.1%	15.3%	11.0%	10.4%	8.2%	7.3%	13.9%	12.3%
7	-33.8%	-32.3%	-38.0%	-36.6%	-31.5%	-30.0%	-36.8%	-35.5%	-27.9%	-26.7%	-29.0%	-28.0%	-33.7%	-32.3%	-20.6%	-19.4%	-27.2%	-26.1%	-31.9%	-30.5%
8	-20.4%	-25.7%	-22.2%	-27.7%	-15.8%	-21.1%	-30.0%	-35.1%	-20.4%	-25.5%	-21.8%	-24.7%	-21.7%	-26.6%	-10.5%	-13.8%	-20.0%	-24.0%	-20.3%	-25.2%
9	-20.1%	-18.7%	-21.8%	-20.6%	-16.0%	-14.8%	-26.3%	-25.2%	-14.6%	-13.2%	-20.0%	-18.7%	-19.8%	-18.5%	-11.7%	-10.4%	-17.9%	-16.8%	-18.6%	-17.4%
12	-10.2%	-6.6%	-11.3%	-6.8%	-2.0%	2.7%	-14.1%	-10.8%	-7.2%	-3.6%	-14.8%	-12.5%	-8.1%	-3.7%	-4.2%	-2.0%	-8.4%	-5.6%	-7.9%	-4.1%
13	-29.7%	-28.5%	-34.0%	-32.9%	-26.0%	-24.7%	-34.3%	-32.9%	-29.8%	-28.1%	-29.0%	-28.0%	-30.1%	-28.3%	-21.5%	-19.9%	-25.5%	-24.3%	-29.6%	-28.1%
14	-9.3%	14.6%	-12.1%	10.3%	-6.0%	15.5%	-15.4%	9.5%	-13.3%	9.4%	-10.6%	15.4%	-12.8%	13.1%	-3.5%	23.6%	-9.4%	12.0%	-10.5%	13.5%
15	-1.1%	-24.0%	-5.2%	-26.8%	0.3%	-20.6%	-6.6%	-30.5%	-7.2%	-28.1%	-0.3%	-23.1%	-1.6%	-27.0%	7.7%	-16.9%	-1.8%	-21.7%	-2.2%	-25.0%
16	-23.7%	-19.7%	-26.4%	-21.8%	-20.3%	-16.0%	-32.0%	-27.5%	-20.6%	-16.8%	-22.6%	-21.6%	-25.0%	-21.1%	-10.8%	-9.3%	-21.5%	-18.6%	-22.9%	-19.1%
17	-1.3%	1.8%	-0.0%	2.8%	3.6%	6.6%	-7.6%	-4.7%	2.5%	5.3%	-7.7%	-5.1%	-2.1%	0.3%	-1.4%	1.7%	-2.6%	-0.1%	-0.9%	2.0%
20	-31.4%	-31.3%	-33.8%	-33.3%	-27.9%	-27.7%	-33.8%	-34.1%	-25.7%	-25.7%	-29.4%	-30.7%	-28.7%	-29.2%	-18.7%	-20.5%	-24.4%	-25.0%	-28.6%	-28.9%
31	-14.3%	-17.1%	-15.4%	-18.6%	-5.7%	-8.7%	-16.1%	-18.6%	-9.5%	-11.9%	-15.4%	-17.5%	-8.5%	-11.1%	-4.8%	-6.8%	-9.1%	-11.3%	-10.3%	-13.0%

Once again, beyond the changes to Districts 14 and 15, District 12 is made more Democratic, and is turned from a district carried by former President Donald Trump into one carried by President Joe Biden. Because District 17 is not pushed as far into red areas of Klickitat County as it is in its configuration for Maps 1 and 2, it is made even more Democratic.

Figure 26: Democratic Percentage in VTDs, Enacted and Remedial Maps 3 and 4, District 17



District 12 once again gives up Republican-leaning East Wenatchee, and once again takes in bluer areas of District 5.

Figure 27: Democratic Percentage in VTDs, Enacted and Remedial Maps 3, District 12

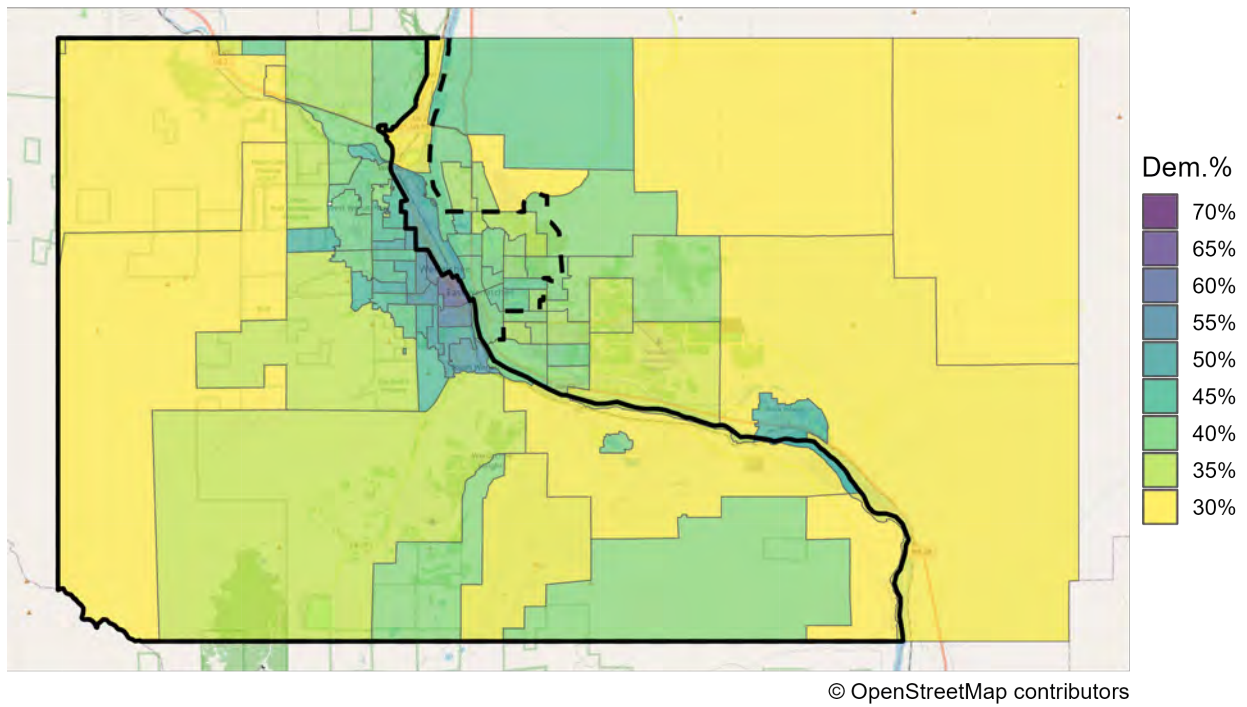
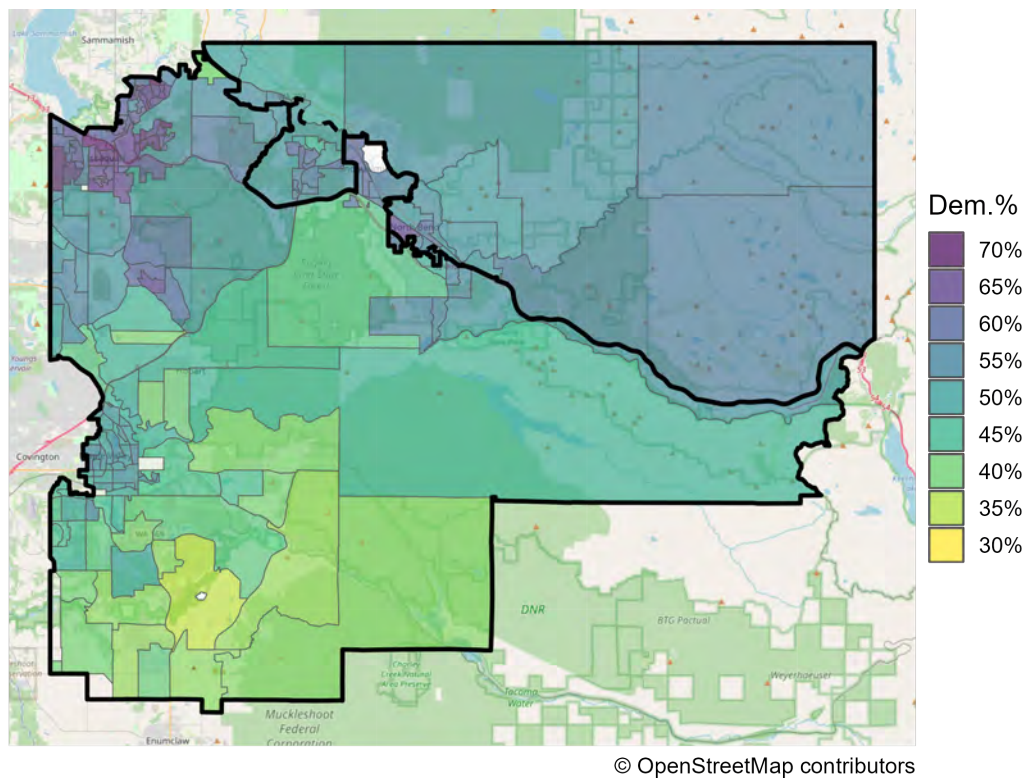


Figure 28: Democratic Percentage in VTDs, Enacted and Remedial Maps 3, District 12



Because Remedial Map 4 changes fewer districts, does not alter District 12, and uses the same version of District 17, examining its effects provide no new information.

A larger version of this image is available as a part of Exhibit 2.

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 4																				
	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
District	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.0%	-22.8%	-22.6%	-14.7%	-14.6%	-21.2%	-21.0%	-16.2%	-15.9%	-18.9%	-17.8%	-16.0%	-15.7%	-8.1%	-7.1%	-13.9%	-13.4%	-17.0%	-16.6%
8	-20.4%	-25.7%	-22.2%	-27.7%	-15.8%	-21.1%	-30.0%	-35.1%	-20.4%	-25.5%	-21.8%	-24.7%	-21.7%	-26.6%	-10.5%	-13.8%	-20.0%	-24.0%	-20.3%	-25.2%
9	-20.1%	-19.6%	-21.8%	-21.4%	-16.0%	-15.6%	-26.3%	-26.0%	-14.6%	-14.0%	-20.0%	-19.5%	-19.8%	-19.3%	-11.7%	-11.1%	-17.9%	-17.5%	-18.6%	-18.2%
13	-29.7%	-27.2%	-34.0%	-31.7%	-26.0%	-23.0%	-34.3%	-31.6%	-29.8%	-26.9%	-29.0%	-26.8%	-30.1%	-26.6%	-21.5%	-18.6%	-25.5%	-23.0%	-29.6%	-26.7%
14	-9.3%	14.6%	-12.1%	10.3%	-6.0%	15.5%	-15.4%	9.5%	-13.3%	9.4%	-10.6%	15.4%	-12.8%	13.1%	-3.5%	23.6%	-9.4%	12.0%	-10.5%	13.5%
15	-1.1%	-23.4%	-5.2%	-26.2%	0.3%	-20.1%	-6.6%	-30.0%	-7.2%	-27.4%	-0.3%	-22.3%	-1.6%	-26.2%	7.7%	-16.0%	-1.8%	-21.2%	-2.2%	-24.3%
16	-23.7%	-17.8%	-26.4%	-20.0%	-20.3%	-14.1%	-32.0%	-25.8%	-20.6%	-14.9%	-22.6%	-20.3%	-25.0%	-19.3%	-10.8%	-7.8%	-21.5%	-17.2%	-22.9%	-17.3%
17	-1.3%	1.8%	-0.0%	2.8%	3.6%	6.6%	-7.6%	-4.7%	2.5%	5.3%	-7.7%	-5.1%	-2.1%	0.3%	-1.4%	1.7%	-2.6%	-0.1%	-0.9%	2.0%
20	-31.4%	-31.3%	-33.8%	-33.3%	-27.9%	-27.7%	-33.8%	-34.1%	-25.7%	-25.7%	-29.4%	-30.7%	-28.7%	-29.2%	-18.7%	-20.5%	-24.4%	-25.0%	-28.6%	-28.9%
31	-14.3%	-15.8%	-15.4%	-16.9%	-5.7%	-7.3%	-16.1%	-17.3%	-9.5%	-10.7%	-15.4%	-16.5%	-8.5%	-9.8%	-4.8%	-5.8%	-9.1%	-10.2%	-10.3%	-11.6%

4.6 Incumbency

Like the earlier maps, the changes here pit multiple Republican incumbents against each other or places them in unfavorable districts. In particular, Senator Torres is placed in a district based in Walla Walla where just 7.4% of the VAP is drawn from her previous district. District 7 also pairs two Senators, while Districts 15, 16, and 17 involve three Republican House incumbents being placed in the same district. Map 4, which avoids disrupting as many districts, confines the changes to districts 15, 16 and 17.

First	Last	Party	Chamber
District 5			
Lisa	Callan	D	House
Bill	Ramos	D	House
Mark	Mullet	D	Senate
Phil	Fortunato	R	Senate
District 7			
Joel	Kretz	R	House
Jacquelin	Maycumber	R	House
Shelly	Short	R	Senate
Brad	Hawkins	R	Senate
District 15			
Chris	Corry	R	House
Curtis	King	R	Senate
Bruce	Chandler	R	House
Bryan	Sandlin	R	House
District 16			
Stephanie	Barnard	R	House
Nikki	Torres	R	Senate
Mark	Klicker	R	House
Skyler	Rude	R	House
Perry	Dozier	R	Senate
District 17			
Gina	Mosbrucker	R	House
Paul	Harris	R	House
Kevin	Waters	R	House
Lynda	Wilson	R	Senate

5 Analysis of Remedial Map 5

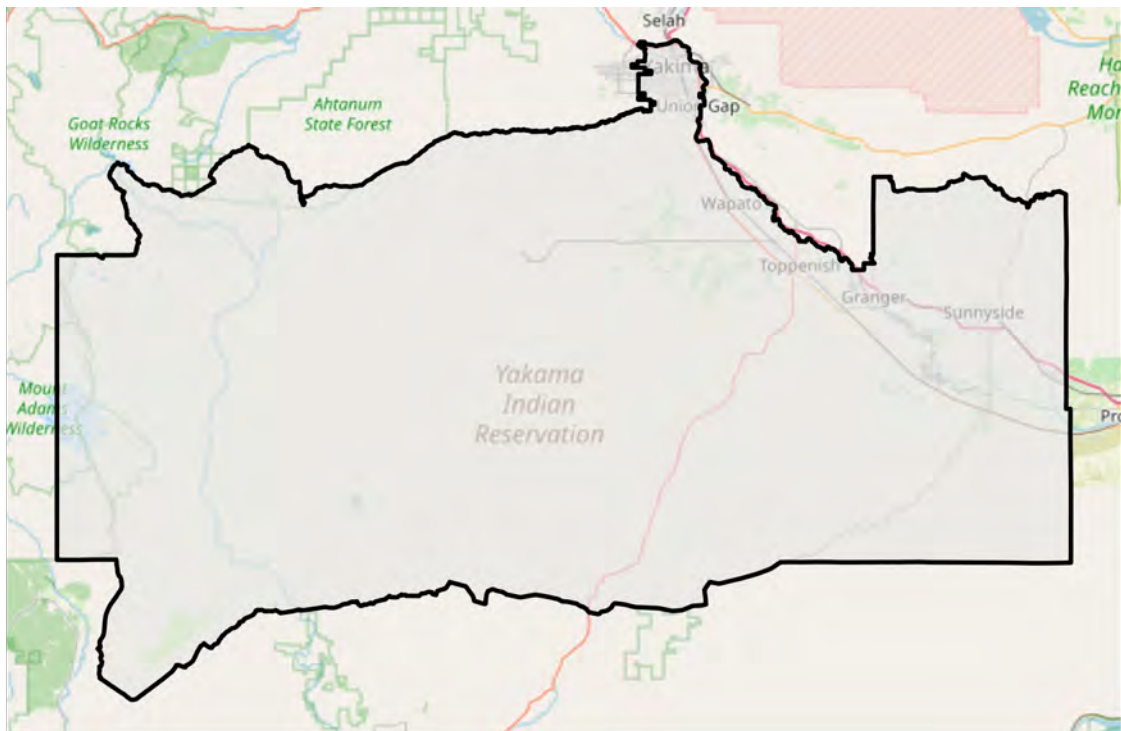
Map 5 is the least disruptive map. Only four districts are changed, all within the Yakima Valley: Districts 13, 14, 15 and 16. This allows for a relatively truncated analysis. The catch, however, is that the district reduces the HCVAP of District 14 below 47%.

HCVAP Estimates of VRA Districts in Remedial 3 and 4, and Enacted Map

Year	HCVAP% (Rem. 5)	HCVAP% (Enacted Map)
2021	46.9%	52.6%
2020	45.9%	51.9%
2019	44.7%	50.0%

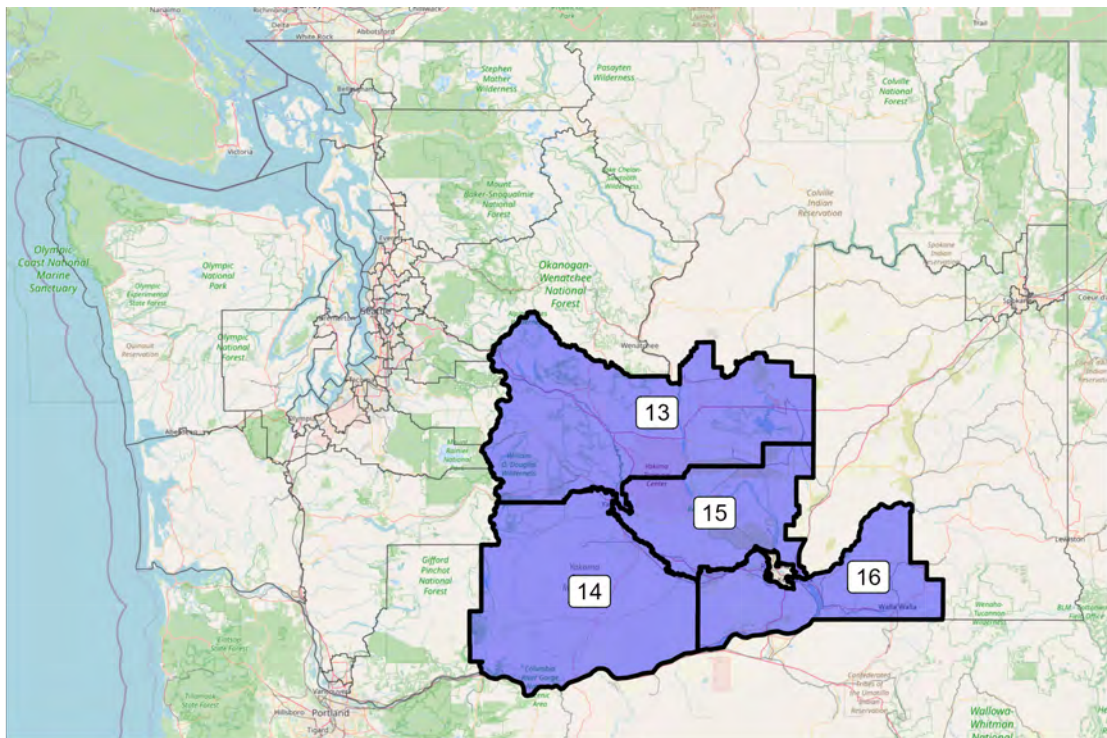
We can view our now-familiar introductory maps here:

Figure 29: Proposed VRA District in Remedial Maps 5



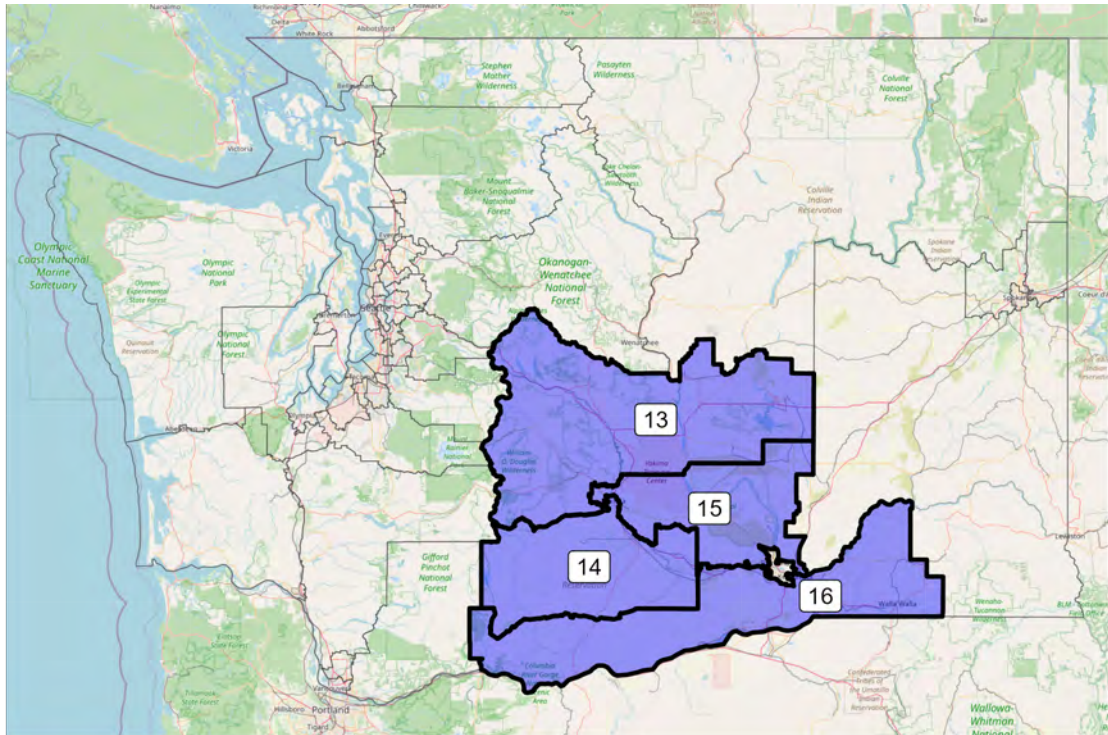
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Figure 30: Enacted Map, with Districts Altered in Remedial Map 5 Highlighted



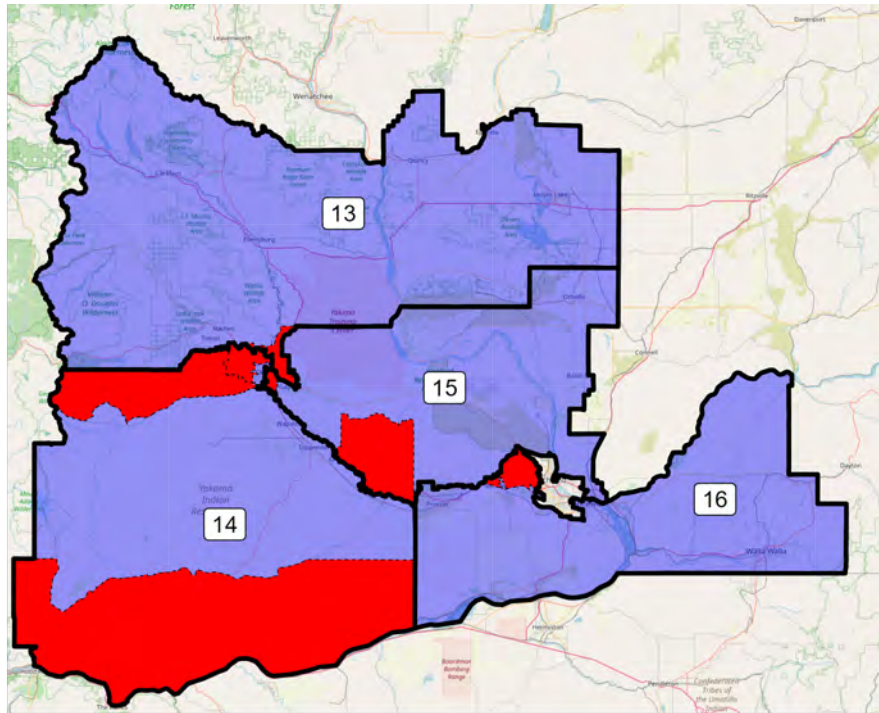
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Figure 31: Remedial Map 5, with Districts Altered from Enacted Map Highlighted



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Figure 32: Enacted Map, with Census Blocks Shifted Into Different Districts in Remedial Map 5 Highlighted in Red



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The map moves 190,745 people around, including just 15,673 who were not in districts 14, 15 or 16. No new counties are impacted.

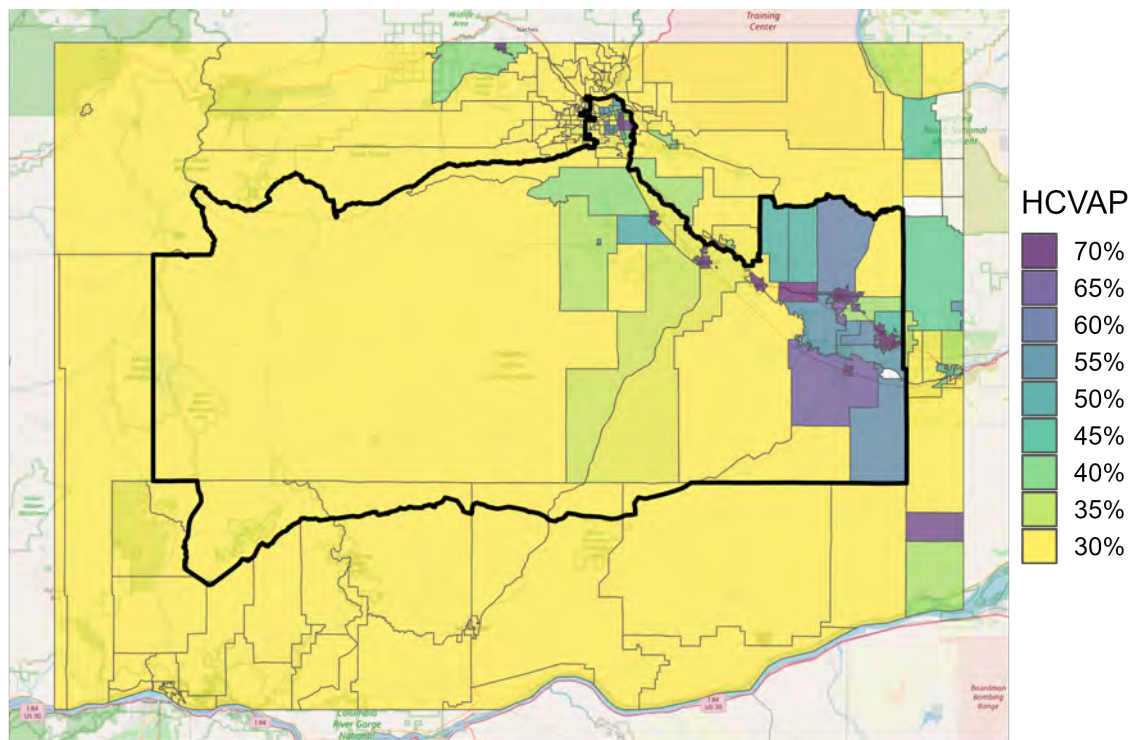
The districts that are changed do become appreciably less compact using this approach. District 16 in particular becomes the least compact district on the map, using either the Polsby-Popper or Reock score.

Comparison of Reock Scores, Changed Districts, Remedial 5					
Made Less Compact			Made More Compact		
Enacted District	Reock, Enacted	Reock, Rem. 5	District	Reock, Enacted	Reock, Rem. 5
14	0.531	0.347	13	0.295	0.307
15	0.323	0.263	—	—	—
16	0.243	0.114	—	—	—

Comparison of Polsby-Popper Scores, Changed Districts, Remedial 5					
Made Less Compact			Made More Compact		
Enacted District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 5	District	Polsby-Popper, Enacted	Polsby-Popper, Rem. 5
13	0.271	0.264	—	—	—
14	0.478	0.356	—	—	—
15	0.255	0.194	—	—	—
16	0.278	0.178	—	—	—

In terms of politics, there are few changes to district partisanship. The Hispanic population is concentrated in Yakima.

Figure 33: District 14 in Remedial Map 5



Finally, the map does not pair any Senate incumbents. In the House, Representatives Mosbrucker, Klicker and Rude, all Republicans, are placed together in District 16, while Representatives Dent, Ybarra and Corry are placed together in District 13. Sen. Torres is left in District 15, however a majority of the Voting Age Population in the district (51.4%) will be new to her. Just 25% of the CVAP in her district is Hispanic.

6 Conclusion

The following table summarizes the HCVAPs of the various proposed remedial maps.

Summary HCVAP Estimates of VRA Districts in Remedial and Enacted Maps

Year	Maps 1 and 2	Maps 3 and 4	Map 5	Enacted Map
2021	51.7%	50.2%	46.9%	52.6%
2020	51.3%	50.1%	45.9%	51.9%
2019	49.8%	48.0%	44.7%	50.0%

Overall, Maps 1-4 disrupt the districts of several Republican incumbents, improve the opportunities for Democrats in districts well beyond the opportunity district that the law demands, and make several districts significantly less compact. They create a chain reaction in districts that stretches across much of the state. Map 5 mitigates some (but not all) of these problems, but does so at the expense of lowering the HCVAP substantially.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct to the best of my knowledge and belief. Executed on 22 December 2023 in Delaware, Ohio.

Sean Trende

Sean P. Trende

7 Exhibit 1

SEAN P. TRENDE

1146 Elderberry Loop
Delaware, OH 43015
strende@realclearpolitics.com

EDUCATION

Ph.D., The Ohio State University, Political Science, 2023. Dissertation titled *Application of Spatial Analysis to Contemporary Problems in Political Science*, September 2023.

M.A.S. (Master of Applied Statistics), The Ohio State University, 2019.

J.D., Duke University School of Law, *cum laude*, 2001; Duke Law Journal, Research Editor.

M.A., Duke University, *cum laude*, Political Science, 2001. Thesis titled *The Making of an Ideological Court: Application of Non-parametric Scaling Techniques to Explain Supreme Court Voting Patterns from 1900-1941*, June 2001.

B.A., Yale University, with distinction, History and Political Science, 1995.

PROFESSIONAL EXPERIENCE

Law Clerk, Hon. Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit, 2001-02.

Associate, Kirkland & Ellis, LLP, Washington, DC, 2002-05.

Associate, Hunton & Williams, LLP, Richmond, Virginia, 2005-09.

Associate, David, Kamp & Frank, P.C., Newport News, Virginia, 2009-10.

Senior Elections Analyst, RealClearPolitics, 2010-present.

Columnist, Center for Politics Crystal Ball, 2014-17.

Visiting Scholar, American Enterprise Institute, 2018-present.

BOOKS AND BOOK CHAPTERS

Larry J. Sabato, ed., *The Red Ripple*, Ch. 15 (2023).

Larry J. Sabato, ed., *A Return to Normalcy?: The 2020 Election that (Almost) Broke America* Ch. 13 (2021).

Larry J. Sabato, ed., *The Blue Wave*, Ch. 14 (2019).

Larry J. Sabato, ed., *Trumped: The 2016 Election that Broke all the Rules* (2017).

Larry J. Sabato, ed., *The Surge: 2014's Big GOP Win and What It Means for the Next Presidential Election*, Ch. 12 (2015).

Larry J. Sabato, ed., *Barack Obama and the New America*, Ch. 12 (2013).

Barone, Kraushaar, McCutcheon & Trende, *The Almanac of American Politics* 2014 (2013).

The Lost Majority: Why the Future of Government is up for Grabs – And Who Will Take It (2012).

PREVIOUS EXPERT TESTIMONY AND/OR DEPOSITIONS

Dickson v. Rucho, No. 11-CVS-16896 (N.C. Super. Ct., Wake County) (racial gerrymandering).

Covington v. North Carolina, No. 1:15-CV-00399 (M.D.N.C.) (racial gerrymandering).

NAACP v. McCrory, No. 1:13CV658 (M.D.N.C.) (early voting).

NAACP v. Husted, No. 2:14-cv-404 (S.D. Ohio) (early voting).

Ohio Democratic Party v. Husted, Case 15-cv-01802 (S.D. Ohio) (early voting).

Lee v. Virginia Bd. of Elections, No. 3:15-cv-357 (E.D. Va.) (early voting).

Feldman v. Arizona, No. CV-16-1065-PHX-DLR (D. Ariz.) (absentee voting).

A. Philip Randolph Institute v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio) (political gerrymandering).

Whitford v. Nichol, No. 15-cv-421-bbc (W.D. Wisc.) (political gerrymandering).

Common Cause v. Rucho, No. 1:16-CV-1026-WO-JEP (M.D.N.C.) (political gerrymandering).

Mecinas v. Hobbs, No. CV-19-05547-PHX-DJH (D. Ariz.) (ballot order effect).

Fair Fight Action v. Raffensperger, No. 1:18-cv-05391-SCJ (N.D. Ga.) (statistical analysis).

Pascua Yaqui Tribe v. Rodriguez, No. 4:20-CV-00432-TUC-JAS (D. Ariz.) (early voting).

Ohio Organizing Collaborative, et al v. Ohio Redistricting Commission, et al, No. 2021-1210 (Ohio) (political gerrymandering).

NCLCV v. Hall, No. 21-CVS-15426 (N.C. Sup. Ct.) (political gerrymandering).

Szeliga v. Lamone, Case No. C-02-CV-21-001816 (Md. Cir. Ct.) (political gerrymandering).

Montana Democratic Party v. Jacobsen, DV-56-2021-451 (Mont. Dist. Ct.) (early voting; ballot collection).

Carter v. Chapman, No. 464 M.D. 2021 (Pa.) (map drawing; amicus).

NAACP v. McMaster, No. 3:21-cv-03302 (D.S.C.) (racial gerrymandering).

Graham v. Adams, No. 22-CI-00047 (Ky. Cir. Ct.) (political gerrymandering).

Harkenrider v. Hochul, No. E2022-0116CV (N.Y. Sup. Ct.) (political gerrymandering).

LULAC v. Abbott, Case No. 3:21-cv-00259 (W.D. Tex.) (racial/political gerrymandering/VRA).

Moore et al., v. Lee, et al., (Tenn. 20th Dist.) (state constitutional compliance).

Agee et al. v. Benson, et al., (W.D. Mich.) (racial gerrymandering/VRA).

Faatz, et al. v. Ashcroft, et al., (Cir. Ct. Mo.) (state constitutional compliance).

Coca, et al. v. City of Dodge City, et al., Case No. 6:22-cv-01274-EFM-RES (D. Kan.) (VRA).

Milligan v. Allen, Case No. 2:21-cv-01530-AMM (N.D. Ala.) (VRA).

Nairne v. Ardoin, NO. 22-178-SDD-SDJ (M.D. La.) (VRA).

Robinson v. Ardoin, NO. 22-211-SDD-SDJ (M.D. La.) (VRA).

Republican Party v. Oliver, No. D-506-CV-2022-00041 (N.M. Cir. Ct. (Lea County)) (political gerrymandering).

COURT APPOINTMENTS

Appointed as Voting Rights Act expert by Arizona Independent Redistricting Commission (2020)

Appointed Special Master by the Supreme Court of Virginia to redraw maps for the Virginia House of Delegates, the Senate of Virginia, and for Virginia's delegation to the United States Congress for the 2022 election cycle.

Appointed redistricting expert by the Supreme Court of Belize in *Smith v. Perrera*, No. 55 of 2019 (one-person-one-vote).

INTERNATIONAL PRESENTATIONS AND EXPERIENCE

Panel Discussion, European External Action Service, Brussels, Belgium, Likely Outcomes of 2012 American Elections.

Selected by U.S. Embassies in Sweden, Spain, and Italy to discuss 2016 and 2018 elections to think tanks and universities in area (declined Italy due to teaching responsibilities).

Selected by EEAS to discuss 2018 elections in private session with European Ambassadors.

TEACHING

American Democracy and Mass Media, Ohio Wesleyan University, Spring 2018.

Introduction to American Politics, The Ohio State University, Autumns 2018, 2019, 2020, Spring 2018.

Political Participation and Voting Behavior, Springs 2020, 2021, 2022, 2023.

Survey Methodology, Fall 2022, Spring 2024.

PUBLICATIONS

James G. Gimpel, Andrew Reeves, & Sean Trende, "Reconsidering Bellwether Locations in U.S. Presidential Elections," Pres. Stud. Q. (2022) (forthcoming, available online at <http://doi.org/10.1111/psq.12793>).

REAL CLEAR POLITICS COLUMNS

Full archives available at http://www.realclearpolitics.com/authors/sean_trende/

8 Exhibit 2

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 1

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-21.1%	-22.8%	-23.7%	-14.7%	-15.7%	-21.2%	-22.2%	-16.2%	-17.0%	-18.9%	-18.6%	-16.0%	-16.8%	-8.1%	-7.9%	-13.9%	-14.3%	-17.0%	-17.7%
5	11.3%	9.4%	14.3%	12.0%	22.9%	20.2%	3.9%	2.4%	13.9%	12.1%	-1.0%	-2.0%	17.1%	14.9%	11.0%	9.7%	8.2%	6.9%	13.9%	11.9%
7	-33.8%	-31.7%	-38.0%	-36.0%	-31.5%	-29.4%	-36.8%	-34.8%	-27.9%	-26.1%	-29.0%	-27.4%	-33.7%	-31.7%	-20.6%	-18.8%	-27.2%	-25.6%	-31.9%	-29.9%
8	-20.4%	-24.2%	-22.2%	-26.2%	-15.8%	-19.7%	-30.0%	-34.0%	-20.4%	-24.2%	-21.8%	-23.6%	-21.7%	-25.4%	-10.5%	-12.5%	-20.0%	-22.9%	-20.3%	-23.9%
9	-20.1%	-18.7%	-21.8%	-20.6%	-16.0%	-14.8%	-26.3%	-25.2%	-14.6%	-13.2%	-20.0%	-18.7%	-19.8%	-18.5%	-11.7%	-10.4%	-17.9%	-16.8%	-18.6%	-17.4%
12	-10.2%	-6.1%	-11.3%	-6.2%	-2.0%	3.4%	-14.1%	-10.4%	-7.2%	-2.8%	-14.8%	-12.1%	-8.1%	-2.8%	-4.2%	-1.3%	-8.4%	-5.1%	-7.9%	-3.4%
13	-29.7%	-28.7%	-34.0%	-33.2%	-26.0%	-24.9%	-34.3%	-33.2%	-29.8%	-28.2%	-29.0%	-28.3%	-30.1%	-28.6%	-21.5%	-20.2%	-25.5%	-24.5%	-29.6%	-28.4%
14	-9.3%	15.2%	-12.1%	10.9%	-6.0%	16.2%	-15.4%	10.2%	-13.3%	9.6%	-10.6%	16.2%	-12.8%	14.0%	-3.5%	24.2%	-9.4%	12.5%	-10.5%	14.1%
15	-1.1%	-24.1%	-5.2%	-26.8%	0.3%	-20.6%	-6.6%	-30.6%	-7.2%	-28.2%	-0.3%	-23.1%	-1.6%	-27.1%	7.7%	-17.0%	-1.8%	-21.8%	-2.2%	-25.1%
16	-23.7%	-20.3%	-26.4%	-22.4%	-20.3%	-16.6%	-32.0%	-27.9%	-20.6%	-17.4%	-22.6%	-22.1%	-25.0%	-21.6%	-10.8%	-9.9%	-21.5%	-19.1%	-22.9%	-19.6%
17	-1.3%	1.2%	-0.0%	2.0%	3.6%	5.8%	-7.6%	-5.3%	2.5%	4.7%	-7.7%	-5.5%	-2.1%	-0.4%	-1.4%	1.5%	-2.6%	-0.6%	-0.9%	1.4%
20	-31.4%	-30.5%	-33.8%	-32.4%	-27.9%	-26.9%	-33.8%	-33.4%	-25.7%	-25.0%	-29.4%	-30.3%	-28.7%	-28.6%	-18.7%	-20.3%	-24.4%	-24.5%	-28.6%	-28.2%
31	-14.3%	-17.4%	-15.4%	-19.0%	-5.7%	-9.0%	-16.1%	-18.6%	-9.5%	-12.4%	-15.4%	-17.7%	-8.5%	-11.6%	-4.8%	-6.9%	-9.1%	-11.5%	-10.3%	-13.3%
49	20.1%	20.1%	20.6%	20.6%	22.4%	22.4%	13.2%	13.2%	24.9%	24.9%	14.9%	14.9%	16.4%	16.4%	21.0%	21.0%	15.9%	15.9%	19.6%	19.6%

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 2

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-21.1%	-22.8%	-23.7%	-14.7%	-15.7%	-21.2%	-22.2%	-16.2%	-17.0%	-18.9%	-18.6%	-16.0%	-16.8%	-8.1%	-7.9%	-13.9%	-14.3%	-17.0%	-17.7%
8	-20.4%	-24.2%	-22.2%	-26.2%	-15.8%	-19.7%	-30.0%	-34.0%	-20.4%	-24.2%	-21.8%	-23.6%	-21.7%	-25.4%	-10.5%	-12.5%	-20.0%	-22.9%	-20.3%	-23.9%
9	-20.1%	-19.6%	-21.8%	-21.4%	-16.0%	-15.6%	-26.3%	-26.0%	-14.6%	-14.0%	-20.0%	-19.5%	-19.8%	-19.3%	-11.7%	-11.1%	-17.9%	-17.5%	-18.6%	-18.2%
13	-29.7%	-28.8%	-34.0%	-33.3%	-26.0%	-24.5%	-34.3%	-32.9%	-29.8%	-27.7%	-29.0%	-27.7%	-30.1%	-27.8%	-21.5%	-19.5%	-25.5%	-24.1%	-29.6%	-27.9%
14	-9.3%	15.2%	-12.1%	10.9%	-6.0%	16.2%	-15.4%	10.2%	-13.3%	9.6%	-10.6%	16.2%	-12.8%	14.0%	-3.5%	24.2%	-9.4%	12.5%	-10.5%	14.1%
15	-1.1%	-23.3%	-5.2%	-25.9%	0.3%	-19.8%	-6.6%	-30.0%	-7.2%	-27.1%	-0.3%	-22.2%	-1.6%	-25.9%	7.7%	-15.8%	-1.8%	-21.1%	-2.2%	-24.1%
16	-23.7%	-17.5%	-26.4%	-19.8%	-20.3%	-13.9%	-32.0%	-25.2%	-20.6%	-14.8%	-22.6%	-20.3%	-25.0%	-19.2%	-10.8%	-7.9%	-21.5%	-16.9%	-22.9%	-17.1%
17	-1.3%	1.2%	-0.0%	2.0%	3.6%	5.8%	-7.6%	-5.3%	2.5%	4.7%	-7.7%	-5.5%	-2.1%	-0.4%	-1.4%	1.5%	-2.6%	-0.6%	-0.9%	1.4%
20	-31.4%	-30.5%	-33.8%	-32.4%	-27.9%	-26.9%	-33.8%	-33.4%	-25.7%	-25.0%	-29.4%	-30.3%	-28.7%	-28.6%	-18.7%	-20.3%	-24.4%	-24.5%	-28.6%	-28.2%
31	-14.3%	-14.5%	-15.4%	-15.5%	-5.7%	-6.0%	-16.1%	-16.0%	-9.5%	-9.6%	-15.4%	-15.8%	-8.5%	-8.8%	-4.8%	-5.1%	-9.1%	-9.3%	-10.3%	-10.5%
49	20.1%	20.1%	20.6%	20.6%	22.4%	22.4%	13.2%	13.2%	24.9%	24.9%	14.9%	14.9%	16.4%	16.4%	21.0%	21.0%	15.9%	15.9%	19.6%	19.6%

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 3

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.0%	-22.8%	-22.6%	-14.7%	-14.6%	-21.2%	-21.0%	-16.2%	-15.9%	-18.9%	-17.8%	-16.0%	-15.7%	-8.1%	-7.1%	-13.9%	-13.4%	-17.0%	-16.6%
5	11.3%	9.7%	14.3%	12.3%	22.9%	20.6%	3.9%	2.7%	13.9%	12.5%	-1.0%	-1.5%	17.1%	15.3%	11.0%	10.4%	8.2%	7.3%	13.9%	12.3%
7	-33.8%	-32.3%	-38.0%	-36.6%	-31.5%	-30.0%	-36.8%	-35.5%	-27.9%	-26.7%	-29.0%	-28.0%	-33.7%	-32.3%	-20.6%	-19.4%	-27.2%	-26.1%	-31.9%	-30.5%
8	-20.4%	-25.7%	-22.2%	-27.7%	-15.8%	-21.1%	-30.0%	-35.1%	-20.4%	-25.5%	-21.8%	-24.7%	-21.7%	-26.6%	-10.5%	-13.8%	-20.0%	-24.0%	-20.3%	-25.2%
9	-20.1%	-18.7%	-21.8%	-20.6%	-16.0%	-14.8%	-26.3%	-25.2%	-14.6%	-13.2%	-20.0%	-18.7%	-19.8%	-18.5%	-11.7%	-10.4%	-17.9%	-16.8%	-18.6%	-17.4%
12	-10.2%	-6.6%	-11.3%	-6.8%	-2.0%	2.7%	-14.1%	-10.8%	-7.2%	-3.6%	-14.8%	-12.5%	-8.1%	-3.7%	-4.2%	-2.0%	-8.4%	-5.6%	-7.9%	-4.1%
13	-29.7%	-28.5%	-34.0%	-32.9%	-26.0%	-24.7%	-34.3%	-32.9%	-29.8%	-28.1%	-29.0%	-28.0%	-30.1%	-28.3%	-21.5%	-19.9%	-25.5%	-24.3%	-29.6%	-28.1%
14	-9.3%	14.6%	-12.1%	10.3%	-6.0%	15.5%	-15.4%	9.5%	-13.3%	9.4%	-10.6%	15.4%	-12.8%	13.1%	-3.5%	23.6%	-9.4%	12.0%	-10.5%	13.5%
15	-1.1%	-24.0%	-5.2%	-26.8%	0.3%	-20.6%	-6.6%	-30.5%	-7.2%	-28.1%	-0.3%	-23.1%	-1.6%	-27.0%	7.7%	-16.9%	-1.8%	-21.7%	-2.2%	-25.0%
16	-23.7%	-19.7%	-26.4%	-21.8%	-20.3%	-16.0%	-32.0%	-27.5%	-20.6%	-16.8%	-22.6%	-21.6%	-25.0%	-21.1%	-10.8%	-9.3%	-21.5%	-18.6%	-22.9%	-19.1%
17	-1.3%	1.8%	-0.0%	2.8%	3.6%	6.6%	-7.6%	-4.7%	2.5%	5.3%	-7.7%	-5.1%	-2.1%	0.3%	-1.4%	1.7%	-2.6%	-0.1%	-0.9%	2.0%
20	-31.4%	-31.3%	-33.8%	-33.3%	-27.9%	-27.7%	-33.8%	-34.1%	-25.7%	-25.7%	-29.4%	-30.7%	-28.7%	-29.2%	-18.7%	-20.5%	-24.4%	-25.0%	-28.6%	-28.9%
31	-14.3%	-17.1%	-15.4%	-18.6%	-5.7%	-8.7%	-16.1%	-18.6%	-9.5%	-11.9%	-15.4%	-17.5%	-8.5%	-11.1%	-4.8%	-6.8%	-9.1%	-11.3%	-10.3%	-13.0%

Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 4

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.0%	-22.8%	-22.6%	-14.7%	-14.6%	-21.2%	-21.0%	-16.2%	-15.9%	-18.9%	-17.8%	-16.0%	-15.7%	-8.1%	-7.1%	-13.9%	-13.4%	-17.0%	-16.6%
8	-20.4%	-25.7%	-22.2%	-27.7%	-15.8%	-21.1%	-30.0%	-35.1%	-20.4%	-25.5%	-21.8%	-24.7%	-21.7%	-26.6%	-10.5%	-13.8%	-20.0%	-24.0%	-20.3%	-25.2%
9	-20.1%	-19.6%	-21.8%	-21.4%	-16.0%	-15.6%	-26.3%	-26.0%	-14.6%	-14.0%	-20.0%	-19.5%	-19.8%	-19.3%	-11.7%	-11.1%	-17.9%	-17.5%	-18.6%	-18.2%
13	-29.7%	-27.2%	-34.0%	-31.7%	-26.0%	-23.0%	-34.3%	-31.6%	-29.8%	-26.9%	-29.0%	-26.8%	-30.1%	-26.6%	-21.5%	-18.6%	-25.5%	-23.0%	-29.6%	-26.7%
14	-9.3%	14.6%	-12.1%	10.3%	-6.0%	15.5%	-15.4%	9.5%	-13.3%	9.4%	-10.6%	15.4%	-12.8%	13.1%	-3.5%	23.6%	-9.4%	12.0%	-10.5%	13.5%
15	-1.1%	-23.4%	-5.2%	-26.2%	0.3%	-20.1%	-6.6%	-30.0%	-7.2%	-27.4%	-0.3%	-22.3%	-1.6%	-26.2%	7.7%	-16.0%	-1.8%	-21.2%	-2.2%	-24.3%
16	-23.7%	-17.8%	-26.4%	-20.0%	-20.3%	-14.1%	-32.0%	-25.8%	-20.6%	-14.9%	-22.6%	-20.3%	-25.0%	-19.3%	-10.8%	-7.8%	-21.5%	-17.2%	-22.9%	-17.3%
17	-1.3%	1.8%	-0.0%	2.8%	3.6%	6.6%	-7.6%	-4.7%	2.5%	5.3%	-7.7%	-5.1%	-2.1%	0.3%	-1.4%	1.7%	-2.6%	-0.1%	-0.9%	2.0%
20	-31.4%	-31.3%	-33.8%	-33.3%	-27.9%	-27.7%	-33.8%	-34.1%	-25.7%	-25.7%	-29.4%	-30.7%	-28.7%	-29.2%	-18.7%	-20.5%	-24.4%	-25.0%	-28.6%	-28.9%
31	-14.3%	-15.8%	-15.4%	-16.9%	-5.7%	-7.3%	-16.1%	-17.3%	-9.5%	-10.7%	-15.4%	-16.5%	-8.5%	-9.8%	-4.8%	-5.8%	-9.1%	-10.2%	-10.3%	-11.6%

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

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

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

Defendants,

and,

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

Intervenor-Defendants.

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

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

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1 Expert Qualifications

My qualifications were set out in my December 22, 2023 Expert Report of Sean P. Trende, Ph.D., in this matter (hereinafter “First Trende Report” or “First Report”). They have not changed materially since then. I have not testified in any additional matters, nor have I been deposed in any.

2 Scope of Engagement

I was engaged to file a report pursuant to the Court’s order for supplemental expert reports on Plaintiffs’ Map 3A. I have also been asked to determine if it is plausible to draw a map that will address the concerns of the Yakama Nation regarding the Remedial maps submitted by Dr. Oskooii while still creating a district that addresses this Court’s ordered remedy: that the district will give Hispanic voters the opportunity to elect their candidate of choice. In my opinion, it is possible to draw a map that will simultaneously (1) address the concerns of the Yakama Nation; (2) contain a minority majority district; and (3) provide a reasonable opportunity for Democrats to win the district referenced in (2). I have labelled this map “Intervenor-Defendants Yakama Nation Inclusion Proposed Alternative Map,” but will refer to it as the “Intervenor-Defendants’ Map” or simply “Proposed Map” for shorthand.

This map will also alleviate many of the needlessly far-reaching consequences created by Map 3A. Because Map 3A was submitted to the Court after my First Report was filed, I will evaluate it here. I will also respond to criticisms of my previous analysis offered by Dr. Oskooii in his January 5, 2024 “Rebuttal Expert Report Submitted on Behalf of Plaintiffs,” (hereinafter “Oskooii Report”) insofar as those criticisms would still be relevant to my analysis here.

3 Methodology

To create this map I began with the existing districts that governed the 2022 elections in Washington (“Enacted Map”). I then sought to transform District 15 into a minority-majority district that was typically carried by statewide Democratic candidates. While this was a goal, I did not let these concerns predominate, instead prioritizing the traditional principles of minimizing county and jurisdictional splits, respecting communities of interest (including the requests of the Yakama Nation), and drawing reasonably compact, contiguous districts. I also sought to minimize disruption to adjoining districts. It is likely possible to draw a district with a higher HCVAP or Democratic performance by allowing race or politics to predominate over these concerns; these maps were excluded from consideration.

4 Analysis of Demonstration Map 3A and Intervenor-Defendants' Map

4.1 Yakama Nation Concerns

In correspondence to the Attorney General of Washington, dated Dec. 22, 2023, the Chairman of the Yakama Nation Tribal Council expressed his concerns with the various remedial maps proposed by plaintiffs in this case. The Chairman explained that the tribe wished to preserve the political integrity of the Yakama Reservation boundary and “incorporate off-Reservation trust land *with its associated Yakama communities of interest* into one representative district.” (Ex. 2) (emphasis supplied). In particular, he noted that “[n]one of the [plaintiffs’ proposed] remedial maps represent the Yakama Nation’s interests to the same degree as the current 14th Legislative District that was a product of the Yakama Nation’s active participation as a sovereign government in consultative posture with the Washington State Redistricting Commission.” He concluded that “the Yakama Nation encourages your advocacy for the remedial redis-

tricting which respects the Yakama Reservation political boundaries and incorporates the greatest amount of off-Reservation trust land and associated communities of interest with Indigenous voting populations.” *Id.*

This is consistent with testimony adduced at trial, which demonstrated that the Yakama Nation’s concerns were not limited to the Reservation boundaries itself, but also reflect concerns that “their traditional hunting and fishing lands[] be contained within one Legislative District. ” Trial Tr. 714:25-715:16.

To my knowledge, this information is not located in a single document. Important facets of it can, however, be pieced together by comments made by the tribe throughout the redistricting process. For example, in a November 4, 2021 letter the chairman praised District 4 (which includes Klickitat, Benton and Yakima counties) in the congressional map for creating “shared representative interests in protecting water quality and habitat along a majority of the Columbia River and many of its tributary basins” and including “the Yakama Nation’s significant human service areas and public safety districts adjacent to the Reservation.” (Ex. 3). He also praised Legislative District 14 for incorporating “Yakama members living in established tribal communities off-Reservation and on federal trust property along the Columbia River,” for including human service and public safety areas adjacent to the district, and for including “critical natural resource management areas for the protection of adjacent forests and rivers.” *Id.*

PowerPoint presentations provided to the Commission on August 6, 2021 likewise demonstrate a desire on the part of the Yakama Nation to include areas from “the river to the river” – that is, that it should provide “single representation between the Yakima River and Columbia River.” The communication noted that the 1992 and 2002 maps had achieved this goal; these maps paired the Yakama Nation with Klickitat County in its entirety. (Ex. 4). The tribe further specified a particular interest in service benefit areas and environmental stewardship areas “particularly to the south of the Yakima Reservation.” (Ex. 5). It also referred to a short film “Land of the Yakamas,” which references the importance of the Klickitat River and White Salmon River. See [https:](https://)

[//yakamafish-nsn.gov/LandOfTheYakamas](https://yakamafish-nsn.gov/LandOfTheYakamas), at 2:19–2:25. In a June 3, 2021 letter, the tribe urged the Commission to reject “any legislative mapping that demonstrably ‘cracks’ the indigenous voting population located south of the Yakima River in Klickitat and Skamania Counties.” (Ex. 6).

Other sources further emphasize the importance of the region south of the Yakama Reservation to the tribe. The State of Washington has identified Husum as a “historic Yakama Nation fishing village,” and noted that the tribe has been “highly involved in the protection and restoration of the [White Salmon] River.” apps.ecology.wa.gov/publications/documents/2303103.pdf. White Salmon includes a treaty fishing access site that is “for the exclusive use of Indian fishers from the four Columbia River Intertribal Fish Commission (one is the Yakama Nation) CRITFC member tribes.” <https://critfc.org/for-tribal-fishers/in-lieutreaty-fishing-access-sites/>. The tribe has also been involved in restoration projects in the Klickitat River Watershed. <http://www.ykfp.org/klickitat/>. See also <https://yakamafish-nsn.gov/restoration/projects/yakima-klickitat-fisheries-project-ykfp> (describing Tribal restoration efforts within the Yakima and Klickitat River watersheds).

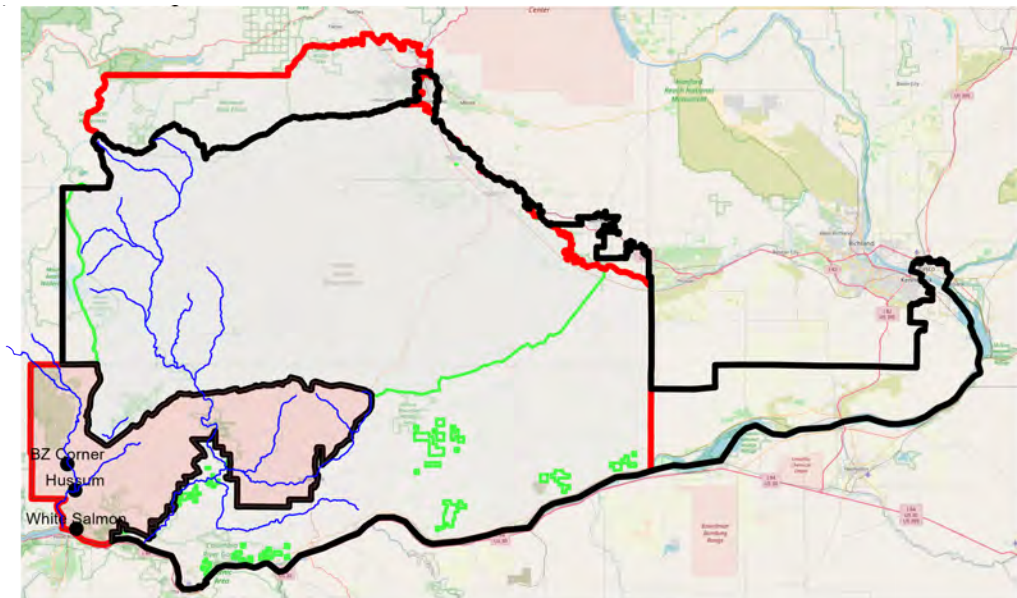
All of these are excluded from Remedial Map 3A, District 14. The following map depicts Remedial Map 3A, District 14 with a black line. Reservation Boundaries and Off-Reservation Trust Lands are depicted with a green line, while Enacted Map District 14 is drawn with a red line. As you can see, Remedial Map 3A, District 14 does appear to include the Reservation in its entirety, as well as the various Off-Reservation Trust Lands.

But, unlike District 14 in the Enacted Map, it does not include all of the tribal areas “from the river to the river.” In particular, it excludes the tribe’s fishing access site in White Salmon. It excludes historic fishing villages along the White Salmon River. It also trifurcates the Klickitat River and its watershed, while eliminating the White Salmon River entirely from the district. This, then, eliminates the Enacted Map’s establishment of “shared representative interests in protecting water quality and habitat along a majority

of the Columbia River and many of its tributary basins.”

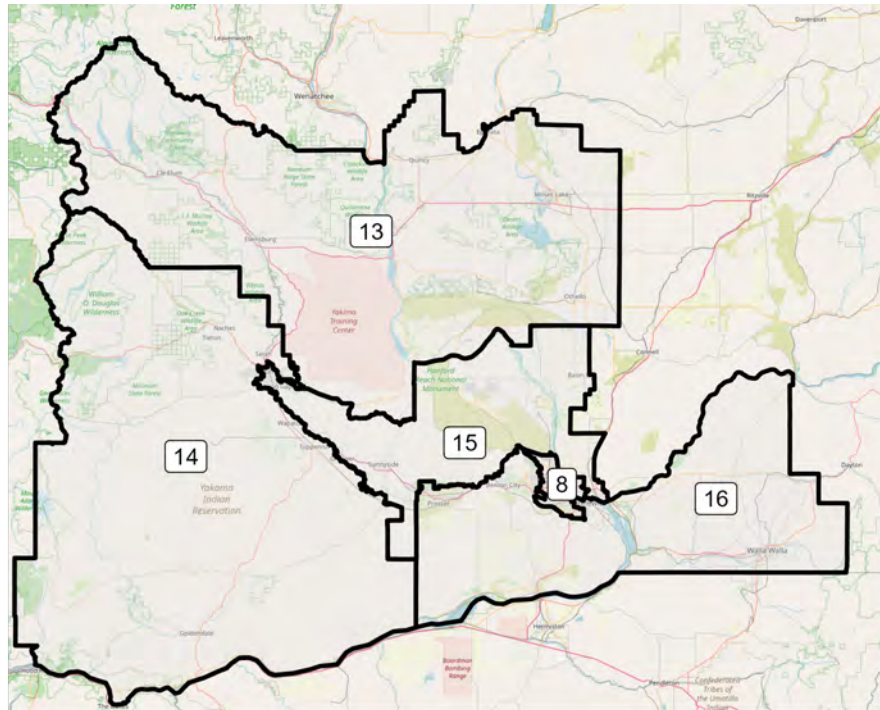
Figure 1: Remedial Map 3A District 14, Enacted Map District 15, and Tribal Areas

(a) Green line = Yakama Nation Reservation boundaries and Off-Reservation Trust Land; Red line = Enacted District 15; Black line = Remedial Map 3A District 14; Blue lines = Klickitat and White Salmon River Watersheds; Red area = Area excluded from District 14



It does not have to be that way, though. Intervenor-Defendants' Map alters just three legislative districts: 13, 14 and 15.

Figure 2: Intervenor-Defendants proposed district boundaries, Yakima River valley



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Future sections in this supplemental report will explore various features and facets of this map, but for our purposes here, the relevant fact is that the only changes to the southern or western boundary of Enacted District 14 are the removal of two precincts in Eastern Yakima County (which are not contained within the Yakama Nation),¹ and changes to some precincts in the City of Yakima. In other words, with respect to the Tribal Lands, the Enacted Map is kept intact. This map would therefore “respect the Yakama Nation’s political boundaries and incorporate the greatest amount of off-reservation trust land and associated communities of interest with indigenous voting populations. . . . to the same degree as the current 14th legislative district that was a product of the Yakama Nation’s active participation as a sovereign government in consultative posture with the Washington State Redistricting Commission.”

¹This appendage was created as a tradeoff for keeping Moxee and Terrace Heights intact elsewhere in the map.

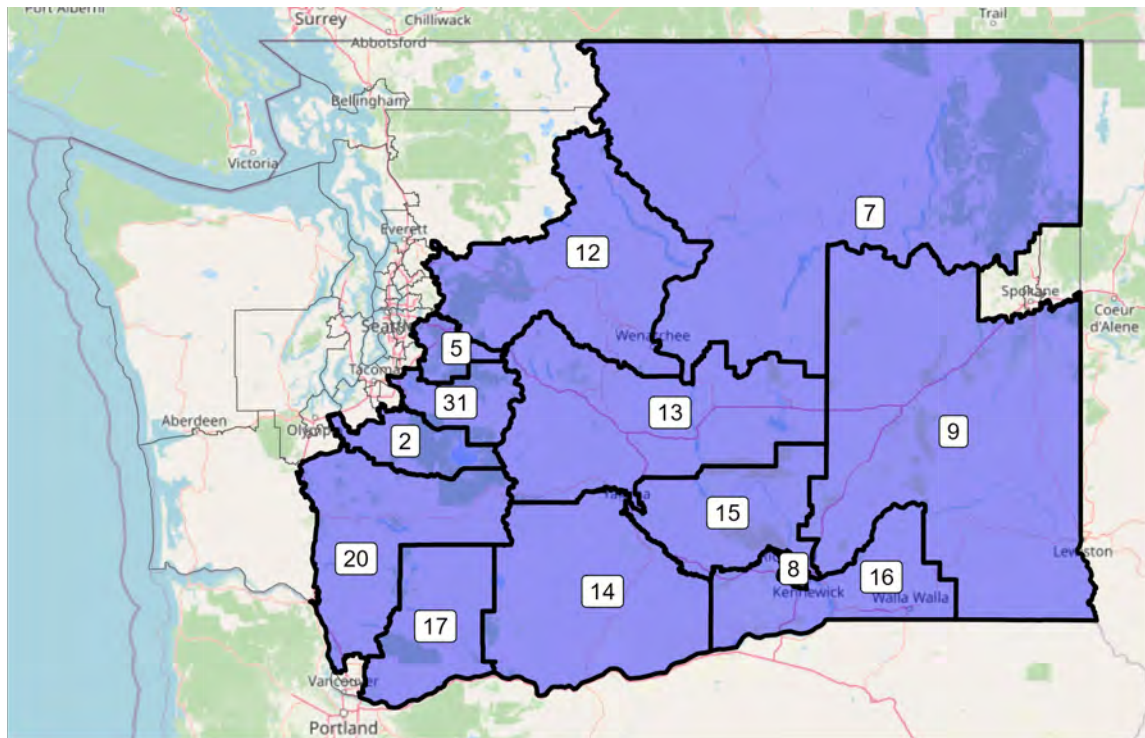
4.2 Overview of Intervenor-Defendants' Map, Compared to Remedial Map 3A

Remedial Map 3A makes only minor changes to Remedial Map 3; most of the critiques from my initial report apply here as well.² Regardless, as you can see, Remedial Map 3A requires a redraw of most of the districts in eastern Washington, as well as several districts in suburban Seattle and Tacoma.³

²Dr. Oskooii criticizes my initial report for not thoroughly examining Washington's redistricting criteria. *See* Oskooii Report, at ¶11. That is not what I was asked to do, however, likely because Intervenor-Defendants do not believe it is their burden to prove that Dr. Oskooii's proposed remedial maps fail to comply with *all* of the relevant criteria. I have no doubt, for example, that Dr. Oskooii was able to draw maps that were contiguous; since that is not in dispute it did not seem worth including in my report.

³Dr. Oskooii insists that disruptions of the magnitude he creates with his remedial maps are "unavoidable." *See* Oskooii Report at ¶14. It's true that you can't alter one district without altering at least one more, but it is by no means guaranteed that such a shift will cascade into 12 additional districts. Indeed, Dr. Oskooii's own maps suggest that such movement is not unavoidable: Two of his proposed maps alter two fewer districts than Map 3A, while one of them alters just four districts in total. Given that Dr. Oskooii was aware of at least one less-disruptive alternative, it *is* "unexpected" that he would draw maps that redrew most of the districts in Eastern Washington and then claim that this was demanded by the "realities of redistricting." *id.* ¶16. In fact, as shown below, it is demanded by his decision to split the areas south of the Yakama Nation. While Dr. Oskooii insists that my emphasis on the Enacted Map is misplaced, *id.*, in my experience advising commission on the VRA and in litigating these cases, minimizing changes to the legislature's preferred map is critical for federal courts.

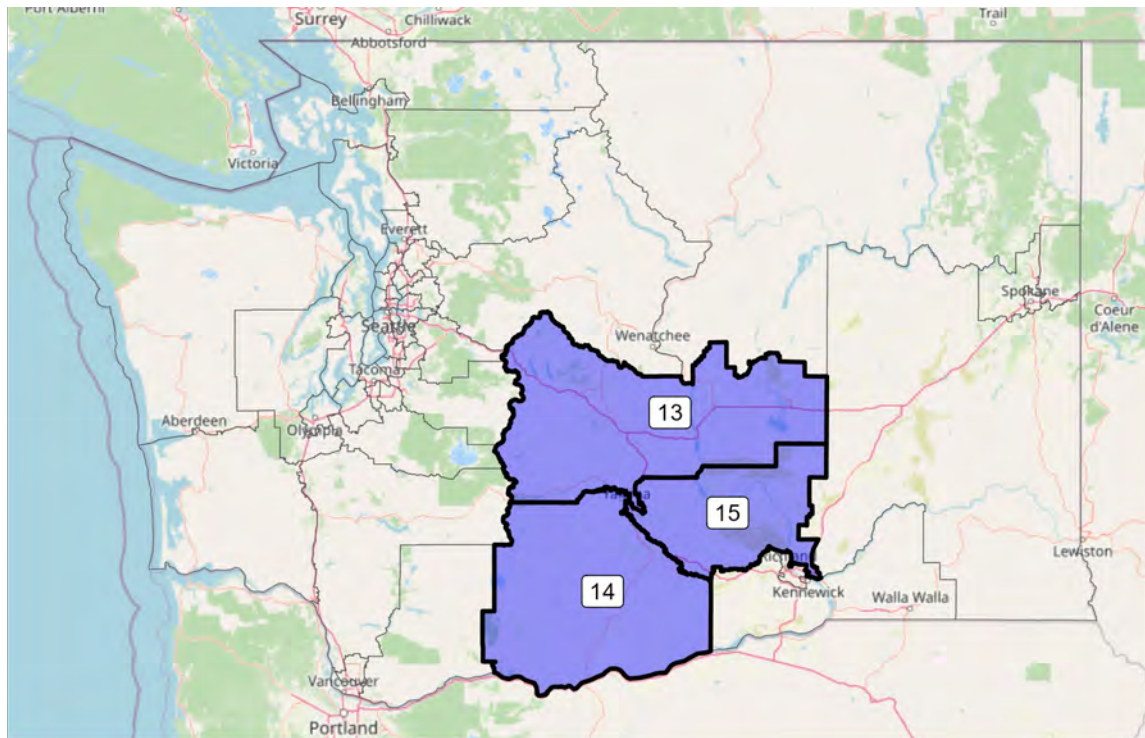
Figure 3: Enacted Districts altered by Remedial Map 3A



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The Proposed Map, on the other hand, changes only three districts.

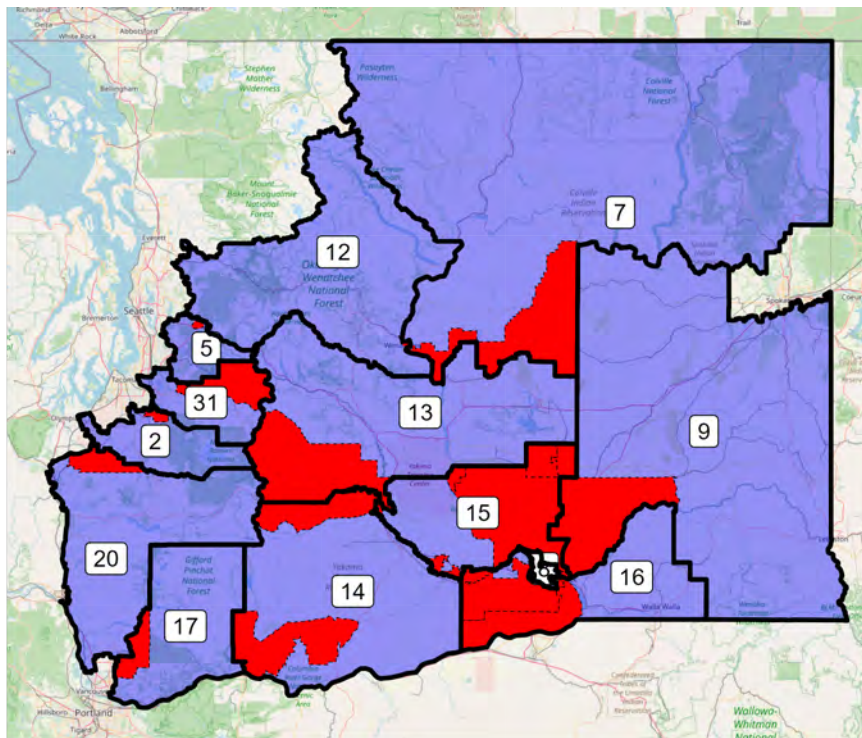
Figure 4: Enacted Districts altered by Intervenor-Defendants' Map 3A



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The following map, adapted from my first report, shows the areas that are changed in Remedial Map 3A by highlighting the census blocks that are changed. As you can see, to make Map 3A work, Dr. Oskooii “walks” the districts around much of Eastern Washington, disrupting 13 districts.

Figure 5: Blocks Changed in Remedial Map 3A



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Note that this is not necessitated by the "realities of redistricting," but rather by Dr. Oskooii's decision to split up the area immediately south of the Yakama Reservation which the tribe had fought to include in a single district. You can see this in the following table, which details the movement of populations from district to district. 15,726 individuals are moved out of 14 and into 17. 15,639 individuals are moved from 17 to 20. 15,508 individuals are moved from 20 to 2. 15,545 individuals are moved from 2 to 31. 15,551 individuals are moved from 31 to 5. 15,697 individuals are moved from 5 to 12. 15,600 individuals are moved from 12 to 7. Finally, 15,697 individuals from 7 to 13. Notably, the one map he submitted that does not split up this critical area – Map 5 – does not create such a cascade.

Figure 6: Movement of Population, Remedial Map 3A

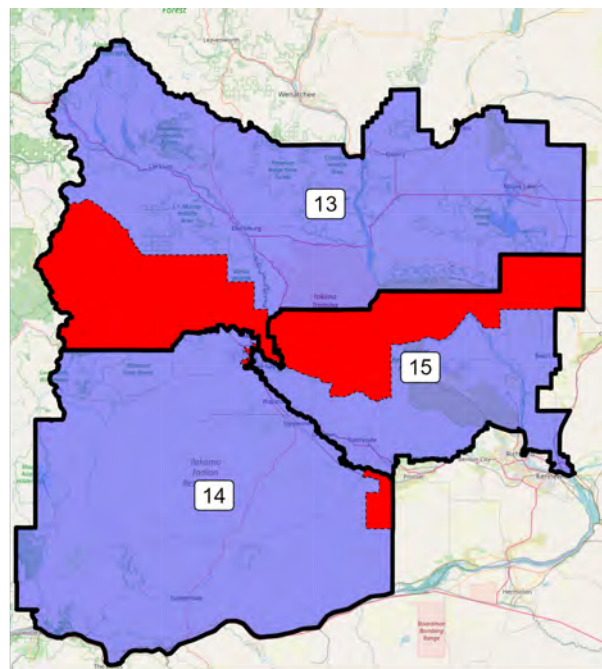
Enacted District	Remedial District 3A	Total
2	31	15,545
5	12	15,697
7	13	15,543
8	16	62,386
9	16	9,612
12	5	123
12	7	15,600
13	15	30,654
14	15	87,551
14	17	15,726
15	9	7,466
15	13	15,236
15	14	94,742
15	16	12,040
16	8	62,249
16	14	8,379
16	15	11,374
17	20	15,639
20	2	15,508
31	5	15,551

This table also demonstrates that, like its predecessor, Map 3A redistricts a large number of residents – 526,621 in total. While this moves around 4,000 fewer residents

than the previous iteration of Map 3, that still represents over three complete districts worth of residents being redistricted.

The Proposed Map, on the other hand, is far less disruptive.⁴

Figure 7: Blocks Changed in Intervenor-Defendants' Proposed Map



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⁴Dr. Oskooii claims that I assess core retention improperly, describing these data as “misleading, inaccurate” and using “inappropriate metrics to assess core retention.” ¶23. They are none of these things. In fact, I don’t believe I ever use the term “core retention” in my report. I am simply illustrating the magnitude of the disruptions that Map 3 (and now 3A) creates. That’s not inaccurate or misleading, it’s a precise answer to the question of the total effect of the plan: About 3 districts worth of people are moved. I do this because in the context of VRA remedies, whether the map disrupts districts beyond what’s needed to remedy the harm is an important consideration for courts.

Dr. Oskooii instead relies upon the *percentage* of population moved between districts. This too is a valid way to describe a map’s shifts. However, it is important to place these percentages in context. For example, the districts with 86% core retention may seem as though they are retaining almost their entire district core, when in fact this means about 1 in every 7 residents were moved into a different district. A core retention rate of 90% means that 1 out of every 10 residents were moved. In other words, whether you look at raw numbers or percentages, the disruption to these districts is still substantial, and add up to a large overall move.

Last, Dr. Oskooii refers back to his statewide metrics. *Id.* at ¶27. It is true that he only alters one-in-four districts in the state. But this is why statewide metrics are misleading in this context; the 100% core retention in districts that are truly far removed from the area he changes can obscure significant changes in the districts he does change. And once again, the differences between 95% core retention (Map 4) and 97.5% retention (Map 5) is a big deal: 1-in-20 residents in the state being moved versus 1-in-40.

It moves a total of 87,230 residents between the districts: Less than a single seat's worth. Moreover 29,220 residents constitute around 18.6% of a district's population; these districts retain around 80% of their populations from the Enacted Map.

Figure 8: Movement of Residents, Enacted Plan v. Proposed

Enacted District	Proposed	Total
13	14	28,832
14	15	29,220
15	13	28,880
15	14	298

4.3 HCVAP

As mentioned in my initial report, Map 3A, District 14 has an HCVAP of just at 50.2% using the 2021 data. Proposed Map District 15 has a higher HCVAP: 51.1% using the 2021 data and 50.3% using the 2020 data.⁵

4.4 Compactness

As discussed in the initial report, Remedial Map 3 makes a number of districts significantly less compact (it also makes a few districts slightly more compact). Because it changes substantially fewer districts, the Proposed Map makes fewer changes. As with

⁵Since District 14 in Map 3A is unchanged from Map 3, there is no need to rehash the racial analysis of the district. It is certainly not the place of an expert to dispute Dr. Oskooii's relating of his mental process while drawing the maps. The only point of interest he makes is by taking the racial dotplots and drawing arrows to show concentrations of Hispanic citizens that were not included in the district. *See* Oskooii Report at 17. The point of my First Report, however, is that racial dotplots should be read *in conjunction* with the choropleth maps, as both relate different data. What the choropleth maps show is that the areas to which he points also have high concentrations of non-Hispanic White citizens. In other words, adding these precincts would generally serve to lower the HCVAP of District 14, at times substantially so.

Map 3A, District 15 is made less compact than the Enacted Map. It is more compact than 3A using Polsby-Popper, and less compact using Reock. District 13 is slightly less compact than the Enacted Map using Reock but slightly more compact using Polsby-Popper. As with Map 3A, the Proposed Map District 14 is less compact than the Enacted Map using either Polsby-Popper or Reock, however it is more compact than Map 3A using either metric.⁶

Figure 9: Ten Least Compact Districts by Reock Score

Enacted Map		Remedial 3		Remedial 3A		Proposed Alt.	
Reock	District	Reock	District	Reock	District	Reock	District
0.133	42	0.133	42	0.133	42	0.133	42
0.180	2	0.186	2	0.186	2	0.180	2
0.222	43	0.221	15	0.221	15	0.215	15
0.243	16	0.222	43	0.222	43	0.222	43
0.258	41	0.223	14	0.223	14	0.243	16
0.279	8	0.249	17	0.226	31	0.258	41
0.291	49	0.258	41	0.249	17	0.279	8
0.295	13	0.272	5	0.258	41	0.289	13
0.304	40	0.291	49	0.291	49	0.291	49
0.308	5	0.298	8	0.299	8	0.304	40

⁶Dr. Oskooii does not really dispute the district-by-district changes, but rather insists on once again looking at statewide averages. Oskooii Report at ¶31. Because a large number of districts have zero change, any statewide average is going to be weighted toward zero change, even as substantial changes are made to individual districts which, to my understanding, are the focus of a VRA inquiry. His only response is that district-by-district scores can be misleading because of feature selection, but there is no real reason that the districts he changes should become less compact than the original district lines, since all of the maps have to deal with feature selection, including the Enacted Map. It's just that when Dr. Oskooii changes a district, he tends to select features in ways to make the districts less compact, at times substantially so. There's nothing inevitable about this.

Figure 10: Ten Least Compact Districts by Polsby-Popper Score

Enacted Map		Remedial 3		Remedial 3A		Proposed Alt.	
Polsby-Popper	District	Polsby-Popper	District	Polsby-Popper	District	Polsby-Popper	District
0.141	11	0.141	11	0.141	11	0.141	11
0.203	8	0.145	14	0.145	14	0.150	15
0.217	45	0.190	5	0.203	15	0.203	8
0.222	2	0.203	15	0.208	2	0.217	45
0.223	41	0.208	2	0.217	45	0.222	2
0.226	12	0.217	45	0.219	12	0.223	41
0.227	1	0.219	12	0.223	41	0.226	12
0.242	6	0.223	41	0.227	1	0.227	1
0.245	26	0.227	1	0.236	5	0.242	6
0.245	35	0.238	13	0.238	13	0.245	26

4.5 Political Effects

As discussed in my original report, Map 3 disrupts the political lean of Washington's legislative districts beyond those found in the Yakima River valley. District 14 is made substantially more Democratic than its predecessor District 15, but this is unsurprising given the requirement of creating a minority opportunity district. At the same time, however, District 17 changes from being a district with a slight Republican lean to one with a slight Democratic lean, while District 12 goes from being non-competitive to being competitive, albeit with a Republican lean. District 5 depends on the races examined.⁷

⁷Dr. Oskooii once again tries to hide the impact of his maps in certain districts by referencing statewide partisan bias metrics. Oskooii Report ¶¶55 - ¶¶60. Setting aside any problems with the Planscore algorithm he uses to evaluate the maps, the approach suffers from the same shortcomings as his approach to compactness. These metrics will generally not change much unless a district is outright flipped from Democrat to Republican or vice-versa; in other words, making District 12 much more competitive won't change the efficiency gap even though the district becomes potentially winnable for the other party. Regardless, my point isn't that this is a radical overall impact on the composition of the House or Senate. My point is simply that these changes do have political impacts that extend beyond remediating the VRA violation that the Court found. Moreover, they are unnecessary, as illustrated by Dr. Oskooii's

Figure 11: Democratic (Dis)Advantage, Enacted Map vs. Remedial Map 3A

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.0%	-22.8%	-22.6%	-14.7%	-14.6%	-21.2%	-21.0%	-16.2%	-15.9%	-18.9%	-17.8%	-16.0%	-15.7%	-8.1%	-7.1%	-13.9%	-13.4%	-17.0%	-16.6%
5	11.3%	7.7%	14.3%	9.9%	22.9%	18.5%	3.9%	0.9%	13.9%	10.9%	-1.0%	-2.8%	17.1%	13.6%	11.0%	9.2%	8.2%	5.8%	13.9%	10.5%
7	-33.8%	-32.3%	-38.0%	-36.6%	-31.5%	-30.0%	-36.8%	-35.5%	-27.9%	-26.7%	-29.0%	-28.0%	-33.7%	-32.3%	-20.6%	-19.4%	-27.2%	-26.1%	-31.9%	-30.5%
8	-20.4%	-26.5%	-22.2%	-28.7%	-15.8%	-22.2%	-30.0%	-35.7%	-20.4%	-26.9%	-21.8%	-26.0%	-21.7%	-27.6%	-10.5%	-15.0%	-20.0%	-24.6%	-20.3%	-26.3%
9	-20.1%	-18.9%	-21.8%	-20.7%	-16.0%	-14.9%	-26.3%	-25.3%	-14.6%	-13.2%	-20.0%	-18.8%	-19.8%	-18.6%	-11.7%	-10.5%	-17.9%	-16.9%	-18.6%	-17.5%
12	-10.2%	-6.6%	-11.3%	-6.8%	-2.0%	2.7%	-14.1%	-10.8%	-7.2%	-3.6%	-14.8%	-12.5%	-8.1%	-3.7%	-4.2%	-2.0%	-8.4%	-5.6%	-7.9%	-4.1%
13	-29.7%	-28.5%	-34.0%	-32.9%	-26.0%	-24.7%	-34.3%	-32.9%	-29.8%	-28.1%	-29.0%	-28.0%	-30.1%	-28.3%	-21.5%	-19.9%	-25.5%	-24.3%	-29.6%	-28.1%
14	-9.3%	14.6%	-12.1%	10.3%	-6.0%	15.5%	-15.4%	9.5%	-13.3%	9.4%	-10.6%	15.4%	-12.8%	13.1%	-3.5%	23.6%	-9.4%	12.0%	-10.5%	13.5%
15	-1.2%	-24.0%	-5.2%	-26.8%	0.2%	-20.6%	-6.7%	-30.5%	-7.3%	-28.1%	-0.3%	-23.1%	-1.7%	-27.0%	7.6%	-16.9%	-1.9%	-21.7%	-2.3%	-25.0%
16	-23.7%	-19.0%	-26.4%	-20.9%	-20.3%	-15.0%	-32.0%	-27.1%	-20.6%	-15.7%	-22.6%	-20.3%	-25.0%	-20.2%	-10.8%	-8.2%	-21.5%	-18.1%	-22.9%	-18.2%
17	-1.3%	1.8%	-0.0%	2.8%	3.6%	6.6%	-7.6%	-4.7%	2.5%	5.3%	-7.7%	-5.1%	-2.1%	0.3%	-1.4%	1.7%	-2.6%	-0.1%	-0.9%	2.0%
20	-31.4%	-31.3%	-33.8%	-33.3%	-27.9%	-27.7%	-33.8%	-34.1%	-25.7%	-25.7%	-29.4%	-30.7%	-28.7%	-29.2%	-18.7%	-20.5%	-24.4%	-25.0%	-28.6%	-28.9%
31	-14.4%	-15.8%	-15.6%	-16.8%	-5.9%	-7.3%	-16.2%	-17.3%	-9.6%	-10.7%	-15.5%	-16.5%	-8.6%	-9.7%	-4.9%	-5.8%	-9.2%	-10.2%	-10.4%	-11.6%

But again, all of this is avoidable. Because Districts 5, 12, and 17 are unchanged in intervenor-defendants' proposal (and in Map 5), their political position is unchanged as well. District 14 is made more Republican, and District 13 is made marginally more

own Map 5 and the Intervenor-Defendants' Map here.

Democratic.⁸

More importantly, District 15 is transformed into one where Democrats are favored, in other words, one where Hispanic voters will have a reasonable opportunity to elect their candidate of choice. In all of the elections measured in the tables above, Democrats were victorious. On average, from 2016 to 2020, the district transforms from one where Republicans won by 2% to one where Democrats won by 5%. Of all of the elections in Dave's Redistricting, whether contained in the site's composite or not, Republicans carried the district only in the 2022 Senate race (it is my understanding that there is a factual dispute as to who the Hispanic candidate of choice was in this election), the 2016 Lieutenant Governor's race, and the 2020 Secretary of State race. In all other races, the Democrat won. Regardless, the expectation here would be that the Hispanic candidate of choice would carry the district, even if it is not a guarantee.

⁸That Dr. Oskooii interprets my reference to +/- 10% as meaning a movement of a tenth of a percentage point in either direction is confusing. When I say +/- 10%, I mean percentage points, which is how this is usually addressed. Moving from 67% to 64% isn't going to change the partisanship of a district much, as the Republican or Democrat will almost always win either way. Moving from 50% to 53% can have a large impact on a candidate's ability to win. Dr. Oskooii even writes "A district is considered to perform (also referred to as "lean" or "reliable" in political science) in favor of one party over the other when the difference between the party vote shares of that district is 10% or higher (e.g., 45%-55%)."

Dr. Oskooii incidentally doesn't provide any citation for his claim. First, within the study of elections, rating the competitiveness of districts isn't something the modern political science discipline is deeply interested in and as such there aren't any agreed-upon metrics; instead such assessments are typically performed by race forecasters such as Nate Silver, Charlie Cook, or myself. *See, e.g.,* Charles E. Cook, Jr. & David Wasserman, "Recalibrating Ratings for a New Normal," 47 *PS: Political Science and Politics*, 304 (2014); Logan Dancey & Geoffrey Sheagley, "Partisanship and Perceptions of Party-Line Voting in Congress," 71 *Pol. Rsrch. Q.* 32 (2018) (relying on Cook Political Ratings); Mark Blumenthal, "Polls Forecasts and Aggregators," 47 *PS: Political Science and Politics* 427 (2014) (relying on RealClearPolitics polling data); James E. Campbell, et. al, "Forecasting Recap: Assessments of the 2008 National Elections Forecasts," 42 *PS: Political Science and Politics* 19 (2009) (same); Matt Barreto, Loren Collingwood, & Sylvian Manzano, "A New Measure of Group Influence in Presidential Elections: Assessing Latino Influence in 2008," 63 *Pol. Rsrch. Q.* 908 (2010) (same). Most would see a significant difference between labeling a district "lean" and "reliable." None of us, to my knowledge, are doing so with a legal understanding of "perform" in mind. Moreover, I don't know of any political scientist or elections analyst that would dispute that, even within that 45%-55% range, there's a substantial difference between a 50-50 district and a 54.5% Democrat – 45.5% Republican district.

Finally, Dr. Oskooii is referring here to Dave's Redistricting App's rating of districts as "competitive" or "not competitive." While I have a great deal of respect for Dave Bradlee, there's no real methodology or justification for this cutoff. At best it is a rough heuristic for separating competitive districts from non-competitive, and says nothing of the overall "lean" of a district within that range.

Figure 12: Democratic (Dis)Advantage, Enacted Map vs. Intervenor-Defendants' Map

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.3%	-22.8%	-22.8%	-14.7%	-14.7%	-21.2%	-21.2%	-16.2%	-16.2%	-18.9%	-18.9%	-16.0%	-16.0%	-8.1%	-8.1%	-13.9%	-13.9%	-17.0%	-17.0%
5	11.3%	11.3%	14.3%	14.3%	22.9%	22.9%	3.9%	3.9%	13.9%	13.9%	-1.0%	-1.0%	17.1%	17.1%	11.0%	11.0%	8.2%	8.2%	13.9%	13.9%
7	-33.8%	-33.8%	-38.0%	-38.0%	-31.5%	-31.5%	-36.8%	-36.8%	-27.9%	-27.9%	-29.0%	-29.0%	-33.7%	-33.7%	-20.6%	-20.6%	-27.2%	-27.2%	-31.9%	-31.9%
8	-20.4%	-20.4%	-22.2%	-22.2%	-15.8%	-15.8%	-30.0%	-30.0%	-20.4%	-20.4%	-21.8%	-21.8%	-21.7%	-21.7%	-10.5%	-10.5%	-20.0%	-20.0%	-20.3%	-20.3%
9	-20.1%	-20.1%	-21.8%	-21.8%	-16.0%	-16.0%	-26.3%	-26.3%	-14.6%	-14.6%	-20.0%	-20.0%	-19.8%	-19.8%	-11.7%	-11.7%	-17.9%	-17.9%	-18.6%	-18.6%
12	-10.2%	-10.2%	-11.3%	-11.3%	-2.0%	-2.0%	-14.1%	-14.1%	-7.2%	-7.2%	-14.8%	-14.8%	-8.1%	-8.1%	-4.2%	-4.2%	-8.4%	-8.4%	-7.9%	-7.9%
13	-29.7%	-26.9%	-34.0%	-31.6%	-26.0%	-23.3%	-34.3%	-31.5%	-29.8%	-27.4%	-29.0%	-26.8%	-30.1%	-27.0%	-21.5%	-18.9%	-25.5%	-23.3%	-29.6%	-26.9%
14	-9.3%	-18.0%	-12.1%	-20.6%	-6.0%	-14.7%	-15.4%	-23.9%	-13.3%	-21.1%	-10.6%	-18.6%	-12.8%	-21.4%	-3.5%	-11.6%	-9.4%	-16.6%	-10.5%	-18.9%
15	-1.2%	6.7%	-5.2%	2.7%	0.2%	8.1%	-6.7%	1.2%	-7.3%	0.7%	-0.3%	7.8%	-1.7%	6.3%	7.6%	15.3%	-1.9%	5.0%	-2.3%	5.6%
16	-23.7%	-23.7%	-26.4%	-26.4%	-20.3%	-20.3%	-32.0%	-32.0%	-20.6%	-20.6%	-22.6%	-22.6%	-25.0%	-25.0%	-10.8%	-10.8%	-21.5%	-21.5%	-22.9%	-22.9%
17	-1.3%	-1.3%	-0.0%	-0.0%	3.6%	3.6%	-7.6%	-7.6%	2.5%	2.5%	-7.7%	-7.7%	-2.1%	-2.1%	-1.4%	-1.4%	-2.6%	-2.6%	-0.9%	-0.9%
20	-31.4%	-31.4%	-33.8%	-33.8%	-27.9%	-27.9%	-33.8%	-33.8%	-25.7%	-25.7%	-29.4%	-29.4%	-28.7%	-28.7%	-18.7%	-18.7%	-24.4%	-24.4%	-28.6%	-28.6%
31	-14.4%	-14.4%	-15.6%	-15.6%	-5.9%	-5.9%	-16.2%	-16.2%	-9.6%	-9.6%	-15.5%	-15.5%	-8.6%	-8.6%	-4.9%	-4.9%	-9.2%	-9.2%	-10.4%	-10.4%

4.6 Incumbency

Finally, while Map 3A does eliminate some of the “double bunking” of incumbents, the districts in the Yakima Valley area retain their double bunks, including by shifting Sen. Torres into District 16. Likewise, Sen. Brad Hawkins of East Wenatchee is again moved into District 7 with incumbent Sen. Shelly Short of Addy. The Proposed Map avoids this, as all incumbents are kept in their original districts.

5 Conclusion

In addition to the shortcomings detailed in my First Report, Remedial Map 3A splits traditional Yakama tribal areas in western Klickitat County, which drew an objection from the Yakama Nation. Fortunately, it is possible to address this, while causing less disruption to the overall map and still producing a district that will give Hispanic voters an opportunity to elect their candidate of choice.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct to the best of my knowledge and belief. Executed on 23 February 2024 in Delaware, Ohio.

Sean Trende

Sean P. Trende

6 Exhibit 1

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DR A	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.0%	-22.8%	-22.6%	-14.7%	-14.6%	-21.2%	-21.0%	-16.2%	-15.9%	-18.9%	-17.8%	-16.0%	-15.7%	-8.1%	-7.1%	-13.9%	-13.4%	-17.0%	-16.6%
5	11.3%	7.7%	14.3%	9.9%	22.9%	18.5%	3.9%	0.9%	13.9%	10.9%	-1.0%	-2.8%	17.1%	13.6%	11.0%	9.2%	8.2%	5.8%	13.9%	10.7%
7	-33.8%	-32.3%	-38.0%	-36.6%	-31.5%	-30.0%	-36.8%	-35.5%	-27.9%	-26.7%	-29.0%	-28.0%	-33.7%	-32.3%	-20.6%	-19.4%	-27.2%	-26.1%	-31.9%	-30.5%
8	-20.4%	-26.5%	-22.2%	-28.7%	-15.8%	-22.2%	-30.0%	-35.7%	-20.4%	-26.9%	-21.8%	-26.0%	-21.7%	-27.6%	-10.5%	-15.0%	-20.0%	-24.6%	-20.3%	-26.6%
9	-20.1%	-18.9%	-21.8%	-20.7%	-16.0%	-14.9%	-26.3%	-25.3%	-14.6%	-13.2%	-20.0%	-18.8%	-19.8%	-18.6%	-11.7%	-10.5%	-17.9%	-16.9%	-18.6%	-17.4%
12	-10.2%	-6.6%	-11.3%	-6.8%	-2.0%	2.7%	-14.1%	-10.8%	-7.2%	-3.6%	-14.8%	-12.5%	-8.1%	-3.7%	-4.2%	-2.0%	-8.4%	-5.6%	-7.9%	-4.2%
13	-29.7%	-28.5%	-34.0%	-32.9%	-26.0%	-24.7%	-34.3%	-32.9%	-29.8%	-28.1%	-29.0%	-28.0%	-30.1%	-28.3%	-21.5%	-19.9%	-25.5%	-24.3%	-29.6%	-28.9%
14	-9.3%	14.6%	-12.1%	10.3%	-6.0%	15.5%	-15.4%	9.5%	-13.3%	9.4%	-10.6%	15.4%	-12.8%	13.1%	-3.5%	23.6%	-9.4%	12.0%	-10.5%	13.5%
15	-1.2%	-24.0%	-5.2%	-26.8%	0.2%	-20.6%	-6.7%	-30.5%	-7.3%	-28.1%	-0.3%	-23.1%	-1.7%	-27.0%	7.6%	-16.9%	-1.9%	-21.7%	-2.3%	-25.4%
16	-23.7%	-19.0%	-26.4%	-20.9%	-20.3%	-15.0%	-32.0%	-27.1%	-20.6%	-15.7%	-22.6%	-20.3%	-25.0%	-20.2%	-10.8%	-8.2%	-21.5%	-18.1%	-22.9%	-18.2%
17	-1.3%	1.8%	-0.0%	2.8%	3.6%	6.6%	-7.6%	-4.7%	2.5%	5.3%	-7.7%	-5.1%	-2.1%	0.3%	-1.4%	1.7%	-2.6%	-0.1%	-0.9%	2.0%
20	-31.4%	-31.3%	-33.8%	-33.3%	-27.9%	-27.7%	-33.8%	-34.1%	-25.7%	-25.7%	-29.4%	-30.7%	-28.7%	-29.2%	-18.7%	-20.5%	-24.4%	-25.0%	-28.6%	-28.5%
31	-14.4%	-15.8%	-15.6%	-16.8%	-5.9%	-7.3%	-16.2%	-17.3%	-9.6%	-10.7%	-15.5%	-16.5%	-8.6%	-9.7%	-4.9%	-5.8%	-9.2%	-10.2%	-10.4%	-11.6%

District	A.G. 2020		Governor 2020		President 2020		Treasurer 2020		Senate 2018		Governor 2016		President 2016		Senate 2016		Total Vote, 2016-2020		Total Vote, DRA	
	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial	Enacted	Remedial
2	-20.3%	-20.3%	-22.8%	-22.8%	-14.7%	-14.7%	-21.2%	-21.2%	-16.2%	-16.2%	-18.9%	-18.9%	-16.0%	-16.0%	-8.1%	-8.1%	-13.9%	-13.9%	-17.0%	-17.0%
5	11.3%	11.3%	14.3%	14.3%	22.9%	22.9%	3.9%	3.9%	13.9%	13.9%	-1.0%	-1.0%	17.1%	17.1%	11.0%	11.0%	8.2%	8.2%	13.9%	13.9%
7	-33.8%	-33.8%	-38.0%	-38.0%	-31.5%	-31.5%	-36.8%	-36.8%	-27.9%	-27.9%	-29.0%	-29.0%	-33.7%	-33.7%	-20.6%	-20.6%	-27.2%	-27.2%	-31.9%	-31.9%
8	-20.4%	-20.4%	-22.2%	-22.2%	-15.8%	-15.8%	-30.0%	-30.0%	-20.4%	-20.4%	-21.8%	-21.8%	-21.7%	-21.7%	-10.5%	-10.5%	-20.0%	-20.0%	-20.3%	-20.3%
9	-20.1%	-20.1%	-21.8%	-21.8%	-16.0%	-16.0%	-26.3%	-26.3%	-14.6%	-14.6%	-20.0%	-20.0%	-19.8%	-19.8%	-11.7%	-11.7%	-17.9%	-17.9%	-18.6%	-18.6%
12	-10.2%	-10.2%	-11.3%	-11.3%	-2.0%	-2.0%	-14.1%	-14.1%	-7.2%	-7.2%	-14.8%	-14.8%	-8.1%	-8.1%	-4.2%	-4.2%	-8.4%	-8.4%	-7.9%	-7.9%
13	-29.7%	-26.9%	-34.0%	-31.6%	-26.0%	-23.3%	-34.3%	-31.5%	-29.8%	-27.4%	-29.0%	-26.8%	-30.1%	-27.0%	-21.5%	-18.9%	-25.5%	-23.3%	-29.6%	-26.8%
14	-9.3%	-18.0%	-12.1%	-20.6%	-6.0%	-14.7%	-15.4%	-23.9%	-13.3%	-21.1%	-10.6%	-18.6%	-12.8%	-21.4%	-3.5%	-11.6%	-9.4%	-16.6%	-10.5%	-18.9%
15	-1.2%	6.7%	-5.2%	2.7%	0.2%	8.1%	-6.7%	1.2%	-7.3%	0.7%	-0.3%	7.8%	-1.7%	6.3%	7.6%	15.3%	-1.9%	5.0%	-2.3%	5.6%
16	-23.7%	-23.7%	-26.4%	-26.4%	-20.3%	-20.3%	-32.0%	-32.0%	-20.6%	-20.6%	-22.6%	-22.6%	-25.0%	-25.0%	-10.8%	-10.8%	-21.5%	-21.5%	-22.9%	-22.9%
17	-1.3%	-1.3%	-0.0%	-0.0%	3.6%	3.6%	-7.6%	-7.6%	2.5%	2.5%	-7.7%	-7.7%	-2.1%	-2.1%	-1.4%	-1.4%	-2.6%	-2.6%	-0.9%	-0.9%
20	-31.4%	-31.4%	-33.8%	-33.8%	-27.9%	-27.9%	-33.8%	-33.8%	-25.7%	-25.7%	-29.4%	-29.4%	-28.7%	-28.7%	-18.7%	-18.7%	-24.4%	-24.4%	-28.6%	-28.6%
31	-14.4%	-14.4%	-15.6%	-15.6%	-5.9%	-5.9%	-16.2%	-16.2%	-9.6%	-9.6%	-15.5%	-15.5%	-8.6%	-8.6%	-4.9%	-4.9%	-9.2%	-9.2%	-10.4%	-10.4%

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3

4 SUSAN SOTO PALMER, et al.,

5 Plaintiffs,

6 V

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

7
8 STEVEN HOBBS, in his official
9 capacity as Secretary of State
10 of Washington, and STATE OF
11 WASHINGTON,

12 Defendants.
13 _____/

14
15 REMOTE DEPOSITION UPON ORAL EXAMINATION OF

16 JOSE A. TREVINO

17 Monday, January 9, 2023

18 11:00 a.m. to 11:38 a.m.
19

20 REPORTED BY: Tamika Burnette, RPR, WA CCR No. 21002053
21
22
23
24
25

1 my laptop, and then I had to --

2 Q. I just want to make sure I'm clear. I don't
3 want you to tell me the substance of what you discussed
4 with your attorneys, but I just wanted to know when --
5 when that was.

6 A. Yes. I don't recall, but it was through
7 e-mail.

8 Q. Okay. Did you talk with anyone other than your
9 attorneys in preparation for your deposition?

10 A. No.

11 Q. Where do you live?

12 A. As in the city, I live in Granger, Washington.

13 Q. And how long have you lived in Granger?

14 A. I've been here for 12 years now, over 12 years.

15 Q. And you're within the city limits?

16 A. That's correct.

17 Q. And you are the mayor of Granger; is that
18 right?

19 A. That's correct.

20 Q. And how long have you held that position?

21 A. I'm on -- in my seventh year as mayor.

22 Q. Is the -- the term runs through this year; is
23 that right?

24 A. That's correct.

25 Q. Are you a candidate for reelection?

1 A. Not yet.

2 Q. Is it -- do you intend to run for reelection?

3 A. Yes.

4 Q. And are you -- do you reside in the 15th
5 legislative district?

6 A. Yes.

7 Q. Do you have any second homes or residences
8 elsewhere?

9 A. No.

10 Q. And do you hold any positions with a political
11 party?

12 A. No.

13 Q. Have you ever?

14 A. Yes.

15 Q. Which party?

16 A. It was the republic. It was the Republican
17 Party Central Committee here in Okanogan County.

18 Q. And what was your position?

19 A. All of them or just the most recent one?

20 Q. Let's start with the most recent?

21 A. I was a vice chair.

22 Q. And when was that?

23 A. I resigned last year sometime. I don't recall.

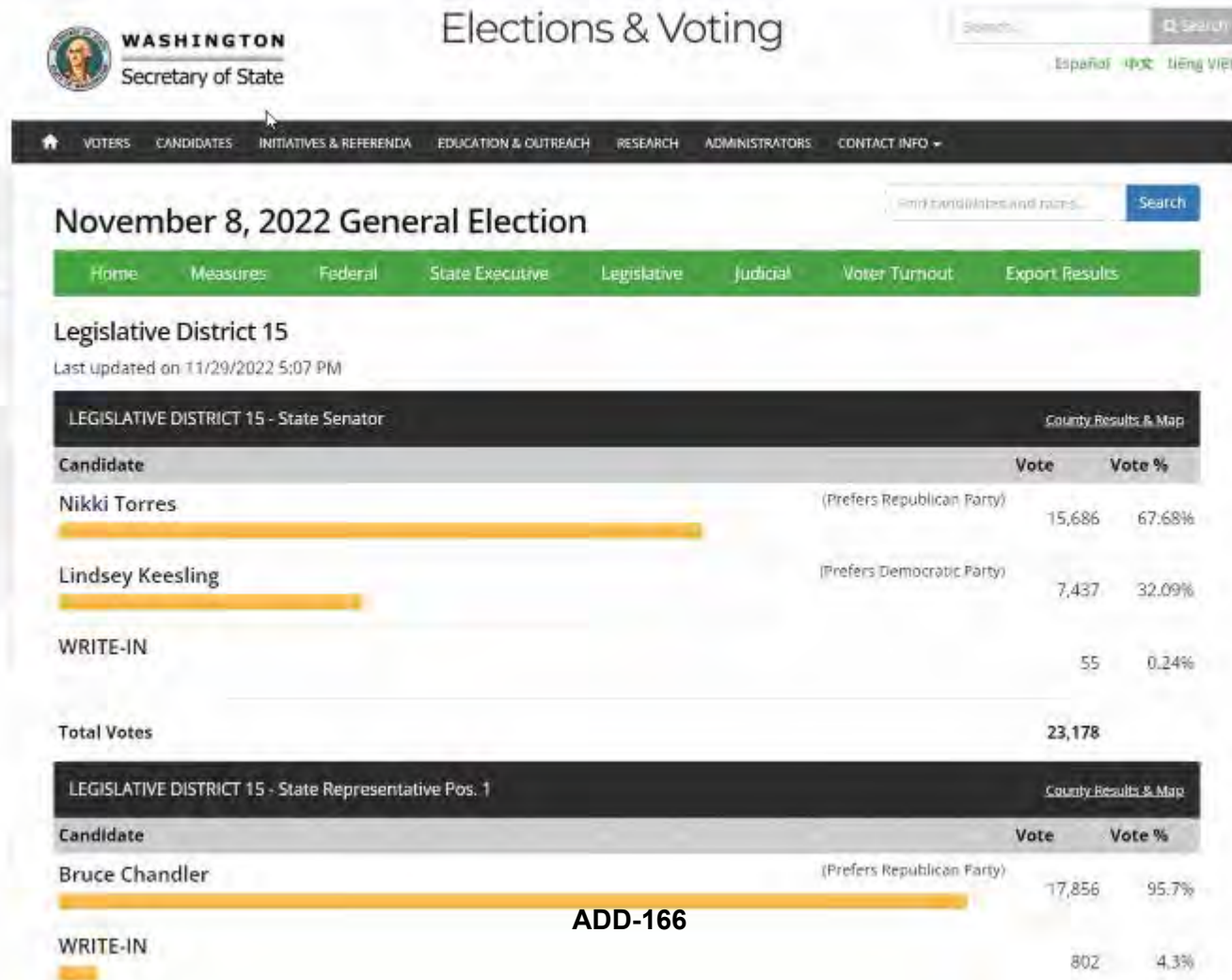
24 Q. Why did you resign?

25 A. I just have so many things going on in my life

EXHIBIT 23

ADD-165





ADD-166

12-19-2022
Adam Hall
EXHIBIT 18
Jeanne Gersten, RDR, CCR #2711

Supplemental Expert Report of Dr. Loren Collingwood

Loren Collingwood

2023-01-25

Executive Summary

I have been retained by plaintiffs as an expert, and have been asked to analyze whether there is racially polarized voting (RPV) in the Yakima Valley region, to analyze demographic data, and to conduct electoral performance analyses.

In this report I present an analysis of RPV in the most recent 2022 Legislative District 15 election for Washington State Senate. I also examined the supplemental and initial reports of Intervenor Defendants' expert, Mark Owens.

In line with my previous findings, my analysis of this election does not change my opinion that contests are generally polarized by race in LD-15 and the Yakima Valley generally. Using the same methodology as in my previous reports, I find that non-Hispanic white voters cohesively backed candidate Nikki Torres between 84-88%, meanwhile, Latino voters backed the other candidate, Lindsey Keesling between 60-68%. These findings are consistent with patterns of racially polarized voting.

My opinions are based on the following data sources: Washington State 2022 general election precinct returns downloaded from the Secretary of State's (SOS) website,¹ and ballot status reports from the SOS website.² My work is ongoing in this matter, and my opinions are based on the information available to me as of the date of this report. I reserve the right to supplement or amend my findings on the basis of additional information.

I am being compensated at a rate of \$400/hour. My compensation is not contingent on the opinions expressed in this report, on my testimony, or on the outcome of this case.

Background and Qualifications

I am an associate professor of political science at the University of New Mexico. Previously, I was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. I have published two books with *Oxford University Press*, 40 peer-reviewed journal articles, and nearly a dozen book chapters focusing on sanctuary cities, race/ethnic politics, election administration, and RPV. I received a Ph.D. in political science with a concentration in political

¹ <https://results.vote.wa.gov/results/20221108/turnout.html>

² <https://www.sos.wa.gov/elections/research/2022-general-election.aspx>

methodology and applied statistics from the University of Washington in 2012 and a B.A. in psychology from the California State University, Chico, in 2002. I have attached my curriculum vitae, which includes an up-to-date list of publications, as Exhibit 1 to this report.

In between my B.A. and Ph.D., I spent 3-4 years working in private consulting for the survey research firm Greenberg Quinlan Rosner Research in Washington, D.C. I also founded the research firm Collingwood Research, which focuses primarily on the statistical and demographic analysis of political data for a wide array of clients, and lead redistricting and map-drawing and demographic analysis for the Inland Empire Funding Alliance in Southern California. I was the redistricting consultant for the West Contra Costa Unified School District, CA, independent redistricting commission in which I was charged with drawing court-ordered single member districts. I am contracted with Roswell, NM, Independent School District to draw single member districts.

I served as a testifying expert for the plaintiff in the Voting Rights Act Section 2 case *NAACP v. East Ramapo Central School District*, No. 17 Civ. 8943 (S.D.N.Y.), on which I worked from 2018 to 2020. In that case, I used the statistical software eiCompare and WRU to implement Bayesian Improved Surname Geocoding (BISG) to identify the racial/ethnic demographics of voters and estimate candidate preference by race using ecological data. I am the quantitative expert in *LULAC vs. Pate (Iowa)*, 2021, and have filed an expert report in that case. I am the BISG expert in *LULAC Texas et al. v. John Scott et al. (1:21-cv-0786-XR)*, 2022. I filed two reports and have been deposed in that case. I was the RPV expert for the plaintiff in *East St. Louis Branch NAACP, et al. vs. Illinois State Board of Elections, et al.*, having filed two reports in that case. I am the Senate Factors expert for plaintiff in *Pendergrass v. Raffensperger (N.D. Ga. 2021)*, having filed a report in that case. I am the RPV expert for plaintiff in *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, having filed three reports in that case. I am the RPV expert for plaintiff in *Faith Rivera, et al. v. Scott Schwab and Michael Abbott*. I filed a report, was deposed, and testified at trial in that case. I served as the RPV expert for the intervenor in *Walen and Henderson v. Burgum and Jaeger No 1:22-cv-00031-PDW-CRH*, where I filed a report and testified at trial. I am the RPV expert in *Lower Brule Sioux Tribe v. Lyman County* where I filed a report and testified.

Data Preparation

To conduct the analysis, I gathered precinct election returns and ballot return statistics. The ballot return statistics provide individual-level data on who voted, their name, address, precinct, county, and whether election administrators rejected their ballot. I use the exact same methodology and analytical approach as in my previous reports, so please visit those documents for further details.

First, I subset the ballot return data to only individuals residing in the counties comprising LD-15 (Adams, Benton, Franklin, Grant, Yakima). Second, I subset out any individual whose ballot indicates it was rejected. Third, I geocoded all individuals to extract their residence latitude/longitude coordinates, and placed them in their precinct using a points to

polygons overlay. Fourth, using forward-geocoding, I extracted their GEOID (2020 block) to identify their block.

Fifth, using each individual's name and Census block, I conducted Bayesian Improved Surname Geocoding (BISG) to estimate each individual's probability of being non-Hispanic white, Black, Hispanic, Asian/Pacific Islander, or Race: other. Sixth, I collapsed each individual-level probability to the precinct by summing each individual's respective race probabilities within a precinct. For example, in a precinct with 10 people, if 10 people each have a probability of being white at 0.9, I sum 0.9 10 times which returns 9 (90% white). Finally, I joined these data with the election precinct vote returns based on the common precinct column in both datasets.

Beginning with the precinct vote returns, for each election contest I analyze, I divide each candidate's vote by the total number of votes in that election. For example, in a precinct with 1,000 voters, if Biden scored 800 votes and Trump 200, I produce a Percent Biden value of 0.8 (80%) and a Percent Trump value of 0.2 (20%).

However, my approach also lets me capture possible voter drop off for different election contests. Thus, while 1000 people might have voted in the top of the ticket contest, maybe just 850 cast ballots in LD-15 in the same election year. Thus, I further account for no vote in these down-ballot races. In the statistical model, I then weight each precinct by its total vote size to account for variation in precinct population size.

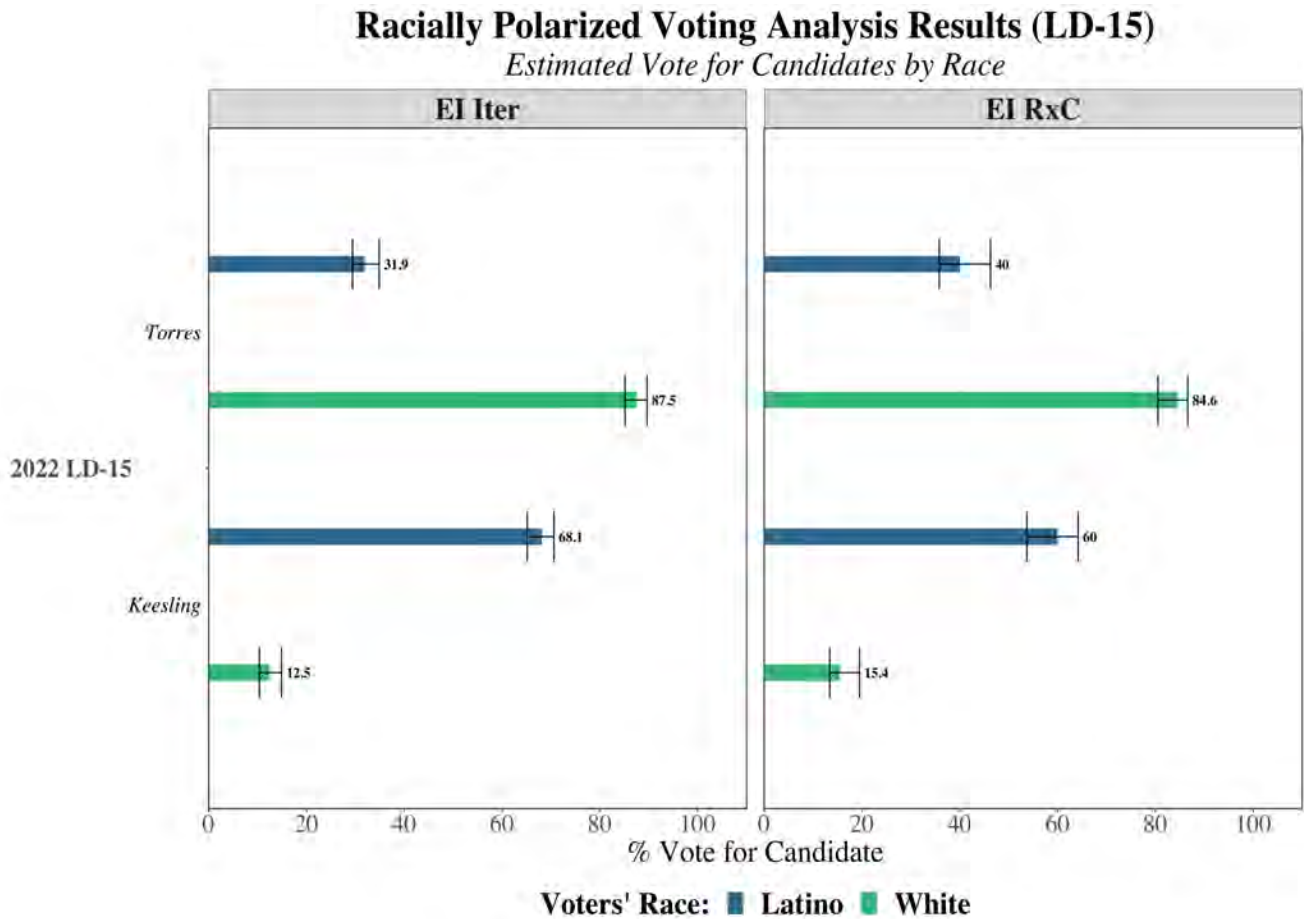
Next, I generate the demographic statistics of each voting precinct. To generate the percentage of voters in the precinct that are Hispanic, for instance, I sum each voters' probability of being Hispanic then divide by 1,000. That percentage is then my racial Hispanic demographic estimate in that precinct.

Racially Polarized Voting Analysis

As with my initial report, I use both Ecological Inference (EI) and Rows by Columns (RxC) to estimate vote choice by race/ethnicity, focusing specifically on non-Hispanic white and Hispanic voters. Figure 1 presents the results. Beginning with the left panel (EI Iter), we see that whites give Torres 87.5% of their vote, whereas Latinos backed Torres with an estimated 32%. Instead, Latinos preferred Keesling at 68%, whereas whites give Keesling just 12.5% of their vote. This is clearly racially polarized voting.

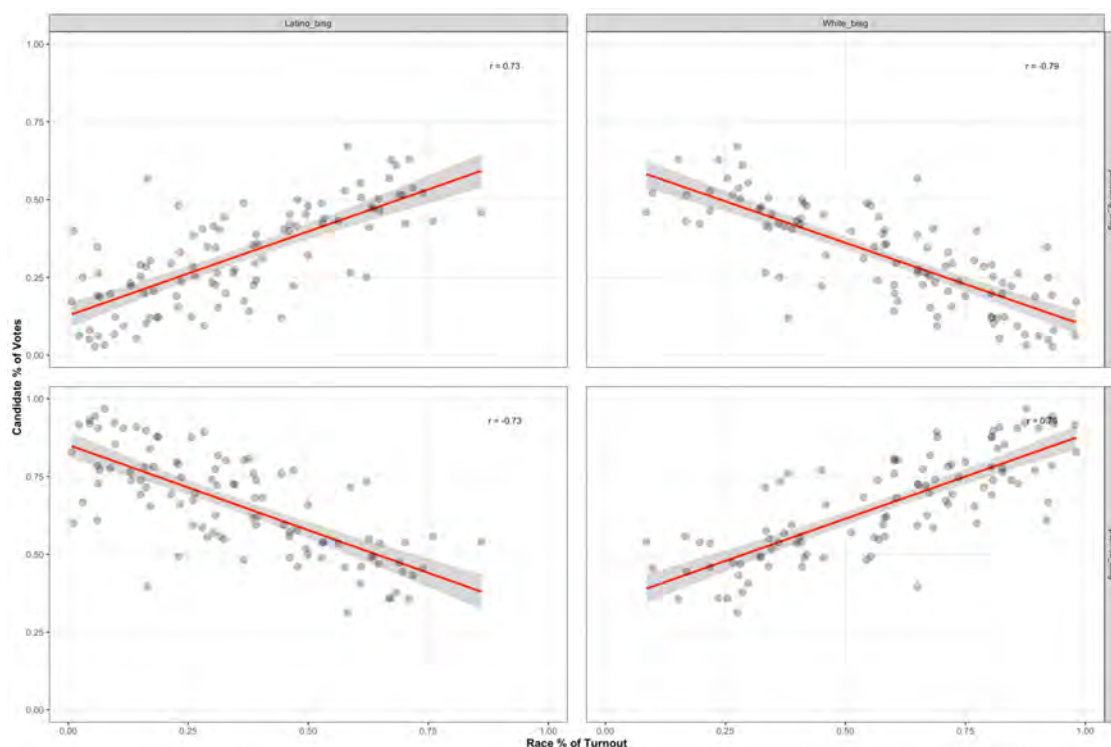
The second panel shows the results for the RxC method, which are consistent with the EI iterative approach although somewhat attenuated. Here, Latinos provide Keesling with a 60-40% margin over Torres. White voters, on the other hand, strongly back Torres (85%) to Keesling (15%).

Figure 1. Racially Polarized Voting assessment in the LD-15 contest between Torres and Keesling.



As another means for assessing polarization, Figure 2 shows a series of bivariate scatterplot further detailing strong racially polarized voting in LD-15. Beginning on the top-left panel, we observe an upward sloping line, showing that as the voting population in a precinct becomes more Latino, the percentage of voters backing Keesling steadily rises. The correlation is 0.73, an extremely strong relationship. Meanwhile, in the lower right quadrant, we observe a similar but even more stark trend – which is that as a precinct becomes more white, the percentage of the vote going to Torres steadily rises.

Figure 2. Racially Polarized Voting assessment in the LD-15 contest between Torres and Keesling.



Comment on Owen's report and Turnout by Race

Dr. Owens finds that Latino voters nearly evenly cast ballots for Keesling and Torres in the most recent 2022 LD-15 election. He suggests that this is evidence of a lack of cohesion among Latino voters. There are a few aspects of Dr. Owens' analysis that suggest his results are likely misleading.

First, Dr. Owens does not use the more commonly used methods to estimate vote choice by race. He does not use King's EI or Rows by Columns – the two methods most often used and accepted. Instead, he used linear regression, or what is commonly known as Goodman's Regression. Goodman's regression does not bound the model between 0-100, so it is possible to get non-sensical values like negative voting and 130%. This is the key reason why King and others developed newer methods.

In addition, Dr. Owens does not account for voter turnout in any way, even though the election returns that report turnout were publicly available at the time he produced his supplemental report. Even when using CVAP or VAP as an estimate for vote, an expert can still attempt to account for variation in voter turnout by race/ethnicity. The way to do this is to divide candidate votes by CVAP, not by total vote; generate a dummy no-vote column, calculate the EI estimates, and then only calculate vote choice by race to voters estimated

to have voted. By not accounting for turnout by race, Dr. Owens assumes that whites and Hispanics vote at the same rate. As I demonstrated in my previous report, this is not the case.

Finally, Dr. Owens does not provide candidate choice estimates for white voters in the 2022 LD 15 race. Rather he simply examines whether Latinos are cohesive, and concludes that since according to his estimates, barely more than 50% of Latino voters are casting ballots for Keesling, they are not cohesive. He provides no context or analysis as to how whites voted, yet concludes that Torres was “the clear candidate of choice among non-Hispanic White voters.” Owens Supplemental Report at 2.

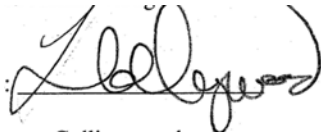
In this report, as in my initial report, the data methods I used enabled my analysis to control for turnout. I can do this by simply summing each voter’s estimated probability of being white, and Hispanic, respectively, then divide by the total number of voters. The data show that 32.5% of the voters in the 2022 LD-15 contest were Hispanic, whereas 61.6% were non-Hispanic white. This is a very stark difference to the 51.5% Hispanic CVAP that comprises the district.

Thus, by not accounting for voter turnout by race in any way, I show here how Dr. Owens’ analysis is flawed. White voters are turning out at significantly higher rates, and so the CVAP inputs into an ecological inference model will bias the results towards white voter’s preferred candidate (Torres). Specifically, a model that does not correct for turnout variation by race will improperly assume a precinct, for instance, is 60% Hispanic (CVAP) when in reality that precinct is not nearly as Hispanic when it comes to people who actually voted. Therefore, this model will show, on average, lower levels of polarization than what actually happened in the election.

Conclusion

In conclusion, racially polarized voting between white and Latino voters is present in the Washington Yakima Valley 5-county region, and in the newly enacted LD-15. The pattern is overwhelming. In my previous report, I examined 25 elections, and 23 demonstrate clear patterns of RPV using both the ecological inference and the rows by columns methods. In this report, I showed evidence of continued racially polarized voting within LD-15. Given these findings, it is clear that the Gingles Test has been met: 1) Plaintiffs have provided plans that produce a compact, majority-Latino district; 2) Racially polarized voting is present between white voters and Latino voters; and 3) The white majority defeats Latino voters’ preferred candidate more often than not, and the enacted plan has produced a map that blocks minority voters’ ability to elect candidates of choice while alternative maps do not.

Pursuant to 28 U.S.C. §1746, I, Loren Collingwood, declare that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "L. Collingwood", written over a horizontal line.

Dr. Loren Collingwood
Dated: January 25, 2023

In the United States District Court
Western District of Washington

SUSAN SOTO PALMER, et al.,
Plaintiffs,

v.

STEVEN HOBBS, in his official capacity as
Secretary of State of Washington and the
STATE of WASHINGTON, et al.,
Defendants.

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

SUPPLEMENTAL RESPONSE REPORT OF DR. MARK OWENS
IN SUPPORT OF INTERVENING DEFENDANTS

February 6, 2023

Executive summary

I have been asked by the intervening defendants to respond to the supplemental report submitted by Dr. Loren Collingwood on January 25, 2023. I focus on the EI estimates that were presented in two supplemental reports about the 2022 election. I also respond to the selective choices used by Dr. Collingwood to frame my supplemental report. Please refer to my initial report for my hourly rate and CV regarding details about my compensation and relevant expertise.

Senator Nikki Torres (R) was elected to the State Senate from Legislative District 15 in November 2022. Two supplemental reports have been submitted that show this victory can be explained by Hispanic voters being less supportive of the Democratic candidate than in elections over the last decade. One of the two estimates provided in Dr. Collingwood's report is not statistically different from my prior report. The consistency of these findings is remarkable, because the two research reports are designed differently. Dr. Collingwood defined Latino preference with a distribution that give more weight to voting behavior where Hispanic residents are more likely to have Spanish surnames and where they are most politically active. His estimates and critique of other estimates provided to the court is based on this measure being more realistic than the U.S. Census estimate of the citizen voting age population (CVAP), which is the most common measure used to ensure a group of voters has an equal opportunity to elect representatives of their choice.

Dr. Collingwood's supplemental report opened a new conversation about the distribution assumptions of well-accepted statistical procedures with EI. His attention to the point was brief, despite decades of scholarly debate that I will attempt to summarize. The consistent conclusion of those studies in the literature is a reminder that statistical estimates are most often driven by the numbers a model analyzes; our models can fail if the assumption chosen does not reflect reality. Instead of treating a new model as a new solution, my discussion describes why Dr. Wendy Kam Cho (1997) offered this caution; "Excitement about the advances to ecological inference provided by EI should not be allowed to lead to insufficient attention to the strong and potentially inappropriate assumptions at the heart of [King's EI] model (Cho 1997)." Strong assumptions in a model can produce bias in one direction or constrain estimates at the margin. When researchers make additional assumptions to produce a precise estimate, the reliability of estimates in the real world become less clear. The best solution is to check the reliability of a model's estimate by the consistency of its findings with other models and across elections.

In conclusion, a comparison of the two supplemental reports offers the most direct comparison between the two methods that have been used to estimate racially polarized voting in this district. Two of the three estimates provided for Hispanic voter preference in the 2022 Senate (LD-15) election were statistically the same; the exception came from King's EI estimate using data from the surname analysis. This shows that efforts by Dr. Collingwood to show a distinguishable pattern with a precise estimate overstates reality. Strong assumptions were made about the distribution of the Latino population in the Yakima Valley by using the voter list to produce a different reference for comparison than the American Community Survey's Hispanic CVAP. This introduces opportunities for misclassification of Hispanic residents that do not have a Spanish surname as well as non-Hispanic residents that have a Spanish surname and points our attention to who is participating rather than the precincts where candidates are gathering support.

Still, the two statistical approaches showed voters in LD-15 were less cohesive in their support for the Democratic candidate in 2022.

Preparation

To prepare this response I referred to Dr. Loren Collingwood’s supplemental report (dated January 25, 2023) and his first report (dated August 3, 2022). I also referenced scholarship that compared ecological regression to ecological inference that was not included in prior reports.

Assessing the Candidate of Choice in LD-15

The estimates from Table 1 of my prior report (reproduced below) offer a statistically similar result about Hispanic voter cohesion to Figure 1 of the supplemental report from Dr. Collingwood, despite his disagreement. Dr. Collingwood does not state the margin of error around the RxC estimate, but the visual representation reflects it is available and meaningful. The higher measure of the standard error appears to be closer to 50% than 45%. If the margin of error for this estimate is greater than 44.1%, the estimates of candidate of preference for Hispanic voters is not statistically different in Collingwood’s RxC analysis and the ecological regression I reported.

A claim that this is “overwhelming (p.6)” support overstates the result, when it is really not statistically different from other analyses. The supplemental report is Dr. Collingwood’s first presentation of estimates of voter preference in the newly enacted LD-15. The initial report’s estimates of cohesion of Latino voters presented in Figures 3, 4, 5 and 6 reflected the voting patterns of the entire 5-county region or smaller areas where an election took place.

I present an addition to Table 1 in response to Dr. Collingwood’s interest in my estimates of support for Nikki Torres and Lindsey Keesling among non-Hispanic White voters. My prior report was focused on assessing if Hispanics were cohesive in their support for a candidate, but I have included more detail on this comparison. The estimates of support for Torres among non-Hispanic White voters are not statistically different from what Dr. Collingwood estimated.

Table 1: Ecological Regression Estimate of the Percent of Voters Who Voted for a Candidate, by Group (Confidence Interval in Parentheses to indicate Margin of Error)¹

Election	Office	Candidate Race/Ethnicity	Candidate Name	Hispanic Voters LD-15	non-Hispanic White Voters LD-15
2022	State Senate District 15	NH-White	Keesling (D)	52% (47.5, 55.9)	19% (14.8, 23.1)
2022	State Senate District 15	Hispanic	Torres (R)	48% (44.1, 52.5)	81% (76.9, 85.2)

Revisiting this question is important. Both of our analyses show the Democratic candidate Lindsey Keesling, a non-Hispanic White female, received a lower share of support from non-Hispanic White voters than any Democratic candidate that Dr. Collingwood provided estimates for in the 5-county area. This means the State Senate election in LD-15 for 2022 is an

¹ This analysis uses the same data and script that were used to produce the supplemental report.

example of reduced support for the Democratic candidate among both Hispanic voters and non-Hispanic White voters. The shift favored a Hispanic female candidate, just like the two exceptions cited in Dr. Collingwood's reports where non-Hispanic White voters were split in their preference in two non-partisan elections for Maia Espinoza (endorsed Republican) and Steven Gonzalez (judicial). This points directly to the question of whether voters in LD-15 are primarily responding to race or party.

With respect to voter participation by ethnicity, EI estimates of voter turnout in LD-15 show that turnout increased in the 2022 midterm election. Voter turnout among non-Hispanic voters in the enacted district continued to stay at 56% (see Table 4, Owens report 1). The margin of error around the estimate of voter turnout for non-Hispanic White voters in the midterm was 11% (50%, 61%). The estimated voter turnout among Hispanic voters increased 6% from 2018 (10%) to 2022 (16%) in LD-15. The margin of error surrounding the estimate of Hispanic voter participation is between 10% and 22%. These estimates were calculated with the same method as estimating candidate preference using the CVAP estimates. This shows more Hispanic voters were participating in an election as a Hispanic candidate won the election.

Finally, the estimates of candidate choice by Hispanic voters Dr. Collingwood provides vary by 8% depending on the method used. In the next section, I discuss why it is important to assess the impact of racially polarized voting by considering the results of multiple approaches to see how the assumptions of each statistical model apply to the real world.

Scholarship on considerations when comparing EI methods

Dr. Collingwood identified his analysis used King's EI and RxC as methods to estimate average candidate preference of Latino voters and white voters. Scholars who have compared the performance of King's EI to ecological regression offer three cautions to interpreting the estimates the model produces. First, King's EI imposes an upper and lower constraint to the normal distribution. This is identified as the truncated bivariate normal distribution. Second, when a researcher uses this correction, the model intentionally binds an estimate as a percentage between zero and 100. The estimates I report do not exceed these thresholds, which means the solution King's constraint offers as a trade-off is not necessary. Scholars have also indicated that if an estimate did appear outside of the typical boundaries, it would be useful to researchers. When the model performs incorrectly, then researchers know the aggregate pattern does not match the individual pattern (Lewis 2001). Third, if the truncated bivariate normal distribution is not used, Doug Rivers (1998) found the model no longer has an identified solution.

Scholars have often used the topic of racially polarized voting to compare the efficiency of King's EI to other approaches (Lewis 2001, Bullock and Gaddie 2006, Grofman and Barreto 2009; but for inconsistencies see Cho 1997). These studies found the models often generate the same results, because all of the estimates are conditional on where the candidate got the most votes and where most people in a population category live. The best way to assess racially polarized voting is to use multiple specifications of EI to analyze an area and see if there are discrepancies across multiple elections. Where racially polarized voting exists, the results of these methods will reflect similar patterns. When one method shows a result and another does not, we must think about the uncertainty that exists in finding these patterns and how choices in data selection and estimation may guide the results.

Conclusion

The coalition of voters who support the winning candidate in LD-15 has varied in many contexts. Republican and Democratic candidates often get statistically similar shares of the vote from non-Hispanic White voters and Hispanic voters. The deviating examples include when a Hispanic candidate is on the ballot (Espinoza, Gonzalez, Torres) as a Republican or in a non-partisan election. These candidates have won by attracting “cross-over” voters who are often estimated to vote for a Democratic candidate if the election featured two non-Hispanic candidates. Dr. Collingwood’s report verified the electoral victories of Espinoza (2020) and Gonzalez (2018) are two instances where the Hispanic-preferred candidate was not blocked. Torres’s victory in 2022 was a result of Hispanic and non-Hispanic voters voting against a Democratic candidate at higher levels than usual.

The performances of Maia Espinoza, Justice Steven Gonzalez, and Senator Nikki Torres in LD-15 reflect three different election years when a Hispanic candidate appeared on the ballot in LD-15 (2018, 2020, and 2022). The pattern of cross-over voting occurred in each of these races even though it did not happen across the entire ballot. These elections show a pattern is emerging in which Hispanic voters in LD-15 exhibit varying levels of support for candidates on the same ballot. They have voted for a non-Hispanic Democratic candidate at the top of the ticket and a Hispanic Republican down ballot, breaking patterns of voting that would be needed to observe an overwhelming trend of racially polarized voting.

Dr. Collingwood’s report and my report both show Hispanic voters in the Yakima Valley typically prefer a Democratic candidate. They also show non-Hispanic White voters often prefer a Republican candidate. Both reports show two partisan elections where that cohesion by party does not hold. Polarized voting is not present when a Hispanic candidate indicated a preference for the Republican Party. Hispanic voters opposed the Democratic candidate more often and non-Hispanic White voters continued to oppose the Democratic candidate at a similar rate when a Hispanic Republican appeared on the ballot. The argument that non-Hispanic White voters consistently oppose a Democratic candidate and that Hispanic voters consistently support a Democratic candidate is primarily supported by elections for statewide office when candidates have the same ethnicity and party is the primary cue for voters to identify a candidate.

When the estimates provided in Dr. Collingwood’s and my reports differ, the clearest explanation is that the relevant population is defined differently. Dr. Collingwood’s choice to increasingly weight to the candidate choice of Spanish-surname voters focuses its attention on what happened in a past election and loses leverage on showing what could happen in a future election. His reports explained the choice to use the voter list, because applying information about the statistical area and not the registered voter may reduce the precision of an estimate. The result is a misclassification of how the CVAP estimates of the non-Hispanic population should be applied to the estimates, because the BISG correction is focused on weighting the narrower surname voter population to the larger estimated Hispanic CVAP population. Each of these actions is an action by the researcher to shape the distribution before the estimate is made, just like King’s EI constrained a distribution. These are all trade-offs, all reasons estimates will differ, and all steps that begin to overcomplicate what has occurred. As analysts, our estimates are based on whether polarized voting occurred in a geographic area and the certainty of each

estimate decreases if a precinct is ethnically diverse. I have made efforts to show where estimates I provided match Dr. Collingwood's, because the methodological choices we made would yield marginally different results. The consistency of our results shows why a claim that a distribution is biased because it is based on the CVAP estimate provided by the federal government is unfounded.

The results show a Hispanic candidate (or one preferred by Hispanic voters) does not lose in the enacted district. Candidates have won with support from Hispanic voters and non-Hispanic White voters.

In this report I have provided election estimates that are similar to the Plaintiffs' in each election. My first report also did this for four statewide elections that were omitted from the Plaintiffs' reports. These races include Lt. Governor, State Auditor, Insurance Commissioner, and Supreme Court – Position 6 in 2020. We should expect minor differences in any estimates that are provided because of methodological differences, but they should be within the margin of error. That is the case here. I summarized how scholars have compared the accuracy of these models and found little difference. The recommended best course of action is to compare multiple models for consistency.

February 6, 2023



Mark E. Owens, Ph.D.

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The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et. al.,

Plaintiffs,

v.

STEVEN HOBBS, et. al.,

Defendants,

and

JOSE TREVINO, ISMAEL CAMPOS, and
ALEX YBARRA,

Intervenor-Defendants.

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

Judge: Robert S. Lasnik

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

I. INTRODUCTION

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

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

3 II. LEGAL STANDARD

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

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

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

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

23 **III. PLAINTIFFS’ REMEDIAL PROPOSALS**

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

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

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

Plaintiffs’ Remedial Proposal 1

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

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

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

13 *Plaintiffs' Remedial Proposal 2*

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

18 *Plaintiffs' Remedial Proposal 3*

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

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

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

7
 8 ***Plaintiffs' Remedial Proposal 4***

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

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

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

19
 20 Dr. Collingwood separately assessed whether Plaintiffs' Remedial Proposal 5 would
 21 perform to allow Latino voters an equal opportunity to elect their candidates of choice. LD 14 in
 22 Remedial Proposal 5 has a Latino CVAP of 47%. Ex. 2, Collingwood Decl. at 3. Remedial
 23 Proposal 5 provides Latino voters in the Yakima Valley region with an equal opportunity to elect
 24 candidates of their choice to the state legislature across a range of electoral conditions. The
 25 performance analysis conducted by Dr. Collingwood shows that in nine of the nine elections
 26

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

IV. CONCLUSION

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

Dated: December 1, 2023

Respectfully submitted,

Edwardo Morfin
WSBA No. 47831
MORFIN LAW FIRM, PLLC
2602 N. Proctor Street, Suite 205
Tacoma, WA 98407
Telephone: 509-380-9999

By: /s/ Annabelle H. Harless

Mark P. Gaber*
Simone Leeper*
Aseem Mulji*
Benjamin Phillips*
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org
sleeper@campaignlegal.org
amulji@campaignlegal.org
bphillips@campaignlegal.org

Chad W. Dunn*
Sonni Waknin*
UCLA VOTING RIGHTS PROJECT
3250 Public Affairs Building
Los Angeles, CA 90095
Telephone: 310-400-6019
Chad@uclavrp.org
Sonni@uclavrp.org

Annabelle E. Harless*
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org

Thomas A. Saenz*
Ernest Herrera*
Leticia M. Saucedo*
Erika Cervantes*
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL
FUND
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Telephone: (213) 629-2512
tsaenz@maldef.org

Counsel for Plaintiffs
*Admitted pro hac vice

eherrera@maldef.org
lsaucedo@maldef.org
ecervantes@maldef.org

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CERTIFICATE OF SERVICE

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

/s/ Annabelle E. Harless
Annabelle E. Harless
Counsel for Plaintiffs

The Honorable Robert S. Lasnik

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

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

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

Defendants,

and

JOSE TREVINO, et al.,

Intervenor-Defendants.

NO. 3:22-cv-5035-RSL

STATE OF WASHINGTON'S
RESPONSE TO PLAINTIFFS'
REMEDIAL PROPOSALS

Pursuant to this Court's October 4, 2023 Order (Dkt. # 230), the State of Washington submits the following response to the proposed remedial maps submitted by Plaintiffs.

The State does not dispute Plaintiffs' assertion that each map "is a complete and comprehensive remedy to Plaintiffs' Section 2 harms" Dkt. # 245 at p. 2. The State defers to the Court on which remedial map best provides Latino voters with an equal opportunity to elect candidates of their choice while also balancing traditional redistricting criteria and federal law.

1 Additionally, as the Court is well aware, one key consideration in creating LD 15 was
 2 respecting the sovereign interests of the Yakama Nation. These interests should likewise be
 3 respected in any court-ordered remedial map. To the extent the Yakama Nation wishes to be
 4 heard on the matter, the State defers to them to express their own sovereign interests.

5 DATED this 22nd day of December 2023.

6
 7 ROBERT W. FERGUSON
 Attorney General

8 /s/ Andrew R.W. Hughes
 9 ANDREW R.W. HUGHES, WSBA #49515
 Assistant Attorney General
 10 800 Fifth Avenue, Suite 2000
 Seattle, WA 98104
 11 (206) 464-7744
 andrew.hughes@atg.wa.gov

12 CRISTINA SEPE, WSBA #53609
 Deputy Solicitor General
 13 1125 Washington Street SE
 PO Box 40100
 14 Olympia, WA 98504-0100
 (360) 753-6200
 15 cristina.sepe@atg.wa.gov

16 *Attorneys for Defendant State of Washington*

17 I certify that this memorandum contains 149 words,
 18 in compliance with the Local Civil Rules.

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 22nd day of December 2023, at Seattle, Washington.

/s/ Andrew R.W. Hughes

ANDREW R.W. HUGHES, WSBA #49515
Assistant Attorney General

Expert Report of Dr. Loren Collingwood

Loren Collingwood

2024-02-23

Executive Summary

I have been retained by plaintiffs as an expert, and have been asked to examine the citizen voting age population (CVAP) of different racial/ethnic categories of the enacted LD-15 as well as several proposed LD-14 districts in 10 remedial maps (1-5, 1A-5A).

To estimate CVAP demographics for each map, I used the recently released 2022 CVAP block group data taken from the U.S. Census.¹ I filter the block groups to those appearing in each respective map (i.e., LD-15 in the enacted plan, or LD-14 in the alternative plans), then sum the total counts for total population, non-Hispanic white alone, Hispanic, and several other minority groups.

Based on my analysis, I conclude the following:

- The enacted plan has a Hispanic CVAP (HCVAP) population of 52.18%
- Maps 1, 1A, 2, 2A have an estimated HCVAP of 52.48%
- Maps 3, 3A, 4, 4A have an estimated HCVAP of 51.04%
- Maps 5, 5A have an estimated HCVAP of 47.96%.
- LD14 is the same in each “A” remedial proposal as the corresponding original proposal. As a result, the performance analysis for LD14 in each “A” map is the same as its corresponding original proposal.

My opinions are based on the following data sources: 2020 US Census block data, 2022 American Community Survey (ACS) block group data, and enacted and alternative Block Assignment files provided to me by counsel.

I am being compensated at a rate of \$400/hour. My compensation is not contingent on the opinions expressed in this report, on my testimony, or on the outcome of this case.

Background and Qualifications

I am an associate professor of political science at the University of New Mexico. Previously, I was an associate professor of political science and co-director of civic engagement at the

¹The 2022 CVAP estimates were not available prior to January 23, 2024:
<https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>

Center for Social Innovation at the University of California, Riverside. I have published two books with *Oxford University Press*, 42 peer-reviewed journal articles, and nearly a dozen book chapters focusing on sanctuary cities, race/ethnic politics, election administration, and RPV. I received a Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012 and a B.A. in psychology from the California State University, Chico, in 2002. I have attached my curriculum vitae, which includes an up-to-date list of publications, as Exhibit 1 to this report.

In between my B.A. and Ph.D., I spent 3-4 years working in private consulting for the survey research firm Greenberg Quinlan Rosner Research in Washington, D.C. I also founded the research firm Collingwood Research, which focuses primarily on the statistical and demographic analysis of political data for a wide array of clients, and lead redistricting and map-drawing and demographic analysis for the Inland Empire Funding Alliance in Southern California. I was the redistricting consultant for the West Contra Costa Unified School District, CA, independent redistricting commission in which I was charged with drawing court-ordered single member districts. I was the redistricting consulting with Roswell, NM, Independent School District to draw single member districts.

I served as a testifying expert for the plaintiff in the Voting Rights Act Section 2 case *NAACP v. East Ramapo Central School District*, No. 17 Civ. 8943 (S.D.N.Y.). I am the quantitative expert in *LULAC vs. Pate (Iowa)*, 2021, and have filed an expert report in that case. I am the BISG expert in *LULAC Texas et al. v. John Scott et al. (1:21-cv-0786-XR)*, 2022. I filed two reports and have been deposed in that case. I was the RPV expert for the plaintiff in *East St. Louis Branch NAACP, et al. vs. Illinois State Board of Elections, et al.*, having filed two reports in that case. I was the Senate Factors expert for plaintiff in *Pendergrass v. Raffensperger (N.D. Ga. 2021)*, where I filed two reports, was deposed, and testified at trial. I was the RPV expert for plaintiff in *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, having filed three reports in that case. I was the RPV expert for plaintiff in *Faith Rivera, et al. v. Scott Schwab and Michael Abbott*. I filed a report, was deposed, and testified at trial. I served as the RPV expert for the intervenor in *Walen and Henderson v. Burgum and Jaeger No 1:22-cv-00031-PDW-CRH*, where I filed a report and testified at trial. I was the RPV expert in *Lower Brule Sioux Tribe v. Lyman County* where I filed a report. I was the RPV expert for plaintiff in *Soto Palmer et al. vs. Hobbs et al.*, where I filed two reports, was deposed, and testified at trial. I was the RPV expert for plaintiff in *IE United et al. v. Riverside County, CVRI2202423*, where I filed a report and was deposed. I was the RPV expert for plaintiff in *Paige Dixon v. Lewisville Independent School District, et al., Civil Action No. 4:22-cv-00304*, where I filed two expert reports. I was the RPV expert for plaintiff in *Turtle Mountain Band of Chippewa Indians v. Jaeger No. 3:22-cv-00022-PDW-ARS*, where I filed two reports, was deposed, and testified at trial.

Proposed Maps

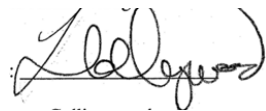
Plaintiffs have proposed 10 maps, and in several LD-14 is the same. Each map's 2022 ACS Citizen Voting Age Population (CVAP) demographics are presented in Table 1 below.² I also include estimates for the enacted LD-15.³

Table 1. Demographics 2022 CVAP.

Map	HCVAP	WCVAP	BCVAP	NCVAP	ACVAP
Enacted D15	52.18	42.73	1	0.96	1.18
Map 1 D14	52.48	36.83	1.07	5.33	1.57
Map 1A D14	52.48	36.83	1.07	5.33	1.57
Map 2 D14	52.48	36.83	1.07	5.33	1.57
Map 2A D14	52.48	36.83	1.07	5.33	1.57
Map 3 D14	51.04	38.36	1.01	5.25	1.6
Map 3A D14	51.04	38.36	1.01	5.25	1.6
Map 4 D14	51.04	38.36	1.01	5.25	1.6
Map 4A D14	51.04	38.36	1.01	5.25	1.6
Map 5 D14	47.96	41.86	1.07	5.04	1.46
Map 5A D14	47.96	41.86	1.07	5.04	1.46

LD14 in each "A" remedial proposal is the same as in the corresponding original proposal. For example, LD14 is the same in Maps 1 and 1A, 2 and 2A, 3 and 3A, 4 and 4A, and 5 and 5A. Thus, the performance of LD14 in each "A" remedial proposal is also the same as in the corresponding original proposal, as reported in my December 1, 2023, report.

Pursuant to 28 U.S.C. § 1746, I, Loren Collingwood, declare the foregoing is true and correct.



Dr. Loren Collingwood

Dated: February 23, 2024

² Estimates for white, Black, Asian/Pacific Islander, and Native American are non-Hispanic single race.

³ HCVAP = Hispanic CVAP, WCVAP = White CVAP, BCVAP = Black CVAP, NCVAP = Native American CVAP, ACVAP = Asian/Pacific Islander CVAP.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN SOTO PALMER, et al.,
Plaintiffs,

v.

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

Defendants,

and

JOSE TREVINO, et al.,

Intervenor-Defendants,

BENANCIO GARCIA III,
Plaintiff,

v.

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

Defendants.

) C22-5035-RSL

) Seattle, WA

) June 6, 2023

) 8:30 a.m.

) TRIAL - Day 3

) C22-5152-RSL-DGE-
) LJCv

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

1 ballots?

2 A Yes.

3 Q In those races, and again, the non-judicial races, do
4 major parties often endorse in those races?

5 A I believe so. They did in the election that I analyzed.

6 Q Okay. So first of all, why did -- let's put up Table 1,
7 from your initial report.

8 So I'd like you to look here at the first column under
9 race and ethnicity. Is that the race of the Democratic
10 candidate?

11 A Yes, it is.

12 Q And the second column, is that the race of the Republican
13 candidate?

14 A Yes, exactly, following the dashes.

15 Q Would the exception to that be the 2020 lieutenant
16 governor race, where it lists two whites?

17 A Yes. This would also be indicating that there are two
18 Democratic candidates in that race.

19 Q I'd like to focus just on what you found in this chart, in
20 enacted Senate District 15. And the court has the rest of
21 the report.

22 So what happens when there's only white and Democratic
23 ballots -- sorry, when there are only white Democratic and
24 Republican candidates on the ballot, what happens to -- what
25 do you see in the preference of Hispanic voters, based on

1 your analysis in those classes of elections?

2 A In enacted Legislative District 15, the Hispanic
3 preference for the Democratic candidates, so the white
4 Democratic candidate, when running against a white
5 Republican, ranges between 69 percent and 76 percent.

6 Q Okay. That's great.

7 Okay. So what happens to Hispanic voters, when there
8 are two Democrats on the ballot, like the lieutenant governor
9 race in 2020?

10 A What we see here, Hispanic preference for one of the
11 Democratic candidates falls to 49 percent. To me this
12 represents something where Hispanic areas, with high
13 concentrations of Hispanic voters, are voting for either one
14 of the Democratic candidates.

15 Q Okay.

16 A Not cohesive. We cannot know their preference.

17 Q Have you reviewed Dr. Collingwood's reports in this case?

18 A Yes.

19 Q And is it true, he did not include the 2020 lieutenant
20 governor race, in the list of races he analyzed?

21 A No, I did not see it.

22 Q So what happens when there's a Hispanic Republican on the
23 general election ballot, like in the 2020 Superintendent of
24 Public Instruction race?

25 A In this case, also in enacted Legislative District 15, and

1 across all of the other districts that I analyzed, the
2 Hispanic voters were less supportive of the Democratic
3 candidate.

4 Q And in that race, again, the Republican candidate had a
5 Hispanic surname?

6 A Yes.

7 Q And it's technically a nonpartisan race. Why did you
8 include it on your list of partisan races?

9 A Because both political parties made endorsements of the
10 candidates who qualified for the general election.

11 Q And is that one of the races that Dr. Collingwood looked
12 at?

13 A Yes, it was.

14 Q And is it true that he found that race was not racially
15 polarized?

16 A Yes.

17 Q And, again, it was the Hispanic candidate that was
18 endorsed by the Republican Party; is that correct?

19 A Yes.

20 Q Did the Hispanic -- did the Democratic Party ever have a
21 Hispanic candidate advance to any of the elections, that you
22 analyzed, in 2018 or 2020?

23 A No.

24 Q Okay. Based on this, do you believe that race is the
25 determining factor of Hispanic votes in Senate -- in

1 Legislative District 15?

2 A No. I see, in this case, that where you have party to
3 look at, party is driving most of the preferences of Hispanic
4 candidates, when they're presented with --

5 Q And just to clarify, your prior statement, you're talking
6 about elections where there are two white candidates as the
7 choice?

8 A Yes.

9 Q And you started to say something about, when there's a
10 Hispanic candidate.

11 A In this case, when there's a Hispanic candidate, you see a
12 deviation from that pattern.

13 Q What does that tell you?

14 A Some is that voters are considering multiple factors of a
15 candidate. So one could be partisan. I know in this case,
16 it's one where we're seeing, there's a sort of nonpartisan
17 election, even it's not going to get as much attention as the
18 Governor's race. But individuals know, on their ballot, not
19 only like the name of the individual, and information about
20 generally who the Republican candidate might be, or the
21 Democratic candidate, as they introduce themselves.

22 Q Let's switch to your Table 2, from your same report. So
23 in this chart, you're looking at judicial races; is that
24 correct?

25 A Yes.

1 Q Why did you choose to look at judicial races?

2 A Judicial races give us the context, where partisanship is
3 not indicated, yet a voter could still see -- so if we look
4 at the groups of voters, if they tend to be coalesced around
5 the same candidate, either for reasons of issues, or their
6 ability to identify the candidate in a certain way.

7 Q What did you find, when you looked at judicial races in
8 enacted Senate District 15?

9 A I saw in this case that Hispanic voters were supportive of
10 a candidate, often the same candidate, in this case, if it
11 was -- and I use NAIA, Native American Indian American --
12 with representative, with Judge Montoya Lewis. Additionally,
13 if a black candidate is running against a white candidate,
14 then the Hispanic cohesion in support of that candidate is a
15 little bit lower.

16 But when Judge Gonzalez was running, as well, against an
17 Asian opponent, the opportunity here was, the coalition of
18 the group of voters tended to also be the same, and reflect
19 the same kind of cohesion that we see among white Democrats,
20 when they're running against white Republicans.

21 Q In this particular chart, it looks like, in your enacted
22 15, it looked like -- looks like the Hispanic voter
23 preference was the highest for the candidate with the
24 Hispanic last name?

25 A Yes, it was.

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.

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

3. I have worked for the Office of the Secretary of State since 2014 and worked in elections administration since 2005.

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

5. As director I oversee the statewide voter registration and election management system; voter education and outreach; and election official certification and training.

6. I supervise a staff of 27 people, who include Specialists in Candidate Filing, Auditing, Voter Education, Election Certification, Training, as well as Management Analysts for the statewide voter registration and election management system.

7. I understand that Plaintiffs in this litigation seek revised legislative district maps based on their contention that Legislative District 15, as drawn by the Redistricting Commission in 2021, violates Section 2 of the Voting Rights Act.

8. Based on my knowledge and experience, any revised district maps would need to be final by March 25, 2024, to allow my office and county elections officials to perform necessary tasks before the primary election on August 6, 2024.

9. Any change to the district maps after this date would put us in serious jeopardy of failing to meet our constitutional obligations.

10. When the a new legislative district plan is adopted, my office transmits that information—not just the maps showing district lines, but the files containing the geographic data underlying those maps, known as shapefiles—from the Commission to county auditors' offices.

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

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

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

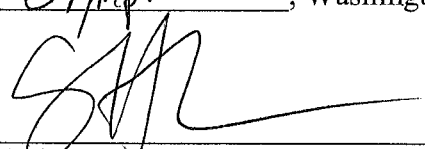
24 34. Under Washington law, counties must mail ballots to military and overseas voters
 25 45 days before an election. Federal law also requires that ballots for elections for federal offices
 26

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
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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
Leena Vanderwood
Legal Assistant
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200
Leena.Vanderwood@atg.wa.gov

NO. 24-1602

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

SUSAN SOTO PALMER, et al.,

Plaintiffs–Appellees,

v.

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

Defendants–Appellees,

JOSE A. TREVINO, et al.,

Intervenor–Defendants–
Appellants.

APPELLEE STATE OF
WASHINGTON’S
OPPOSITION TO
APPELLANTS’
EMERGENCY MOTION
FOR A STAY PENDING
APPEAL

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I. INTRODUCTION

This Court already denied Intervenor–Defendant–Appellees’ (Intervenors) bid to stay the district court’s ruling in December 2023, and the Court should do the same again here. DktEntry 45, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir. Dec. 21, 2023). Previously, following a full trial, the district court concluded that Legislative District 15 violated Section 2 of the Voting Rights Act, by denying Hispanic voters in and around Washington’s Yakima Valley the ability to elect candidates of their choice. Intervenors then asked this Court to stay that order and the remedial proceedings, making largely the same merits arguments they make in their current motion. Mot. to Stay, DktEntry 34-1, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir. Dec. 5, 2023). Some things have changed since then—following extensive argument, several expert reports, and an evidentiary hearing, the district court (aided by a special master) ordered a remedial map that addresses the Section 2 violation; the Supreme Court rejected Intervenors’ petition for certiorari before judgment, *Trevino v. Soto Palmer*, No. 23-484 (U.S. Feb. 20, 2024); and the Intervenors agreed to delay their own appeal of the merits. But one thing has not: Intervenors continue to deploy untenable arguments in their bid to delay—and meanwhile deny—Hispanic voters in the Yakima Valley from receiving the opportunity to elect candidates of their choice.

Just as it did once before, this Court should deny Intervenors’ latest effort to

stay the district court’s injunction and remedial map. Granting a stay would mean that the very district a court has already deemed illegal would be used again for the 2024 election. Intervenors bear the burden of justifying that drastic relief, and they come nowhere close. They can show no likelihood of success on appeal, they cannot show they will suffer irreparable injury, and their grievances with the court-entered remedy cannot outweigh the fundamental interests of Plaintiffs and voters in LD 15 in a districting map that complies with the Voting Rights Act.

The Court should deny the stay so state elections officers can prepare for the 2024 elections under a legal map without delay or disruption.

II. BACKGROUND AND PROCEDURAL HISTORY

Shortly after Washington’s bipartisan Redistricting Commission adopted and the Legislature approved the state’s legislative redistricting plan, Plaintiffs–Appellees brought suit. They alleged that LD 15 diluted Hispanic votes in violation of Section 2 of the Voting Rights Act. ECF No. 1, *Soto Palmer v. Hobbs*, No. 22-cv-5035-RSL (W.D. Wash. Jan. 19, 2022).¹ That case was assigned to Judge Lasnik of the Western District of Washington.

Around two months later, three individuals moved to intervene to defend LD 15 against Plaintiffs’ Section 2 claims. The district court allowed Intervenors to permissively intervene and defend the map, despite determining they “ha[d] no right

¹ District court filings will be short cited as ECF No. ____.

or protectable interest in any particular redistricting plan or boundary lines,” because at the time there were no truly adverse parties.² ECF No. 69 at 4.

The State prepared to defend against Plaintiffs’ challenge 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. *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. *Id.* Based on Dr. Alford’s conclusions, the factual findings in other recent federal and state VRA cases in the Yakima Valley, and other record evidence, the State notified the parties and court that it had concluded 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[.]” ECF No. 194 at 10.

A. The District Court’s Order and Intervenors’ Appeal

After a bench trial, Judge Lasnik issued a Memorandum of Decision on August 10, 2023, finding that LD 15 had the effect of discriminating against Hispanic voters by denying them the right to elect candidates of their choice.

² Judge Lasnik separately ordered that the State of Washington be joined as a defendant to ensure that, if Plaintiffs were able to prove their claims, the Court would have the power to provide all of the relief requested, particularly the development and adoption of a VRA-compliant redistricting plan. ECF No. 68.

ADD-1–32. Following the Supreme 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. 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.” ADD-9. 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.” ADD-11–12. And on the third *Gingles* factor, Judge Lasnik noted that both Plaintiffs’ and the State’s experts concluded “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 expert. ADD-12.

Turning to the totality-of-the-circumstances analysis, Judge Lasnik found that seven of the nine Senate Factors “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.” ADD-28. Thus, the court concluded, although “things are moving in the right direction . . . 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.* The court entered judgment for Plaintiffs and ordered the parties to engage in a remedial process to adopt a new legislative map. ADD-32.

Intervenors appealed Judge Lasnik’s decision on the merits in September 2024. ADD-45. Nearly three months later, Intervenors moved to stay that order and the remedial process, raising most of the arguments they raise here, including that the district court: improperly found vote dilution in a majority-minority district; considered only the compactness of Plaintiffs’ proposed maps and failed to consider the compactness of the Hispanic population; failed to give due weight to the election of a particular state senator; failed to consider whether racially polarized voting was a product of partisanship, rather than race itself; and was wrongly subjecting the Intervenors to a race-based remedial process. DktEntry 34-1, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir.). This Court promptly denied the motion.

Meanwhile, Intervenors petitioned the Supreme Court for certiorari before judgment. *Trevino v. Soto Palmer*, U.S. No. 23-484. That petition raised many of the arguments from their stay motion, and also argued that 28 U. S. C. § 2284 mandated a three-judge panel in this case, such that Judge Lasnik lacked subject matter jurisdiction. Pet. at 19–21. The Court denied their petition on February 20, 2024.

B. The Remedial Process

Under Washington law, modifying a legislative plan requires reconvening the

Redistricting Commission, which in turn requires “an affirmative vote in each house of two-thirds of the members” Wash. Rev. Code § 44.05.120. And in this case, because Washington’s Legislature was not in session when the district court entered its order—and not scheduled to reconvene until January 2024—reconvening the Redistricting Commission would have required the additional step of calling a special session of the Legislature. *See* Wash. Rev. Code § 44.04.012.

In its ruling enjoining the enacted plan, the district court provided the Legislature (and any reconvened Commission) approximately five months to complete this process. ADD-32. Intervenors falsely assert that “the district court did not even give the Commission an opportunity to draw remedial maps, instead short-circuiting its own timeline based solely on various news reports.” Mot. at 24. But the district court did nothing to prevent the Legislature from reconvening the Redistricting Commission to adopt remedial maps.

In reality, following news reports that the House Speaker and Senate Majority Leader were declining to call a special session to reconvene the Redistricting Commission, Judge Lasnik ordered the State to “file a status report . . . formally notifying the Court regarding the Legislature’s position.” ECF No. 224 at 2. Upon receiving conflicting reports—one from the State saying a special legislative session was unlikely (ECF No. 225) and another from non-party legislators expressing hope that it might yet occur (ECF No. 227), the court ordered the parties to begin a

remedial process *in parallel with* the Legislature. As the court explained, “[i]f . . . the Legislature is able to adopt revised legislative maps for the Yakima Valley region in a timely manner, the Court’s parallel process . . . will have been unnecessary.” ECF No. 230 at 2. But “[g]iven the practical realities of the situation as revealed by the submissions of the interested parties,” the district court elected to “not wait until the last minute to begin its own redistricting efforts” to “allow a more deliberate and informed evaluation of those proposals.” *Id.* This was entirely appropriate. And it was prescient: the Legislature never reconvened the Commission.

As part of its parallel process, the district court directed the parties to submit proposed remedial maps by December 1 and to identify candidates to serve as a special master. *Id.* at 3. On December 1, 2023, Plaintiffs proposed five remedial maps to the district court, and the parties submitted special master candidates. ECF Nos. 230, 244, 245. Neither the State nor Intervenors submitted proposed remedial maps. In the State’s case, because the State explained that article I, section 43 of Washington’s Constitution and Wash. Rev. Code § 44.05.120 provide a single mechanism for the State to propose redistricting plans: through the Redistricting Commission. It is unclear why Intervenors chose not to propose a map.

Over the following weeks, the district court appointed Karin Mac Donald, a respected, non-partisan redistricting expert to serve as the special master, and all parties had an opportunity to fully brief their positions on the proposed remedial

maps. ECF Nos. 246, 248–52, 254. As the State explained, because the State had no basis to “dispute Plaintiffs’ assertion that each map ‘is a complete and comprehensive remedy to Plaintiffs’ Section 2 harms[,]’ it “defer[red] to the Court on which remedial map best provides Latino voters with an equal opportunity to elect candidates of their choice while also balancing traditional redistricting criteria and federal law.” ECF No. 250 at 1 (quoting ECF No. 245 at 2). However, the State urged the district court to carefully consider any input from the Yakama Nation, should they choose to be heard on the matter. *Id.* at 2.

While the remedial process was underway, Intervenor made further efforts to delay the proceedings. On January 22, they filed another motion to delay a remedy, this time asserting that the district court lacked jurisdiction over the remedial phase because the Intervenor had appealed the district court’s liability finding. ECF No. 258. The district court properly denied that motion. ECF No. 265. Intervenor then successfully moved to hold their own liability appeal in abeyance—the appeal that raises most of the arguments they now raise by this “emergency” motion. DktEntry 48, 59, No. 23-35595 (9th Cir.).

Turning back to the remedial phase, on February 9, the district court heard oral argument on Plaintiffs’ remedial proposals and Intervenor’s objections. *Id.* Then, on February 23, nearly three months *after* the court-ordered due date for remedial proposals, Intervenor for the first time submitted their own proposed map.

ECF No. 273. On March 8, at Intervenor’s request, the district court held a half-day evidentiary hearing at which the parties presented testimony from their experts and other witnesses. ADD-34. “The Court also reached out to the Confederated Tribes and Bands of the Yakama Nation (‘Yakama Nation’), soliciting their written input and participation at the March 8th evidentiary hearing.” *Id.*

On March 15, the district court ordered a new map, with a redrawn, newly labeled LD 14, in time for the March 25, 2024 deadline. In a detailed order, the court explained the remedy it adopted was necessary to remedy the VRA violation it previously found. ADD-33–43. Although acknowledging that “the Latino citizen voting age population of LD 14 in the adopted map is less than that of the enacted district,” the court explained that “the new configuration provides Latino voters with an equal opportunity to elect candidates of their choice to the state legislature, especially with the shift into an even-numbered district, which ensures that state Senate elections will fall on a presidential year when Latino voter turnout is generally higher.” ADD-36. Although Intervenor’s try to characterize this reduction in Hispanic CVAP as “dilution,” the unchallenged evidence was that enacted LD 15 did not permit Hispanic voters to elect candidates of their choice, while the new LD 14 will. *Compare* ADD-12–14, *with* ECF No. 278 at 2–3.

Following the district court’s remedial order, Intervenor’s filed this motion for a stay, raising arguments related not only to the remedial order, but to the district

court’s seven-month-old liability order that this Court already declined to stay.

III. LEGAL STANDARD

A stay pending appeal is “an exercise of judicial discretion,” not a “matter of right.” *Nken v. Holder*, 556 U.S. 418, 433 (2009). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 433–34. In order to carry this burden here, Intervenor must (1) make “a strong showing” that they are likely to succeed on the merits and (2) demonstrate that they will be irreparably injured absent a stay. *See id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Intervenor must also show that (3) a stay will not “substantially injure . . . other parties interested in the proceeding[]” and (4) the public interest favors a stay. *See id.* (quoting *Hilton*, 481 U.S. at 776).

The district court’s remedial order is reviewed for clear error. *See North Carolina v. Covington*, 585 U.S. 969, 979 (2018) (applying clear error review to court’s adopted map).

IV. ARGUMENT

As this Court already found in denying Intervenor’s last motion to stay, Intervenor fails to demonstrate their entitlement to a stay of the remedy. The State defers to Plaintiffs–Appellees to address Intervenor’s likelihood of success on appeal of the remedial map entered by the district court and the harms to Plaintiffs. Moreover, the bulk of Intervenor’s arguments go to the liability finding and were

already raised in their prior, unsuccessful stay motion. The State therefore makes just a handful of arguments regarding Intervenor’s motion.

A. Intervenor’s Lack Standing

Intervenor’s motion 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 but granting only permissive intervention, “intervenor’s lack a significant protectable interest in this litigation.” ECF No. 69 at 10. Lacking a concrete interest in this suit, they now lack standing to appeal.

Hollingsworth v. Perry is dispositive. 570 U.S. 693 (2013). 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, intervenor’s sought to continue their defense via an appeal. *Id.* But this Court dismissed the intervenor’s appeal, holding that they lacked standing to challenge the injunction enjoining state officials from enforcing Proposition 8. *Id.* at 715.

As the Supreme 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 (quotation omitted). 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.” *Id.* Thus, intervenors “had no direct stake in the outcome of their appeal.” *Id.* at 705–06 (quotation omitted). The Court likewise rejected intervenors’ effort to claim standing on behalf of California, explaining 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)).

The Supreme Court reached a similar result in *Virginia House of Delegates v. Bethune-Hill*, 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. 139 S. Ct. 1945, 1950 (2019). The Court reasoned that the House 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 [new LD 14]. They 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. at 555, 560–561 (1992)). Nor, as the district court already found, do they have “standing in [their] own right” to defend the State’s adoption of the now invalidated legislative maps. ECF No. 69 at 5.

Turning to the individual Intervenors, Mr. Trevino is the only one who even lives in the new LD 14, but he has no role in the district’s implementation or enforcement. 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.”” ECF No. 69 at 5 (citation omitted). 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 ask this Court to *presume* that the district court’s remedy violates the 14th Amendment, Mot. at 19–21, but there is no basis for such a presumption, especially since the Supreme Court has 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.”). So here, “absent specific evidence” showing Mr. Trevino is subject to a racial classification by the district court, he only asserts “a generalized grievance against governmental conduct of which he . . . does not approve” and, thus, lacks standing. *United States v. Hays*, 515 U.S. 737, 745 (1995).

The next Intervenor, Alex Ybarra, has no connection to the newly-drawn LD 14 or its enforcement. While he serves in Washington’s Legislature from LD 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, or identified how his “institutional position” is affected, *Newdow v. U.S. Congress*, 313 F.3d 495, 499 (9th Cir. 2002). Nor has Mr. Ybarra ever sought to participate in this litigation in anything but his personal capacity. 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.”). He now attempts to premise his standing on the assumption that he will have to spend money and time to campaign in LD 13 based on altered boundaries—the natural consequence of remedying the neighboring district—but courts have consistently rejected this theory. *See, e.g., City of Philadelphia v. Klutznick*, 503 F. Supp. 663, 672 (E.D. Pa. 1980) (legislators suffered no cognizable injury when their district

boundaries are adjusted); *LULAC v. Abbott*, No. EP21CV00259DCGJESJVB, 2022 WL 4545757, at *5 (W.D. Tex. Sept. 28, 2022) (plaintiff “who pleads mere proximity to a diluted or gerrymandered district—or some connection between that district’s boundaries and vote dilution or racial gerrymandering in [his] own district—does not thereby have standing to challenge the neighboring district”).

As for the final Intervenor, Ismael Campos, he lives and votes in a different district and has no role in the implementation or enforcement of LD 14. Intervenor does not even attempt to argue Mr. Campos has standing.

In short, Intervenor has “no role—special or otherwise—in the enforcement of [LD 14]. They 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. Their generalized grievances mean they lack standing to appeal.

B. Intervenor Has Not Made a Strong Showing That They Are Likely to Succeed on Appeal

Intervenor fails to show that a stay is appropriate under *Nken*, 556 U.S. 418.

1. Intervenor’s threshold argument—that the single-judge district court lacked jurisdiction to decide the state legislative redistricting challenge—flies in the face of statutory text, precedent, and history. They argue that only a three-judge panel may rule on a Section 2 redistricting claim under 28 U.S.C. § 2284. Mot. at 9–10. But no court has ever so held. 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 the Supreme Court has repeatedly and recently erred in affirming such judgments. *See, e.g., Allen*, 599 U.S. at 42 (affirming “[t]he judgment[] of the [single-judge] District Court”).

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.” This case, raising only a statutory challenge, was thus heard before a single judge.³

Intervenors rely on a single concurring Fifth Circuit 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 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.” 961 F.3d at 813 (Willett, J., concurring). But Judge Willett’s concurrence is not the law, and a greater number of the *Thomas* en banc panel joined a separate concurrence *expressly refuting* his reasoning. *Id.* at 802 (“a plain reading of the three-judge statute

³ This is unlike Intervenors’ cited case, *Shapiro v. McManus*, 577 U.S. 39 (2015), which alleged a First Amendment claim to a state redistricting plan, and thus a three-judge panel should have been convened to hear the case.

as well as its ancestry reject the unprecedented notion that statutory challenges to state legislative districts require a special district court”) (Costa, J., concurring); *id.* at 807–08 (legislative history likewise refutes Judge Willett’s reading of the statute). The reason is clear: “[Congress] does not . . . hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 468 (2001).

The ordinary meaning of Section 2284 is that three-judge panels are required only for *constitutional challenges* to the apportionment of congressional districts or statewide legislative bodies. Courts uniformly read the statute that way. *See, e.g., Rural West 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.’”). Indeed, the Supreme Court has parenthetically described Section 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).

In sum, Section 2284 requires three-judge courts *only* for constitutional challenges to legislative apportionment. Intervenor’s anemic argument to wipe away

nearly forty years of VRA case law, relying on a single concurrence, fails to show they are likely to succeed on the merits of their appeal.

2. Intervenor next rehash their objections to the district court’s liability order from their prior motion to stay. Although the Supreme Court has said “it may be possible for a citizen voting-age majority to lack real electoral opportunity,” *LULAC*, 548 U.S. at 428, Intervenor argues that the district court erred in finding so here. Mot. at 12. 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.” ADD-28; *see also* ADD-29 (“[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.”). Intervenors make no effort to show why this conclusion was clearly erroneous.

Instead, Intervenors try to invent a rule of law limiting Section 2 claims in majority-minority districts to narrow circumstances. Mot. at 11. 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 the Supreme Court. *LULAC*, 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); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 934 (8th Cir. 2018). Intervenors are not likely to succeed on this point on appeal.

3. Intervenor badly miss the mark with their argument that the district court erred by failing to treat it as essentially dispositive that, in the first election in LD 15, Nikki Torres, a Hispanic candidate, won her race by a 35-point margin. Mot. at 15-16. The Voting Rights Act guarantees the right of minority voters “to elect representatives *of their choice*.” 52 U.S.C. § 10301 (emphasis added). It does not mean that any Hispanic elected official is good enough for Hispanic voters, regardless of the voters’ actual preferences. *See LULAC*, 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 Intervenor’s own expert*, “testified that Latino voters [in LD 15] overwhelmingly favored the same candidate in the vast majority of the elections studied.” ADD-11. But, because of white bloc voting in the other direction, Hispanic voters’ preferred candidates rarely win. ADD-12–13. Senator Torres’s election did not singlehandedly repudiate that trend. Rather, the evidence reflected that Senator Torres was not the candidate of choice of Hispanic voters, but was elected *in spite of* Hispanic voter preferences. Intervenor concedes as much, noting that Plaintiffs’ expert found that only 32% of Hispanic voters voted for Senator Torres—meaning Hispanic voters preferred her opponent by *over two-to-one*. *See* Mot. at 6. Even Intervenor’s own expert concluded that a majority of Hispanic voters in LD 15 voted *against* Senator Torres. *Id.* And this

despite the fact that Senator Torres ran against a political novice, who was a write-in candidate in the primary, and spent less than five percent of what Senator Torres spent. ECF No. 208 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.” ADD-11; *see also LULAC*, 548 U.S. at 427 (“The District Court’s determination whether the § 2 requirements are satisfied must be upheld unless clearly erroneous.”).

4. Intervenors’ claim that the district court was required to, but did not, disentangle the effects of race and partisanship is doubly wrong. *Contra* Mot. at 14–15. As a legal matter, “[i]t is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, . . . only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.” *Thornburg v. Gingles*, 478 U.S. 30, 63 (1986) (plurality op.).⁴ As a factual matter, contrary to Intervenors’ claims, the district court explicitly *did* consider partisanship as part of its totality-of-circumstances analysis. ADD-30 (“Especially in light of the evidence showing significant past discrimination against Latinos, on-going impacts of that

⁴ *Smith v. Salt River Project Agricultural Improvement & Power District*, on which Intervenors rely, did not concern a dilution claim or racially polarized voting. 109 F.3d 586 (9th Cir. 1997).

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.”). Intervenors make no effort to explain why the district court’s factual findings were wrong.⁵

5. Intervenors also challenge the district court’s remedy. They must show, but cannot, that they are likely to succeed on the merits of the argument that the district court clearly erred in adopting the remedial map.

Intervenors’ repeated contention that the remedial map has the perverse effect of further diluting the Hispanic vote, Mot. at 18–19, fails because it is contrary to the evidence. The Voting Rights Act guarantees the right of minority voters “to elect representatives of their choice.” 52 U.S.C. § 10301. Here, the undisputed evidence showed that Hispanic voters in former LD 15 couldn’t do that because of racially polarized voting: while they voted cohesively for particular candidates, non-Hispanic voters voted cohesively in the other direction, resulting in the Hispanic-

⁵ Intervenors misstate things when they say the State’s expert “agreed . . . that the partisan signifier of the candidate drove any polarization.” Mot. at 15. The State’s expert 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 noted that “in contests without a party cue, non-Hispanic White voters do not exhibit cohesive opposition to Hispanic candidates.” Trial Ex. #601 at 17–18.

preferred candidates losing. ADD-11–14. What’s more, the evidence shows this racially polarized voting reflected and reinforced a longstanding (if improving) pattern of discrimination against Hispanic voters in the Yakima Valley area, resulting in “less opportunity” for Hispanic voters “to “participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301; ADD-14–29. This is the Section 2 violation the district court was tasked with remedying.

The evidence shows that the new LD 14 likely succeeds in remedying it. Plaintiffs’ expert demonstrated that, in contrast to enacted LD 15, Hispanic-preferred candidates would likely win in the version of LD 14 ultimately adopted by the district court. ECF No. 278 at 2–3. For all his criticisms of Plaintiffs’ maps, Intervenor’s expert agreed, finding that Hispanic-preferred candidates tended to lose in the enacted LD 15, but tended to win in the new LD 14. ECF No. 273 at 18.⁶ The new LD 14 thus remedies the Section 2 violation.

Unable to address the actual evidence, Intervenor’s wave their arms about how “bizarre” this all is. Mot. at 18. But they don’t point to any authority to support their implied proposition that a remedy that nominally reduces minority CVAP, but increases minority voters’ ability to elect candidates of their choice, is *per se*

⁶ Because Plaintiffs’ (and ultimately the court’s) remedial district changed the numbering of the relevant district from 15 to 14, interpreting Figure 11 in ECF No. 273 requires comparing enacted district 15 with remedial district 14.

unacceptable.⁷ Lacking legal authority, they turn to a colorful analogy, claiming “[a] court cannot remedy dilution with more dilution any more than a firefighter can battle fires with napalm.” *Id.* Apparently, Intervenorors are unaware that fire is in fact an important tool in fighting fire. *See, e.g.,* Bureau of Land Management, *Oregon/Washington Prescribed Fire*, <https://www.blm.gov/programs/public-safety-and-fire/fire/state-info/oregon-washington/prescribed-fire> (last visited March 20, 2024). The point, of course, is not to debate fire-management strategies but to highlight that, as Voltaire put it, “a witty saying proves nothing.” Evidence is what proves things. And here the evidence shows—and Intervenorors do not dispute—that the prior version of LD 15 did not permit Hispanic voters to elect their candidates of choice, but remedial LD 14 does. The remedial map thus remedies the violation.

6. Nor have Intervenorors’ demonstrated a strong likelihood of success that Judge Lasnik violated the 14th Amendment by creating a racial gerrymander. *Contra* Mot. at 19–21. To allege, let alone prove, a racial gerrymandering claim, Intervenorors “face[] an extraordinarily high burden.” *Cano v. Davis*, 211 F. Supp. 2d 1208, 1215 (C.D. Cal. 2002); accord *Easley v. Cromartie*, 532 U.S. 234, 241 (2001). And courts apply a presumption of good faith, given “[t]he distinction between being aware of racial considerations and being motivated by them may be difficult to make.” *Miller*

⁷ *Johnson v. De Grandy*, 512 U.S. 997 (1994), says nothing about the appropriate remedy for a VRA violation.

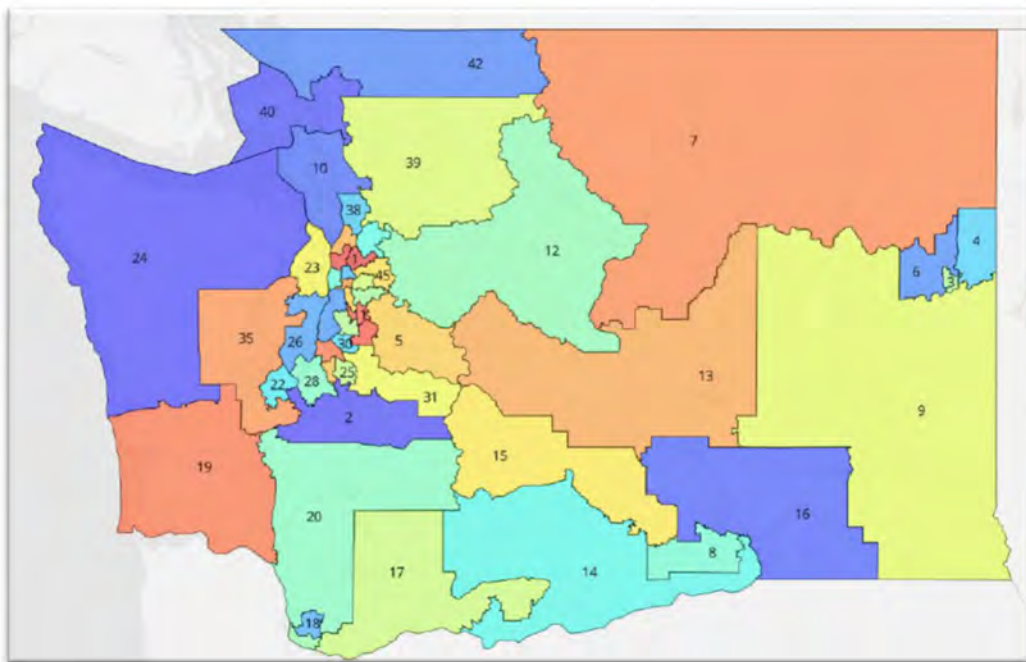
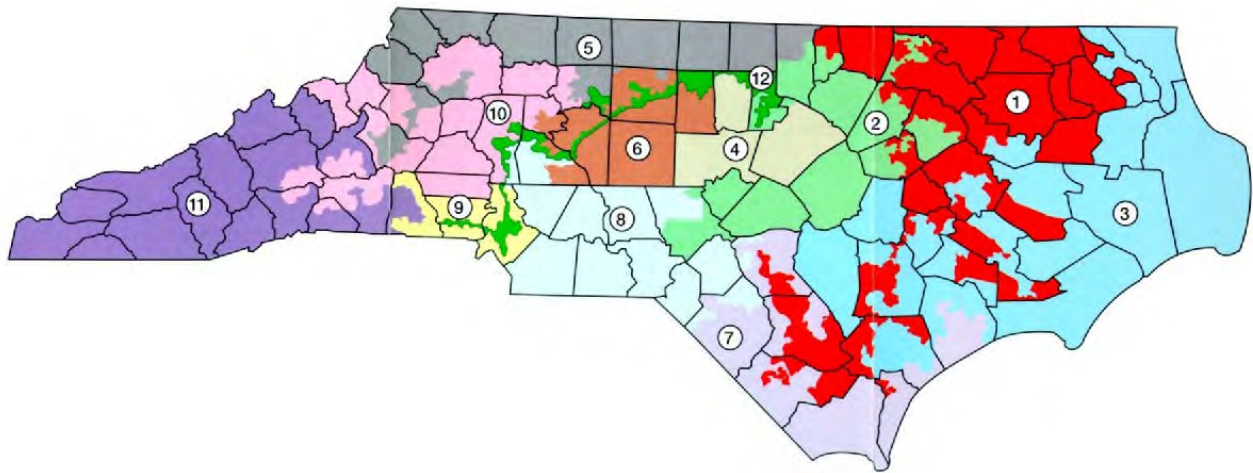
v. Johnson, 515 U.S. 900, 916 (1995). Intervenor’s argument requires “two-step analysis.” *Cooper v. Harris*, 581 U.S. 285, 291 (2017).⁸ “First, [they] must prove that race was the predominant factor motivating the [court’s] decision to place a significant number of voters within or without a particular district.” *Id.* (cleaned up). To make this showing, they would have to show the district court “subordinated other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to racial considerations.” *Id.* (cleaned up). It is not enough that race played a role in decisionmaking—it must overwhelm other factors. *See Easley*, 532 U.S. at 253 (finding no evidence of racial predominance in a legislator’s statement that a map provided “geographic, racial and partisan balance” because at worst “the phrase shows that the legislature considered race, along with other partisan and geographic considerations”). “Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny.” *Cooper*, 581 U.S. at 292. At this stage in the inquiry, the burden “shifts to the” party defending the map to establish that any “race-based sorting of voters serves a compelling interest and is narrowly tailored to that end.” *Id.* (cleaned up). Courts have long considered compliance with the VRA to be a compelling interest. *Id.*

⁸ In the limited time given to respond to Intervenor’s motion, the State has not yet found a case scrutinizing whether a court-crafted remedial map was a racial gerrymander that violated equal protection. For purposes of this response, the State assumes the same analysis applies as when a legislature or redistricting commission enacts a redistricting plan in the first instance.

Intervenors ignore this demanding standard, and make essentially no effort to satisfy it. Instead, their argument is based on two things: their hired expert's characterization of the new LD 14's shape as octopus-like and Judge Lasnik's conclusion that the district's shape was necessary to remedy the enacted map's division of a Hispanic community of interest in the Yakima Valley area. Mot. at 20. Not only do they vastly overstate the strangeness of the district's shape, and disregard that uniting communities of interest is a well-recognized—indeed, *statutorily mandated*—redistricting criteria, RCW 44.05.090, they also simply ignore evidence and testimony that the district was reasonably compact and initially drawn by Plaintiffs' mapdrawing expert without considering race or racial demographics.⁹ *See, e.g.*, ECF No. 277 at 10; ECF No. 245-1 at 4–5. Their central premise—that considering race is verboten in remedying a VRA violation—has been definitively rejected by the Supreme Court. *See Allen*, 599 U.S. at 32–33 (“The contention that mapmakers must be entirely ‘blind’ to race has no footing in our § 2 case law.”); *id.* at 41 (citations omitted). Intervenors come nowhere near showing that race predominated over other redistricting criteria in Judge Lasnik's mind.

⁹ Intervenors' criticism of the map's shape also ignores obvious, non-racial explanations for its shape. For example, both the northwest and southwest legs are necessary to keep together Reservation and Off-Reservation Trust Land of the Yakama Nation—a recognized community of interest whose preservation in a single district all parties agreed was a critical goal. And the small appendage at the northernmost point of the district goes into Yakima, the population center of the district, and is necessary to grab enough population for the district.

Intervenors compare this case to *Shaw v. Reno*, where North Carolina’s congressional map was “so extremely irregular on its face” that plaintiffs could state an equal protection violation. 509 U.S. 630, 641 (1993). But even the quickest glance at District 12, a majority-minority district at issue in *Shaw*, and LD 14 adopted by the district court, show why Intervenors cannot meet the extraordinarily high burden of establishing that race predominated here:



Compare id. at 659, with ECF No. 288-3.

But even if they could, that still wouldn't prove Judge Lasik violated the Constitution. Instead, it would just mean the map was subject to strict scrutiny. *Cooper*, 581 U.S. at 292. And if strict scrutiny did apply, Judge Lasnik's order would satisfy it. The new LD 14 serves the undeniably compelling interest of remedying a VRA violation, and, for all the reasons detailed in his order, the new district is narrowly tailored to remedy the violation. ADD-38–41.

C. The Balance of Harms and the Public Interest Tip Decisively Against Denying Hispanic Voters Relief for the Upcoming Election Cycle

Intervenors cannot demonstrate that the balance of harms or the public interest favor a stay. Perhaps most fundamentally, a stay of the remedial process will harm the public interest. A stay will force voters in the Yakima Valley area to vote in a legislative district the district court determined discriminates against Latino voters in violation of federal law. No subsequent relief could redress that harm. Intervenors make no serious effort to justify this harm.¹⁰

Intervenors' contention that they are injured absent a stay relies on their thinly argued and unproven claim that the new LD 14 is a racial gerrymander. Mot. at 26–28. For the reasons detailed above, they have fallen far short of meeting their “extraordinarily high burden” of showing a racial gerrymander. *Cano*, 211 F. Supp.

¹⁰ For the reasons detailed above, their assertions that voters will suffer no harm because the district court erred in finding a VRA violation (Mot. at 27) are incorrect. Moreover, this Court already denied Intervenors' request to stay the remedial phase pending Intervenors' liability appeal.

2d at 1215. And to the extent Intervenor's hinge their stay request on inconvenience to incumbents seeking reelection, they cannot seriously contend that any (voluntarily assumed) inconvenience justifies denying voters their rights under the VRA.

Intervenor's also argue the State will be harmed absent a stay. Mot. at 28. The State disagrees. The State declined to propose a remedial map, the Secretary of State made clear the deadlines by which it needed the district court to adopt a revised map in order to hold elections in an orderly manner, and the district court met that deadline and adopted a map that complies with the VRA. It is no undue hardship to conduct elections in compliance with the Voting Rights Act.

Finally, Intervenor's assertion that the Attorney General "collu[ded]" with Plaintiffs to "end-run around state law" is laughable. Mot. at 29. The Attorney General's Office represents multiple state parties, including the Secretary of State. The State ultimately declined to defend LD 15 at trial because the evidence—including all parties' expert reports—showed that enacted LD 15 likely did dilute Hispanic votes. And the State did not propose its own remedial map because the Legislature opted not to. Intervenor's insinuation that the State is somehow part of a conspiracy with Plaintiffs is not a serious argument.

V. CONCLUSION

The Court should deny Intervenor's stay motion.

RESPECTFULLY SUBMITTED this 20th day of March 2024.

ROBERT W. FERGUSON
Attorney General

/s/ Andrew R.W. Hughes

ANDREW R.W. HUGHES, WSBA #49515
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Andrew.Hughes@atg.wa.gov

/s/ Cristina Sepe

CRISTINA SEPE, WSBA #53609
Deputy Solicitor General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
Cristina.Sepe@atg.wa.gov

*Attorneys for Respondent
State of Washington*

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

SUSAN SOTO PALMER, *et al.*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellees,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

*Intervenors-Defendants-
Appellants.*

No. 24-1602

D.C. No. 3:22-cv-05035-RSL
United States District Court for the
Western District of Washington
Tacoma, Washington

**PLAINTIFFS-APPELLEES’
OPPOSITION TO APPELLANTS’
EMERGENCY MOTION FOR A
STAY PENDING APPEAL**

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INTRODUCTION

This Court has already denied Appellants’ (“Intervenors”) motion for a stay of the district court’s injunction. *See* Dkt. 9.1. Now Intervenors raise the precise same arguments again. Their motion should be denied. Neither the State nor the Secretary of State has appealed and Intervenors—three private individuals granted permissive intervention below—have no standing to appeal. Moreover, their kitchen-sink approach to their stay motion arguments mischaracterizes and distorts the record and law.

BACKGROUND

On August 10, 2023, after a year and half of litigation and a four-day trial, the district court found that Washington’s 15th Legislative District (LD15) violated Section 2 of the Voting Rights Act. ADD-32.¹ The district court found that the enacted boundaries of LD15, “in combination with the social, economic, and historical conditions in the Yakima Valley region” resulted in an unequal opportunity for Latino voters in the area. *Id.* The court conducted a “detailed evaluation,” of the *Gingles* and Senate factors, finding that the pervasive racially polarized voting in the Yakima Valley consistently led to Latino candidates of choice being defeated. ADD-28. The court provided an opportunity for Washington’s

¹ Citations to the *Soto Palmer v. Hobbs* district court docket that appear in Intervenors’ Addendum, ECF No. 6.1, are cited as “ADD.” Citations to additional documents included in Plaintiffs’ Appendix are cited as “Pl. App.”

Redistricting Commission, which drew the enacted map, to be reconstituted to redraw the district, and also established a parallel remedial process to ensure a new map would be adopted by the Secretary of State’s March 25, 2024, deadline. *Id.*

Intervenors—three individuals who were granted permissive intervention in the district court—filed a notice of appeal a month later, on September 8, 2023. ADD-45. Secretary Hobbs and the State of Washington—the defendants below—did not appeal. On November 3, 2023, Intervenors filed a petition for certiorari before judgment with the Supreme Court, seeking to bypass this Court’s appellate review. *See* Petition for Certiorari Before Judgment, *Trevino v. Soto Palmer*, No. 23-484 (U.S. Nov. 3, 2023). On December 5, 2023—four months after the district court issued its decision and injunction, three months after its appeal in this Court was docketed, and one month after asking the Supreme Court to bypass this Court—Intervenors filed a motion with this Court to stay the district court’s injunction and remedial proceedings. *See* Mot. to Stay Injunction and Lower Court Proceedings, *Susan Palmer, et al. v. Jose Trevino, et al.*, No. 23-35595 (9th Cir. Dec. 5, 2023), Dkt. 34-1 (“First Stay Motion”).²

On December 21, 2023, a motions panel of this Court issued an order denying Intervenors’ motion for a stay, citing Intervenors’ failure to satisfy the stay factors

² This was Intervenors’ first stay motion in this Court but accompanies five stay attempts in the district court, each one of which was denied.

set forth in *Nken v. Holder*, 556 U.S. 418, 434 (2019). Order Denying Stay, *Susan Palmer, et al. v. Jose Trevino, et al.*, No. 23-35595 (9th Cir. Dec. 21, 2013), Dkt. 45. On January 5, 2024, Intervenor filed a motion to hold their own appeal in abeyance pending the district court’s remedial proceedings and their Supreme Court petition, *id.*, Dkt. 48, which this Court granted, *id.*, Dkt. 59. That is, five months after the district court entered an injunction they contend imminently harmed them and necessitated a stay, Intervenor sought to delay resolution of their own appeal. Thereafter, the Supreme Court denied their petition for certiorari before judgment on February 20, 2024. *See Trevino v. Soto Palmer*, No. 23-484.³

In the meantime—and following this Court’s denial of Intervenor’s motion to stay the trial court remedial proceedings—the district court held a robust remedial process. Pursuant to the district court’s remedial order, on December 1, 2023, Plaintiffs submitted five maps, each one of which would remedy the Section 2 violation. ADD-34; Pl. App. 168-194. As Plaintiffs’ expert and map-drawer Dr.

³ The same day, the Supreme Court also declined to take jurisdiction in a related case, *Garcia v. Hobbs*, No. 23-467 (2024). That case concerns the appeal in a separate suit filed in the district court two months after Plaintiffs filed this suit, challenging LD15 as a racial gerrymander. Like Plaintiffs, Mr. Garcia sought to invalidate LD15 and have a new valid plan enacted in its place, and following Plaintiffs’ win in this case invalidating LD15, *Garcia* was dismissed as moot. *Garcia v. Hobbs*, No. 3:22-cv-05152, ECF No. 81. The circumstances surrounding Mr. Garcia’s case, however, are unusual. He is represented by the same attorneys as Intervenor here, despite his desire to invalidate the same district Intervenor were trying to maintain.

Kassra Oskooii explained, he drew the maps to unify the population centers from East Yakima to Pasco and the cities in the Lower Yakima Valley that the district court identified as a community of interest. Pl. App. 171. In doing so, Dr. Oskooii started with the enacted map and then made the changes necessary to achieve this goal while adhering to the redistricting criteria in Washington law, traditional redistricting principles, equal population mandates, and respecting other communities of interest—including the desires of the Yakama Nation. Pl. App. 171-72. No other party submitted maps by the court’s deadline.

In response to criticism from Intervenors, on January 5, 2024, Plaintiffs submitted slightly revised versions of their five maps that eliminated nearly all incumbent displacement in the districts surrounding LD14 and LD15. ADD-34; Pl. App. 98-142. The remedial process continued throughout the early months of 2024 with additional briefing and expert reports, the appointment of a special master, oral argument on the district court’s preferred map, and an evidentiary hearing on March 8 at which expert and lay witnesses testified. ADD-34-35. In the lead-up to the evidentiary hearing (nearly three months after the initial deadline), Intervenors submitted a proposed remedial map. ADD-145.

Following the evidentiary hearing, on March 15, 2024, the district court ordered in place Plaintiffs’ Map 3B, which remedied the Section 2 violation while respecting the priority of the Washington Redistricting Commission to

simultaneously unite the Yakama Nation Indian Reservation with its off-reservation trust lands in Klickitat County near to and along the Washington/Oregon border. ADD-36.

ARGUMENT

I. Intervenor lack standing to appeal.

Intervenors lack standing to appeal this case. To establish standing, a litigant must demonstrate “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). “[S]tanding ‘must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.’” *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013)) (internal citation omitted); *see also Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (“As the [Supreme] Court has repeatedly recognized, to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing”) (internal citation omitted). This ensures that “the decision to seek review . . . is not to be placed in the hands of ‘concerned bystanders,’ who will use it simply as a ‘vehicle for the vindication of value interests.’” *Diamond v. Charles*, 476 U.S. 54, 62 (1986) (internal citation omitted).

This appeal is such a vehicle. In granting Intervenors only permissive intervention, the district court expressly found that “intervenors lack a significant

protectable interest in this litigation.” Pl. App. 287. Two of the three, Ybarra and Campos, *do not even reside or vote in LD15*, and thus have no possible cognizable interest in the district’s configuration. *United States v. Hays*, 515 U.S. 737, 744-45 (1995).

Intervenors Campos and Trevino below asserted an interest “in ensuring that any changes to the boundaries of [their] districts do not violate their rights to ‘the equal protection of the laws’” and “that Legislative District 15 and its adjoining districts are drawn in a manner that complies with state and federal law.” Pl. App. 281. But neither has been racially classified, and a blanket interest in “proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits [the intervenors] than it does the public at large[,] does not state an Article III case or controversy.” *Lujan*, 504 U.S. at 573-74; *Allen v. Wright*, 468 U.S. 737, 754-55 (1984).

Moreover, the district court has not ordered *Intervenors* “to do or refrain from doing anything.” *Hollingsworth*, 570 U.S. at 705 (holding that non-governmental intervenor-defendants lack standing to appeal); *Republican Nat’l Comm. v. Common Cause of Rhode Island*, 141 S. Ct. 206 (2020) (Mem.) (denying stay of consent decree between state officials and plaintiffs because “no state official has expressed opposition” and intervenor “lack[s] a cognizable interest in the State’s ability to enforce its duly enacted laws”) (internal quotations omitted). Intervenors have no

role in enforcing state statutes or implementing any remedial plan. Thus, Intervenor’s only interest in reversing the district court’s decision is “to vindicate the [] validity of a generally applicable [Washington] law.” *Hollingsworth*, 570 U.S. at 706. But the Supreme Court has repeatedly held that “such a ‘generalized grievance,’ no matter how sincere, is insufficient to confer standing.” *Id.*

Intervenor Ybarra’s status as a legislator also does not confer standing. Any interest in “avoiding delays in the election cycle and in knowing ahead of time which voters will be included in his district,” Pl. App. 283, is not particularized enough for Article III standing—every party (and the public) has an interest in an orderly election—and no legislator is entitled to advance notice of his constituents. In addition, the district court’s remedial order *guarantees* that Rep. Ybarra will know his district’s boundaries before the candidate filing date. ADD-43. Similarly, individual legislators have “no standing unless their own institutional position” is affected. *Newdow v. United States Cong.*, 313 F.3d 495, 498-99 (9th Cir. 2002). Nothing in this litigation impacts Rep. Ybarra’s institutional position or powers, and he is only one legislator of many, without the ability to assert harm on behalf of others. *Bethune-Hill*, 139 S. Ct. at 1953-54.

Nor does Rep. Ybarra have standing because of any argument that the remedial map *might* make his reelection campaign more difficult or costly. No official is guaranteed reelection or particular district lines, and to assert standing a

litigant “must do more than simply allege a nonobvious harm.” *Bethune-Hill*, 139 S. Ct. at 1951 (citing *Wittman v. Personhuballah*, 578 U.S. 539, 543-45 (2016)). Intervenor’s have not done so. To begin, as of the date of this filing, Rep. Ybarra’s reelection campaign is uncontested.⁴ Despite that fact, Intervenor’s speculate harm based on a “net movement of Democrats into Representative’s Ybarra’s district.” Mot. at 26. But that is not a cognizable injury, and the partisan lean of Rep. Ybarra’s district does not change in Map 3B. Pl. App. 140 (comparing LD13 in the Enacted Plan’s 63.85% Republican performance to Map 3B’s 63.21% Republican performance). If having new constituents established standing, *every legislator* would be able to sue over almost any changes to their district at least every 10 years.⁵ That cannot be so.

If anything, Map 3B *better* reflects Rep. Ybarra’s wishes for his own district boundaries, adding communities to his district he testified he desired be included

⁴See Washington Public Disclosure Commission, *Candidates: Legislative District 13-House*, https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/candidates?jurisdiction=LEG+DISTRICT+13+-+HOUSE&jurisdiction_type=Legislative.

⁵ Nor is spending \$3.76 to campaign for reelection in one’s own district (LD13) enough to establish standing to challenge a remedial map, particularly to challenge *another* district entirely (LD15). In contrast to the inapposite *Van* case cited by Intervenor’s, Rep. Ybarra would spend more than \$3.76 campaigning in LD13 even if his district did not change. For example, Rep. Ybarra ran in uncontested primary and general elections in 2020 yet spent over \$73,000 campaigning. *Id.*

and removing areas he desired be excluded. Pl. App. 243. As such, a *stay* would harm Rep. Ybarra's interests.

In addition to the reasons above, Intervenor's have no other concrete interest in a remedial appeal. Two of the three do not live in the remedial district in Map 3B. The district court's remedial order did not order Intervenor's to do or not do anything, nor are Intervenor's injured in any way by changes they claim are beyond "necessary," Mot. at 29; only the State Defendants could raise such an argument and they have not appealed. Moreover, any allegations that Intervenor's Trevino or Ybarra were *personally* subject to a racial classification are not based in the record. *Hays*, 515 U.S. at 745 ("[A]bsent specific evidence" showing a voter has been subject to racial classification, the voter "would be asserting only a generalized grievance against governmental conduct of which he or she does not approve" and lack standing); *Cooper v. Harris*, 581 U.S. 285, 290 (2017). Nothing about Map 3B suggests that race predominated. *See infra* II.B.2. To the contrary, Plaintiffs' mapping expert "did not consider race or racial demographics in drawing the remedial plans." Pl. App. 172. Thus, Plaintiffs' plans would not even prompt, let alone fail, strict scrutiny.

II. Intervenor's are unlikely to succeed on the merits.

Even if this Court had subject matter jurisdiction over this appeal, Intervenor's are unlikely to succeed on the merits. To begin, Intervenor's misleadingly quote 28

U.S.C. § 2284 to contend that a three-judge court was required to adjudicate Plaintiffs’ statutory VRA claim. No court anywhere has ever held as much because, as six Fifth Circuit judges have explained, *see Thomas v. Reeves*, 961 F.3d 800, 801 (5th Cir. 2020) (Costa, J., concurring), the plain text of § 2284 limits the jurisdiction of three-judge courts to constitutional challenges. *See* 28 U.S.C. § 2284 (“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.” (emphasis added)).

A. Intervenor’s are unlikely to succeed on the merits of the district court’s Section 2 liability finding.

1. LD15’s bare Latino majority did not preclude the district court’s Section 2 liability finding.

The district court did not clearly err in finding a Section 2 violation notwithstanding LD15’s bare majority of Latino voters. A majority-minority district can dilute the minority’s voting power where, as here, the minority lacks a real opportunity to elect their candidates of choice. *See, e.g., Perez v. Abbott*, 253 F. Supp. 3d 864, 880 (W.D. Tex. 2017) (“[T]he existence of a majority HCVAP in a district does not, standing alone, establish that the district provides Latinos an opportunity to elect, nor does it prove non-dilution.”); *Pope v. Cnty. of Albany*, 687 F.3d 565, 575 n.8 (2d Cir. 2012) (“[T]he law allows plaintiffs to challenge legislatively created bare majority-minority districts on the ground that they do not

present the ‘real electoral opportunity’ protected by § 2”); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 933 (8th Cir. 2018); *Kingman Park Civic Ass’n v. Williams*, 348 F.3d 1033, 1041 (D.C. Cir. 2003); *Monroe v. City of Woodville*, 881 F.2d 1327, 1333 (5th Cir. 1989). The Supreme Court has further recognized that it is “possible for a *citizen voting-age majority* to lack real electoral opportunity,” *LULAC v. Perry*, 548 U.S. 399, 428 (2006) (emphasis added), and, as the district court held, “the evidence shows that that is the case here.” ADD-29.

Intervenors’ contention that “if a group constitutes a majority of the citizen-age voting population, then it necessarily possesses *at least an equal* opportunity to do so,” Mot. at 11-12 (emphasis in original), ignores the district court’s “searching practical evaluation of the past and present reality” in the Yakima Valley. *Gingles*, 478 U.S. at 79 (internal quotations omitted). Here, the district court found 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.” ADD-29.⁶ This finding accords with extensive evidence presented at trial, including evidence that the LD15 cracked the

⁶ When adopted, LD15 was 50.02% Hispanic CVAP. Pl. App. 235.

Latino community of interest “in Yakima, Pasco, [and] along the highways and rivers in between.” ADD-10-11; *see, e.g.*, Pl. App. 228 (“[W]hite voting power was higher in the included precincts, even though they’re high-density Latino, relative to the excluded precincts.”); Pl. App. 210-11, 274-75; *see also Perez*, 253 F. Supp. 3d at 887-88 (fracturing politically active communities had “the foreseeable effect of depressing Latino turnout”). Intervenor’s do not show this was clear error.

2. The Latino community in the Yakima Valley is compact.

The district court properly found that Plaintiffs satisfied the compactness requirement of the first *Gingles* precondition. ADD-9-11. Intervenor’s argue that the district court “failed to analyze the compactness of minority populations, rather than the geographic lines of the districts.” Mot. at 10. This argument has no merit.

In *LULAC*, the U.S. Supreme Court held that a Texas congressional district stretching from the Mexican border to Austin was not reasonably compact for § 2 purposes because of the “enormous geographic distance” separating the two pockets of Latino communities and the “disparate needs and interests” of those communities. 548 U.S. at 435. In so doing, the Court “emphasize[d] it is the enormous geographic[] distance separating the Austin and Mexican-border communities, coupled with the disparate needs and interests in these populations—not either factor alone—that renders District 25 noncompact for § 2 purposes.” *Id.*; *see id.* at 424 (concluding that

another district stretching 500 miles satisfied *Gingles* 1 where its Latino population had shared interests).

Here, neither factor is present. The district court concluded that the Latino population was geographically proximate and connected. ADD-10-11. And the district court concluded, based upon the testimony at trial, that the communities had shared “socio-economic status, education, employment, health, and other characteristics,” *id.* at 424 (internal quotation marks omitted), and “form a community of interest based on more than just race.” ADD-10-11, 19. Intervenors flippantly label these shared socio-economic disparities and community characteristics as “ubiquitous characteristics of Hispanic voters,” but do not show how the district court clearly erred. Their own expert, Dr. Mark Owens, “acknowledged at trial that he does not know anything about the communities in the Yakima Valley region other than what the maps and data show,” ADD-11 n.7, and testified that he had no opinion on whether LD15 was compact. Pl. App. 218.

3. The district court did not err by failing to analyze the cause of racially polarized voting.

The district court did not err by failing to analyze the cause of racially polarized voting in the Yakima Valley. Intervenors do not dispute that Latino voters are cohesive (*Gingles* 2), and that white voters vote as a bloc to routinely defeat the preferred candidate of Latino voters (*Gingles* 3), but instead argue that any

polarization is “caused by partisanship,” Mot. at 15, not racial attitudes of voters. Intervenor is wrong on the law and facts.

A majority of the U.S. Supreme Court has concluded that this type of causation argument is not pertinent to assessing racially polarized voting. *Gingles*, 478 U.S. at 51, 62-63, 74 (plurality) (the “legal concept of racially polarized voting incorporates neither causation nor intent” and “the reasons [Latino] and white voters vote differently have no relevance to the central inquiry of § 2”); *id.* at 100 (O’Connor concurring) (agreeing, along with three other justices, that where statistical evidence shows minority political cohesion and assesses prospects of winning, “defendants cannot rebut this showing by offering evidence that the divergent racial voting patterns may be explained in part by causes other than race”); *see also Allen v. Milligan*, 599 U.S. 1, 19 (2023) (explaining that the third *Gingles* precondition “establish[es] that the challenged districting thwarts a distinctive minority vote at least plausibly on account of race” (internal quotation marks omitted) (bracket in original)).

This Court has likewise so held. *See Old Person v. Cooney*, 230 F.3d 1113, 1128 (9th Cir. 2000) (noting that *Gingles* plurality rejected this argument); *United States v. Blaine Cnty., Mont.*, 363 F.3d 897, 912 & n.21 (9th Cir. 2004) (holding that in vote dilution claims, “evidence of racial bloc voting provides the requisite causal link between the voting procedure and the discriminatory result” and that plaintiffs

do not have “the additional burden of proving that white bloc voting is due to discriminatory motives”); *Gomez v. City of Watsonville*, 863 F.2d 1407, 1415-16 (9th Cir. 1988) (holding that “[t]he court should have looked only to *actual voting patterns* rather than speculating as to reasons why” (emphasis in original)). Intervenor contend that this Court has required a causal connection in Section 2 cases but misconstrue the Court’s precedent. Mot. at 14 (quoting *Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997)). In *Salt River*, the court assessed the presence or absence of a causal connection by considering whether, under the Senate Factors, the totality of circumstances supported finding a Section 2 violation. 109 F.3d at 595-96; see *Blaine County*, 363 F.3d at 912 n.21 (expressly rejecting Intervenor’s reading of *Salt River*).

In any event, the district court found that Intervenor’s argument was factually incorrect, ADD-11-14, 30-31, and Intervenor identify no clear error in that conclusion. Indeed, the State’s expert Dr. John Alford persuasively testified about “a real ethnic effect on voting in this area.” Pl. App. 212-13. Plaintiffs’ expert Dr. Loren Collingwood’s analysis demonstrated that Latino-preferred candidates with Spanish surnames also lose in nonpartisan races. Pl. App. 225-26. And Intervenor’s counsel’s other client, Benancio Garcia, testified to racial discrimination he faced from the Washington State Republican Party as a Latino candidate running for Congress in the Yakima Valley. In Mr. Garcia’s own words, this discrimination

“greatly affected th[e] election, the outcome, and suppressed the Latino vote.” Pl. App. 238-40.⁷

Moreover, Intervenor claim that the district court ignored the victory of candidate Nikki Torres in LD15 in 2022, Mot. at 15, but that is belied by the record. The district court found that it confirmed the overall statistical evidence of racially polarized voting, with Latino voters cohesively voting for the *losing* candidate Lindsey Keesling, and white voters cohesively preferring Ms. Torres, the winning candidate. ADD-11-12.⁸ Intervenor’s constant refrain that Ms. Torres (a candidate opposed by Latino voters) won by 35 points simply highlights *the harm* of the enjoined district.⁹

⁷ Mr. Garcia’s testimony demonstrates that even within the Washington Republican Party, white Republicans are favored over Latino Republicans.

⁸ Moreover, LD15’s 2022 election is a “special circumstance” with little probative value as it took place during the pendency of VRA litigation and featured a severely underfunded Latino-preferred candidate nominated as a write-in. Pl. App. 219-20; *Ruiz v. City of Santa Maria*, 160 F.3d 543, 557-58 (9th Cir. 1998) (elections “not representative of the typical way in which the electoral process functions” are less probative); *Gingles*, 478 U.S. at 75-76.

⁹ Intervenor assumes that because Ms. Torres is Latina, she *must* be the Latino-preferred candidate. That assumption is as offensive as it is incorrect. A minority candidate is not automatically the minority *candidate of choice*. See, e.g., *LULAC*, 548 U.S. at 438-41 (redistricting diluted Latino voting strength because Latino voters were near ousting non-Latino-preferred Latino incumbent); *Ruiz*, 160 F.3d at 551 (“[A] candidate is not minority-preferred simply because the candidate is a member of the minority”) (collecting cases).

4. The district court’s totality of circumstances analysis was not clearly erroneous.

The district court did not err in finding that the Yakima Valley region’s Latino voters do not, under the totality of the circumstances, have an equal opportunity to elect state legislative candidates of their choice. The district court found that “[e]specially 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.” ADD-31. Contrary to Intervenor’s assertions, the district court’s analysis did take into account both LD 15’s CVAP, *see infra* II.B.1, and the election of Senator Torres, *see supra* II.A.3. Indeed, even the State admitted “that under the totality of the circumstances, Hispanic voters in LD15 are less able to participate in the political process and elect candidates of their choice than white voters.” Pl. App. 232-33. Intervenor cannot show clear error in the district court’s findings.

B. Intervenor’s are unlikely to succeed on the merits of the district court’s remedial order.

1. The district court did not clearly err on account of the remedial district’s HCVAP percentage.

The district court did not clearly err by ordering a remedial district that has an HCVAP slightly below that of the enjoined version of LD15. “When devising a remedy to a § 2 violation, the district court’s ‘first and foremost obligation . . . is to

correct the Section 2 violation.”” *United States v. Brown*, 561 F.3d 420, 435 (5th Cir. 2009) (quoting *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022 (8th Cir. 2006)). Whether a district violates (or remedies a violation of) Section 2 “entails a functional analysis that is ‘peculiarly dependent upon the facts of each case and requires an intensely local appraisal of the design and impact of the contested electoral mechanism.’” *Harding v. Cnty. of Dallas*, 948 F.3d 302, 309 (5th Cir. 2020) (quoting *Gingles*, 478 U.S. at 79).

The district court found that its remedial map cured the Section 2 violation—a conclusion that was supported by both Plaintiffs’ expert Dr. Loren Collingwood and Intervenor’s expert Dr. Sean Trende. ADD-34, 36, 155. Dr. Collingwood found that, under the remedial map’s version of LD14 in the Yakima Valley, Latino voters in the region would have been able to elect their candidates of choice in 8 out of 8 analyzed elections. Pl. App. 39. By contrast, Dr. Collingwood and the State’s expert, Dr. Alford, found that under the enjoined version of LD15, white voters usually defeated the preferred candidates of Latino voters (70% of the time). ADD-12.

Intervenors object that the remedial district’s HCVAP is slightly lower than the enjoined district’s. Mot. at 18-19. This argument is meritless. Whether a district violates Section 2—or, as here, remedies a Section 2 violation—is not about a numerical racial target. *See Cooper v. Harris*, 581 U.S. 285, 306 (2017) (noting that Section 2 compliance does not demand “precise[]” minority population targets).

Rather, the inquiry is a functional analysis of the election results and voter behavior in a particular district. *See id.* (holding that district with a sub-majority minority population complied with Section 2 because of greater white “crossover” support for minority candidates in the region). Intervenors make no showing, under *Gingles*, that the remedial district dilutes Latino voting strength; they merely compare HCVAP numbers and label any decrease as “dilution.” They are unlikely to succeed with this argument.

2. Intervenors are unlikely to succeed on the merits of their contention that the remedial map is a racial gerrymander.

Intervenors are unlikely to succeed on the merits of their contention that the remedial map is a racial gerrymander. To show that a map is an unconstitutional racial gerrymander, a party must “prove that ‘race was the predominant factor motivating the [mapdrawer’s] decision to place a significant number of voters within or without a particular district.’” *Cooper*, 581 U.S. at 291 (quoting *Miller v. Johnson*, 515 U.S. 900, 919 (1995)). This showing “entails demonstrating that the [mapdrawer] “subordinated other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to racial considerations.” *Id.* (internal quotation marks omitted). The burden on the party claiming racial gerrymandering is “demanding.” *Easley v. Cromartie*, 532 U.S. 234, 257 (2001). If the party succeeds in showing race was the predominant factor, “the design of the district must withstand strict scrutiny,” with a compelling interest that is narrowly

tailored. *Cooper*, 581 U.S. at 292. The Supreme Court “has long assumed that one compelling interest is complying with operative provisions of the Voting Rights Act of 1965.” *Id.* Intervenor’s 1.5-page argument falls woefully short of their burden.

First, Intervenor’s waived this argument by failing to raise it in the district court. This Court “will not consider arguments that are raised for the first time on appeal.” *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). In neither their district court remedial briefing, Pl. App. 153-67, nor their oral argument regarding the remedial map, Pl. App. 64-97, did Intervenor ever contend that the district court would be imposing an unconstitutional racial gerrymander if it adopted any of Plaintiffs’ proposed maps, including what ultimately became Map 3B.¹⁰ Indeed, Intervenor contended in the district court that *partisanship* (not race) was the predominant motivation in the configuration of Plaintiffs’ proposed remedial maps. *See, e.g.*, Pl. App. 153, 160-63 (contending that Plaintiffs proposed “an overtly partisan legislative map”); Pl. App. 72-73. Intervenor repeats that argument in their motion for a stay. Mot. at 18-19, 23-24. A party alleging a racial gerrymander must show “that race (not politics)” was the predominant consideration. *Cooper*, 581 U.S. at 318. Intervenor cannot raise for the first time on appeal a racial gerrymandering contention that was “not raised before the district court [and is] inconsistent with

¹⁰ Map 3A barely differed from Map 3B. *See* Pl. App. 1-6; Mot. at 16-17 n.2.

positions employed there.” *Momox-Caselis v. Donohue*, 987 F.3d 835, 841 (9th Cir. 2021).

Second, Intervenorors cite no record evidence to support their contention that race predominated in the drawing of the remedial map—nor could they. The remedial map was drawn by Plaintiffs’ expert Dr. Oskooii, who testified as follows: “I did not consider race or racial demographics in drawing the remedial plans. I did not make visible, view, or otherwise consult any racial demographic data while drawing districts.” Pl. App. 171; Pl. App. 122 (same regarding Map 3A).

Third, Intervenorors’ argument rests entirely on what they call the “remedial district’s slithering-octopus shape,” which they contend—without citation and contrary to the record—is “unexplainable except by race-based criteria.” Mot. at 20 (internal quotation marks omitted). But Dr. Oskooii specifically explained the district’s shape, and it had nothing to do with race, but rather with maximizing the number off Yakama Nation off-reservation trust lands and fishing villages kept whole with the reservation itself in the district—something *Intervenorors requested*. Pl. App. 90-91; Pl. App. 56-63. Map 3 (and 3A and 3B) were variations on Map 1, which is shown below with remedial LD14 shown in green.

Plaintiffs' Map 1



Pl. App. 172. This looks nothing like an octopus, or any other “bizarre shape.” Mot. at 19 (internal quotation marks omitted).¹¹ As Dr. Oskooi explained, Map 3 modified Map 1 by including all, rather than just some, of the off-reservation trust lands and fishing villages. Pl. App. 172, 175; *see also* ADD-144 (map of trust lands). Intervenors object to features of the remedial map that the record reflects were configured to address a concern *they raised* about including the maximum amount of tribal lands. *See also* ADD-37-38 (district court explaining map’s purpose in maximizing inclusion of off-reservation trust lands).¹²

¹¹ This shows how Intervenors’ contention that uniting Latino communities of interest in the region “wrought the octopus” is contrary to the record. Mot. at 20.

¹² In addition to Dr. Oskooi’s report on this topic, he testified to this effect at the March 8 remedial hearing, for which the transcript is not yet available.

3. The district court’s remedial map alters the enacted plan no more than necessary to cure the violation.

In fashioning a Section 2 remedy, “a court, as a general rule, should be guided by the legislative policies underlying the existing plan to the extent those policies do not lead to violations of the Constitution or the [VRA].” *Abrams v. Johnson*, 521 U.S. 74, 79 (1997). The district court’s chosen remedy, Map 3B, does exactly this. The court committed no error in finding that Map 3B follows state and traditional redistricting criteria, respects the state’s policy judgments, and alters the enacted plan no more than is necessary to remedy the § 2 violation.

Plaintiffs’ expert Dr. Oskooii drew all proposals, including Map 3B, by starting with the enacted plan and adjusting only as needed to remedy the violation while abiding by state and traditional redistricting principles. Pl. App. 101-02, 171. There is no dispute that the map has equal-population districts within acceptable deviation; is reasonably compact, contiguous, and convenient; minimizes county, city, and precinct splits; and respects communities of interest consistent with Washington law. See RCW § 44.05.090; Pl. App. 110, 129-30; ADD-146.

Map 3B also “follow[s] the policies and preferences of the State,” *Upham v. Seamon*, 456 U.S. 37, 41 (1982), including the State’s desire to honor the Yakama Nation’s wish to keep the Tribe’s land and people in one district to the extent practicable. Pl. App. 40-52. Indeed, Map 3B includes in LD14 the entire tribal reservation, more than 96% of tribal off-reservation trust lands, and 94% of the

tribe’s treaty fishing access sites along the Columbia River. Pl. App. 12-13. Map 3B also has the largest number and share of Native American voting-age residents in LD14 as compared to the enacted map and Intervenor’s proposal. Pl. App. 14. The district court did not clearly err in finding that Map 3B accomplishes these objectives while “avoid[ing] gratuitous changes[] to the enacted map.” ADD-36. The State’s contrary arguments are meritless.

First, Intervenor’s have no standing to raise this argument because only the State could be harmed by a court failing to adhere to its policy goals. The State has not appealed and has not contended its policy goals were infringed.

Second, Intervenor’s refrain that Map 3B alters 13 of the state’s 49 legislative districts is unpersuasive. This fact is unsurprising given that the two districts at issue, LD14 and LD15, are situated in the middle of the state and each border five and six districts with large areas of sparsely populated territory, respectively. Wash. State Redistricting Comm’n, District Maps & Handouts (Legislative District Maps), <https://perma.cc/P48S-4GD9>; ADD-40; Pl. App. 173-76. The number of districts affected also says nothing of the magnitude of the changes. They are small. Dr. Oskooii’s undisputed core retention analysis shows that Map 3B affects less than 5.5% of the state’s roughly 7.7 million people. Pl. App. 142. In other words, the map retains 94.5% of Washingtonians in the same district as the enacted plan. *See*

Singleton v. Allen, No. 2:21-CV-1291-AMM, 2023 WL 6567895, at *9 (N.D. Ala. Oct. 5, 2023) (ordering remedy with core population retention of 86.8%).

Intervenors’ other claims regarding “population displacement,” Mot. 22, are incorrect. They inflate by nearly 100,000 the number of affected people. And Map 3B does not affect “a majority,” Mot. at 22, of the state’s 39 counties as Intervenors claim; it affects only 12, or less than a third. Pl. App. 149 (Secretary of State employee describing the county impact of Map 3B’s very similar predecessor proposal).

Furthermore, Intervenors’ complaints regarding incumbents and political changes are irrelevant. Mot. 22-23. “[P]urely political considerations that might be appropriate for legislative bodies,” like incumbent protection, “have no place in a plan formulated by the courts.” *Larios v. Cox*, 306 F. Supp. 2d 1214, 1218 (N.D. Ga. 2004) (internal citations omitted). Nor is incumbent protection among the state’s redistricting criteria. See RCW § 44.05.090. Nevertheless, after drawing Plaintiffs’ map submissions first according to the state’s actual criteria, Dr. Oskooii did adjust districts where possible to avoid incumbent displacement. Pl. App. 121-22, 128; *Abrams*, 521 U.S. at 84 (upholding plan subordinating incumbent protection to other factors).

Intervenors’ demand for a map with specific partisan performance is similarly misplaced. *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 563-64 (E.D. Va. 2016)

(“[W]e have found no case holding that we must maintain a specific political advantage in drawing a new plan[.]”). Because Washington prohibits favoring or disfavoring any political party, RCW § 44.05.090(5), Dr. Oskooii declined to consider any political, partisan, or electoral data while drawing his remedial proposals, including Map 3B. ADD-42; Pl. App. 172. Nonetheless, his subsequent analysis contradicts Intervenor’s claims of partisan bias: Map 3B confers no gain or loss to any party beyond LDs 14 and 15, and the overall partisan tilt of the legislative map remains slightly Republican, like the enacted plan. ADD-42; Pl. App. 116-121.

Intervenor’s claim that Dr. Trende’s illustrative map—which was submitted to the district court three months after the parties’ deadline to submit remedial proposals—shows that a remedy could be ordered that entails fewer changes. But Dr. Trende’s map is not actually a remedy to the Section 2 violation because it fails to unify the Latino community of interest that the enacted plan had unlawfully cracked, hampering Latino voters’ ability to organize effectively to elect candidates of their choice. ADD-41; Pl. App. 9-10. The Plan also suffered from additional flaws. Pl. App. 008-036. Such a map cannot serve as a reliable comparator.

Lastly, Intervenor’s claim the district court did not give the Commission an opportunity to draw remedial maps. Untrue. Although the district court initiated a parallel process for developing a court remedy on October 4, 2023, the court made clear that this process was a contingency plan should the Commission fail to be

reconvened to draw a remedial map in time for the 2024 elections, App. 203-04, precisely what the legislative Republican leadership requested, ECF No. 218 at 32.

III. Intervenor face no harm, irreparable or otherwise.

Irreparable harm absent a stay is the second of the two “most critical” factors in consideration of a stay pending appeal. *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 952 (9th Cir. 2020) (citation omitted). Intervenor argue that they are “sorted on the basis of their race,” Mot. at 24, in the adopted map, but they provide no evidence for this claim. *See supra*.

Lacking any evidence that race predominated however—or was even considered—in drawing or adopting the remedial map, Intervenor instead argue that *any* § 2 remedial map creates a cognizable injury. Mot. at 25. But this argument is flatly inconsistent with the Supreme Court’s recent precedent. *See Allen*, 599 U.S. at 41. A district is not an unconstitutional racial gerrymander if the VRA requires its race-conscious drawing, as Intervenor have previously acknowledged. First Stay Motion at 9. Their assertion now that even where required for VRA compliance, consideration of race nevertheless causes an “irreparable injury” is nonsensical. Intervenor are not harmed by a remedial process that proceeded according to established precedent, or a remedial district adopted without racial consideration to remedy an established VRA violation. And even if race had been considered at all in adopting the remedial map, that would not constitute harm. *Allen*, 599 U.S. at 30.

Finally, Intervenor’s previous efforts to delay resolution of their appeal in this case significantly undermine the urgency of the present motion. Though Intervenor moved quickly to file this appeal after the district court issued its remedial order, they previously waited *three months* after the district court issued its decision on the merits before appealing, and then asked that that appeal be held in abeyance. ADD-47. The majority of issues in the present emergency appeal have been known to Intervenor since the district court’s August 2023 opinion, and Intervenor have provided no explanation for their previous delay. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983) (denying “emergency stay” pending appeal filed after “unexplained delay” of 56 days).

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

The balance of equities and public interest strongly weighs in favor of denying Intervenor’s request for a stay. It is a recognized public interest for elections to be conducted under lawful redistricting plans. *See e.g., Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Intervenor’s arguments rest on the success of their appeal, but they neither have standing to appeal nor are likely to succeed on the merits. *See supra*. Courts faced with similar situations—the appeal of a redistricting decision and motion to stay the implementation of a remedial plan—have declined to stay the remedial order finding the risk of permitting elections on an unlawful map grossly against the public interest. *See Personhuballah*, 155 F. Supp. 3d at 560-61. To grant

Intervenors’ motion would “give [them] the fruits of victory whether or not the appeal has merit.” *Jimenez v. Barber*, 252 F.2d 550, 553 (9th Cir. 1958); *see also Covington*, No. 1:15CV399, 2018 WL 604732, at *6 (M.D.N.C. Jan. 26, 2018).

Intervenors’ request contravenes the public interest. They ask this Court to conduct the 2024 elections using a plan that after a four-day trial with expert and lay testimony, and after extensive briefing, was found to violate the VRA. Lawful elections cannot be conducted on an unlawful map.¹³ *See Larios v. Cox*, 305 F. Supp. 2d 1335, 1344 (N.D. Ga. 2004); *Personhuballah*, 155 F. Supp. 3d at 560-61. Courts have recognized that the harm suffered by Plaintiffs and the public compound for each election that is conducted under an unlawful plan. *See Larios*, 305 F. Supp at 1344; *Reynolds*, 377 U.S. at 585. There is no justification and no need for Washingtonians to vote in *another* election under an illegal plan.

CONCLUSION

The Court should deny the motion for a stay.

¹³ It is untrue that the Supreme Court has routinely stayed permanent injunctions in redistricting cases, the two cases cited by Intervenor’s concern *preliminary* injunctions. *See, e.g., Merrill v. Milligan*, 142 S. Ct. 879 (2022); *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022). Once a remedial plan was ordered in *Milligan*, the Supreme Court denied the subsequent stay application. *See Allen v. Milligan*, 144 S. Ct. 476 (U.S. Sept. 26, 2023) (Mem.).

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Chad W. Dunn
Sonni Waknin
UCLA Voting Rights Project
3250 Public Affairs Building
Los Angeles, CA 90095
(310) 400-6019
chad@uclavrp.org
sonni@uclavrp.org

Thomas A Saenz
Ernest Herrera
Mexican American Legal Defense and
Education Fund
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
(213) 629-2512
tseanz@maldef.org
eherrera@maldef.org

Edwardo Morfin
Morfin Law Firm, PLLC
2602 N. Proctor St., Ste. 205
Tacoma, WA 98407
(509) 380-9999

Respectfully submitted,

/s/ Mark P. Gaber
Mark P. Gaber
Aseem Mulji
Simone Leeper
Benjamin Phillips
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegal.org
amulju@campaignlegal.org
sleeper@campaignlegal.org
bphillips@campaignlegal.org

Annabelle E. Harless
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org

Counsel for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

1. This brief contains 6,924 words spanning 29 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f). Intervenor moved—on their and Appellees’ behalf—for leave to file a brief exceeding the limits of Federal Rule of Appellate Procedure 27(d)(2)(B) and Circuit Rule 27-1(1)(d).

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

Dated: March 20, 2024

/s/ Mark P. Gaber
Mark P. Gaber

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/ Mark P. Gaber
Mark P. Gaber